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*[Handwritten signature]*  
Date 7/17/2013

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

**UNDER SEAL**

\_\_\_\_\_  
UNITED STATES )

v. )

ALI AL-TIMIMI )  
\_\_\_\_\_ )

Case No. cr-04-385

Hon. Leonie M. Brinkema

**DEFENDANT DR. ALI AL-TIMIMI'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY RELATED TO ANWAR AL-AULAQI**

Defendant Dr. Ali al-Timimi respectfully moves this Court, by counsel and pursuant to Federal Rule of Criminal Procedure 16 and *Brady v. Maryland* and its progeny, to compel the government to produce previously requested and unlawfully withheld evidence regarding Dr. al-Timimi and Anwar al-Aulaqi.<sup>1</sup> The requested evidence was clearly material to the preparation of Dr. al-Timimi's defense for his 2005 trial before this Court, would have allowed defense counsel to impeach the testimony of at least two key government witnesses, and may contain exculpatory information regarding Dr. al-Timimi's willingness to recruit young men for violent jihad, an alleged willingness that lay at the heart of the government's case. Recent public disclosures regarding this evidence, moreover, raise fundamental questions concerning the government's representations to both the Court and defense counsel during this matter.

<sup>1</sup> Defense counsel informed the government about the instant filing to confirm that the government's previous position on this discovery had not changed and to determine the availability of counsel for a future hearing. Government counsel confirmed that he is available August 16th for such a hearing, though the Court may wish to include planned future motions in such a hearing.

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There are motions related to discovery currently pending in both classified and unclassified dockets in this matter.<sup>2</sup> This Motion (and planned subsequent motions)<sup>3</sup> supplements these earlier motions and seeks to compel disclosure based on new information obtained since the prior filings. As of last Wednesday, July 10, lead counsel is now permitted to return to the SCIF for any classified arguments and has arranged for a sealed filing to be given to the court security officer today.<sup>4</sup>

## I. INTRODUCTION

Anwar al-Aulaqi was an American-born Muslim cleric who was killed in a drone strike by order of President Barack Obama in 2011.<sup>5</sup> Beginning several months prior to his 2005 trial

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<sup>2</sup> Since February 2009, this Court has had several motions pending before it, including but not limited to a Motion for Modification of Court's March 14, 2008 Order and a February 2009 Motion to Compel Discovery. (Dkt Nos. 251, 287). The government has also classified one other pending motion from October 2008, and counsel is still unclear as to whether it can use titles of that or other pending motions in a public filing due to an earlier claim of classification. Dr. al-Timimi, in requesting the below relief, incorporates by reference all of these motions.

<sup>3</sup> Both classified and unclassified motions to be filed will address additional withheld evidence that has come to light through the efforts of defense counsel, as well as Congress and the media. The classified motions may be delayed by the need to schedule "SCIF time."

<sup>4</sup> On Wednesday, July 10, the government informed lead counsel Jonathan Turley that his field investigation and clearance review had been finalized. As a result, his clearance was reactivated, allowing him to resume filings in the SCIF. Defense counsel is filing this document under seal due to the references to the Affidavit of Wade Ammerman (which is itself under seal), as well as the enclosure of a document from the National Archives and Records Administration ("NARA"). The NARA document has no classification markings and was given to uncleared defense counsel as an unclassified document. Because, however, the government has previously objected in this matter to a filing quoting a title that appears on the public docket, defense counsel, in an abundance of caution, waited to submit this document under seal. The defense believes that this document and the Ammerman affidavit should be unsealed and placed on the public docket. Defense counsel has also been in consultation with security staff over the last week on how to submit this filing; it was decided that the motion would first be given to court security to allow a review of the NARA document before the motion is placed on the docket as a sealed filing. Thus, a copy of this filing will be given to the Clerk by security staff once a classification review is completed.

<sup>5</sup> Michael Martinez, *U.S. Drone Killing Of American al-Awlaki Prompts Legal, Moral Debate*, CNN (Sept. 30, 2011), <http://www.cnn.com/2011/09/30/politics/targeting-us-citizens>.

before this Court, Dr. al-Timimi has sought from the government material information relating to al-Aulaqi. This information includes, but is not limited to, evidence in the government's possession relating to al-Aulaqi's sudden and unexplained appearance at Dr. al-Timimi's Northern Virginia residence late one night in October 2002, during which Dr. al-Timimi rejected al-Aulaqi's entreaties to help him recruit young men for jihad. Dr. al-Timimi has long believed that this visit could not have happened without the government's knowledge or facilitation, despite the government's assertion at trial that its investigation of him began only in February 2003. These requests for evidence on al-Aulaqi and his dealings with either Dr. al-Timimi or other parties associated with the so-called "Virginia Jihad" conspiracy<sup>6</sup> have been repeatedly rebuffed by the government.

Since the last hearing in this remand, defense counsel has pursued a variety of different means to establish the scope of withheld evidence in this case, including surveillance evidence and related field reports concerning al-Aulaqi. This evidence—which includes heavily redacted material disclosed in just the last two weeks as well as evidence uncovered by defense counsel at NARA—demonstrates the intense interest and direct involvement in al-Aulaqi's movements in October 2002 by FBI Special Agent Wade Ammerman, who helped lead the investigation of Dr. al-Timimi and testified against him at trial. The documents also show that the FBI's October 2002 communications about al-Aulaqi include "asset reporting," and that, at least in the early part of 2002, Anwar al-Aulaqi was under close government surveillance. Indeed, Agent

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<sup>6</sup> The alleged conspiracy, which Dr. al-Timimi was accused of inspiring with his words, has also been referred to as the "Virginia Paintball" case. Although the government has long claimed the prosecutions to be a significant victory against terrorism, recently uncovered documents show that, even during the height of the investigation, there existed highly dismissive attitudes within the FBI toward the need for criminal prosecutions in the case. *See* Memorandum for the Record, Interview of FBI Special Agent Tim Ervin by "9/11 Commission," at 3 (October 17, 2003) (Exhibit A) ("[t]he Lackawanna 6 was a good case. The other prosecutions for terrorism are B.S.[.] They would never have investigated the Virginia jihad group before 9/11.").

Ammerman is quoted in an interview with a Fox News reporter as stating, “I don’t think anyone wants me talking ‘bout what I was involved in” vis-à-vis al-Aulaqi. Catherine Herridge, *The Next Wave: On the Hunt for Al Qaeda’s American Recruits* 217 (Crown Publishing Grp. 2011).<sup>7</sup>

This information raises highly troubling questions over past representations made to the Court and defense counsel by the government—misrepresentations which both directly relate to the issues in this remand and which the Court possesses inherent authority to investigate. *Manez v. Bridgestone Firestone N. Am. Tire, LLC*, 533 F.3d 578, 585 (7th Cir. 2008) (“No matter who allegedly commits a fraud on the court—a party, an attorney, or a nonparty witness—the court has the inherent power to conduct proceedings to investigate that allegation and, if it is proven, to punish that conduct.”); *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 462 (4th Cir. 1993) (“Under [its] inherent power, a court may issue orders, punish for contempt, vacate judgments obtained by fraud, [and] conduct investigations as necessary to exercise the power”).

## II. PROCEDURAL HISTORY

### A. *United States v. al-Timimi* and the Fourth Circuit Remand

Nearly eight years ago, following his conviction at trial, this Court sentenced Dr. Ali al-Timimi to life in prison.<sup>8</sup> In April 2006, several months after Dr. al-Timimi’s sentencing, the Court of Appeals for the Fourth Circuit remanded this case to this Court for additional proceedings after reports surfaced of previously undisclosed surveillance programs covering

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<sup>7</sup> According to the author of this source, this statement is not a verbatim quote, but captures the essence of Agent Ammerman’s comment. *Id.*

<sup>8</sup> Dr. al-Timimi had been indicted for counseling and inducing others to conspire to levy war against the United States, aid the Taliban, aid Lashkar-e-Taiba, violate the Neutrality Act, and to use firearms and explosives in furtherance of those underlying crimes of violence. At the time of sentencing, this Court acknowledged that the statutorily mandated sentence was “very draconian.” Sentencing Hr’g Tr. 20:23-24, July 13, 2005. On other occasions, this Court has expressed concern that the case against Dr. al-Timimi was “permeated with First Amendment issues.” (Dkt. No. 146, Hr’g Tr. 34:24-25, 35:1-3, Mar. 18, 2005).

individuals material to this case. (Exhibit B). The remand set no period for the Court's review of undisclosed evidence, and included inquiry into (1) whether evidence derived from warrantless surveillance was used against Dr. al-Timimi at trial in violation of the Fourth Amendment; and (2) whether previously undisclosed surveillance contained material evidence that the government had been obligated to produce pursuant to Rule 16 or *Brady v. Maryland* and its progeny.<sup>9</sup> (Dkt. No. 183, Hr'g Tr. 31:9-14, July 21, 2006). The adequate resolution of both of these issues was critically dependent on one thing: the production by the government of all undisclosed evidence in its possession that was material to Dr. al-Timimi's case.<sup>10</sup>

This remand has been unique in its focus and its procedural posture. The inequity faced by Dr. al-Timimi, however, remains simple and, in light of newly discovered information, increasingly untenable. Despite submitting, in compliance with an order from this Court, a set of narrowly tailored discovery requests for evidence, defense counsel has received from the government only unsupported legal objections about the materiality and discoverability of the evidence. To the extent the government has disclosed anything, it has done so in a series of *ex parte* filings, or else has provided very limited classified information to cleared defense counsel.

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<sup>9</sup> As discussed below, defense counsel has recently uncovered declassified documents which show that the government, contrary to assertions it has made in the past, shared FISA information with criminal investigators in order to develop cases against individuals associated with the "Virginia Jihad." Given this admitted "cross-pollination" between intelligence and criminal investigations in this matter, discovery in this remand must necessarily cover both intelligence and investigatory agencies.

<sup>10</sup> Additionally, the remand order did not limit the Court's inherent authority to address any disclosure of prior fraud, false statements, or willful blindness by the government in its dealings with the Court during these proceedings, including the remand period. *See Shaffer Equip. Co.*, 11 F.3d at 462.

**B. Pre-trial Discovery Related to Anwar al-Aulaqi**

For the last nine years, defense counsel has sought from the government evidence related to Anwar al-Aulaqi's dealings with Dr. al-Timimi or others in the so-called "Virginia Jihad" or "Virginia Paintball" conspiracy. These efforts began in November 2004, from the start of pre-trial discovery in this case, and have continued to this day.<sup>11</sup>

On November 19, 2004, Dr. al-Timimi filed a Motion for Discovery and *Brady* Material (Dkt. No. 18). In this motion, Dr. al-Timimi sought evidence, including tapes or debriefing notes, regarding "Mr. Al-Timimi's Meeting with Anwar Nasser Aulaqi." (*Id.* ¶ 26).<sup>12</sup> In its subsequent Response to Defendant's Supplemental Pre-Trial Motions, the government stated only, "Al-Timimi seeks the Court to order the government to produce tapes he suggests Aulaqi made while visiting Al-Timimi. We are aware of no authority for this request." (Dkt. No. 23 ¶ 23).

In pre-trial Discovery Letter #8, dated December 28, 2004, the government again made only a passing reference to Dr. al-Timimi's requests concerning al-Aulaqi, and noted that it would decide what had to be turned over to the defense:

You asked about our position regarding FISAs containing the voice of your client. Our position is that we will either provide you such recordings as exist, or in limited circumstances, not do so through utilization of CIPA, or, in other limited circumstances, not do so after determining that they are not relevant under Rule 16. The statement of this position also is responsive to your question regarding a recording of Alaqui [sic].

(Discovery Letter #8 at 5, Dec. 28, 2004) (Exhibit C).

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<sup>11</sup> These efforts have been delayed by the over-classification of material by the government in this case. As a result, defense counsel have been forced to rely on information trickling out of Congress and the media as well as its own efforts through the Freedom of Information Act and long-delayed efforts to gain access to information in the National Archives and Records Administration 9/11 Commission-related records.

<sup>12</sup> This request, which was made as part of a broader discovery motion, was denied. (Dkt. No. 25).

On January 12, 2005, trial counsel for Dr. al-Timimi sent the government an e-mail reminding them of their non-response to requests regarding al-Aulaqi. (Exhibit D).

Notwithstanding its refusal of Dr. al-Timimi's discovery requests regarding al-Aulaqi, the government, in a February 16, 2005 letter, notified defense counsel that among items seized from Dr. al-Timimi's house was a "Piece of paper containing Arabic and English writing with contact information for Anwar Awlaki.<sup>13</sup>" (Discovery Letter #11 at 2, Feb. 16, 2005) (Exhibit E). The government further informed defense counsel that some of these materials might be used as exhibits at trial. (*Id.* at 4.)

**C. Post-Remand Efforts Related to Anwar al-Aulaqi.**

Dr. al-Timimi's efforts to obtain information related to Anwar al-Aulaqi have continued throughout this remand, and have been met with virtually identical non-responses from the government. Dr. al-Timimi has sought information not only about the October 2002 visit, but also al-Aulaqi's relationship with other witnesses and parties involved in the investigation of the "Virginia Jihad" and activities surrounding Dr. al-Timimi.

In a September 14, 2007, letter to the government, drafted pursuant to an August 24, 2007, order of this Court, Dr. al-Timimi requested the following with respect to Anwar al-Aulaqi:

Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. AuLaqi met with Dr. Al-Timimi at his house in October 2002 to discuss his reaction to 9-11, the congressional letter, and other individuals later associated with his trial. Telephone calls were made to Dar Al-Arqam and to Dr. al-Timimi's home. We also ask for any reports or notes generated in connection with AuLaqi's visit to Dr.

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<sup>13</sup> "Awlaki" is a common alternate spelling for "Aulaqi."

Al-Timimi's home in October 2002 when he was accompanied by Nabil Gharbieh<sup>14</sup> and Rubeel Iqbal.

Letter from Jonathan Turley to Gordon D. Kromberg, at 5 (Sept. 14, 2007) (Exhibit F). In its response, the government again mischaracterized both the scope of the request and its discovery responsibilities, and stated:

We agree that any previously undisclosed communications to which Al-Timimi was a party that were obtained from a government surveillance program and covered by Fed.R.Crim.P 16 should be disclosed or otherwise brought to the attention of the Court. This naturally, includes communications between Al-Timimi and Al-Aulaqi...[H]owever, there is no requirement that the government disclose intercepts that merely reference Al-Timimi unless they constitute *Jencks* or are exculpatory ... Al-Aulaqi [was not a] government witness[ ], so *Jencks* does not apply.

(Dkt No. 237 at 9).

In his Opposition to the Government's Motion to Quash his discovery requests, Dr. al-Timimi noted to the Court that the government had reserved the right to decide whether communications were exculpatory without explaining its understanding of why Dr. al-Timimi sought the material, or explaining its own view on the "proper" use of such evidence. (Dkt No. 244 at 14). Dr. al-Timimi also reminded the Court that:

Anwar al-Aulaqi goes directly to Dr. Al-Timimi's state of mind and his role in the alleged conspiracy. The 9-11 report indicates that Special Agent Ammerman interviewed al-Aulaqi just before or shortly after his October 2002 visit to Dr. al-Timimi's home to discuss the attacks and his efforts to reach out to the U.S. government.

(*Id.* at 15).

Subsequent to these filings, al-Aulaqi became more prominent in news stories, after a connection was alleged between him and Nidal Malik Hasan, an Army psychiatrist accused in the 2009 Fort Hood shootings, and Umar Farouk AbdulMutallab, who in 2009 attempted to blow

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<sup>14</sup> As discussed in further detail below, Nabil Gharbieh was the government's first witness at trial.



up Northwest Airlines Flight 253.<sup>15</sup> Ultimately, President Obama ordered al-Aulaqi killed in a drone attack in Yemen on September 30, 2011. Two weeks later, his 16-year-old son was also killed in a targeted drone attack by the CIA.<sup>16</sup> The killings led to additional information being made public about the ties between the United States government and al-Aulaqi.

Given the pending motions and the refusal of the government to disclose the full extent of its evidence related to al-Aulaqi, the defense proceeded during the remand to seek alternative sources for information. This included the NARA 9/11 Commission-related records, to which defense counsel had already unsuccessfully sought access during this remand.<sup>17</sup>

In September 2012, after negotiating issues of scope and search terms, defense counsel received permission from NARA authorities to search its electronic database of 9/11 Commission-related documents for material relevant to this remand. Dr. al-Timimi provided NARA with more than thirty search terms, including several variations of "Aulaqi." In December 2012, defense counsel received a chart of results from this search, which included 99 "hits" on the variations of "Aulaqi." For classification reasons, this chart included, for each

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<sup>15</sup> Brian Ross and Lee Ferran, *How Anwar al-Awlaki Inspired Terror From Across the Globe*, ABC News (Sept. 30, 2011), <http://abcnews.go.com/Blotter/anwar-al-awlaki-inspired-terror/story?id=14643383#.UeSXyNKsjTo>.

<sup>16</sup> Associated Press, *Al-Awlaki's Son Among Al Qaeda Militants Killed in Yemen Air Strike*, Fox News (Oct. 15, 2011), <http://www.foxnews.com/world/2011/10/15/yemen-says-local-al-qaeda-media-chief-six-others-killed/#ixzz2ZAJbq7Ql>.

<sup>17</sup> In 2006, Dr. al-Timimi's trial counsel wrote a letter to the Court stating that, during the course of representing another client, he had come across 9/11 Commission documents in the SCIF indicating that Dr. al-Timimi had been the subject of a government investigation long before the period of time in which the government had represented to the Court that the investigation of al-Timimi started. After hearings during this remand in which FBI Agents Christopher Mamula and Sarah Linden testified and were cross examined about their limited efforts to find the information using paper finding aids (Dkt. No. 220, Hr'g Tr. 13:25-42:7, Jan. 16, 2007), a limited number of documents from the 9/11 Commission records, allegedly containing Dr. al-Timimi's name, were turned over to the Court *ex parte*; Dr. al-Timimi, however, was denied an order to be allowed to review this material through cleared counsel and to conduct his own search. (Dkt. 231).

document, only the file and document number, the classification level, the date and number of pages, and the search term or terms found within it. Also in December 2012, NARA provided to defense counsel a slightly more detailed chart containing very basic descriptions of those responsive documents that contained Dr. al-Timimi's name. This second chart is being provided to the Court under seal. (Exhibit L). While the defense will not quote from this chart until it is unsealed, the chart calls into question the government's repeated assertions that it has provided Dr. al-Timimi all the discovery to which he is entitled. (*See, e.g.*, Dkt. No. 183, Hr'g Tr. 16:11-12, July 21, 2006). Defense counsel was not permitted to view any of the 9/11 Commission documents containing Dr. al-Timimi's name, and was able to view only a declassified subset of those documents containing al-Aulaqi's name.

On October 11, 2012, Dr. al-Timimi submitted a request pursuant to the Freedom of Information Act asking for disclosure of "any records that were prepared, received, transmitted, collected and/or maintained by the FBI, concerning Anwar al-Aulaqi between January 1, 2001 and March 2003." Letter from Jonathan Turley to FBI, at 1 (Oct. 11, 2012) (Exhibit G). To the best of current defense counsel's knowledge, there has been no response.

### **III. SUMMARY OF EVIDENCE REGARDING ANWAR AL-AULAQI**

#### **A. Summary of Publicly Available Evidence Regarding Anwar al-Aulaqi**

Publicly available documents, including some obtained this month by defense counsel, show not only that the Department of Justice possesses considerable undisclosed material information on al-Aulaqi, but that a key government witness and a leader of the investigation against Dr. al-Timimi, FBI Special Agent Wade Ammerman, was personally involved in Anwar al-Aulaqi's movements during the critical period of time covered by Dr. al-Timimi's discovery efforts. Indeed, it now appears Special Agent Ammerman played a key role in facilitating al-

Aulaqi's October 2002 re-entry into the United States, and, by extension, his visit to Dr. al-Timimi. New documents also cast doubt on Special Agent Ammerman's assertions, made both in his 2003 Affidavit for a search warrant on Dr. al-Timimi's residence and at trial, about the origins and temporal scope of the investigation against Dr. al-Timimi. Had this information been disclosed to defense counsel prior to trial, counsel would have been able to impeach Special Agent Ammerman's witness testimony on these points.

On October 10, 2002, Anwar al-Aulaqi returned to John F. Kennedy International Airport in New York on a flight from Yemen via Saudi Arabia, despite a warrant for his arrest in Colorado, and his prior identification as a possible terrorist leader. Herridge, *supra*, at 75-82. That warrant, which had been secured by the FBI Joint Terrorism Task Force in San Diego, was a "holding charge" to allow for al-Aulaqi's arrest to permit the Task Force to question al-Aulaqi on his ties to 9/11 hijackers Nawaf al-Hazmi and Khalid al-Mihdhar. Herridge, *supra*, at 75-77. Accordingly, upon his arrival, al-Aulaqi was promptly held at the airport and put into custody by American officials. *Id.* at 82.

New reporting shows that, on the same night, Special Agent Ammerman took extraordinary steps to arrange for al-Aulaqi to be released from holding by American customs officials, despite the outstanding warrant for his arrest. *Id.* at 82-84, 93-96, 216-17. Not only did Special Agent Ammerman order his release, but he did so based on representations to Customs agents that have been thrown in question.<sup>18</sup> Congress has demanded answers on how the arrest

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<sup>18</sup> As noted in recent coverage of this new material, "[t]he Justice Department, in explaining why it had the warrant pulled, claimed Awlaki had corrected lies about his place of birth on his Social Security card application, in turn making a passport fraud case against him weak. However, Fox News obtained, through FOIA, Awlaki's Social Security records showing there was no correction – Awlaki only applied for a replacement card using his true place of birth, New Mexico." Catherine Herridge, *Exclusive Documents: Was Anwar al-Awlaki a Government Asset?*

warrant in Colorado could have been rescinded, as Special Agent Ammerman apparently claimed to Customs officials that day, since no one would presumably have been at the local U.S. Attorney's office in Colorado at the time of al-Aulaqi's arrest at the airport. *See* Letter from Congressman Frank R. Wolf to FBI Director Robert Mueller, at 8 (Aug. 15, 2012) (Exhibit H) (noting that the questionable timeline of events surrounding al-Aulaqi's release from detention on October 10, 2002 has "never been adequately explained," and asking if the Washington Field Office of the FBI (the "WFO") and Agent Ammerman "want[ed] Aulaqi released to assist in [the] investigation of Timimi").

Moreover, documents obtained this month by a public interest organization show a high degree of interest in al-Aulaqi, including at the highest levels of the FBI, before and after his entrance into the United States. On October 1, 2002, the WFO transmitted a memorandum marked "secret" and "priority" to FBI headquarters; the unredacted portion of the subject line of this memo reads, "Aulaqi." (Exhibit I at 1-4, also marked as AWLAKI-895-898). Then, on October 3, 2002, the Director of the FBI authored a Secret Memo, referencing a National Security investigation by the Washington Field Office ("199N-WF-222852"). (*Id.* at 5-6, AWLAKI-899-900). The subject of this fully redacted memorandum is "Anwar Aulaqi; IT-UBL/Al-Qaeda." (*Id.*) Seven days later, al-Aulaqi entered the United States with Special Agent Ammerman's apparent assistance; that same day, a fax was sent from the FBI at JFK airport that included Aulaqi's plane ticket, customs form, passport and Social Security card. (*Id.* at 7-13, AWLAKI-901-907).

The FBI's document trail on Anwar al-Aulaqi in October 2002 does not stop with his re-entry into the United States; it continues well into the period where al-Aulaqi visited Dr. al-

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Fox News (July 2, 2013), <http://www.foxnews.com/politics/2013/07/02/why-did-fbi-allow-awlaki-to-roam-in-us/>.

Timimi's house, and clearly involves the Washington Field Office. On October 22, 2002, the WFO sent a memorandum to the Counterterrorism Unit titled "Anwar Nasser Aulaqi, IT-UBL/AlQaeda, OO:WFO," whose synopsis contains the term "asset reporting." (Exhibit I at 14, AWLAKI-908). For other relevant documents relating to this specific issue, Dr. al-Timimi respectfully refers the Court to its sealed exhibit accompanying this pleading. (Exhibit L).

In addition to the October 2002 FBI documents, other newly released documents highlight the startling efforts expended by the Department of Justice in allowing al-Aulaqi to remain free in the United States in 2001 and early 2002.<sup>19</sup> In 2001 and early 2002, the new documents show, al-Aulaqi was under surveillance by the FBI. *Id.* During this surveillance, the FBI observed al-Aulaqi engage prostitutes at local hotels, and indeed interviewed the prostitutes. *Id.* Despite witnessing the commission of these crimes, the FBI did not arrest him or even detain him. *Id.* This accommodation of al-Aulaqi continued despite the fact that, according to another document obtained this month, a "computer database record" in February 2002 listed al-Aulaqi's name with the warning to "approach with caution" under the heading of "terrorist organization member." *Id.*

**B. The Relation of the al-Aulaqi Evidence to Special Agent Ammerman**

The new evidence about FBI surveillance on Anwar al-Aulaqi, coupled with the intense interest and intervention in his October 2002 movements by both Special Agent Ammerman and the FBI Director's office, makes it highly unlikely that the government possesses no evidence about al-Aulaqi's visit to Dr. al-Timimi's house and other contacts with parties associated with

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<sup>19</sup> FoxNews.com (July 2, 2013) *Terror leader Awlaki paid thousands for prostitutes in DC area, documents show*, <http://www.foxnews.com/politics/2013/07/02/terror-leader-awlaki-paid-thousands-for-prostitutes-in-dc-area-documents-show/#ixzz2ZEUxkCK>

his case. This evidence also conflicts with prior representations to the Court, and calls into questions the government's arguments about the materiality and discoverability of this evidence.

For example, Special Agent Ammerman affirmatively testified before this Court that the investigation of Dr. al-Timimi began in February 2003. (Trial Tr. 1337:6 (Apr. 11, 2005); *see also* Dkt. No. 220, Hr'g Tr. 38:9-11, (Jan. 16, 2007)) (Court stating that the government "insists that there was no material investigation of Timimi until 2003"). In his Affidavit in Support of Application for Search and Seizure Warrants on Dr. al-Timimi's house (Exhibit J),<sup>20</sup> he states that he was made aware of Dr. al-Timimi's activities at the Dar al-Arqam mosque on November 19, 2002, following a tip from a confidential informant. (Exhibit J at ¶ 17). Later in the affidavit, Special Agent Ammerman strongly implies that he had never heard of Dr. al-Timimi before that same tip. ("Upon learning of Timimi from CI-1 and CI-2...I researched Timimi on the internet.") *Id.* at ¶ 21.

Special Agent Ammerman's alleged tip came just one day after the United States Foreign Intelligence Court of Review ruled that the Foreign Intelligence Surveillance Act did not require the government to show the FISA court that its primary purpose in conducting electronic surveillance was not criminal prosecution. *See generally In re Sealed Case*, 310 F.3d 717, 746 (FISA Ct. Rev. 2002). In an August 13, 2003, 9/11 Commission Memorandum for the Record, obtained by defense counsel, Duncan Wainwright, Assistant Division Counsel for the FBI WFO, stated that this decision led to a great deal of previously forbidden information sharing between intelligence and criminal investigators. *See* Memorandum for the Record, Interview of Duncan Wainwright, Assistant Division Counsel, WFO, FBI by 9/11 Commission, at 4 (Aug. 13, 2003)

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<sup>20</sup> The Affidavit also states that "on several occasions and as recently as January 10, 2003, FBI physical surveillance has observed Ali al-Timimi entering and exiting his residence located at 4106 Meadowfield Court, Fairfax, Virginia, 22033." (Exhibit J at ¶ 72).

(Exhibit K). Moreover, he explicitly admits that the criminal prosecution of the “Virginia Jihad” case was one of only a few criminal cases resulting from the sharing of such FISA information. *Id.*<sup>21</sup> Thus, not only does this document call into question Special Agent Ammerman’s assertion that the investigation of Dr. al-Timimi began with a confidential tip only one day after this decision, but it casts into even deeper doubt the government’s bedrock contention during this remand, that there are no intercepts material to Dr. al-Timimi’s defense that have not already been disclosed.

It now appears likely that Special Agent Ammerman must have known about Dr. al-Timimi before that “tip,” given his undisputed involvement in the al-Aulaqi matter. Had this evidence been disclosed to the defense before trial, Special Agent Ammerman would have been examined on the stand as to his claimed lack of knowledge regarding Dr. al-Timimi before the “tip.” The defense could also have explored Special Agent Ammerman’s role in facilitating, directly or indirectly, an effort by al-Aulaqi to use Dr. al-Timimi for possible terrorist activities. If Special Agent Ammerman or the government wanted al-Aulaqi to be able to conduct such meetings in the United States, it bears directly on his relationship with the government and the purpose of such meetings. Finally, the information would have also allowed the defense to pursue potential exculpatory evidence from the exchange between al-Aulaqi and Dr. al-Timimi.<sup>22</sup>

**C. The Relation of the al-Aulaqi evidence to Nabil Gharbieh**

The al-Aulaqi evidence is also relevant to the testimony of Nabil Gharbieh, who drove al-Aulaqi to Dr. al-Timimi’s residence that night in October 2002, and who was the government’s

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<sup>21</sup> This same memorandum appears to reference AUSA Kromberg as being “very supportive” of a related effort. (Exhibit K at 5.)

<sup>22</sup> This information also has bearing on any prior undisclosed surveillance related to al-Aulaqi and al-Timimi. The high degree of surveillance reflected in these new sources strongly suggest electronic and physical surveillance that remains undisclosed in the case.

first witness at Dr. al-Timimi's trial. At trial, Gharbieh was specifically asked about the scope and character of his contacts with Dr. al-Timimi, including any discussion of violent or disloyal acts. Trial Tr. 28:15-139:22 (April 4, 2005). If there are records on the visit to Dr. al-Timimi's house or the relationship of Gharbieh to a known terrorist, they should have been revealed to the defense. Gharbieh was a government witness and his association and interaction with al-Aulaqi directly bears on this credibility and knowledge.

Notably, one of the documents revealed this month includes the report from October 22, 2002 with the subject line "Anwar Nasser Aulaqi" and "Synopsis: Asset reporting." (Exhibit I at 14, AWLAKI-908). The identity of the "asset" is not clear. However, what is clear is that the FBI may have had an asset, as well as surveillance, on al-Aulaqi on the night of the visit that was not revealed to defense counsel. If al-Aulaqi was the "asset," this fact should have been disclosed when the defense requested it pre-trial, along with any field reports and other records. If a witness like Nabil Gharbieh was an asset, that too should have been revealed pre-trial. Likewise, if the government sent someone like Rubeel Iqbal (an acquaintance of Dr. Ali al-Timimi who accompanied al-Aulaqi that night) as an "asset," the defense should have been informed that an asset or agent had facilitated a meeting with and an attempt to recruit the Defendant by al-Aulaqi.

Whether it is evidence that would have been used to cross-examine Special Agent Ammerman, Nabil Gharbieh, or evidence that would have directly exculpated Dr. al-Timimi, it is clearly evidence that should have been disclosed to the defense before trial.

**IV. EVIDENCE RELATED TO AL-AULAQI SHOULD BE ORDERED PRODUCED FOR REVIEW BY THE COURT AND THE DEFENSE.**

Dr. al-Timimi has a constitutional right to the requested evidence under *Brady v. Maryland* and its progeny, as well as the broad statutory guarantee to such evidence under



Federal Rule of Criminal Procedure 16(a) (1) (e). It is critical, however, that in applying these standards, the Court recognize the unique procedural posture of this remand and treat Dr. al-Timimi's requests *as if they were being made pre-trial*.

**A. *Brady v. Maryland***

Under the Fourth Circuit's application of *Brady v. Maryland* and its progeny, Due Process requires that the government disclose "evidence favorable to an accused upon request ... where the evidence is material either to guilt or to punishment." *United States v. Caro*, 597 F.3d 608, 619 (4th Cir. 2010). Of particular importance to this matter and this remand, the Supreme Court subsequently extended the *Brady* disclosure rule to material impeachment evidence. *Giglio v. United States* (1972); *United States v. Fisher*, 711 F.3d 460, 471 (4th Cir. 2013).

In the typical post-conviction context in which *Brady* issues surface, an appellate court will apply hindsight and find favorable evidence material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

As the Court is aware, this is far from the typical post-conviction context in which the Court considers previously undisclosed evidence and the parties argue, with the benefit of hindsight, whether the evidence would have affected the outcome of the trial. *See, e.g., Caro*, 597 F.3d at 619. Rather, the Fourth Circuit remanded this case before this Court to determine *whether or not undisclosed exculpatory evidence existed* to begin with. This remand is, therefore, procedurally analogous to pre-trial discovery and requests for *Brady* material, where courts have prohibited prosecutors from making any unilateral materiality determinations before producing exculpatory evidence. Indeed, the Eastern District of Virginia recently stated that the normal definition of "materiality" under *Brady* is best suited for typical post-conviction appellate review,

and that, in a pre-trial setting, circumstances necessitate a “somewhat different inquiry.” The Court stated:

The prosecutor cannot be permitted to look at the case pretrial through the end of the telescope an appellate court would use post-trial. Thus, the government must always produce any potentially exculpatory or otherwise favorable evidence without regard to how the withholding of such evidence might be viewed—with the benefit of hindsight—as affecting the outcome of the trial.

*United States v. Danielczyk*, 2013 WL 142460, at \*2 (E.D. Va. Jan. 10, 2013) (quoting *United States v. Safavian*, 233 F.R.D. 12, 16 (D.D.C.2005)).

This admonition to prosecutors is particularly relevant to this case, where the government has on many occasions reserved its right to determine what is “material.” (See Dkt No. 237 at 9; Exhibit C at 4).

As Dr. al-Timimi has demonstrated, the desired evidence would have served to impeach two witnesses in his case. Moreover, the evidence could undercut the government’s fundamental narrative that Dr. al-Timimi hated the United States and wished to send young men abroad to wage war against it; the October 2002 meeting between Dr. al-Timimi and al-Aulaqi featured the explicit rejection by Dr. al-Timimi, during the same period of time covered by the indictment, of a solicitation to recruit followers for overseas jihad. In light of the wide latitude given to the government in introducing Dr. al-Timimi’s own statements against him at trial, there is no question about the exculpatory and material nature of this exchange.<sup>23</sup>

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<sup>23</sup> Indeed, the government at trial adopted the broadest possible interpretation of relevance in the introduction of “state of mind” evidence. This standard was often used to justify the introduction of evidence such as the statements on the Space Shuttle disaster (made almost seventeen months after the September 16, 2001 dinner that was the focus of the government’s case) over constitutional and evidentiary objections. In a December 3, 2004 hearing, the Court made clear that “the intent of the defendant is going to be a critical factor in this case, and obviously, statements that a defendant makes are a very significant piece of evidence to one’s intent.” (Dkt. No. 144 at 34:13-16); (*see also id.* at 35:1-3 ) (“In other words, I think the probative value is so critical because the statements of a defendant are important windows into that person’s intent.”).

In a November 20, 2007 hearing on the government's Motion to Quash, the Court recognized that Dr. Al-Timimi's counsel's right to participate in the discovery process to confirm whether all exculpatory evidence has been produced. Specifically, the Court noted that:

I think you make a good argument that defense counsel have a right under our legal system to be involved to a reasonable degree in making judgment calls as to whether material is, in fact, exculpatory or not exculpatory.

(Dkt. No. 245, at 4:12-19).

**B. Federal Rule of Criminal Procedure 16**

Dr. al-Timimi is clearly entitled to the requested evidence under the much more permissive standard of Rule 16(a) (1) (E) (i), which requires the government to make available any requested items that are "material to preparing the defense." Fed.R.Crim.P. 16(a) (1) (E) (i); *United States v. Caro*, 597 F.3d 608, 620-21 (4th Cir. 2010) (agreeing that Rule 16 is "much broader" than *Brady*, and provides the "minimum amount of pretrial discovery granted in criminal cases"). "[E]vidence is material as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *Caro*, 597 F.3d at 621 (quoting *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993)).

Throughout this remand, defense counsel has expressed alarm to this Court that the government's position with respect to its discovery obligations is fatally flawed and based on a fundamental misreading of Rule 16 as well as the scope of this remand. (*See, e.g.* Dkt. 252). Defense counsel has also objected to the fact that any disclosures that have been made have occurred in the absence of a formal order from this Court clearly establishing the materiality standards to be applied. (*Id.*)

In a January 16, 2007 hearing, the Court stressed that full disclosure was necessary under Rule 16:

[W]ho determines what's relevant? I mean, again, that's why we have an adversary system. . . . The rule requires that the appropriate categories of information be turned over to defense counsel. Then they'll rummage through it. It may be in their eyes important to some theory of defense that, you know, you might not appreciate, I might not appreciate, but I thought that one of the pretty strong requirements of rule 16 . . .

(Dkt. No. 220, Hr'g Tr. 43:1-9 Jan. 16, 2007).

As discussed above, "materiality" under Rule 16 is far broader than "materiality" under *Brady*. *United States v. Caro*, 597 F.3d at 621 (4th Cir. 2010) ("we stress that "materiality" in Rule 16(a) (1) (E) (i) differs from "materiality" under *Brady*). As with the disclosure of exculpatory material, the government must first establish what evidence was withheld pre-trial, and cannot engage in post-trial rationalizations or use of hindsight to excuse violations of Rule 16. The evidence must be reviewed under the standard for disclosure that existed pre-trial. In this case, there is no question that this evidence, if requested pre-trial, would "play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *Caro*, 597 F.3d at 621 (quoting *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993)).<sup>24</sup>

In light of the foregoing, the Defendant respectfully requests an order compelling the disclosure of all evidence, including, but not limited to, any surveillance records, field reports, and recordings, related to visits by Anwar al-Aulaqi to the United States from 2001 to 2003 and that reference Dr. al-Timimi, any of the trial witnesses in this case, other alleged members of the "Virginia Jihad" conspiracy, or the Dar-al-Arqam mosque.

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<sup>24</sup> A latter question may arise as to whether "the pretrial disclosure of the disputed evidence would have enabled the defendant significantly to alter the quantum of proof in his favor." *Caro*, 597 F.3d at 621. That appellate standard for a violation of Rule 16 only occurs after the establishment of the body of evidence withheld by the government. *Id.* Moreover, when that secondary question is raised, it is done so through an adversarial process, and not by an opaque determination of the government.

Dated: July 17, 2013

Respectfully submitted,

Dr. Ali al-Timimi, by Counsel:



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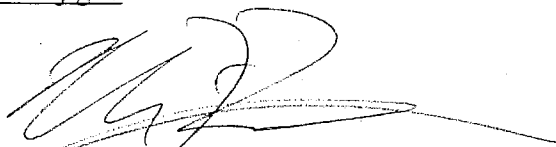
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July, 2013, I served the foregoing via courier

upon:

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*Counsel for Dr. Ali al-Timimi*

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

<b>UNITED STATES,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>CR-04-385</b>
	§	
<b>V.</b>	§	
	§	
<b>ALI AL-TIMIMI</b>	§	
	§	
<b>Defendant.</b>	§	

**PROPOSED ORDER**

Upon motion of Defendant Dr. Ali al-Timimi, and for good cause shown, it is ORDERED that the Plaintiff United States provide to cleared defense counsel all evidence, including, but not limited to, any surveillance records, field reports, and recordings, related to visits by Anwar al-Aulaqi to the United States from 2001 to 2003 and that reference Dr. al-Timimi, any of the trial witnesses in this case, other alleged members of the “Virginia Jihad” conspiracy, or the Dar-al-Arqam mosque.

**SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2013.**

\_\_\_\_\_  
Hon. Leonie M. Brinkema  
United States District Judge

Electronic Records for PJ and Manu				
File Name	Document No.	Classification	# of Pages	Description
53845	MFR04017479	S	5	Dar al-Arkam; Virginia Jihad; Timimi; Paintball; Timimi
0000F5CE	RDOJ03003548	S	35	Al-Timimi; Timimi; International
00062CBF	RDOS04018664	S	5	Al-Timimi; Timimi; International
00035F9A	RFB103004134	S	256	Al-Timimi's name in list of telephone contacts by someone else. This is the only mention of him in the document.
00031FAA	RFB103009401	S	28	Foundation
00037CD8	RFB103009475	S	49	Timimi; Royer
00037D45	RFB103009477	S	74	Dar al-Arkam; Masoud Khan; Yong KI Kwon; Yong Kwon; Timimi; Royer; Paintball; Timimi; BIF; Benevolence International
00037D90	RFB103009478	S	30	Foundation
0003AFA6	RFB103009480	S	70	Paintball; Timimi; Awlaki; Timimi; International
0003B0DA	RFB103009485	S	71	Auladi

4/21/2003 FBI memo from Baltimore Field Office; FBI case file # is classified; mentioned on one page only

12/6/2000, pg. 6, from Detroit Field Office, FBI case file # is classified

Washington Field Office memo of 10/23/2002; FBI case file # is classified

265A-WF-226192, page 4

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File Name	Document No.	Classification	# of Pages	Search Term	Description
0003B151	RFBI03009487	S	59	Al-Hamdi; Al-Timimi; Timimi; Tamimi; Aulaqi	1/2/2003 Washington Field Office memo, FBI case file # is classified
0003B18D	RFBI03009488	S	60	Dar al-Arkam; Yong Ki Kwon; Yong Kwon; Timimi; Royer; Chapman; BIF; Benevolence International Foundation Awlaki; Dar al- Argam; Timini; Timimi	3/20/2003 memo and 5/21/2003 Washington Field Office memo, FBI case file # is classified
00037F58	RFBI03009624	S	80	Timimi; Tamimi; BIF; Benevolence International Foundation	page 2 of 2/21/2003 Washington Field Office memo (FBI case file # is classified)
0001C160	RFBI03010185	S	110	International Foundation	1/3/2001, Chicago Field Office memo (FBI case file # is classified)
00019A0D	RFBI03010195	S	37	Timimi; Chapman Al-Hamdi; Timini; Yong Kwon; Timimi; Royer; BIF; Benevolence International Foundation	pp 13 and 28 of 7/7/2002 FBI memo 199N-SE-85481
0003D712	RFBI03010214	S	136	Foundation	5/26/2003 FBI memo
0003CFD4	RFBI030104478	S	36	Al-Timimi; Al-Timini; Timimi; Aulaqi	pg 6 of 3/20/2003 FBI 302 265C-SU-55418, serial 660
0001723C	RFBI03010489	S	55	Timimi	265A-WF-224591, 8/22/2002, pg 7
000320A8	RFBI03010650	S	43	Tamimi	pg 4 of FBI memo from Dallas Field Office; FBI case file # is classified

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File Name	Document No.	Classification	# of Pages	Search Term	Description
0004AA7A	RFB103011843	S	18	Timimi	pg. 18 of 9/12/2001 FBI memo from the Counterterrorism Division; FBI case file # is classified
0003F099	RFB103012713	S	81	Al-Timimi; Timimi; BIF	pg 31 of 6/6/2003 FBI memo
0003DBF0	RFB103013114	S	46	Al-Timimi; Dar al-Arqam; Virginia Jihad; Timimi; Aulaqi	pg 2 of 9/17/2003 FBI memo from the Washington Field Office; FBI case file # is classified
0003DC1F	RFB103013115	S	55	Dar al-Arkam; Virginia Jihad; Yong Kwon; Timimi; Royer; Chapman; BIF	Washington Field Office memo of 9/27/2003; case file # 315N-WF-217423
0003DC80	RFB103013117	S	59	Al-Timimi; Timimi; Benevolence International Foundation	pg 36 of 6/6/2003 FBI memo
0005CE8A	RFB104014773	S	57	Al-Timimi; Timimi	pg 9 of 10/25/1999 FBI memo from Denver Field Office
0005D000	RFB104015058	S	27	Al-Hamdi; Al-Timimi; Timimi; Royer; Aulaqi; Benevolence International Foundation	FBI 302 dated 6/23/2003, file # 265C-WF-225105
0005E58E	RFB104016742	S	24	Al-Timimi; Timimi; Benevolence International Foundation; BIF	page 4 of list of disruptions to international terrorist operations since 11 September

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File Name	Document No.	Classification	# of Pages	Search Term	Description
005DB4F	RFBI04016920	S	84	Aatigue; Timimi	pg 15 of FBI memo of 9/12/2003 from the Washington Field Office (FBI case file # is classified); pp 15, 17, 18 of 9/14/2003 FBI memo from Washington Field Office (FBI case file # is classified)
0005DBA4	RFBI04016921	S	52	Al-Timimi; Dar al-Arqam; Timimi; Aulagi	7/16/2003 FBI report from Washington Field Office contained on page 9 of 10/31/2003 FBI memo re: case # 315N-WF-221874
0005DC12	RFBI04017112	S	78	Al-Timimi; Timimi; Aulagi	pg 5 of FBI memo of 9/27/2002 from Washington Field Office (case file # 265A-WF-224591)
0001DC64	RFBI	S	16	Tamimi; Aulagi	FBI case summary memo for case ID: 265A-NY-280350 (PENTTBOM); not your guy
25800	RFBI03008051	S	339	Tamimi	FBI memo -- not your guy
00036F40	RFBI03009014	S	331	Tamimi	FBI Legat memo -- not your guy
000392EC	RFBI03009019	S	86	Timimi	FBI memo -- not your guy
000192A7	RFBI03009758	S	133	Tamimi; Bif; Benevolence International Foundation	FBI memo -- not your guy

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File Name	Document No.	Classification	# of Pages	Search Term	Description
0003CF80	RFBI03010447	S	83	Tamimi; Blf; Benevolence International Foundation	FBI memo -- not your guy
0003EAGC	RFBI03010629	S	74	Tamimi	FBI memo -- not your guy
00025D0A	RFBI03011410	S	36	Tamimi	FBI memo -- not your guy
0003ED1F	RFBI03011680	S	90	Tamimi	FBI memo -- not your guy
0004198D	RTR04014136	S/SCI	62	Tamimi	not your guy
42526	RTR04014192	TS/SCI	96	Tamimi	not your guy
0003498E		TS	2	Tamimi	not your guy
00041AB1		TS/SCI	9	Tamimi	not your guy
00041E47		TS/SCI	9	Tamimi	not your guy
0002661B	RFBI03010648	S	28	Al-Hamdi; Al-Timimi	[This is my error: I put the Al-Timimi search term with this document by mistake. The name is not in the document.]



COMMISSION SENSITIVE

MR 04019894

**MEMORANDUM FOR THE RECORD**

Event: **Duncan Wainwright, Assistant Division Counsel, WFO, FBI**

Type of event: Interview

Date: August 13, 2003

Special Access Issues: None

Prepared by: Peter Rundlet

Team Number: 6

Location: FBI, Washington Field Office

Participants - Non-Commission: Sean O'Neill, Assistant General Counsel

Participants - Commission: Lance Cole and Peter Rundlet

**Background.** Duncan Wainwright graduated from Valparaiso School of Law in 1979. He came to the FBI in 1982 as an Agent, starting in the Chicago Field Office. In 1983, he was sent to the Hickory, North Carolina Resident Agency and in June, 1984 he came to the Washington Field Office (WFO) as a street crime Agent. In 1987, Wainwright went to FBI Headquarters (HQ) as a Supervisor in the Organized Crime Section. From 1991-92 Wainwright had a brief "stint" in the Civil Litigation Unit of the Office of the General Counsel (OGC). In 1992, Wainwright returned to the WFO to be an SSA in charge of a Labor Racketeering squad. In 1994, Wainwright switched to the Healthcare squad. He later became "Inspection Certified" and in 1999, he rotated to the Office of Division Counsel at WFO. There are four counsels in the office at WFO: he is the Assistant Division Counsel (ADC) for Foreign Counterintelligence (FCI) and Counterterrorism (CT); another does FOIA, one does administrative law and civil litigation; and one does criminal advice and training, and this person does most of the "Title III" work.

**Job Description, Pre-9/11.** National security has been the focus of Wainwright's work since 1999. Wainwright had to seek a detail to the National Security Law Unit (NSLU) at HQ for six weeks for "immersion training" to get up to speed. Prior to 9/11, the NSLU had 9 attorneys; now it has 25. The Unit Chief for the NSLU was Mike Woods until about a year ago; Woods had Wainwright sit in on the weekly Unit meetings and he continues to attend those to this day. Prior to 9/11, Wainwright assisted Agents with Foreign Intelligence Surveillance Act (FISA) applications on the National Security Division (NSD) side, as well as compulsory process National Security Letters (NSLs). He frequently provided operational guidance to NSD Agents. Agents on the NSD side were "confused" about dealings with the US Attorneys Office and he acted as a liaison with the Office of Intelligence Policy and Review (OIPR), who he called "the enforcers of the Wall." He also had some odd administrative duties [redacted]

**The Wall.** Before the Foreign Intelligence Surveillance Court of Review opinion that tore down the Wall, Wainwright said the Wall was clearly in place, entrenched, and rigorously

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9/11 Classified Information

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enforced by OIPR. There is significant discussion of the Wall issue and how the Wall was "killing the FBI" in the Bellows Report, done by Randy Bellows on the Wen Ho Lee case. Wainwright said that he "was surprised to learn of the Wall" since he came from an organized crime background. Wainwright said that there was limited sharing of FISA or non-FISA information between Intelligence investigations and criminal. Wainwright stated that David Cris wrote an internal DOJ monograph on the Wall and provided testimony on the Hill. During this era, Wainwright helped guide compliance and he attempted to make operational progress by using the exceptions.

The Wall had a very significant effect on the FBI's Counterterrorism (CT) and Counterintelligence (CI) activities because they "couldn't deal with the criminal guys." Wainwright mentioned the "primary purpose" test which was built into the FISA. As a precautionary measure, they disallowed CI and CT agents from talking to the criminal agents (they feared that if they talked to the criminal agents, they might be suspected of not having foreign intelligence as the "primary purpose" of the FISA. For every case involving a U.S. person, a Letterhead Memorandum (LHM) was submitted to OIPR. Wainwright believed there were LHMs on non-U.S. persons as well, but that this was less stringent. Prior to the Patriot Act, there was no clear-cut mechanism to share information with the criminal side. Wainwright stressed the irony of this

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9/11 Classified Information

**Attorney General Guidelines.** Wainwright said that there were three applicable AG Guidelines: (1) the July, 1995 AG Guidance (from Reno); (2) the 2000 Deputy AG Guidance, which clarified the earlier AG Guidance; and (3) the early 2001 Guidance, which explained the prior two.

**FISAs prior to 9/11.** Prior to 9/11, the FBI ran lengthy Form 199 intelligence cases, where they tried to keep track of individuals and disrupt them, but generally not criminal prosecutions. Deportation under the Absconder Program was an option, but it was not a strong tool. Prosecution on small matters (*e.g.*, food stamp fraud) was used only very infrequently because of the concern that the FBI could be accused of using a FISA to make a petty crime case.

Before 9/11, Wainwright said that they would submit "50-page tomes" for affidavits to make clear that no criminal investigations were going on. They would write "even 30 pages" for

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**LHMs.** The purpose of the LHM was to identify the nature of your investigation. Wainwright said that "sometimes criminal activity ended up in the LHM, but it was not required until 2002." The LHM was also required to keep HQ and OIPR apprised of all intelligence investigations. Wainwright noted that OIPR has an oversight function for all intelligence cases.

**OIPR/Oversight.** OIPR processes warrants and provides guidance on investigations. Occasionally, Wainwright said, OIPR would advise the FBI to close certain cases. Wainwright said that there was a general perception that the Wall was "crazy," and that it hampered them. They felt like they fought the battle and lost. Agents feared that they would be sanctioned by the Intelligence Oversight Board, which is a Presidential entity that could sanction the agents

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personally. "There was a sense that discipline was not meted out fairly between higher-ups and agents."

The Wall was clearly one-way from the intelligence (NSD) side to the criminal side. Going the opposite way, Grand Jury information under Rule 6(e) and Title III was also limited in what they could share, but not nearly as tight a restriction in this direction. Wainwright said that the Wall even affected personal relationships between criminal and intelligence agents.

**FISA Application Process.** Prior to 9/11, agents would first have to draft lengthy LHMs requesting that a FISA be done, and they would include a lot of information. Then, the LHM was sent to a GS-14 counterpart at HQ, who would then have to craft the LHM into an affidavit that showed probable cause – "but it was really a higher standard: beyond certainty." From there, it would go to the NSLU to get edited and blessed. They had to craft it into the proper format before sending it to OIPR. Wainwright said this process took months. OIPR then took time to review the application. Prior to 9/11, they had other priorities. [Redacted]

[Redacted] But, Wainwright noted, this takes up the AG's time and the Court's time

[Redacted]

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**NSLs.** Before the Patriot Act, National Security Letters were limited to 3 types of entities: (1) phone carriers and Internet Service Providers; (2) financial institutions (those listed in the Right to Privacy Act; specifically, banks and credit unions, not casinos, brokerage houses, pawn shops, etc.); and (3) credit reporting companies (they can get accounts, addresses, and employment, but not balances). Since 9/11 the scope of NSLs has not changed, although the standard has changed. Before 9/11, they had to have specific articulable facts and circumstances that X was engaging in terrorism, for example. The Assistant Director in Charge (ADIC) had to certify them. The WFO did their own, but for the other non-ADIC offices, the requests had to be sent to HQ and "it would take months to get an NSL." Wainwright noted that 18 U.S.C. 2709 has the provisions for NSLs for phones.

The new standard is that the information sought would be relevant to a case pertaining to CFI or CT (a relevance standard). Also, under the new standard, an SAC can certify to this, which makes it a lot easier, process-wise. At present, though, authority for NSLs is still limited to the 3 areas listed. [But note that there is legislation that greatly expands the definition of "financial institution" in the 2004 Intelligence Authorization bill extending the reach to casinos, pawn shops, etc.] Wainwright complained that even under the lower standard there are many things an agent cannot get in an intelligence case that they can easily get in a criminal case under a Grand Jury subpoena.

**Mail and Trash Covers.** Wainwright said that the SAC can request that the Postal Service copy the outside of letters for 30 days, when the request is made for a criminal case. This is run by the Postal Inspectors. On the national security/intelligence side, the FBI makes a

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request of the AG to get a 90-day mail cover. The AG, through OIPR, must sign off on the request. An LHM is required to get a mail cover for intelligence purposes. Wainwright said that the SAC can sign off on a request for a trash cover since there is a lower expectation of privacy when it comes to trash.

Wainwright said that there is currently a problem with the Postal Service on mail covers. According to Wainwright, the Postal Service has the authority to turn down requests for mail covers by the AG, and sometimes rejects the request. Wainwright said that this is a recurring problem now. Wainwright said that Jack Livingston, the Unit Chief of the NSLU, is dealing with the Postal Service on this.

**Patriot Act & the "199 Order."** Wainwright said that Mike Woods, who is currently with MZM, a Department of Defense contractor that focuses on terrorism, was the primary FBI person involved with drafting the Patriot Act. Wainwright said that as a practical matter, the Wall did not come down until the FISA Court of Review opinion. The FISA Court of Review (which is the appellate court for FISA issues, and which has only been convened this one time) actually rewrote the AG Guidelines. But this came later. After the Patriot Act, the Foreign Intelligence Surveillance Court (FISC, which is the first-level court for FISA issues) reestablished the Wall to some extent. Thereafter, the FISA Court of Review reversed the decision and took down the Wall. Even before the FISA Court of Review opinion, however, the FISC had issued an order approving a request by the Terrorism and Violent Crime Section (now, the Counterterrorism Section) of the Criminal Division to have their attorneys review the FBI's Form 199 (terrorism intelligence case) investigation files for the purpose of identifying any criminal violations that suspected terrorists could be charge with. This was called the "199 Order." So, the DOJ attorneys reviewed the FBI's 199 files, primarily at HQ, according to Wainwright. When the Wall finally came down after the FISA Court of Review's opinion, Ashcroft established a policy to have AUSAs come over and review the FBI's 199 files to identify "any violation." The idea was to use every tool available. Wainwright said that not many criminal cases came out of this effort, but the Virginia Jihad case did.

**Class 199, 265, & TEI Investigations.** Class 199 cases are terrorism *intelligence* cases, and they are worked under the AG Guidelines for FCI and CT (the "FCI guidelines," which are classified and have been unchanged since Reno). Class 265 cases are terrorism *criminal* cases, and they are worked under the AG Guidelines for General Crimes in Terrorism (these were changed in April or May, 2002). So, Wainwright emphasized, there are two different sets of guidelines that apply to terrorism cases.

Wainwright said that HQ's position was that the FBI can work 199 cases under the Guidelines and if there is a criminal aspect to the case, then the agents can open up a 265 case and work that under the criminal guidelines. Wainwright said that if a 265 case is opened up first, then the rule is that a 199 *must* be opened as a parallel case. Wainwright called this "a paper exercise – since both are discoverable." Wainwright said that some agents were "dual hatting" – the same agents would sometimes have both files.

Wainwright said that the new guidelines in 2002 allowed for Terrorism Enterprise Investigations (TEIs), where previous guidelines referred to Racketeering Enterprise Investigations (REIs). Wainwright noted that the WFO is doing on TEI for



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[redacted] in the Washington, DC metropolitan area. He said that they had to get HQ sign-off from the CT Section [of DOJ?]. Wainwright said the TEI was run by the Joint Intelligence Task Force (JITF, the intelligence squad) and that it is not being implemented "all that great." [redacted] 9/11 Law Enforcement Sensitive [redacted] Wainwright noted that Jeff Reinhold of the CT Section and Gordon Crombie (sp?) of the Eastern District of Virginia, are very supportive.

[Note that the distinction between class 199 and class 265 cases is going to go away when the two are merged into class 315 cases.] Wainwright said that post-9/11, there are no walls within the FBI record system and that one agent is working both sides of a case.

**Attorney-Client Communications.** With respect to monitoring privileged conversations between attorneys and their clients, Wainwright said that, under FISA, the rules allow listening to privileged conversations when the subject has not yet been indicted because the monitoring is done for intelligence purposes. He said there may be new implications now that there is no Wall. Wainwright said that, for protection, they work these conversations so that the AUSAs that review the class 199 cases cannot see the take from the conversations. Wainwright said that there is a bright-line rule that requires that only the FISA Court can modify these rules. Once a subject is indicted, then OIPR is required to approve. Wainwright said this was analogous to prison monitoring rules.

**FISA/Title III Standards.** Under the old FISA standard, agents had to show probable cause that the person is an agent of a foreign power and that he will use the specific facility (e.g., telephones). In order to get a search warrant under Title III, the FBI has to show probable cause that the target has committed a crime and that he used the specific facility (e.g., telephone) *in furtherance* of the crime (the so-called "dirty phone").

Wainwright said that the minimization standards under FISA and Title III were different

[redacted]

9/11 Classified Information

Wainwright emphasized that "now we can get information under FISA and use it in criminal cases, without going to Title III."

**Authority under Different Phases of Investigation (PI v. FFI).** During the phase *prior to a Preliminary Inquiry (PI)*, what the FBI can do in the CFI/CT context is very limited. Essentially, an agent can do one record check, Wainwright said. On the criminal side, an agent can do more. Wainwright noted that an agent can use all lawful investigative techniques during a full field investigation (FFI) for a criminal case. As a result, nearly all criminal international

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terrorism (IT) cases go directly to a FFI, skipping the PI. For non-criminal cases, agents need to have a PI to question a subject. A PI can be opened when there is a "reasonable suspicion" that the person may be involved in IT or clandestine activity. Under a TEI, there is a perpetual FFI that is renewed on an annual basis.

[Redacted]

9/11 Classified Information

Wainwright said the CIA is "essentially useless to us." He said that the FBI gives the CIA everything they want, [Redacted]

[Redacted]

9/11 Classified Information

Wainwright said that a threat assessment [Redacted] was not shared. [Redacted]

9/11 Classified Information

[Redacted] "But we give them literally everything." [Redacted]

9/11 Classified Information

9/11 Classified Information

Wainwright continued: "If we're giving them too much, someone needs to tell us." He said there is no MOU in place for sharing information.

[Redacted]

9/11 Classified Information

**Looking forward.** Wainwright said that it would be nice to use section 215 of the Patriot Act (regarding library records, etc.) and it will "be nice" to use the roaming wiretaps. He mentioned that they are trying to modify the definition of "financial institution" for the purposed of getting an NSL. He thinks there is a lot of "good stuff" in Patriot Act II. He also said that the FBI would like to get tax information – that they cannot get the information ex parte.

9/11 Classified Information

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

Alexandria Division

**UNDER SEAL**

IN THE MATTER OF SEARCH AND )  
SEIZURE WARRANTS REGARDING ) Misc. No.  
4106 MEADOW FIELD COURT, )  
FAIRFAX, VIRGINIA, ET AL. )

Affidavit in Support of Application for Search and Seizure Warrants

I, F. Wade Ammerman, after being duly sworn, depose and state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”), United States Department of Justice. I have been so employed by the FBI for approximately seven years, during which I have been assigned to the Washington Field Office (“WFO”). During my seven-year tenure at WFO, I have been assigned to both domestic and international terrorism squads, having working primarily international terrorism cases for the past six years.

2. I have received instruction and training, along with seven years of investigative experience, in methods of investigation relating to identifying terrorist activity directed against the United States, as well as identifying the support network for terrorists who seek to target United States interests, activities which are prohibited by 18 U.S.C. §§ 2339A and 2339B. In the course of conducting or participating in criminal investigations, I have been involved in interviewing and debriefing informants; conducting physical surveillance; consensual monitoring and recording of conversations; analyzing telephone pen register and caller identification system data; and preparing and executing search warrants.

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3. This affidavit supports applications for warrants to search the following locations, within which there is probable cause to believe will be found records (as specifically described in Attachment A, attached hereto and incorporated herein) of a conspiracy to provide material support and resources to terrorists and designated foreign terrorist organizations, in violation of Sections 2339A and 2339B of Title 18, United States Code:

- a. The residence of Ali al-Timimi at 4106 Meadowfield Court, Fairfax, Virginia;
- b. One maroon 1998 Nissan Sedan, VIN: 1N4DL01D4WC168151, and bearing Virginia tags ZCM-3668;
- c. The Residence of Ibrahim Hamdi at [REDACTED], Annandale, Virginia;
- d. One blue/silver 1997 Acura two-door, VIN: 19UYN2258VL017057, bearing Virginia tags JAZ-7041;
- e. The Residence of Nabil Garbieh at [REDACTED], Annandale, VA; and
- f. One 2001 White Nissan X-Terra, VIN: 5N1ED28Y81C528686, and bearing Virginia tags YDP-4042.

4. This affidavit also supports applications for warrants to seize the vehicles listed above, in that they constitute assets of individuals engaged in planning and perpetrating an act of international terrorism (as defined in 18 U.S.C. § 2331) against the United States, citizens of the United States, and their property, so that they are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(G).

5. In my capacity as a co-case agent assigned to this matter, I have examined documents and other records pertinent to this investigation from numerous sources. I have also received information obtained through investigation by other law enforcement and U.S. Government personnel. On the basis of this investigation, there is probable cause to believe that Ali al-

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Timimi (also known as Ali Timimi), Ibrahim Hamdi (also known as Ibrahim al-Hamdi), Nabil Garbieh (also known as Nabil Gharbieh and Nabil Abugharbieh), and others are engaging in a conspiracy to provide material support and resources to terrorists and designated foreign terrorist organizations, in violation of Sections 2339A and 2339B of Title 18, United States Code.

6. The information in this affidavit is based in part on information provided to me by other Special Agents of the FBI, and on my experience and background as a Special Agent of the FBI. Since this affidavit is being submitted for the limited purpose of conducting a search of the above listed property, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish the foundation for the search warrant.

#### Summary of Investigation

7. Ali al-Timimi is a spiritual leader at the Dar al-Arqam Islamic Center in Falls Church, VA. al-Timimi has publicly stated that the United States is the greatest enemy of his version of Islam, has publicly expressed his hope that the United States will quickly be defeated by the forces of his version of Islam, and publicly expressed ideals that mirror those of Islamist terrorists including Osama Bin Laden. al-Timimi appears to maintain regular communication with an individual in Saudi Arabia closely allied with Bin-Laden, as well as with individuals apparently involved in raising funds for Bin Laden in the United States.

8. Claiming the position of a religious leader and scholar, al-Timimi has used his position at the Dar al-Arqam Islamic Center to advance the idea of an Islamist jihad against the United States. As a result of his leadership, selected young Muslim fundamentalists in Northern Virginia have trained in combat tactics to be used while fighting as Islamic Jihadists; at least one was successfully recruited to travel to Pakistan with the purpose of then traveling to Afghanistan

to fight alongside al-Qaeda against American forces post 9/11. Two others that have helped al-Timimi to conduct the training and recruiting in furtherance of their Islamist jihad against America that we have identified are Ibrahim Hamdi and Nabil Garbieh.

The Statutes Involved

9. Section 2339A of Title 18, United States Code – captioned “Providing material support to terrorists” – provides criminal penalties for

[w]hoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 27, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2115, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332c, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502 or 60123(b) of title 49, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, or attempts or conspires to do such an act.

10. The statute defines “material support or resources” as “currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”

11. Section 2339B of Title 18, United States Code, proscribes the knowing provision “within the United States or subject to the jurisdiction of the United States” of “material support or resources to an organization designated by the United States as a “Foreign Terrorist Organization” (“FTO”), or attempting or conspiring to do so. al-Qaeda is a designated FTO See 66 F.R. 51088. Thus, the provision of material support to al-Qaeda is a violation of

18 U.S.C. § 2339B, regardless of whether the provider intends that the support be used to facilitate terrorism.

al-Qaeda

12. In August 1998, al-Qaeda members bombed American embassies in Kenya and Tanzania, causing hundreds of deaths. In October 2000, al-Qaeda members crashed a small boat laden with explosives into the U.S. Navy vessel, USS Cole, while it was refueling in Yemen. On September 11, 2001, al-Qaeda members hijacked four commercial airplanes and crashed three of them into the World Trade Center in New York City and the Pentagon in Arlington, Virginia, killing thousands of people; the fourth plane crashed in Pennsylvania en route to another target in Washington, D.C..

13. al-Qaeda was established in Afghanistan in 1988 by Osama Bin Laden and others. Together with affiliated organizations, it has provided military, financial and logistical support to armed fighters (“mujahideen”) in Afghanistan and worldwide in furtherance of its Islamist vision to expel infidels exerting sovereignty over lands previously ruled by Muslims, and eliminate Muslims rulers elsewhere in the Islamic world insufficiently dedicated to al-Qaeda’s Islamist ideals. Its operations against infidels include fighting not only what they call “Crusaders and Jews” (i.e., Christians and Jews), but also Hindus in Kashmir and members of other religions in China and elsewhere in Asia and Africa.

14. Through my experience in investigating international terrorism and my involvement in the investigations relating to the 9/11 attacks on the United States, I know that there exists in the United States a widespread presence of Muslim individuals seeking to destroy the United States in furtherance of their vision of “jihad” or Islamic “holy war” or “struggle.” I will refer to these individuals as “Islamists.” I further know, as FBI Director Robert Mueller related to the

United States Senate on February 11, 2003, that al-Qaeda has developed a support infrastructure inside the United States that would allow al-Qaeda to mount another terrorist attack on our soil. Such an attack may rely on local individuals or use these local assets as support elements for teams arriving from outside the U.S.

15. I also know that al-Qaeda appears to be enhancing its support infrastructure in the United States by boosting recruitment efforts. al-Qaeda no doubt recognizes the operational advantage it can derive from recruiting United States residents and citizens who are much less likely to come to the attention of law enforcement and who also may be better able to invoke constitutional protections that can slow or limit investigative efforts. The FBI is additionally deeply concerned about al-Qaeda's interest in acquiring the capability to employ chemical, biological, radiological, and nuclear weapons.

16. I know that the FBI recently has and presently is investigating suspected al-Qaeda cells in various areas of the United States. For example, I received information from my FBI WFO colleague, SA Laura Deans, who last year worked with FBI agents in Seattle investigating Islamists, including James Ujaama, now indicted for conducting a jihad training camp in support of al-Qaeda and Bin Laden. On August 8, 2001, Seattle FBI agents accessed on the internet and printed out a copy of an advertisement for that camp, at [www.sakina.fsbusiness.co.uk](http://www.sakina.fsbusiness.co.uk). The advertisement listed the different types of training offered, including live fire, tactical ambush, cover and concealment, and night and dim light shooting. In addition to that case, I know that, among the cells that have been disrupted through arrests and indictments in the past year include groups in Portland, Oregon, Lackawanna, New York, and Detroit, Michigan. Many of the individuals in these groups engaged in firearms training and other kinds of military-type training to train for jihad in support of al-Qaeda and Bin Laden.

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The Investigation

17. On November 19, 2002, a confidential informant from the local Muslim community who apparently had no prior contact with law enforcement ("CI-1") told three WFO FBI special agent colleagues of mine that an Islamic group known as the Dar al-Arqam was under the direction of a person known as Timimi. Timimi was known to be a graduate student pursuing a PhD in biochemistry at George Mason University ("GMU"). CI-1 reported that the Dar al-Arqam is made up of students and former military members which espouse Islamist views and has conducted military-style training.

18. On December 6, 2002 a second confidential informant from the local Muslim community who also apparently had no prior contact with law enforcement ("CI-2") told FBI WFO SA [REDACTED] that the Dar al-Aqram was founded by al-Timimi and others, along with an active radical Salafi student group from GMU. CI-2 told SA [REDACTED] that the members of the Dar al-Arqam are between 19 and 30 years old and are strongly committed to the Wahhabi ideals. CI-2 told SA [REDACTED] that services at the Dar al-Arqam involve closed sessions involving religious education combined with outside activities such as hunting, target shooting, and paint ball. Because of the similarities in the information provided by CI-1 and CI-2, and the common practice of sometimes dropping the "al" prefix in Arabic names, I believe that the "Timimi" associated with the Dar al-Arqam described by CI-1 is the same person as the "al-Timimi" associated with the Dar al-Arqam described by CI-2.

19. On January 9 & 10, 2003, an individual facing a *[three words deleted]* warrant ("CI-3") spoke with SA *[name deleted]*, an FBI agent in *[place]*. *[34 words deleted describing CI-3's background]*. CI-3 told SA *[name deleted]* that several young arab males in Northern Virginia are actively involved in the recruitment of individuals to travel to the Middle East to train and

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ultimately fight "Jihad." As detailed below, because CI-3 provided information regarding Ibrahim Hamdi and was in touch with him *[five words deleted]* - - and Hamdi is connected by telephone calls to al-Timimi - - I believe that the group described by CI-3 is the same group as that described by CI-1 and CI-2.

20. I know from my training and experience that followers of the Salafi Movement believe that they follow the religion of pure Islam as it was originally intended and detailed in the Qur'an and the Sunnah during the time of the Prophet Muhammad; free from any additions, deletions, or alterations. Wahabism is a puritanical Muslim sect founded in Arabia in the 18th century by Muhammad ibn-Abdul Wahhab and revived by ibn-Saud in the 20th century. I know that many of the Islamist terrorists in the world today, including in particular Osama Bin Laden, claim to be motivated by ideology similar to that of the Salafi Movement and Wahabism. I further know that much of the funding for Bin Laden, al-Qaeda, and other Islamist terrorist groups comes from followers of the Wahabi strain of Islam, in Saudi Arabia and elsewhere.

21. Upon learning of Timimi from CI-1 and CI-2, FBI SA John Wyman and I researched Timimi on the internet. The reporting from CI-1 and CI-2 about Timimi was corroborated by my query of an internet site operated by the Northern Virginia Muslim Students Association. That site, [nvmsa.8m.net/khateeb/Ali\\_Timimi.html](http://nvmsa.8m.net/khateeb/Ali_Timimi.html), in November 2002 revealed biographical information pertaining to Ali Timimi. This site indicated that Timimi is associated with the Dar al-Arqam and is pursuing a Ph.D degree.

22. I will now detail what I have found about Ali Timimi, also known as Ali al-Timimi.

Khafagi and al-Timimi

23. Bassam Khafagi is a citizen of Egypt who has maintained various residences and operated businesses within the United States. Among his businesses is IMG, which publishes an Arabic newspaper and periodical which explicitly espouse Islamist views and support for violence against the United States and its allies. In or about December 2000, Khafagi leased office space for IMG at 3660-D Wheeler Avenue, Alexandria, Virginia, and also commercial storage space in Lorton, Virginia.

24. Khafagi operated businesses in Michigan that, between 1996 and 1998, engaged in financial transactions with Global Relief Foundation (“GRF”) a Chicago-based Islamic charity. In October 2002, GRF was designated under Executive Order 13224 as a terrorist organization for its financial support to Al-Qaeda and Bin Laden, and its assets were frozen by the Treasury Department’s Office of Foreign Assets Control (“OFAC”). Khafagi’s involvement with GRF is noteworthy because some of the transactions between GRF and Khafagi’s businesses involved the circular movement of money in a manner consistent with the laundering of money ultimately destined to support international terrorism. As a result of Khafagi’s suspicious financial transactions with GRF, I suspect that he helped GRF conceal the destination of the funds that it disbursed to support Bin Laden and al-Qaeda.

25. On September 15, 2001, Khafagi abruptly abandoned IMG's leased office premises on Wheeler Avenue in Alexandria, leaving no forwarding address, and abandoning substantial quantities of records in those premises as well as in the storage facility he had leased for IMG in Lorton. FBI agents subsequently examined the abandoned records, and found numerous Islamist articles espousing jihad against America, apparently being translated into Arabic for publication.

26. Earlier this month, Khafagi was arrested in New York on bank fraud charges brought in the Eastern District of Michigan. Khafagi is not central to the investigation outlined in this affidavit, but his arrest provides useful context regarding Ali al-Timimi.

27. I learned that at the time of his arrest, Khafagi was in possession of a Personal Digital Assistant ("PDA"). An examination by the FBI Laboratory of the PDA revealed a contacts database, including a listing for Ali al-Tamimi, business telephone number (703) 993-8397, home telephone number (703) 218-8425, and e-mail address: [altimimi@yahoo.com](mailto:altimimi@yahoo.com).

28. On February 12, 2003, I obtained documents signed in the Clerk's office of this Court in Alexandria, reflecting that, on February 4, 2003, Ali al-Timimi and another individual deposited \$10,000 and posted a \$100,000 bond for Khafagi for his Michigan court case. The court documents bear a signature for Ali al-Timimi and indicate his address as 4106 Meadowfield Court, Fairfax, VA 22033.

al-Timimi and al-Hawali

29. I obtained telephone toll records from Verizon pertaining to al-Timimi's home telephone number (703) 218-8425. These records revealed ten calls between March and October 2002 to telephone number, 966-2-528-1050, a number in Saudi Arabia. An internet query conducted on February 6, 2003 of Saudi telephone number 966-2-528-1050 revealed three websites containing the names and telephone numbers of Islamic scholars and sheikhs, all three of which identified Saudi telephone number 966-2-528-1050 as belonging to Safar al-Hawali. These calls are significant because of al-Hawali's connection to Osama Bin Laden and calls for jihad against the United States.

30. I know from my training and experience, as well as that of other law enforcement and intelligence agents involved in counter-terrorism work, that Safar al-Hawali was central to

the creation of the Movement for Islamic Resurgence in Saudi Arabia. I further know that, in September 1994, the Saudi government arrested al-Hawali for his involvement with the Movement for Islamic Resurgence, and, in large part, that movement's protests against the Saudi government's authorization for the presence of infidels - namely, American military personnel - in Islamic lands that, according to Islamists, is barred by their vision of Islam. After al-Hawali's arrest a mysterious "battalion of the faithful" threatened the current Saudi regime and Western institutions throughout the world. In fact, according to a web-site that published Bin Laden's Declaration of War Against the Americans Occupying the Land of the Two Holy Places (Expel the Infidels from the Arab Peninsula), Bin Laden mentioned al-Hawali in the following fashion: "By orders from the USA, a large number of scholars, Da'ees and young people were arrested in the land of the two Holy Places, among them the prominent Sheikh Salman Al Oud'a and Sheikh Safar Al-Hawali"

31. An internet query on the name al-Hawali revealed an article at [www.jihadunspun.net/BinLadensNetwork/background/insiderview03.cfm](http://www.jihadunspun.net/BinLadensNetwork/background/insiderview03.cfm), entitled "An Insider's view of Osama Bin Laden." This article chronicles Bin Laden's arrival in Afghanistan in June 1996, his eventual alignment with the Afghan Taliban regime, and his February 1988 fatwa sanctioning the killing of Americans and Jews. A section of this article captioned as "Bin Laden-The Person" reads "He (Bin Laden) always admires Shiekh Safar al-Hawali and would have not gone through his current controversial path if al-Hawali was free."

32. A review of other publicly available information and consultation with other U.S. law enforcement and intelligence agents, revealed a close allegiance between al-Hawali and Osama Bin Laden, as well as a hostility towards the United States by al-Hawali. One news release entitled "Bin Laden only turned to violence in 1994" (author identified only as a Saudi

Source) stated that Bin Laden decided to turn to violence against Saudi Arabia and America in 1994 after the Saudi government arrested Safar al-Hawali, and the United States exerted pressure on Sudan to expel Bin Laden.

33. An article entitled Saudi Missteps Helped Bin Laden Gain Power, by Howard Schneider of the Washington Post Foreign Service, dated October 15, 2001, describes Saudi government actions that helped enable the the Taliban to gain support in Islamist circles as it was offering sanctuary to Bin Laden. This article notes that Bin Laden formed his radical philosophy alongside Saudi sheiks such as Safar al-Hawali. This articles paraphrases a sermon broadcast by al-Hawali from Mecca before the start of the Persian Gulf War, in which he said:

We have asked the help of our real enemies in defending us. The point is that we need an internal change. The first war should be against the infidels inside and then we will be strong enough to face our external enemy. Brothers, you have a duty to perform. The war will be long. The confrontation is coming.

34. I further know that, in 1999, al-Hawali was released from prison with restrictions placed on his preachings by the Saudi government. In spite of these restrictions, Hawali continues his radical Islamist rhetoric. Evidence of this fact can be found in news articles published on the Internet that reveal that al-Hawali was interviewed by telephone on Al-Jazeera Television on July 10, 2002. Both articles, one published on [www.waaqiah.com](http://www.waaqiah.com) and one published on [www.worldnetdaily.com](http://www.worldnetdaily.com), described al-Hawali as one who leads the opposition to U.S. military presence in the Arabian peninsula. The articles describing the comments made by al-Hawali and the others interviewed by Al-Jazeera defended Bin Laden and presented an array of radical and distinctly anti-American views. For example, the Worldnet Daily article quotes Al-Hawali as stating:

But if they [America] choose oppression and aggression, they will find no one who loves martyrdom more than we [do], and no one more willing to die - as this is the hope of every man in this land. While the American young people, including Clinton, evade military service, our young people meticulously do this service.

35. The article published in the Waaqiah web-sited quotes Al-Hawali as stating "America and its supporters know that if it extends its hand to attack the land of the two holy places, it will have no protection from the cruelty of God and the vengeance of the soldiers of Allah, the mujahideen." Al-Hawali continued by alluding to the attacks by airplanes on September 11, 2001, "It will have no protection, even if it digs a hole in the earth or seeks refuge in space. Holes in the ground in which to hide every time a plane deviates from its course will not help those who put forth this kind of proposal."

36. In sum, during the period of the telephone toll record analysis in 2002, it appears that al-Timimi was in regular contact with al-Hawali, a Saudi sheik famous for his ideological affinity with Osama Bin Laden, for his call for jihad against the Americans even before the start of the Gulf War, and for his call for violence against the Saudi government to punish it for allowing the infidel Americans to stay in Saudi Arabia. Moreover, it appears that al-Timimi was in regular contact with one of the very individuals whose imprisonment in Saudi Arabia was blamed by Bin Laden on the United States, and used as justification for Bin Laden's call for jihad against the United States.

al-Timimi's Own Statements

37. Since I did not overhear the conversations between al-Timimi and al-Hawali - - and, indeed, do not even know for sure whether they ever spoke to each other - - I obviously cannot conclude with certainty that they discussed terrorism or jihad during the telephone calls that were undoubtedly made. Yet, from al-Timimi's own statements as displayed on the internet, it is

reasonable to conclude that these were indeed topics of discussion. On February 12, 2003 FBI SA John V. Wyman located the web-page:

<http://www.alfjr.com/showthread.ph...3f362812e5f309d4d&threadid=130909>, posted in Arabic text, which appeared to be a discussion board containing multiple posts. One post contained on that discussion board, regarding the recent crash of the Space Shuttle Columbia, is attributed to Ali al-Timimi. Participants in the chat room expressed their satisfaction and considered the accident to be a sign of revenge from God. Presented below is a translation report for the section attributed to al-Timimi, as provided by an Arabic translator assigned to FBI WFO:

Ali al-Timimi is a professor of Genetic Sciences and one of the most prominent Muslim preachers in the United States. He is an American citizen of an Iraqi origin.

*[Translator's Note: The title of the article is "It is a Sign", and it begins with a preamble that includes verses from the Koran. Following is a translation of the rest of the article:]*

This morning, the world heard news about the crash of the space shuttle. There is no doubt that Muslims were overjoyed because of the adversity that befell their greatest enemy. Upon hearing the news, my heart felt certain good omens that I liked to spread to my brothers.

**First: The Name of the Shuttle:** "Columbia" is the name of the shuttle, called after the name of "Columbus", the sailor who discovered the American Continent in 1492 after the fall of Grenada, the last Islamic stronghold in Andalusia. Historians know that, after discovering the two American Continents, the Romans (the Christians of Europe) exploited their wealth in order to be able to control the Islamic World. The Columbia crash made me feel, and God is the only One to know, that this is a strong signal that Western supremacy (especially that of America) that began 500 years ago is coming to a quick end, God Willing, as occurred to the shuttle.

**Second: The Shuttle Crew:** The Israeli Ambassador to the UN described the Israeli astronaut as someone carrying all the hopes and ambitions of the Israeli people. And so, God Willing, all these hopes and ambitions were burnt with the crash and the burning of the shuttle and one of its astronauts, the Israeli.



**Third: The Crash Location:** As soon as CNN announced the crash of the space shuttle nearby the city of Palestine, in Texas, I said to myself "God is Great". This way, God Willing, America will fall and disappear (nearby Palestine). The State of Texas is also the state of the foolish, obeyed President Bush the son. And so we hope, God Willing, similar to the crash of the shuttle on his state, his nation would fall upon his head due to his foolish policy.

**Fourth: The President's Condolences to the American People:** In the words that President Bush used to console his people, he referred to the Book of Isiah where there is a praise to God's creation, His stars and planets. I said to myself, Praise the Lord, in this same Book of Isiah there are news about the coming of Prophet Muhammad and a warning of the destruction of the Jews at the end of time. [A citation from the Koran follows].

And so, there are other signs that would take a long time to recount. For example, every time the Americans believe that they control the whole earth and the skies, and act as they wish, there comes a sign that reminds us that God, Almighty, is greater than his creatures, sitting on His Chair, handling everything, and that His angels act according to His commands. And so, he whoever will try to raise the Jews, who are a nation that God covered with humiliation and deserved God's wrath, will be afflicted with divine humiliation and wrath as much as he supports them.

As I mentioned earlier, these are all ideas that came to me when I heard of the accident, and hopes that I wish God would fulfill, and God is the only One to know.

Written by: Dr. Ali ibn Mahdi al-Timimi  
Saturday 29 Dhu al-Qi`da 1423, February 1, 2003.

38. al-Timimi's statements regarding the crash of the space shuttle - - particularly that Muslims should be overjoyed at the adversity encountered by their "greatest enemy," and that, "god willing," 500 years of Western supremacy is coming to a quick end, as well as his contacts with al-Hawali (and, to a lesser degree, with Khafagi), together indicate that al-Timimi is an Islamist supporter of Bin Laden, and therefore a likely supporter of jihad training among young Islamists in America. Accordingly, they strongly corroborate the information I received from CI-1 and CI-2 that al-Timimi is leading a group of young men in Northern Virginia training for

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jihad. Accordingly, I conclude that al-Timimi and the young men he is leading in Northern Virginia are, indeed, training for jihad against the infidel Americans.

Yusuf Wells's Travelogue Details the Dar al-Aqram Paintball Training

39. As noted above, CI-1 told me that the activities of the Dar al-Aqram involved military-style training, and CI-2 told me that they involve closed sessions involving religious education combined with outside activities such as hunting, target shooting, and "paintball." Based on my training and experience and the circumstances of this case, I believe the members of the Dar al-Aqram likely engage in these activities not merely for recreation, but for training for engaging in violent jihad against those they see as enemies of their vision of Islam.

40. "Paintball" is a recreational outdoor activity, in which participants engage in mock combat, using "guns" that discharge a ball of paint to hit their intended target. As a result of my training and experience, I know that "paintball" has been and is used today by individuals in the United States associated with Islamist terrorism (and specifically those interested in violent jihad) as a way to gain tactical para-military experience while using a legal and somewhat inconspicuous training methodology.

41. On February 14, 2003 I reviewed a document authored by Yusuf Ansari Wells, a fund-raiser for Benevolence International Foundation ("BIF"), that fully corroborated the information I received from CI-1 and CI-2 regarding the military-style training undertaken by the Dar al-Aqram group. The document I reviewed was seized at the BIF offices in Chicago by the FBI last year during execution of a search warrant in connection with the investigation of BIF for providing material support to Al-Qaeda and Usama Bin Laden.

42. Like GRF (described above in connection with Khafaji), BIF was designated under Executive Order 13224 as a terrorist organization in October 2002 for its financial support to al-

Qaeda and Bin Laden, and its assets were frozen by OFAC. In April 2002, Enaam Arnaout, the director of BIF, was indicted for various charges relating to operating BIF as a racketeering enterprise and providing material support to Bin Laden and al-Qaeda. The indictment charged that, between 1992 and 2002, BIF constituted a RICO “enterprise” for the purpose of providing support to mujahideen and others engaged in violence and armed confrontation, including al-Qaeda.

43. On February 11, 2003, Arnaout pled guilty to operating BIF as a racketeering organization, and illegally diverting charitable contributions to mujahideen in Bosnia and Chechnya, but denied that BIF provided material support to Bin Laden and al-Qaeda. The United States Attorney in the Northern District of Illinois has publicly stated that the United States will provide proof at sentencing that Arnaout and BIF supported Bin Laden and al-Qaeda. Evidence that I have learned about indicates that BIF did, indeed, operate to provide support to Bin Laden and al-Qaeda.

Nabil Garbarbieh

44. The seized document authored by Wells appears to be a “Trip Report” submitted to Farrukh Yunnus, BIF’s Executive Director, by Yusuf Ansari Wells, Fundraising Officer. The report details the activities of Wells between March 29, 2001 and April 22, 2001, when he visited the Washington, D.C. area. Of particular interest in the report was a description of Wells’s activities on April 5, 2001, when, as he wrote, he “stayed with Br. Nabil Abugharabieh, head of Dar ul Arqam center for Islamic propagation.”

45. I believe that, in his journal, Wells was referring to Nabil Garbarbieh, who is indeed associated with the Dar al-Arqam and a student of Ali al-Timimi. My query of internet site [nvmsa.8m.net/lecturers/Nabil\\_Garbich.html](http://nvmsa.8m.net/lecturers/Nabil_Garbich.html) revealed biographical information pertaining to

Nabil Garbieh, and indicates that Garbieh is associated with the Dar al-Arqam and has studied with al-Timimi for the last five years. I further found on the internet, at [www.islaam.org.uk](http://www.islaam.org.uk), an article entitled "My Meeting with Shaykh al-Albaanee" by Nabil Abu Gharbieh, dated September 21, 1999, in which Garbieh discussed a three-month trip he made upon the advice of Ali al-Timimi to Jordan, Saudi Arabia, and Palestine. As a result of Wells's reference to Nabil Abugharabieh and the Dar ul Arqam, I believe that Wells was visiting al-Timimi's group that was described to me by CI-1 and CI-2.

46. In Wells's travelogue, Wells wrote that, on April 11, 2001, he "left back to Virginia". On April 13, 2001, Wells wrote that he "gave after jummah talk in the Islamic Community Center of Laurel. Raised about \$500.00. Spoke with the Director. visited Dar us Salaam in College Park and attempted to arrange khutbah or presentation for the weekend of the 20<sup>th</sup>."

47. Wells next described his activities on Sunday, April 15, 2001:

I was taken on a trip to the woods where a group of twenty brothers get together to play paintball. It is a very secret and elite group and as I understand it, it is an honor to be invited to come. The brothers are fully geared up in camouflage fatigues, facemasks, and state of the art paintball weaponry. They call it "training" and are *Very* serious about it. I knew at least 4 or 5 of them were ex US military, the rest varied. Most of them young men between the ages of 17 - 35. I was asked by the amir of the group to give a talk after Thuhr prayer. I spoke about seeing the conditions of Muslims overseas while with BIF, and how the fire of Islam is still very much alive in the hearts of the people even in the midst of extreme oppression. I also stressed the idea of being balanced. That we should not just be jihadis and perfect our fighting skills, but we should also work to perfect our character and strengthen our knowledge of Islam. I also said that Muslims are not just book reading cowards either, and that they should be commended for forming such a group. Many were confused as to why I had be "trusted" to join the group so quickly, but were

comforted after my brief talk. some offered to help me get presentations in their respective localities.

48. On Monday, April 16, 2001, Wells made an entry that included the following "Sent an email reminder to Br. Ali and M. Shafi concerning helping me with a presentation of Khutbah on Friday. Other entries that week indicate that Wells remained in the Washington, D.C. area.

49. On Friday, April 20, 2001, Wells made an entry that included the following:

I attended Shaykh Ali lecture on purification of the soul. He advised me during the lecture. Stating that some Muslims leave off their obligatory deeds (like praying 5 times prayer), but are very keen on superogatory [sic] deeds (such as giving to Muslim charities like BIF). If I am able, (after looking thoroughly at the situation) I should try to advise such brothers and sisters concerning the importance of the Faraa'id (obligatory deeds) and that Allah loves those deeds, and not to leave them off thinking that they can buy their way into Jinnah.

50. Wells' entry on April 17, 2001 indicates that he remained in the Washington, D.C. area and his entry on April 18, 2001 states "I bid my friend Nabil farewell and headed back to Pittsburgh, PA.

51. Wells's descriptions of his activities with the Dar al-Arqam corroborate the jihad training activities conducted by members of that group as described by CI-1 and CI-2. Based on the activities described in Wells's journal, I believe that, while staying in the Washington, D.C. area, Wells was hosted by Nabil Garbieh, a member of the Dar al Arqam. I further believe that, in light of the connection between Garbieh and al-Timimi at the Dar al Arqam, the "Shaykh Ali" to whom Wells referred is actually Sheikh Ali al-Timimi,. It is also likely, therefore, that the "elite" group that Wells accompanied on the "paintball" outing for military-style training purposes was associated with al-Timimi and Garbieh. Finally, I believe that the "paintball" training described by Wells is the very same training described by CI-2, and constitutes an

attempt by Islamists to obtain training for jihad. Accordingly, based on Wells's journal, I believe that Nabil Garbieh is deeply involved with the Dar al-Arqam group engaged in training for jihad against America, the "greatest enemy" of the Islamists (as seen by al-Timimi).

Ibrahim Hamdi

52. In January 2003, CI-3 provided SA *[name deleted]* information on one Ibrahim Hamdi. CI-3 told SA *[name deleted]* that, in 1996, *[five words deleted regarding CI-3's background]*, Hamdi, the son of a Yemeni diplomat assigned to the Yemeni embassy, approached CI-3 and offered to *[14 words deleted]*. CI-3 told SA *[name deleted]* that Hamdi informed CI-3 that Hamdi was able to procure visas through the Yemeni embassy due to Hamdi's father's position.

53. CI-3 told SA *[name deleted]* that, in 1996, Hamdi told CI-3 that *[four lines deleted regarding what Hamdi told CI-3 in 1996; Timimi not mentioned or referenced]*.

54. CI-3 told SA *[name deleted]* that Hamdi *[seven lines deleted regarding what Hamdi told CI-3 in 1996; Timimi not mentioned or referenced]*.

55. On February 6, 2003, the United States Diplomatic Security Service ("DSS") reported to me that Ibrahim Ahmed A. al-Hamdi, born [REDACTED] 1977 in Yemen, arrived in the United States in 1993 with his father, Ahmed Ali Saleh al-Hamdi, a Yemeni diplomat. The DSS told me that, at the time of his entry into the United States, Ibrahim al-Hamdi was entitled to diplomatic immunity as an "active dependant" until [REDACTED], 1998, his 21st birthday. This immunity could have been extended with a formal request from the embassy, for a period of two years. According to the DSS, no such extension request was ever made or granted by the State Department.

56. On October 31, 2002, Alexandria Police Department ("APD") Detective Joseph Morrash provided SA Wyman information generated during investigation by his department into suspicious activity of Ibrahim Hamdi. According to the information provided by Morrash, on April 16, 2002, ACPD Officer Todaro responded to a report of found property by the apartment manager at the Olympus Condominium, [REDACTED], Alexandria, Virginia. At this time, Officer Todaro was provided with a gray duffle bag that was found by property management in [REDACTED] of the condominium complex. According to the management office, this apartment unit was previously rented by Ibrahim Hamdi. The duffle contained one paint-gun, four rifle cartridges, and various letters and other items.

57. On September 19, 2002, APD officers interviewed Olympus management regarding Hamdi. In so doing APD was advised that other Middle Eastern males, frequently dressed in camouflage outfits, used to visit Hamdi at his residence. Additional items abandoned by Hamdi were turned over to APD at the time of this investigation. These items consisted of items primarily related to paint-gun activities, including several paint-guns and paint-gun accessories, camouflage clothing and combat equipment. One of the items turned over to APD was an Emergency Contact Card for Hamdi, which provided a cellular telephone number as (703) 475-5559.

58. I learned from Cingular Wireless that (703) 475-5559 is subscribed to by Ibrahim Hamdi. From my analysis of toll records, I know that, between October 6, 2001, and January 2, 2002, there were 44 telephone calls between that number and (703) 218-8425. On February 6, 2003, I learned from the Verizon Security Control Center that the account subscriber for (703) 218-8425 is Ali al-Timimi, of 4106 Meadow Field Court, Fairfax, Virginia. Based on these telephone calls and the paintball paraphernalia found among Hamdi's belongings, as well as

upon Hamdi's recruiting for jihad in 1996, I conclude that Hamdi is today associated with al-Timimi's cell of jihad trainees.

59. On February 4, 2003, Alexandria Sheriff's Office ("ASO") conducted an eviction at the apartment of Ibrahim Hamdi at [REDACTED], Alexandria, Virginia, for Hamdi's failure to pay his rent, upon which an outstanding balance was due of approximately \$2,500. Agents from the FBI WFO accompanied the ASO in the execution of this eviction. The apartment was almost empty, with the exception of a few items left on the balcony of the apartment. These items consisted primarily of books written in Arabic. Also located on the balcony was a silver pan, in which were located scraps of yellow paper that had apparently been burned. Observed in close proximity to the scraps of partially-burned yellow paper were ashes.

60. On February 4, 2003, an FBI WFO language specialist analyzed the books obtained from the apartment. Of particular interest was a book entitled "The Green Birds, Examples of Martyrs in Palestine" According to a summary translation, the book was published in support of the Palestinian Intifada and in commemoration of the Palestinian martyrs. Mentioned prominently throughout the book are the activities of the Islamic Resistance Movement, also known as Hamas. I note that, like al-Qaeda, Hamas is a designated foreign terrorist organization the support of which is banned by 18 U.S.C. § 2339B. I further note that al-Qaeda sympathizers are likely supportive of Hamas terrorist activities. I also know from my involvement in other counter-terrorism investigations that individuals and organizations in America today that provide material support to al-Qaeda would not shrink from doing the same for Hamas, because the two organizations espouse similar Islamist ideology.

61. Located during the search and removed from the apartment were four notebooks containing hand-written text, in both Arabic and English text. One of the notebooks found to be

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abandoned in the apartment located the following hand-written notation "I Ibrahim Al-Hamdi took \$2,500 from Yong Kwon on Tuesday 12.27.2000". Also located was the following hand-written e-mail address r\_kwon@hotmail.com.

62. In January 2003, SA [name deleted] asked CI-3 if he knew of an associate of Hamdi known as Yong Kwon. CI-3 told SA [name deleted] that [12 words deleted] he met an Korean-American Muslim named "Yong" (phonetic) who went to Afghanistan to fight against American forces after September 11, 2001 but has not returned. CI-3, who has spoken with Hamdi [five words deleted], has not spoken with Yong for approximately one and one-half years and told me that many people he knows in this area are worried about Yong as they have not heard from him for nearly a year.

63. Nabil Garbieh is currently employed at PEC Solutions, Inc. which is located in Fairfax, Virginia. In order to work on classified government contracts for PEC Solutions, Inc., Garbieh requires a Department of Defense (DoD) Top Secret security clearance, which is currently pending. On February 24, 2003, Special Agent Christopher Mamula reviewed an application for a Security Clearance, submitted by Nabil Gharbieh, dated June 28, 2001. On that application, Garbieh listed his home address as [REDACTED], Annandale, Virginia. Garbieh noted that he was unemployed from March 2001 through 2001, and listed one Yong Ki Kwon, of [REDACTED], Fairfax, Virginia, telephone number 703/898-5449, as verifying individual to this statement.

64. On the basis of my investigation, I believe the "Yong" known by CI-3 to have traveled to Afghanistan to fight against the Americans after 9/11 is the "Yong Ki Kwon" that was a reference for Garbieh on his security clearance application, and the "Yong Kwon" that received \$2,500 from Hamdi in December 2000.

65. Based on the foregoing, there is probable cause that Ali al-Tamimi, Nabil Garbieh, and Ibrahim Hamdi all have been involved with the Dar al-Aqram Islamic Center, and have engaged in recruiting and training Muslims in America to engage in jihad against those they perceive as enemies of their vision of Islam. As explained below, I know that individuals engaged in activity such as that undertaken by al-Tamimi, Garbieh, and Hamdi generate records and documents, and maintain other items that evidence their activity and provide clues to the identities of their associates. These records, documents, and other items are described in detail in Attachment A, which I incorporate here by reference. Accordingly, I seek warrants to search the locations in which these individuals are reasonably likely to have maintained this evidence of their activities; namely, their homes and vehicles.

Locations to Be Searched

66. Based on my training as a member of the FBI's evidence response team, and experience in conducting physical searches, I know that individuals engaged in providing support in the United States for international terrorism typically possess information and other evidence that relate to their criminal activity, travels, personal contacts, financial activities, and group affiliations, such as the documents and items listed on Attachment A, incorporated herein. Often, these materials are maintained in the residences of the individuals engaged in material support to terrorists. This likely is true when an individual is not self-employed because he generally can maintain closer control over sensitive documents, records, and other items in his residence than in his employer's building.

67. For example, six individuals recently were indicted in Portland, Oregon, for activities relating to their travel overseas in attempts to enter Afghanistan to take part in a jihad against American armed forces there. In many respects, the investigation of those individuals is

similar to the investigation outlined in this affidavit. I know from the FBI case documents related to Portland investigation that searches were conducted of the residences of various members of the group that was engaging in military-style training in preparation for their jihad travel. Likewise, searches of their residences yielded valuable evidence as well, including identification records, financial records, travel documents, spreadsheets containing names, addresses, and telephone numbers of individuals and Islamic organizations across the country, some of which (such as GRF and BIF), I know are linked to international terrorist organizations. Similar searches were conducted in connection with the al-Qaeda cell indicted in Lackawanna, New York, with similarly productive results.

68. Having worked counter-terrorism cases for the past seven years, and having been a member of the PENTTBOMB investigative team since the 9/11 terrorist attacks, I know that individuals engaged in support to international terrorism often maintain evidence of that crime in their automobile. In the investigation of the Portland jihad trainees, searches were conducted of the members' personal vehicles, and resulted in important items of evidence, including weapons and ammunition, financial documents, travel information, and miscellaneous handwritten notes. Moreover, even on September 12, 2001, FBI WFO agents searched the vehicle of Flight 77 hijacker Nawaf Al-Hazmi by Dulles Airport, and found valuable information relating to the flight training taken by the hijackers, identification documents of three of the hijackers, and numerous items relating to the activities of the hijackers in Washington, D.C.

69. I know that al-Timimi, Hamdi, and Garbieh are educated and technologically sophisticated. I know that all three routinely use the internet and/or email; as noted above, I found postings by al-Timimi and Garbieh on the internet, an email address for al-Timimi on Khafaji's PDA, and an email address for Yong on one of Hamdi's notebooks (and, as noted in

below, Garbieh has a personal web site on the internet). I know from my training and experience that educated and technologically sophisticated individuals who use email and the internet likely have personal computers, PDAs, and other devices that contain valuable information regarding their contacts, correspondence, finances, and activities. Finally, I know from my training and experience that such individuals are likely to have such devices in their residences. Indeed, many have such devices in their cars as well; PDAs now are sometimes maintained in vehicles for use in connection with navigational programs. Accordingly, there is probable cause to search their residences and vehicles for computers and other devices that store records.

70. I have been advised that to properly retrieve and analyze all electronically stored (computer) data, and to insure accuracy and completeness of such data and to prevent the loss of the data either from accidental or programmed destruction, requires both on site and laboratory analysis by a qualified computer specialist. To effect such accuracy and completeness requires the seizure of all computer equipment and peripheral devices which may be interdependent, the software to operate them, and related instruction manuals which contain directions concerning the operation of the computer system and software programs.

71. I have also been advised that it is often necessary to physically remove computers from the location where they were located. Often the physical removal may be necessary for several reasons, including the protection of the data for both investigative purposes as well as allowing for the safe return of the computer (it's data) to the person from which it was seized.

A. The Residence of al-Timimi at 4106 Meadowfield Court, Fairfax

72. On several occasions and as recently as January 10, 2003, FBI physical surveillance has observed Ali al-Timimi entering and exiting his residence located at 4106 Meadowfield Court, Fairfax, Virginia, 22033. As recently as February 19, 2003, FBI surveillance observed his

personal vehicle parked at that residence. That residence is an end unit townhouse with an exterior of light red brick on the front and side, a single car garage, a wood plank fence surrounding the back yard., and the numbers "4106" displayed on a block next to the front door.

B. One 1998 Nissan

73. On several occasions FBI physical surveillance has observed al-Timimi in his vehicle, a Nissan Altima bearing Virginia license ZCM-3668, at 4106 Meadowfield Court, Fairfax, Virginia. A check with Virginia DMV reveals that this vehicle, VIN: 1N4DL01D4WC168151, is registered to Ali M. al-Timimi, at 4106 Meadowfield Court.

C. The Residence of Hamdi at [REDACTED]

74. On February 6, 2003, FBI surveillance observed Hamdi and an unidentified Middle Eastern male travel from Hamdi's place of employment, UFI, off Edsall Road, in Springfield, Virginia, to [REDACTED] apartment complex, [REDACTED], Annandale, Virginia. Officers there observed Hamdi's vehicle, a blue/silver 1997 Acura two-door, bearing Virginia license plate JAZ-7041, parked at the apartment complex, bearing a parking sticker for the [REDACTED] complex affixed to the rear window of the vehicle. Virginia DMV records reflect that this vehicle, VIN: 19UYN2258VL017057, is registered to Ibrahim Ahmed A. Al-Hamdi at [REDACTED], Alexandria, Virginia (the residence from which he recently was evicted).

75. On February 19, 2003, at approximately 9:00 a.m, FBI surveillance observed Hamdi's vehicle parked in the parking lot of the [REDACTED] apartment complex, and noted that Hamdi's parking sticker number for the complex was [REDACTED]. At approximately 6:30 p.m. of the same day, FBI surveillance observed Hamdi depart UFI in Springfield in the same vehicle and return to the [REDACTED]. Surveillance was discontinued at approximately 10:00 p.m., at which

time Hamdi's vehicle remained parked in the parking lot of the [REDACTED]. At 6:30 a.m. the next morning, the vehicle was in the same parking lot. At 9:50 a.m., Hamdi entered the vehicle and drove to UFI in Springfield.

76. On February 20, 2003, a confidential informant with access to the records of the [REDACTED] complex ("CI-4") advised that [REDACTED] parking permit number 3079 was issued to Abdullah Zikria on February 1, 2003. CI-4 advised that Zikria moved into [REDACTED] on February 2, 2003. CI-4 advised that on January 31, 2003, Zikria made application for residence at the [REDACTED] and indicated that he would be the only tenant in the apartment. Zikria advised that he had been employed as a production manager at UFI since March 23, 2002, and provided a pay-stub signed by one "Mohammed al-Hamdi," General Manager of UFI. Previous FBI investigation revealed that Mohammed al-Hamdi is a brother of Ibrahim Hamdi.

77. Based on the foregoing, I believe that Hamdi is currently residing at [REDACTED] [REDACTED], in Annandale, Virginia. I believe that upon receipt of notice from the ASO on January 28, 2003, that he would be evicted on February 4, 2003, Hamdi sought another residence. Realizing that his eviction made him an unattractive rental candidate at a new apartment complex, he relied on his co-worker, Zikria, to rent for him a new residence. Accordingly, Zikria applied to the [REDACTED] on January 31, 2003, and took possession of the unit on February 2, 2003, without notifying the apartment management that Hamdi would be living there lest Hamdi's poor payment record at his previous residence hinder his chances of successfully securing this apartment for Hamdi. Probable cause, therefore, exists that Hamdi moved his belongings to his new residence at [REDACTED] of the [REDACTED] just weeks ago, and contained among those belongings are items described in Attachment A.

78. At approximately 10:30 p.m. on February 23, 2003, another confidential informant ("CI-5") with access to the [REDACTED] complex observed in [REDACTED] an individual matching a photo I had shown CI-5 of Hamdi. CI-5 observed in [REDACTED] a personal computer and other items that appeared to CI-5 to be among the items that CI-5 had observed being moved into that apartment earlier that day.

79. Last week, I visited [REDACTED], in Annandale, Virginia, and found it to identified by the numbers [REDACTED] posted in black letters on a door-knocker affixed to a red apartment door on the seventh floor of a nine-story red brick apartment building, identified by the numbers [REDACTED] posted in white letters on the front of the building on the south side side of [REDACTED] approximately 150 yards from the corner of [REDACTED] [REDACTED] Annandale, Virginia.

D. One 1997 Acura

As noted above, Hamdi owns and drives a blue/silver 1997 Acura two-door, VIN: 19UYN2258VL017057, bearing Virginia tags JAZ-7041. In addition to the reasons outlined above why evidence as described in Attachment A is likely to be found in the vehicles used by Timimi, Hamdi, and Garbieh it is also noteworthy that, since Hamdi has recently moved from one residence to another -- and that new residence is rented in the name of another -- there is probable cause that some of Hamdi's belongings may still be in his vehicle simply because he has not yet permanently moved them into his new residence.

E. The Residence of Nabil Garbieh at [REDACTED] Annandale, VA

80. According to VA DMV records, a white 2001 Nissan X-Terra, VIN: 5N1ED28Y81C528686, and bearing Virginia tags YDP-4042, is owned by Nabil Gharbieh of [REDACTED], Annadale, Virginia. Additionally, the personal website of Nabil

AbuGharbieh, [www.geocities/nabil74.com](http://www.geocities/nabil74.com), lists his address as [REDACTED], Annandale, VA. The website indicates "I still live with my family as I do not see myself moving out unless Allah blesses me with a wife." According to the Fairfax County Department of Tax Administration website, the owners of the residence located at [REDACTED], Annandale, are Taisir S. and Samiha Abugharbieh, who I believe to be the parents of Nabil Garbieh.

81. Gharbieh is currently employed at PEC Solutions, Inc. which is located in Fairfax, Virginia. In order to work on classified government contracts for PEC Solutions, Inc., Gharbieh requires a Department of Defense (DoD) Top Secret security clearance, which is currently pending. On his DoD Security Clearance Application, dated 06/28/2001, Gharbieh listed his home address as [REDACTED], Annadale, Virginia. SA Mamula reviewed Gharbieh's personnel folder at PEC Solutions and found nothing in his file to indicate he has changed his address or updated his address for his clearance. According to PEC Solutions, Inc., since Oct 28, 2003, Gharbieh has been traveling back and forth on temporary duty between Virginia and the Naval Support Activity Midsouth, 5720 Integrity Drive, Millington, Tennessee and he will continue to do so until Oct 27, 2003.

82. Earlier this morning, Fairfax County Police Detective Richard Cline spoke to Samiha Abugharbieh at [REDACTED]. Samiha Abugharbieh confirmed that her son Nabil lived at that address.

83. FBI SA Mamula told me that, on November 22, 2002, he visited the residence at [REDACTED], Annandale, Virginia, and found it to be located on the northeast side on [REDACTED], which ends in a cul-de-sac. The residence is a two-story single dwelling. The exterior of the residence consists of yellow siding and red brick, with white trim and green shutters. The residence has a carport, partially constructed of white lattice, to which a



basketball hoop is attached. A large green construction-type dumpster is located in the driveway. Two satellite dishes are located on the roof. On the back side of the house a covered patio is attached. In the back yard sits a yellow storage shed and a white lattice fence surrounds what appears to be a swimming pool.

F. One 2001 Nissan X-Terra

As noted above, Garbieh owns a white 2001 Nissan X-Terra, VIN: 5N1ED28Y81C528686, and bearing Virginia tags YDP-4042.

Conclusion

84. Based on the information provided in this affidavit, there is probable cause to believe that Hamdi, Al-Timimi, Garbieh and others have engaged in conspiracy to provide material support and resources to terrorists and designated foreign terrorist organizations in violation of 18 U.S.C. Section 2339A and 2339B. Moreover, there is probable cause to believe that, at the locations listed below, information revealing the extent, nature, and content of communications among the coconspirators, including communications in furtherance of the conspiracy and disclosing the movements, past and current whereabouts of al-Timimi and other coconspirators, and their activities in furtherance of the conspiracy will be found:

- a. The residence of Ali al-Timimi at 4106 Meadowfield Court, Fairfax, Virginia;
- b. One maroon 1998 Nissan Sedan, VIN: 1N4DL01D4WC168151, and bearing Virginia tags ZCM-3668;
- c. The Residence of Ibrahim Hamdi at [REDACTED], Annandale, Virginia;
- d. One blue/silver 1997 Acura two-door, VIN: 19UYN2258VL017057, bearing Virginia tags JAZ-7041

- e. The Residence of Nabil Garbieh at [REDACTED], Annandale, VA; and
- f. One 2001 White Nissan X-Terra, VIN: 5N1ED28Y81C528686, and bearing Virginia tags YDP-4042.

85. Pursuant to 18 U.S.C. § 981(a)(1)(g) and (b)(2), all assets of any individual engaged in planning and perpetrating an act of international terrorism (as defined in 18 U.S.C. § 2331) against the United States, citizens of the United States, and their property, are subject to seizure pursuant to 18 U.S.C. § 981(b)(2). Pursuant to 18 U.S.C. § 2331, an act of international terrorism includes a violent act dangerous to human life that violates the criminal laws of the United States (or that would violate those laws if committed in the United States), that appears to be intended to influence the policy of the United States government by coercion, and transcends national boundaries in terms of the means by which it is accomplished or the persons they appear to coerce.

86. I am advised that fighting on behalf of al-Qaeda against American forces in Afghanistan is a violent act dangerous to human life, in violation of 18 U.S.C. § 2339B, that appears to be intended to influence the policy of the United States government by coercion, and transcends national boundaries in terms of the means by which it is accomplished and the persons the acts appear to coerce. As a result, all assets of any individual engaged in planning to fight on behalf of al-Qaeda against American forces in Afghanistan are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(G) and, thereby, subject to seizure pursuant to a warrant issued pursuant to 18 U.S.C. § 981(b)(2). Accordingly, I seek seizure warrants to seize the above-listed vehicles.

87. Because this affidavit is part of an ongoing investigation that would be jeopardized by premature disclosure of information, I request that this Affidavit and the application in support of the search warrant be filed under seal until further order of the Court.

Wherefore, I request the issuance of search warrants pursuant to Rule 41 of the Federal Rules of Criminal Procedure, and seizure warrants pursuant to 18 U.S.C. § 981(b)(2).

FURTHER THIS AFFIANT SAYETH NOT.

---

F. Wade Ammerman  
Special Agent, FBI

Subscribed to and sworn before me on this 24th day of February 2003.

---

LIAM O'GRADY  
UNITED STATES MAGISTRATE JUDGE

~~SECRET~~

DATE: 12-11-2012

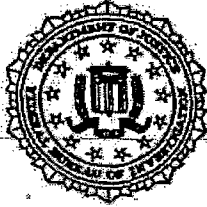
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REASON: 1.4 (c)

DECLASSIFY ON: 12-11-20

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# FBI FACSIMILE COVER SHEET

Oct 10 2002

### PRECEDENCE

- Immediate
- Priority
- Routine

### CLASSIFICATION

- Top Secret
- Secret
- Confidential
- Sensitive
- Unclassified

Time Transmitted: \_\_\_\_\_  
 Sender's Initials: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_  
 (including cover sheet)

To: FBIHQ  
 Name of Office

Date: 10/1/02

Facsimile Number: \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Name Room Telephone

From: WFO  
 Name of \_\_\_\_\_

(S) Subject: AWLAKI \_\_\_\_\_

Special Handling Instructions: \_\_\_\_\_

Originator's Name: \_\_\_\_\_ Telephone \_\_\_\_\_

Originator's Facsimile Number: \_\_\_\_\_

Approved: DD

(S) Brief Description of Communication Faxed: \_\_\_\_\_

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AWLAKI-895

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DATE: 12-11-2012

SEP. 27. 2002

9:23AM

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CLASSIFIED BY 65579 DMH/MJS

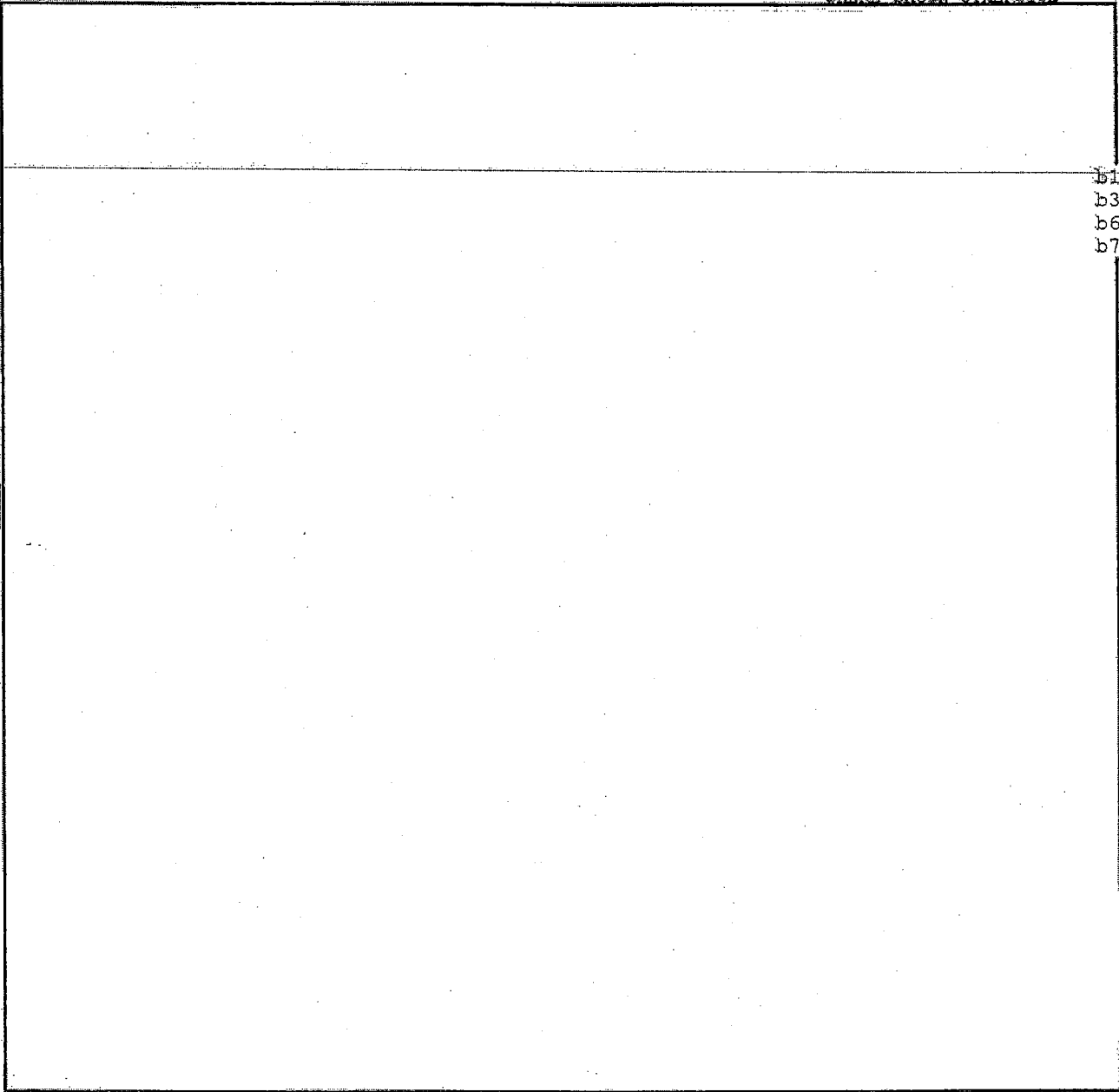
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NO. 452 P. 2

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AWLAKI-896

SEP. 27. 2002

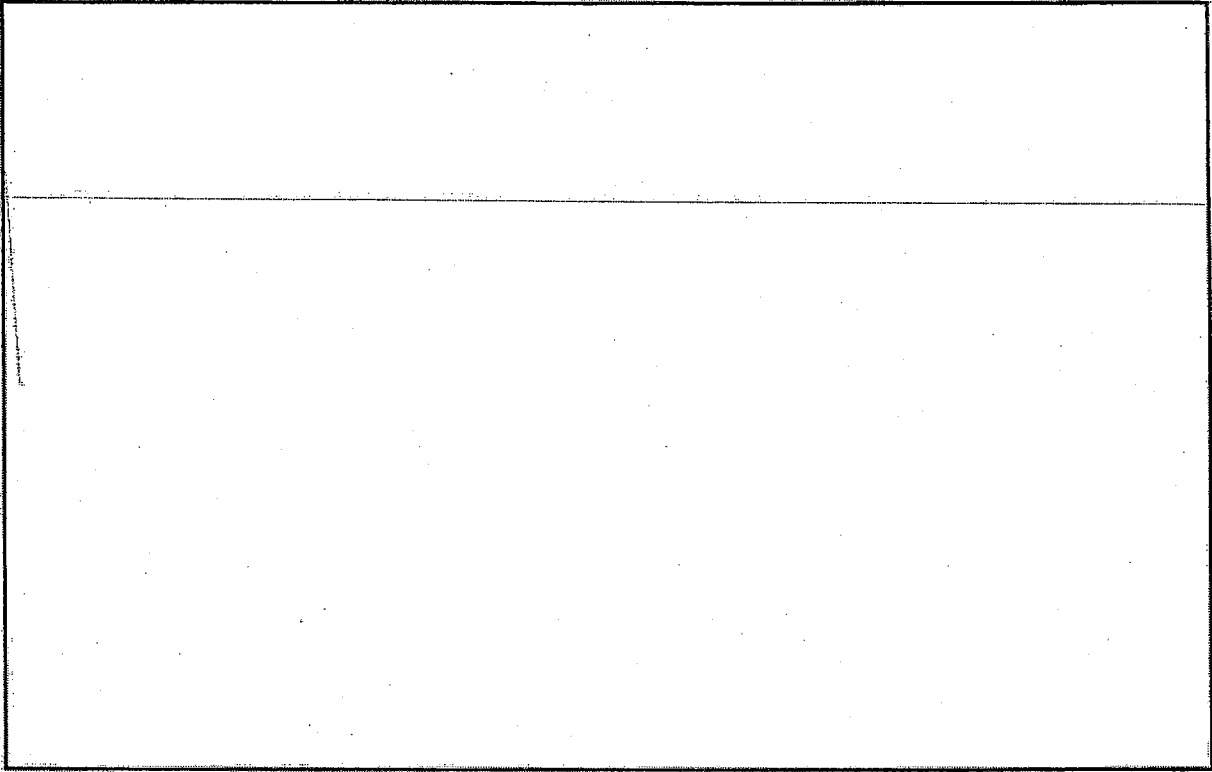
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DATE 12-11-2012 BY 65179 DMH/MJS

P. 1

\* \* \* TRANSMISSION RESULT REPORT ( OCT. 1. 2002 2:56PM ) \* \* \*

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DATE	TIME	ADDRESS	MODE	TIME	PAGE	RESULT	PERS. NAME	FILE
OCT. 1.	2:56PM	COMPATIBLE	G-TS	1'39"	P. 3	OK		121

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M : MEMORY  
S : STANDARD  
A : ASYNC MODE

C : CONFIDENTIAL  
L : SEND LATER  
D : DETAIL  
1- : MIL STD MODE

\$ : TRANSFER  
@ : FORWARDING  
T : FINE  
G- : RICOH-MG3/COMPATIBLE MODE

P : POLLING  
E : ECM  
> : REDUCTION

AWLAKI-898

DATE: 12-11-2012

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DECLASSIFIED BY: 55178 DMH/MJS  
REASON: 1.4 (c)  
DECLASSIFY ON: 12-11-203

199M-WF-222852

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1 - Mr. [redacted]

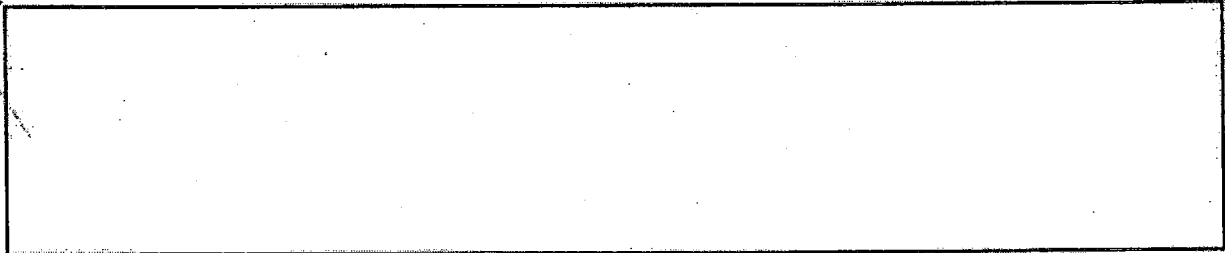
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MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: DIRECTOR, FBI [initials]

SUBJECT: ANWAR AULAQI;  
(U) IT-UBL/AL-QAEDA (S)

(S)



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Enclosure

DLP:dlp (4)

*Handwritten initials/signature*



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Classified by: Director, FBI  
Reason: 1.5(c)  
Declassify on: X1

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10/3/02



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DATE 12-11-2012 BY 65179 DMH/MJS

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OCT 1 1990  
FBI - WASH. METRO FIELD OFFICE

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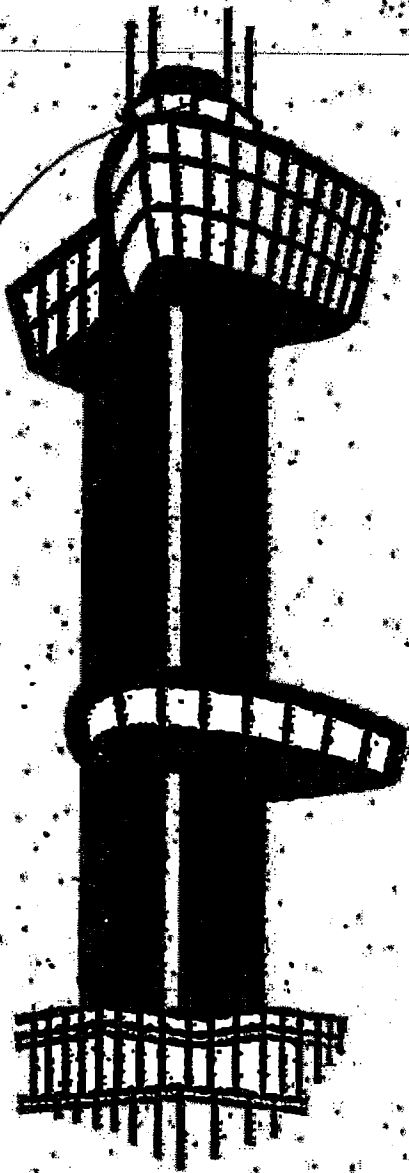
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DATE 12-11-2012 BY 179 DMH/MJS

P. 01/07



# FBI NEW YORK JFK INT'L AIRPORT RESIDENT AGENCY



To: \_\_\_\_\_

Date: 10/10/02

Attention: \_\_\_\_\_

Fax Number: \_\_\_\_\_

From: SA \_\_\_\_\_

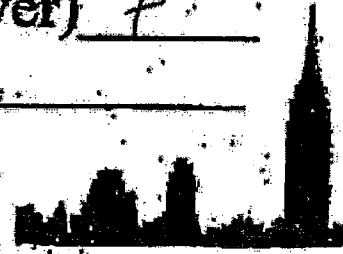
Phone: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Pages (Including Cover) 7

Notes: \_\_\_\_\_

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**WELCOME TO THE UNITED STATES**

U.S. DEPARTMENT OF THE TREASURY  
UNITED STATES CUSTOMS SERVICE

**CUSTOMS DECLARATION**

Each arriving traveler or responsible party member must provide the following information for entry into the United States:

1. Family Name: **AWLAKI**

2. First (Given) Name: **ANWAR**

3. Address (Street No. or Rural Route or Vehicle License No.): **3159 Row 31**

4. City or Town: **Falk Church**

5. State: **VA**

6. Country of Origin: **Yemen**

7. Country of Residence: **US**

8. U.S. Address (Street No. or Rural Route or Vehicle License No.): **3159 Row 31**

9. City or Town: **Falk Church**

10. State: **VA**

11. Country of Residence: **US**

12. The purpose of my (our) trip is or was:  Business  Personal

13. I am (We are) bringing into the U.S. (check one or both boxes, if applicable):  
 Yes  No  
 (Cigarettes, cigars, wine, spirits, tobacco, perfume, jewelry, watches, cameras, video equipment, etc.)

14. I am (We are) carrying currency or monetary instruments over \$10,000 U.S. or foreign equivalent:  Yes  No

15. I have (We have) commercial merchandise, U.S. or foreign (check one box only):  Yes  No

16. The total value of all goods, including commercial merchandise, live purchased or imported abroad and being brought to the U.S. is: **\$ 300**

(See the instructions on the back of this form under "MERCHANDISE" and use the space provided there to fill in for items you must declare. If you have nothing to declare, write "0" in the space provided above.)

**SIGN BELOW AFTER YOU READ NOTICE ON REVERSE**

I have read the notice on the reverse and have made a truthful declaration.

**X** *AWLAKI* **10/09/02**

U.S. Customs and Border Protection - Do not write below this line - U.S. CUSTOMS SERVICE  
 TRAVELER'S SIGNATURE: *AWLAKI* DATE: **10/09/02**

OFFICIAL USE ONLY: **AWLAKI-902**

FILE COMPLETED: **02**

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14:39

OCT-10

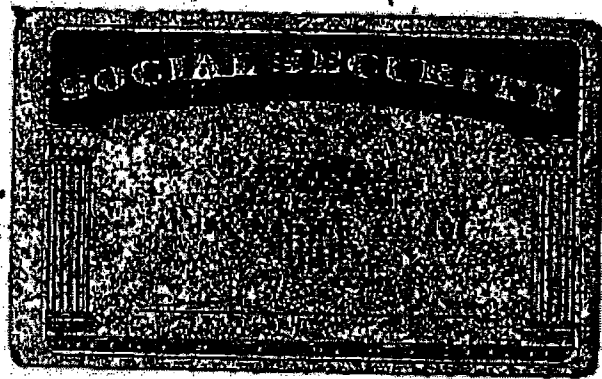
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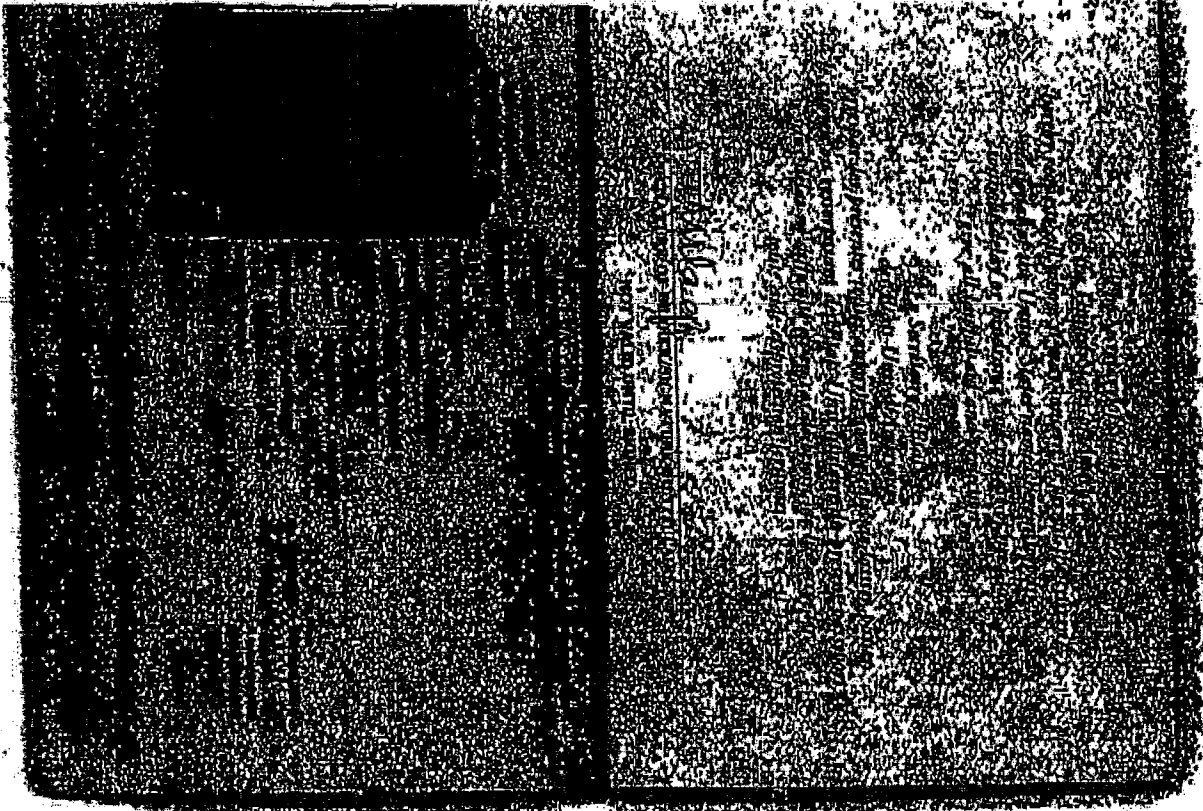


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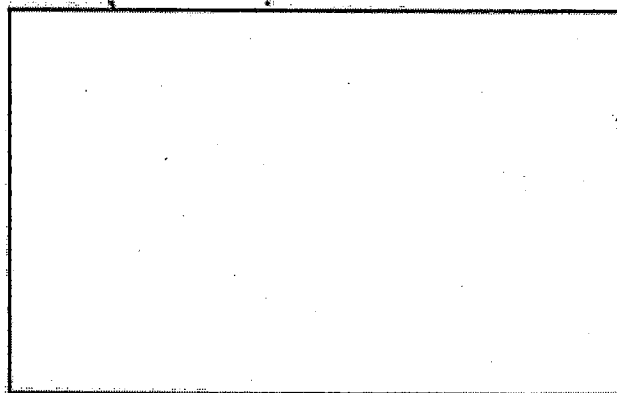


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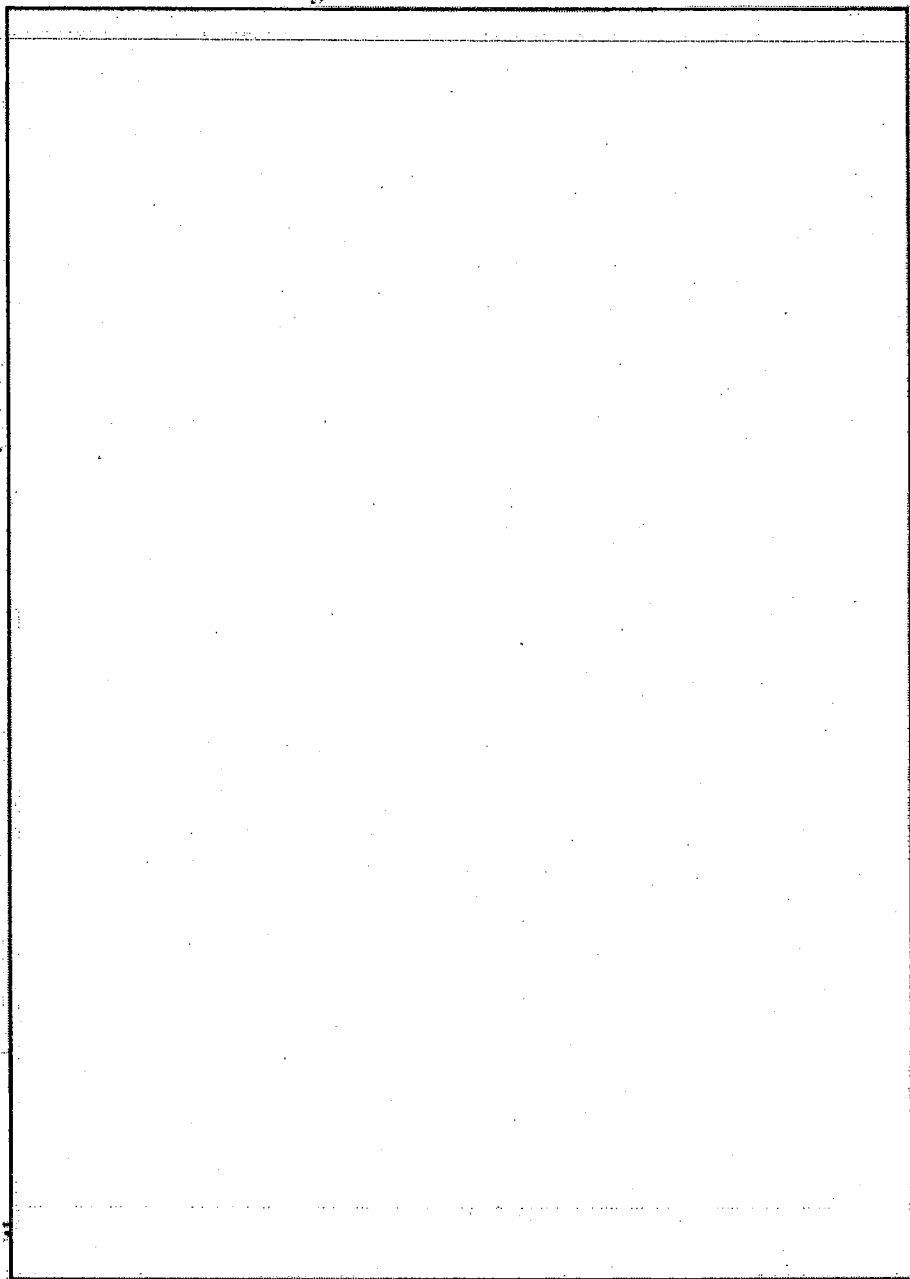
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ملاحظات هامة  
 صدر هذا التذكرة للرحلات الجوية بين جدة والمدينة المنورة.  
 ويتضمن التذكرة التأجير للطيران بين جدة والمدينة المنورة فقط.  
 التذكرة لرحلات الذهاب والعودة أو التذكرة.  
 تذاكر السفر بين جدة والمدينة المنورة.  
 إن تكون التذكرة التي من شأنها أن تتيح السفر المباشر بين جدة والمدينة المنورة.  
 أو السفر من جدة إلى المدينة المنورة.  
 إن كانت التذكرة التي من شأنها أن تتيح السفر بين جدة والمدينة المنورة.  
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DATE: 12-11-2012  
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REASON: 1.4 (c)  
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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 10/22/2002

To: Counterterrorism

Attn: [Redacted]

From: Washington Field

Contact: [Redacted]

Approved By: [Redacted]

Drafted By: [Redacted]

(U) Case ID #: ~~(S)~~ 199N-WF-222R52 (Pending)

(S) [Redacted] (Pending)

(U) Title: ~~(S)~~ ANWAR NASSER AULAQI  
IT-UBL/AlQaeda  
OO:WFO

(U) Synopsis: ~~(S)~~ Asset reporting.

~~(S)~~ (U) Derived From: G-3  
Declassify On: X1

(U) [Redacted]

(S) [Redacted]

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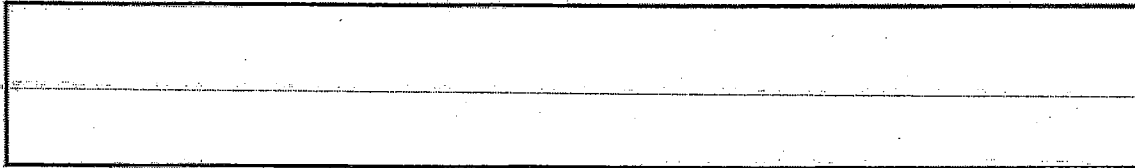
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To: Counterterrorism From: Washington Field  
Re: (U) ~~(S)~~ 199N-WF-222852, 10/22/2002



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(S)

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Obtained by Judicial Watch via FOIA (May 31, 2013)

~~SECRET~~

(U) To: Counterterrorism From: Washington Field  
Re: ~~(S)~~ 199N-WF-222852, 10/22/2002

LEAD(s):

Set Lead 1: (Adm)

COUNTERTERRORISM

AT WASHINGTON, D.C.

(U) Read and clear.

◆◆

~~SECRET~~

**FRANK R. WOLF**

10TH DISTRICT, VIRGINIA

241 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-4610  
(202) 225-5136

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**Congress of the United States**  
**House of Representatives**

August 15, 2012

The Honorable Robert S. Mueller III  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Ave NW  
Washington DC 20535

Dear Mr. Mueller:

I am raising the concerns detailed in this letter because it is the responsibility of the Congress to conduct oversight of the Federal Bureau of Investigation (FBI) and this subcommittee, which I chair, has the direct task of funding the bureau with money provided by the citizens of the United States, including the families and loved ones of those killed at Fort Hood in 2009.

I was sorry that you were not available to testify before the House Commerce-Justice-Science Appropriations subcommittee on August 1 for the hearing on the Webster Commission report on the FBI's investigation of U.S. Army Maj. Nidal Hasan. As you know, Maj. Hasan has been charged with the murder of 13 individuals following his terrorist attack on Fort Hood in November 2009; his long overdue trial is reportedly scheduled to begin next week. The release of this long-awaited report provided an opportunity for the Congress to learn about the bureau's efforts to improve its counterterrorism operations and investigative practices to prevent future attacks.

I am concerned that the bureau's witness at this recent hearing, Mr. Mark Giuliano, the executive assistant director for national security, made comments to the committee that I believe were misleading or incorrect with regard to the nature of findings in the Webster Commission report and the FBI's understanding of Anwar Aulaqi at various points over the last decade. I know Mr. Giuliano has had a distinguished career at the FBI and perhaps felt uncomfortable testifying in public.

I have summarized in detail each comment made by Mr. Giuliano that I believe was potentially misleading, uninformed or incomplete. As part of the record, I am asking you to respond to each of these statements and to provide the committee with the bureau's official position. Specifically, I request your clarification on the following six statements made by Mr. Giuliano during the hearing:

1. Statement on the Webster Commission findings on the role of "political correctness" in the FBI's decision not to interview Hasan or his colleagues.

The Honorable Robert S. Mueller III

August 15, 2012

Page 2

2. Statement on Hasan and Aulaqi's relationship.
3. Statement on FBI's perception of full nature of the Aulaqi threat.
4. Statement on Aulaqi's relationship with 9/11 hijackers.
5. Statement on Aulaqi as confidential informant for the FBI.
6. Statement on Aulaqi's 2002 return to the United States.

I also have enclosed a detailed timeline produced by the New York Police Department summarizing what information is publicly known about the FBI's interactions with Aulaqi through 2009. I request that the bureau affirm or correct the record for each of the events on the enclosed timeline to provide the Congress with a detailed understanding of the bureau's interactions and knowledge of Aulaqi's activities.

### **1. Statement on Webster Commission findings on "political correctness."**

I asked Mr. Giuliano whether political correctness may have played a role in the decision by the Washington Field Office (WFO) task force agents not to further investigate Hasan after receiving a lead from San Diego Field Office (SD) task force. In response to my question, Mr. Giuliano stated, "the [Webster Commission] report did not find political correctness was in any way, shape, or form responsible for his lack of going forward with the interview [of Hasan or his colleagues]."

Mr. Giuliano's statement was not accurate. The Webster Commission report explicitly notes on pages 81 and 82 that the SD officers were told by WFO officers that "political sensitivities" were a factor in the WFO's decision not to investigate Hasan further. Although the Webster Commission report includes no analysis of these findings, I believe they merit a much more thorough review.

I repeatedly asked Mr. Giuliano to cite the section of the report that found that there was no political correctness "in any way, shape, or form," but he refused. When I confronted him about misleading the committee, he admitted that I was correct on that point. Later in the hearing reversed again and said that he and I just "disagree" on that point.

Please confirm for the record whether the Webster Commission report conclusively determined, as Mr. Giuliano testified, "the report did not find political correctness was in any way, shape, or form responsible for his lack of going forward with the interview" and provide me with the citation, as I asked him to do during the hearing.

### **2. Statement on Hasan and Aulaqi's relationship.**

I asked, "Did Aulaqi ever meet with Major Hasan in Virginia?" and Mr. Giuliano definitively responded "No, not that we know."

This statement is contrary to a number of published reports, including a February 1, 2010, piece in *The Weekly Standard* that reported, "[Aulaqi] met Hasan when Hasan's mother died in early 2001, and [Aulaqi] presided over her funeral."

The Honorable Robert S. Mueller III

August 15, 2012

Page 3

Please confirm for the record whether or not Maj. Hasan and Aulqi met while he served as imam for the Dar al Hijrah mosque in Falls Church, Virginia. If so, please provide a summary of the FBI's full understanding of their encounters, including the funeral.

### **3. Statement on FBI's perception of full nature of the Aulqi threat.**

I asked Mr. Giuliano if he agreed that violent Islamist extremism was a cause of the Fort Hood terrorist attack. He refused to comment, but said "Clearly, Anwar Aulqi was an individual who was well known in the community, he was a – a propagandist at that point back in that time."

In a later response to a question from the subcommittee's ranking member, Mr. Fattah, Mr. Giuliano stated, "So [Aulqi] changed and he changed a lot over the years. When he went to prison in Yemen in, you know, '06, '07 and as he came out and came back up online in early '08, [Aulqi] still had somewhat of a moderate tone but – but began to be more of a propagandist, began to show more radical tendencies, but we could not and the [Intelligence Committee] did not see him as operational or in an operational role at that time."

Aside from Mr. Giuliano's troubling failure to acknowledge the obvious about Maj. Hasan's violent Islamist extremist motivation for the attack, I was troubled by his characterization of the Aulqi threat in 2009 – including his assessment that Aulqi "still had somewhat of a moderate tone" as late as 2008. This statement, quite simply, is fundamentally false.

According to a February 27, 2008 *Washington Post* article by Susan Schmidt titled "Imam from Va. Mosque Now Thought to Have Aided Al-Qaeda," a U.S. counterterrorism official speaking on the condition of anonymity said, "There is good reason to believe Anwar Aulqi has been involved in very serious terrorist activities since leaving the United States, including plotting attacks against America and our allies." Again, this article was published in early 2008, the same period of time that Mr. Giuliano asserted that Aulqi "still had somewhat of a moderate tone" and alleged that the U.S. Intelligence Community "did not see [Aulqi] as operational or in an operational role at that time."

Additionally, according to the article, Aulqi had a very long record of radical rhetoric -- not the "moderate tone" as Mr. Giuliano alleged. Schmidt noted that just six days after 9/11, Aulqi wrote on the "IslamOnline" Web site that the FBI "went into the roster of the [hijacked] airplanes and whoever has a Muslim or Arab name became the hijacker by default," and months later Aulqi "posted an essay in Arabic titled 'Why Muslims Love Death' on the Islam Today Web site, lauding the fervor of Palestinian suicide bombers."

Schmidt also reported that "In one speech apparently made in 2006, [Aulqi] predicted an epic global clash between Muslims and 'kfur,' or nonbelievers. 'America is in a state of war with Allah,' he said, referring to the fighting in Afghanistan and Iraq. He praised the insurgency

The Honorable Robert S. Mueller III

August 15, 2012

Page 4

in Iraq and 'martyrdom operations' in the Palestinian territories. Muslims must choose sides between President Bush and the 'mujahedeen,' he said. The solution for the Muslim world, he said, 'is jihad.'"

If these comments were all made prior to 2008, how can Mr. Giuliani honestly state that Aulahi still had a "moderate tone" and was not operational as late as 2008?

Even within the FBI, many believed Aulahi was a far more serious threat around 2009 than Mr. Giuliani indicated. The Webster Commission report specifically noted that at least certain sections of the bureau perceived the threat posed by Aulahi around 2009 as more substantial than a "propagandist" or radicalizer. Specifically, the unclassified version of the Webster Commission report notes "SD-Agent and SD-Analyst believed Aulahi had [ambitions beyond radicalization]," which conflicts with Mr. Giuliani's description of Aulahi as merely a "propagandist at that point back in time."

There is ample evidence that Aulahi had demonstrated operational roles in terrorism activities far earlier than 2009, despite Mr. Giuliani's assessment. A detailed examination of Aulahi's record -- based on publicly available reports -- clearly demonstrates Aulahi's history of operational actions and associations with al-Qaeda affiliated groups and individuals.

When the Treasury Department "designated" Aulahi under Executive Order 13224 in July 2010, its press release included a quote from Stuart Levey, the under secretary for terrorism and financial intelligence, stating, "[Aulahi] has involved himself in every aspect of the supply chain of terrorism -- fundraising for terrorist groups, recruiting and training operatives, and planning and ordering attacks on innocents." The release indicates Aulahi's operational role starting as early as January 2009 -- the exact same timeframe I asked Mr. Giuliani about during the hearing. How did Treasury come to a different understanding of Aulahi's role in early 2009 than the bureau?

Additionally, the Treasury Department's release specifically notes that Aulahi was "imprisoned in Yemen in 2006 on charges of kidnapping for ransom and being involved in an al-Qaeda plot to kidnap a U.S. official." This plot and his subsequent arrest certainly indicate that Aulahi was far more operational prior to 2009 than Mr. Giuliani indicated.

Aulahi, himself, wrote of his radicalization in the early 1990s. In his final column for al-Qaeda's *Inspire* publication, before his death last year, Aulahi wrote about his radicalization and his early affiliation with al-Qaeda-affiliated groups, which was not referenced in the Webster Commission analysis of Aulahi's record. Aulahi wrote that following the Gulf War, "That is when I started taking my religion more seriously and I took the step of traveling to Afghanistan to fight," in 1993. "I spent a winter there and returned with the intention of finishing up in the U.S. and leaving Afghanistan for good. My plan was to travel back in summer. However, Kabul was opened by the mujahideen and I saw that the war was over and ended up staying in the U.S."

The federal government's own records show that Aulahi was far more closely affiliated with al-Qaeda than the bureau has indicated. A 2009 New York Police Department (NYPD) special analysis report on Aulahi reported that from 1998 to 1999, Aulahi served as the vice

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president for the Charitable Society for Social Welfare, which federal prosecutors have described as “a front organization... used to support al-Qaeda...”

The NYPD report also notes that from 1999 to 2000, the FBI investigated Aulaqi for “fundraising links to Hamas and al-Qaeda” and found that Aulaqi met with “an associate of Omar Abdel Rahman,” the “blind sheik,” who is currently serving a life sentence for terrorist activities associated with the 1993 World Trade Center attack that killed six people. According to Schmidt’s February 2008 article, “Law enforcement sources now say that agent was Ziyad Khaleel, who the government has previously said purchased a satellite phone and batteries for bin Laden in the 1990s. Khaleel was the U.S. fundraiser for Islamic American Relief Agency, a charity the U.S. Treasury has designated a financier of bin Laden and which listed Aulaqi’s charity as its Yemeni partner.”

The Webster Commission report also explicitly notes that Aulaqi was twice under investigation by the FBI prior to his reemergence in Yemen: once by SDFO in the late 1990s and again – under full investigation by WFO – from 2001 to 2003. These two investigations demonstrate that, as early as 14 years ago, the FBI considered Aulaqi to be a significant concern.

The NYPD report also indicates that in 2002 the federal government added Aulaqi to the Terror Watchlist, which coincidentally is managed by the FBI. Again, this designation should certainly demonstrate that the both bureau and the entire Intelligence Community, in fact, considered Aulaqi to be of serious concern as early as 2002.

It is also worth noting that around 2006, prior to his arrest in Yemen, Aulaqi was invited to give lectures at the Yemeni university run by Abdul al-Zindani, “designated” a terrorist in 2004 by the U.S.

This record indicates that Aulaqi has long been viewed by both the FBI and the Intelligence Community as a more significant threat than the mere “propagandist” than Mr. Giuliano stated. Given this public information demonstrating Aulaqi’s long history with al-Qaeda-affiliated groups and multiple bureau investigations, please confirm for the record whether the bureau viewed Aulaqi only as “propagandist” with a “moderate tone” as late as 2008, or in fact regarded him as a more complex and substantial threat than Mr. Giuliano described?

#### **4. Statement on Aulaqi as confidential informant for the FBI:**

I asked Mr. Giuliano whether Aulaqi or Hasan had ever served as a confidential informant for the FBI, given that the Webster Commission report noted that the SD officers suspected this based on WFO’s failure to further investigate Hasan. Mr. Giuliano definitively responded, “No, sir.”

However, Aulaqi’s own words could potentially indicate otherwise. In his final column for *Inspire*, Aulaqi wrote: “I was visited by two men who introduced themselves as officials with



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the US government (they did not specify which government organization they belonged to) and that they are interested in my cooperation with them. When I asked what cooperation did they expect, they responded by saying that they are interested in having me liaise with them concerning the Muslim community in San Diego.”

Although Mr. Giuliano testified that neither Aulaqi nor Hasan ever served as a confidential informant for the FBI, in light of Aulaqi’s own comments, I would like you to provide for the record whether the FBI or other federal agencies ever approached, cultivated or targeted Aulaqi or Hasan to be potential confidential informants. I believe this additional information would help reconcile Aulaqi’s comments with the bureau’s actions – and perhaps clarify why the FBI was reluctant to take more aggressive investigative actions with regard to Aulaqi.

#### **5. Statement on Aulaqi’s relationship with 9/11 hijackers:**

I asked Mr. Giuliano about the FBI’s understanding of Aulaqi’s relationship with the 9/11 hijackers. I wanted to know whether the bureau’s view on Aulaqi’s connection to the 9/11 plot might have influenced its actions in 2009.

In response to my question, Mr. Giuliano stated, “We were never able to obtain a stitch of evidence that shows Aulaqi knew beforehand about 9/11 or supported the 9/11 hijackers.” However, the public record shows that there were certainly a number of signs that show Aulaqi may have been closer to the 9/11 plot than originally believed. Consider the following:

- The 9/11 Commission report noted that, “Some [FBI] agents suspect that [Aulaqi] may have tasked Rababah to help [9/11 hijackers] Hamzi and Hanjour. We share that suspicion, given the remarkable coincidence of [Aulaqi]’s prior relationship with Hamzi.”
- Last year House Homeland Security Committee Chairman Peter King sent you and Secretary Napolitano the enclosed letter detailing other known links between Aulaqi and the 9/11 plot. This information certainly adds to the 9/11 Commission’s suspicions about Aulaqi’s role in a possible domestic support network for the hijackers.
- Former Senator Bob Graham, a past chairman of the Senate intelligence committee, wrote in his 2004 book that, “Some believe that Aulaqi was the first person since the [al Qaeda] summit meeting in Malaysia with whom al-Mihdhar and al-Hazmi shared their terrorist intentions and plans.”
- The 2009 NYPD report on Aulaqi also noted that, “Witnesses claim closed door meetings between [Aulaqi and Hamzi and Mihdhar] were common.” It also reports that following 9/11, “German police found a phone number for the Dar al-Hijrah mosque [where Aulaqi served as imam at the time] in the apartment of Ramzi Binalshibh, a 9/11 co-conspirator.”

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- In 2010 the *New York Times* reported, “One day in August 2001, Mr. [Aulaqi] knocked at the door of Mr. Higgie, his neighbor, to say goodbye. He had moved the previous year to Virginia, becoming imam at the far bigger Dar al-Hijrah mosque, and he had returned to pick up a few things he had left behind. As Mr. Higgie tells it, he told the imam to stop by if he was ever in the area — and got a strange response. ‘He said, ‘I don’t think you’ll be seeing me. I won’t be coming back to San Diego again. Later on you’ll find out why,’” Mr. Higgie said. The next month, when Al Qaeda attacked New York and Washington, Mr. Higgie remembered the exchange and was shaken, convinced that his friendly neighbor had some advance warning of the Sept. 11 attacks.”

Despite these very serious connections to the 9/11 hijackers and suspicious comments, Mr. Giuliano testified, “We were never able to obtain a stitch of evidence that shows Aulaqi knew before hand about 9/11 or supported the 9/11 hijackers.”

Please confirm for the record that Mr. Giuliano’s statement that the FBI was “never able to obtain a stitch of evidence that shows Aulaqi knew beforehand about 9/11 or supported the 9/11 hijackers” accurately reflects the FBI’s position?

Also, please confirm for the record whether Mr. Giuliano’s characterization correctly represents the FBI’s understanding of Aulaqi’s connection to the 9/11 plot today, especially in light of any information that may have been learned from documents seized during the raid on Osama bin Laden’s compound in May 2011?

#### **6. Statement on Aulaqi’s 2002 return to the United States:**

As you know, for several years I have been pressing the FBI for a full accounting of why Aulaqi was abruptly released from custody upon his return to the U.S. in October 2002. I have not yet received an unclassified explanation.

Following Aulaqi’s abrupt departure from the U.S. in early 2002, the State Department became aware of Aulaqi’s fraudulent Social Security and passport statements, and the warrant for his arrest was approved. However, Fox News and others have reported that on October 9, 2002, the U.S. Attorney’s office in Colorado abruptly and uncharacteristically submitted a motion to dismiss its complaint and vacate the outstanding arrest warrant against Aulaqi.

On the same day, Aulaqi was reportedly the subject of a classified FBI Electronic Communication (EC) memo. At that same time, Aulaqi was en route back to the U.S. after months living abroad but was detained by U.S. customs agents upon his arrival at Kennedy Airport in New York City.

However, following his detention at Kennedy early on the morning of October 10, 2002, Aulaqi was reportedly ordered to be released by U.S. customs agents after having been detained on an outstanding warrant, according to the Fox News report. This is particularly questionable given the time of these events. The Colorado U.S. Attorney’s motion to dismiss the warrant was not approved until October 11, 2002 -- the day after Aulaqi was inexplicably released into the U.S. To date, this action and the timeline of these events have never been adequately explained.

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Had Aulaqi been arrested and tried in 2002, there is a chance that his rise as a radicalizer and terrorist operative over the last decade might have been prevented. While there may have been a reasonable argument for allowing him into the U.S. at the time the decision was made in October 2002, the FBI has, thus far, failed to publicly explain its rationale and its role. More troubling, the documents surrounding the release of Aulaqi do not match the bureau's public statements on this incident.

Given the key role that Aulaqi played in the radicalization of Maj. Hasan, and 13 innocent individuals who died at Ft. Hood as a result of his radicalization, I asked Mr. Giuliano to provide some explanation for this landmark October 2002 incident. While the full summary of our dialogue may be found in the committee record, I want to note several noteworthy comments made by Mr. Giuliano on this topic during the hearing that may or may not contradict the FBI's official position on this incident.

Mr. Giuliano testified, "I assure you, the bureau, if anything at that point [in October 2002], would have, if we could have incarcerated [Aulaqi], we would have." He also told the committee, "We knew [Aulaqi] was coming in before [his flight arrived]..."

The unclassified version of the Webster Commission report confirmed that around 2001, "WFO opened a full investigation" on Aulaqi, and it remained open until May 2003, after Aulaqi again fled the U.S. for the U.K. and, later, Yemen.

As noted above, NYPD reported that Aulaqi was placed on the federal government's Terror Watchlist in Summer 2002. Please explain why and how Aulaqi was permitted to board a flight to the U.S. in October 2002 if he was already included on the watchlist?

Additionally, if, as Mr. Giuliano testified, the FBI "knew [Aulaqi] was coming in" before he landed at JFK, what information was communicated to the U.S. attorney's office that would set off this strange series of events early in the morning of October 10? Please provide for the record the full series of communications between the FBI and the U.S. attorney's office and the customs office?

During the hearing, I raised the question of whether the FBI requested that Aulaqi be allowed into the country, without detention for the outstanding warrant, due to a parallel investigation regarding Aulaqi's former colleague al Timimi, a radical imam who was recruiting American Muslims to terrorism. Notably, the Timimi case was being led by the same WFO agent who called the U.S. attorney's office and customs on the morning of October 10. Did WFO want Aulaqi released to assist in its investigation of Timimi?

Public records demonstrate a nexus between these cases. According to Schmidt's article, after flying to Washington on October 10, Aulaqi visited Timimi. Timimi's own attorney in a court filing wrote, "Aulaqi attempted to get al Timimi to discuss issues related to the recruitment of young Muslims," for jihad. "Timimi was sentenced in 2005 to life in prison for inciting young Muslims to go to Afghanistan after 9/11 and to wage war against the United States.

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Eleven of his followers were convicted of charges including weapons violations and aiding a terrorist organization.”

According to a November 30, 2009 ABC News article titled “How Anwar [Aulaqi] Got Away:” “The decision to cancel [Aulaqi]’s arrest warrant outraged members of a Joint Terrorism Task Force in San Diego, which had been monitoring the imam. ‘This was a missed opportunity to get this guy under wraps so we could look at him under a microscope,’ said a former agent with the Joint Terrorism Task Force (JTTF), who asked not to be named. ‘He couldn’t cause any harm from a prison cell.’”

The timing and rationale for these decisions simply don’t add up. Andrew McCarthy, the former assistant U.S. attorney who prosecuted the blind sheik, recently wrote, “To begin with, the warrant had not been ‘pulled back’ at the time of [Aulaqi]’s detention at JFK. The prosecutor and the FBI may have made an application for dismissal from the court, but not such application had been granted. The warrant was still in effect. It was not dismissed by a judge until later that day, at the earliest. Of course, had the warrant actually been vacated at the time of [Aulaqi]’s arrival, as the government has been claiming, it would almost certainly have been withdrawn from the Customs database. And if, as the government claims, the FBI told Customs the warrant had been ‘pulled,’ the protocol would have been for Customs to ask for, and the FBI to supply, easily accessible paperwork showing dismissal of the warrant by the court. There was no such paperwork because the warrant had not been dismissed. Customs appears to have released [Aulaqi] based not on a court dismissal but on the FBI’s say-so.”

McCarthy continued: “When [Aulaqi] was detained at JFK airport on October 10, 2002, there was a live warrant for his arrest and every valid reason to press ahead with the case against him. If, down the road, a defense lawyer thought he could make the ‘correct the record’ gambit fly, the prosecutor could have opposed that in court – that’s what prosecutors do. There was no reason to dismiss the case at that point.”

To that point, Mr. Giuliano testified to the committee that the FBI knew Aulaqi would be arriving in the U.S. – and more importantly – told me, “I assure you, the bureau, if anything at that point, would have, if we could have incarcerated Aulaqi, we would have.”

Please confirm for the record whether the FBI did everything in its power to incarcerate Aulaqi on October 10, 2002? Specifically, did the WFO agent or others ask the customs office and/or the U.S. attorney’s office to use the outstanding warrant to detain Aulaqi further, as Mr. Giuliano asserted that the FBI would have wanted? Or did the FBI ask the other agencies involved to stand down and withdraw the warrant to allow Aulaqi in the country for the purpose of further investigation regarding Timimi or other suspects?

I am asking you to provide the committee with a detailed unclassified accounting of the FBI’s actions in October 2002 with regard to Aulaqi. Given that I have been asking for this information since 2010, I believe it is long overdue. I also request that this information be provided to my colleague, Rep. Fattah, as well as House Homeland Security chairman Rep. Peter King, House Intelligence Committee chairman Rep. Mike Rogers and ranking member, Dutch

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Ruppersberger, Senate Commerce-Justice Science Appropriations subcommittee chairman Sen. Barbara Mikulski and ranking member Sen. Kat Bailey Hutchison, Senate Homeland Security chairman Sen. Joe Lieberman and ranking member Sen. Susan Collins, and Senate Intelligence chairman Sen. Diane Feinstein and ranking member Saxby Chambliss.

Finally, I remain concerned that the Justice Department has never fully explained why it failed to use its authorities under the Patriot Act and other anti-terror statutes to investigate and prosecute Hasan, especially given his communications with Aulaqi, who is the ultimate terrorist given his connections to the Christmas Day attempted bombing and other plots. This connection is noteworthy because the president authorized the drone strike that targeted and killed Aulaqi last year. Yet, these important anti-terror investigative tools were provided to the FBI and Justice Department for cases exactly like the Fort Hood attack, but a decision was made in the department not to exercise these authorities. Can you please explain to the committee why this decision was made, and whether the department sacrificed any opportunities to gather additional evidence in choosing not to use these tools?

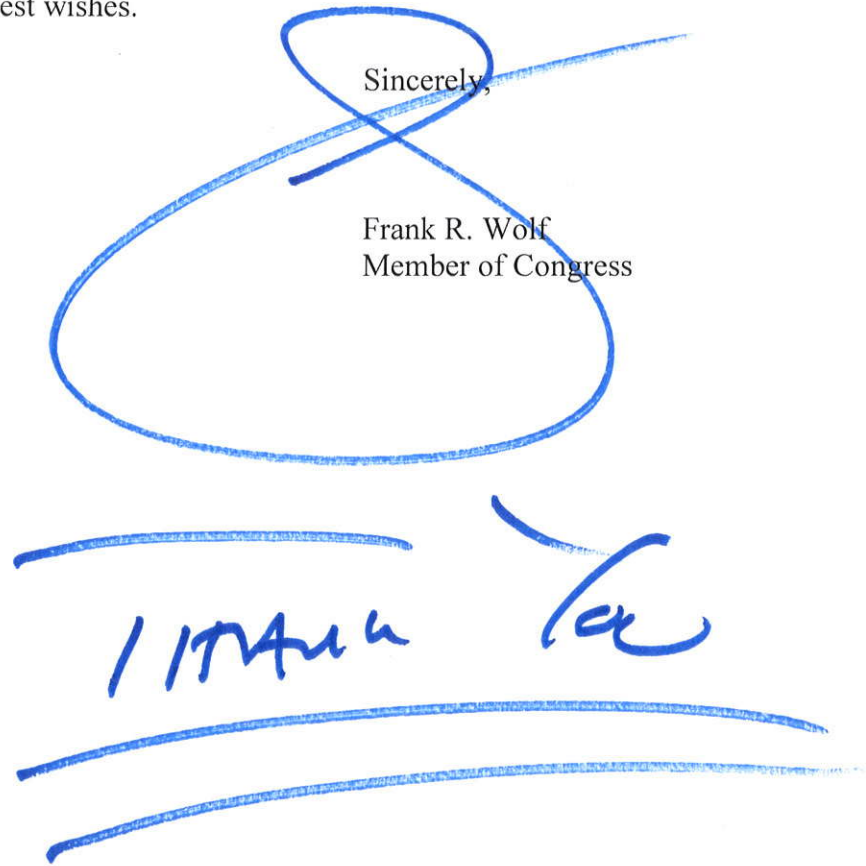
I hope you can understand why I was disappointed in a number of the statements made to the subcommittee during this hearing. That is why I wanted to give you the opportunity to correct the record. I expect that you will provide the committee, by September 15, with the necessary information to clarify some of these misleading, inaccurate or incomplete statements. I look forward to your response.

I sincerely appreciate your efforts – and those of the hard-working agents, analysts and staff members of the FBI – to keep the country safe.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress



PETER T. KING, NEW YORK  
CHAIRMAN

BENNIE G. THOMPSON, MISSISSIPPI  
RANKING MEMBER



One Hundred Twelfth Congress  
U.S. House of Representatives  
Committee on Homeland Security  
Washington, DC 20515

October 25, 2011

The Honorable Janet Napolitano  
Secretary  
Department of Homeland Security  
Washington, D.C. 20528

The Honorable Eric H. Holder, Jr.  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Secretary Napolitano and Attorney General Holder:

The Committee on Homeland Security is investigating the role of the late Anwar al-Awlaki and his associates in the September 11, 2001 attacks. In furtherance of that investigation, I write to request that the Departments of Homeland Security and Justice not seek to deport Daoud Chehazeh, an associate of Awlaki and two of the 9/11 hijackers, without first questioning Chehazeh -- under oath -- about what role he, Awlaki and their associate Eyad al-Rababah played in the 9/11 attacks.

It is well-known that Awlaki met 9/11 hijackers Khalid al-Mihdhar, Hani Hanjour and Nawaf al-Hazmi in California and Virginia in 2000 and 2001, and with Hazmi in both locations. Awlaki fled the US in 2002.

Awlaki was later implicated in several attempted terror attacks on the Homeland, and connected to fatal attacks in Little Rock, Arkansas and Fort Hood, Texas in 2009. At the time of his death, Awlaki served as al-Qaeda in the Arabian Peninsula's external operations coordinator, and was described by senior Government officials as a terrorist at least as dangerous as Usama bin Laden. It is not yet known if Awlaki was an al-Qaeda member in 2000-01, or if he was radicalized to terrorism sometime between then, and his public emergence as an al-Qaeda leader in 2009.

It is also known that hijackers Hanjour and Hazmi met in 2001 with a contact of Awlaki's, Palestinian identity documents procurer Eyad al-Rababah. As discussed by the Report of the National Commission on Terrorist Attacks upon the United States, Rababah helped Hanjour and Hazmi find apartments in New Jersey and Virginia, and accompanied hijackers Hanjour, Hazmi, Ahmed al-Ghamdi and Majed Moqed on a trip to Connecticut. Rababah knew the hijackers were undertaking flight training. Rababah was deported to Jordan in 2002.

According to the 9/11 Commission, "Some FBI investigators doubt Rababah's story. Some agents suspect that Awlaki may have tasked Rababah to help Hazmi and Hanjour. We share that suspicion, given the remarkable coincidence of Awlaki's prior relationship with Hazmi."

What is not as well known, and may not have been shared with either the Joint Inquiry into the Terrorist Attacks of September 11, 2001 by the House and Senate Intelligence Committees, or the 9/11 Commission, is the following. I am reliably informed that:

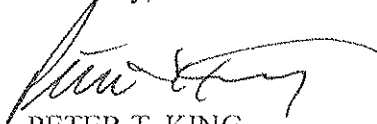
- In March 2001, Rababah met a Syrian procurer of Saudi visas, Daoud Chehazeh.
- Chehazeh informed Rababah that they must move to the Boston or Washington areas (the points of origin for three of the hijacked flights).
- In April 2001, Chehazeh and Rababah moved to Virginia together, with Rababah paying the rent for both men.
- Chehazeh directed Rababah to Anwar al-Awlaki at the Dar al-Hijrah mosque in Virginia to find “work.”
- Awlaki then directed hijackers Hanjour and Hazmi to Rababah.
- Chehazeh described the hijackers to Rababah as “special police” and “important” men.
- A reliable eyewitness states that Rababah frequently visited the same New Jersey library computer facility with Hanjour and Hazmi where Hanjour bought his tickets for 9/11.
- Documentary evidence suggests that Chehazeh was likely aware of Hanjour’s flight training past the World Trade Center.
- Chehazeh lives in New Jersey, is the subject of an asylum proceeding currently under appellate review (*Daoud Chehazeh v. Attorney General of the United States, et al.*, Case No. 10-2995), and has never been questioned under oath about his role in the attacks.

In addition to the facts already provided to the Joint Inquiry and the 9/11 Commission, this additional evidence suggests that Awlaki, Chehazeh and Rababah may have facilitated the 9/11 attacks, and perhaps even wittingly facilitated these attacks.

The Committee on Homeland Security is committed to determining what role these men, and any other at-large Awlaki associates, may have played in the worst mass murder in US history. I request that the Departments of Homeland Security and Justice not seek to deport Chehazeh without first questioning Chehazeh, under oath, about what role he, Awlaki and their associate Eyad al-Rababah may have played in the 9/11 attacks.

If you have any questions regarding this letter, please contact Kevin Carroll or Joseph Herbert on my staff at 202-226-8417.

Sincerely,



PETER T. KING  
Chairman

**CHRONOLOGY**

1971	<b>Born in New Mexico to Yemeni parents. He holds U.S. and Yemeni citizenship.</b>
1975-1977	Awlaki's father, Nasser al-Awlaki, works at the University of Minnesota
1978	Family moves back to Yemen Nasser al-Awlaki becomes Agriculture Minister and a university president
1991	Begins attending Colorado State University on a F-1 student visa
1995 (est.)	Obtains a B.S. in Civil Engineering from Colorado State University Becomes imam in Fort Collins, Colorado
1995-1996 (est.)	Moves to San Diego to obtain M.A. in Education Leadership from San Diego State University <b>Becomes imam at Masjid Ar-Ribat al-Islami mosque in San Diego.</b>
1996-1997	Arrested twice in San Diego for soliciting prostitutes
1998-1999	<b>Serves as Vice President for Charitable Society for Social Welfare (CSSW),</b> founded by Abdul Majeed al-Zindani. Federal prosecutors have referred to CSSW as "a front organization...used to support al-Qaeda...." <b>FBI investigates Awlaki for fundraising links to HAMAS and Al-Qaeda.</b>
Jun. 1999–2000	Awlaki is connected to Ziyad Khaleel, a fundraiser for the Islamic American Relief Agency, a charity designated as a terrorism-financier and a partner-charity with CSSW. <b>Awlaki reportedly meets with an associate of Omar Abdel Rahman</b> FBI lacks evidence to arrest; case closed.
Early 2000	<b>Khalid al-Mihdhar and Nawaf al-Hazmi, two 9/11 hijackers, visit the Awlaki's San Diego mosque.</b> Witnesses claim closed door meetings between them were common.
Feb. 4, 2000	Phone calls are made from Awlaki's phone to Omar Bayoumi's phone (Bayoumi assisted Al-Mihdhar and al-Hazmi in finding a San Diego apartment) Begins Ph.D. at George Washington Univ. for Human Resource Development
Jan. 2001	<b>Becomes imam at Dar al-Hijrah Mosque in Falls Church, Virginia. Ft Hood shooter, Nidal Malik Hasan attends the sermons.</b>
April 4, 2001	Al-Hanjour and Hazmi move to Falls Church. <b>Three 9/11 hijackers – al-Mihdhar, al-Hazmi, and al-Hanjour –attend Awlaki's sermons.</b>
Sept. 11, 2001	9/11 Attacks
Sept. 17, 2001	Awlaki at first condemns the 9/11 attacks, then suggests Israeli culpability
Post 9/11	<b>German police find phone number for the Dar al-Hijrah mosque in the apartment of Ramzi Binalshibh, a 9/11 co-conspirator</b>



2001-2002 (est.)	FBI observes Awlaki taking prostitutes from DC to Virginia; contemplates use of Mann Act, a federal law prohibiting transporting prostitutes across state lines
March 2002	Awlaki leaves United States for Yemen
Summer 2002	<b>Awlaki becomes target of JTTF investigation</b> after the subject of an investigation sends him money; <b>Awlaki's name placed on terror watch list</b>
Early Oct. 2002	<b>Federal judge issues arrest warrant for Awlaki</b> for passport fraud and making a false statement. [Awlaki had attended college on a foreign-student visa falsely claiming he was born in Yemen, not the U.S.]
Oct. 9, 2002	<b>Colorado U.S. Attorney's Office in Denver withdraws the arrest warrant</b>
Oct. 10, 2002	<b>Awlaki arrives at JFK airport</b> from Riyadh (potential connection from Yemen). <b>He is briefly detained, then released</b> due to withdrawn warrant
Oct. 2002	<b>Federal court papers assert that Awlaki visited Ali al-Timimi</b> , who is now serving a life sentence for inciting followers to fight on behalf of the Taliban, to ask how to recruit members for "violent jihad."
Fall 2002	Awlaki moves to Britain; develops lectures and audiotapes for the internet
2004	Moves to Yemen permanently
2006 (est.)	Gives a few lectures at al-Iman University, run by al-Zindani, who was designated foreign terrorist by the U.S. government in 2004.
Aug. 31, 2006	<b>Awlaki arrested in Yemen</b> ; claims he was questioned by FBI agents
Dec. 12, 2007	<b>Awlaki released from prison.</b>
Dec. 17, 2008	<b>Awlaki: Received the first email from Ft Hood shooting, Nidal Hasan</b>
Late Dec. 2008	East London Mosque controversially hosts an Awlaki lecture via videolink
March 2009	<b>Awlaki's parents say he has been missing since March 2009.</b> Suspected of hiding in Mareb or Shabwah governorates. [Family originally from Shabwah].
Aug. 2009	Awlaki banned by London authorities from speaking via videolink to a fundraiser event for Guantanamo detainees
Nov. 5, 2009	Ft. Hood Shooting
Nov. 2009	<b>Awlaki's website removed from WordPress</b>

*Note: al-Awlaki has a wife and five children (three boys and two girls). They are currently residing with his father, Nasser.*

### AL-AWLAKI'S INFLUENCE ON TERRORIST ACTORS

Awlaki's lectures are strongly pro-jihad and supportive of al-Qaeda and its affiliates. In January of this year, he released an article entitled, "44 Ways to Support Jihad;" in July, he praised the efforts of al-Qaeda after militants in Yemen clashed with the government; and, on his blog, he has praised al-Shabaab, who has pledged allegiance to the al-Qaeda cause. In the following case studies, Awlaki is suspected of being a spiritual advisor to operatives, recruiters, and homegrown terrorists.



THE GEORGE  
WASHINGTON  
UNIVERSITY  
LAW SCHOOL  
WASHINGTON DC

JONATHAN TURLEY

J.B. AND MAURICE C. SHAPIRO PROFESSOR  
OF PUBLIC INTEREST LAW

October 11, 2012

**BY EMAIL AND FIRST CLASS MAIL**

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Info. Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843  
[foiparequest@ic.fbi.gov](mailto:foiparequest@ic.fbi.gov)

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115  
LOC Building  
Washington, D.C. 20530-0001

Carmen L. Mallon  
Chief of Staff  
Office of Information Policy  
Department of Justice  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

To Whom it May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.,

I request disclosure of any records that were prepared, received, transmitted, collected and/or maintained by the FBI, concerning Anwar Al-Aulaqi<sup>1</sup> between January 1, 2001 and March 2003.

In July 2012, the FBI released the Final Report of the William H. Webster Commission on the Federal Bureau of Investigation Counterterrorism Intelligence and the Events at Fort Hood, Texas on November 5, 2009. The report states that "[a]t the beginning of 2001, Aulaqi moved to Falls Church, Virginia. He was an imam at the Dar-al-Hirjah mosque in Falls Church from January 2001 until April

<sup>1</sup> Al-Aulaqi's name is sometimes spelled Al-Awlaki. This Request seeks records referring to al-Awlaki using any spelling or transliteration of his name.

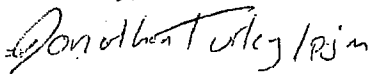
Page 2

2002. [Redactions follows] WFO opened a full investigation. [Redactions follow] In March 2002, Aulahi moved to England, where he reportedly lectured youth groups on jihad. WFO closed its investigation of Aulahi in May 2003 for lack of evidence of a pattern of activity suggesting international terrorism." (See pages 33-34 of the Report.)

The United States government reported that Aulahi was killed in September 2011. See <http://www.whitehouse.gov/the-press-office/2011/09/30/remarks-president-change-office-chairman-joint-chiefs-staff-ceremony>.

Please search both the automated (computer) indices and the general (manual) indices. Please also search cross-references. Please forward the requested records to me at the address below. I agree to be responsible for all direct costs to search for, review and duplicate those records. I will expect a response to this request within twenty (20) business days, as required by law. If you need to discuss this request, I can be reached at (202) 994-7001. Thank you for your prompt consideration of my request.

Sincerely,



Jonathan Turley



THE GEORGE  
WASHINGTON  
UNIVERSITY  
LAW SCHOOL  
WASHINGTON DC

JONATHAN TURLEY

J.B. AND MAURICE C. SHAPIRO PROFESSOR  
OF PUBLIC INTEREST LAW

September 14, 2007

**Via Facsimile Transmission and U.S. Mail**

Gordon D. Kromberg, Esquire  
Assistant United States Attorney  
Eastern District of Virginia  
2100 Jamieson Street  
Alexandria, VA 22314

**Re: United States v. Al-Timimi, Crim. No. 1:04-385**

Dear Mr. Kromberg:

In compliance with the Court's order of August 24, 2007, I am sending a list of individuals and organizations that are material to the case of Dr. Ali Al-Timimi. As discussed before Judge Brinkema, this list has been narrowed to individuals and organizations clearly material to the case of Dr. Al-Timimi. We are seeking confirmation of whether any government agency has investigatory or surveillance material that was not disclosed to the defense involving each of these individuals or organizations. As you know, there have been a number of previously undisclosed intelligence operations revealed in the last two years, including but not limited to the National Security Agency's (NSA) domestic surveillance program.

The information sought by the defense falls within the scope of Fed. R. Crim. P. 16 and Brady v. Maryland and its progeny. This information includes surveillance and documentary records as well as any reports, notes, grand jury transcripts, summaries, photographs, documents, statements, tapes, electronic communications (including emails, email headings, and instant messages), or other tangible evidence in the possession of the United States government, including such material received from foreign or non-government sources. The material sought may be stored in audio, electronic, video, photographic or written format. If the government refuses to turn over any material on the basis of either materiality objections or privilege claims, we ask that you confirm the possession of the withheld evidence and give a summary description so that we may address the matter with the

court.

These requests obviously involve all interceptions or records of statements made by Dr. Al-Timimi. As the Court stressed on December 3, 2004( Docket Number 144), such statements have great probative value "because the statements of the defendant are important windows into that person's intent." The Court went on to reaffirm that "the intent of the defendant is going to be a critical factor in this case, and obviously statements that a defendant makes are a very significant piece of evidence as to intent." We are seeking any communications made to these individuals by Dr. Al-Timimi or any such statements or positions related to Dr. Al-Timimi that they have referenced in their own communications. These include all of the subjects discussed at trial, including but not limited to Dr. Al-Timimi's views on peace, *jihad*, *hijra*, Al Queda, Osame Bin Laden, the 9-11 attacks, the work of Dar al-Arqam, Mullah Omar, the Taliban, terrorism, Afghanistan, accused terrorists, Solimon Al-Buthe, Zacharias Moussaoui, lashkar-e-Taiba or LET, Kashmir, Dr. Safar Al-Hawali, Muslims dealing with the West or the American government, conferences discussing terrorism or 9-11, the Virginia Jihad Network, the paintball defendants, and charities like Al-Haramain and the Islamic Assembly of North America. The defense should have a complete record of any material that relates to Dr. Al-Timimi in the possession of the government from prior terrorism investigations.

We are seeking the aforementioned material as it relates to any of the following categories. We have supplied a brief description of the individual or organization to assist you in your inquiry. We would be happy to supply additional information if needed to complete your search of government records and files.

1. **Dr. Ali Al-Timimi.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. This includes but is not limited to any communications involving Ali Asad Chandia, Seifullah Chapman, Randall "Ismail" Royer, Hammad Abdur-Raheem. Ibrahim al-Hamdi, Masoud Kahn, Yong Ki Kwon, Khwaja Hasan, Nabil Gharibieh, or the other alleged members of the Virginia Jihad or paintball conspiracy or their underlying activities. Dr. Al-Timimi made dozens of calls that discussed 9-11 and how Muslims should react to that tragedy as well as other relevant subjects. Many of these were calls with an international component from Bosnia, Saudi Arabia, Australia, England and other countries.

2. **Dr. Safar Al-Hawali.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. This includes, but is not limited to any material that references Dr. Al-Timimi, Ali Asad Chandia, Seifullah Chapman, Randall "Ismail" Royer, Hammad Abdur-Raheem, Ibrahim al-Hamdi, Masoud Kahn, Yong Ki Kwon, Khwaja Hasan, Nabil Gharibieh, or the other alleged members of the Virginia Jihad or paintball conspiracy or their underlying activities. These calls were made to Mecca, Saudi Arabia in 2001 and 2002. These communications include, but are not limited to, the following examples:

- a. Communications discussing Dr. Al-Timimi's meeting on September 18, 2001 with Dr. Jaafar Idris and Yusuf Idris.
- b. Communications on September 19, 2001, including but not limited to a call that occurred only 23 minutes before Dr. Al-Timimi's first call to Kwon and 1-2 hours prior to Dr. Al-Timimi's lunch with Kwon and Hasan prior to their departure.
- c. Communications with Dr. Al-Timimi on how Muslims should respond to 9-11 and the need for *hijra* (migration).
- d. Conversation in March 2002, during which Dr. Al-Timimi and Dr. Al-Hawali discussed assisting Moussaoui in his defense and the moral dilemma of helping an accused terrorist.
- e. Communications in October 2002, including but not limited to a telephone call between Dr. Al-Timimi and Dr. Al-Hawali in which they discussed reaching out to President Bush and Congress to try to bridge the divide between the Western and Islamic worlds, particularly to avoid war in Iraq. Osama Bin Laden and the need for international conferences were also discussed during this call. There was an initial call to Nihad Awad to reach Dr. Al-Hawali to set up this call.

3. **Mr. Soliman Al-Buthe** (Riyadh, Saudi Arabia). Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. This includes, but is not limited to any material that references Dr. Al-Timimi, Ali Asad Chandia, Seifullah Chapman, Hammad Abdur-Raheem, Randall "Ismail" Royer, Ibrahim al-Hamdi, Masoud Kahn, Yong Ki Kwon, Khwaja Hasan, Nabil Gharibieh, or the other alleged members of the Virginia Jihad or paintball conspiracy or their underlying activities. These calls were made to Mecca, Saudi Arabia in 2001 and 2003. We believe that there were at least 100 such calls in 2002 alone as well as hundreds of emails and facsimile

transmissions. These communications include, but are not limited to, the following examples:

- a. Communications in 2002 discussing papers created with Dr. Al-Timimi's direction or supervision dealing with the United States and its relationship to the Muslim world. These include communications referencing papers by Mr. Amir Butler of Australia, Mr. Ismail and Dr. Bassem Khafagi (who was referenced in the search warrant and interviewed by the FBI).
- b. Communications discussing Dr. Al-Timimi's assistance of Hasan and Chandia.
- c. Communications regarding Dr. Al-Timimi's work on white papers entitled "How Can We Co-Exist" and "What are we Fighting For?," including drafts sent by facsimile transmission of these papers.
- d. Communications between Dr. Al-Timimi and Dr. Al-Buthe in the Fall 2002 regarding discussions with Congress, international conferences to address attacks on Muslims, and the Iraq War.
- e. Communications in 2003 and 2004 addressing the Shuttle disaster and reaching out to Congress and the American people.
- f. Communications relating to U.S. evangelical attacks on Islam as well as discussion of charities like Al-Haramain and coordinating efforts with Dr. Al-Hawali and Dr. Idris.

4. **Paintballers/Virginia Jihad.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. This includes, but is not limited to any material that references Dr. Al-Timimi, individuals associated with the "paintballers" or "Virginia Jihad" including, **Ali Asad Chandia, Seifullah Chapman, Randall "Ismail" Royer, Hammad Abdur-Raheem, Ibrahim al-Hamdi, Masoud Kahn, Yong Ki Kwon, Khwaja Hasan, Nabil Gharibieh** or the other members of the Virginia Jihad. These calls include, but are not limited to, the following examples:

- a. Communications relating to their paintball activities.
- b. Communications relating to traveling abroad after 9-11.
- c. Communications relating to Dr. Jaafar Idris or Mr. Yusuf Idris.
- d. Communications by Royer to LET in September 2001.
- e. Communications of the aforementioned individuals from Pakistan or to Pakistan from September 2001 to March 2002.

- f. Communications from Hasan while in the United States to Kwon in Pakistan and Korea.

5. **Yusuf Idris and Jaafar Idris.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. Of particular importance are any communications before or after the dinner with Kwon in September 2001. The calls to Yosuf and Jaafar Idris were matters raised before and at the trial of Dr. Al-Timimi. These material issues include, but are not limited to, discussions of 9-11, Dar Al-Arqam, Kwon, Hassan, Nabil Gharibieh, Royer, Al-Hawali, Al-Buthe, the Virginia Jihad allegations, Muslims traveling abroad after 9-11, and Muslim response to 9-11.

6. **Ammar Ammonette.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. As associate of Dr. al-Hawali, these calls were made to Saudi Arabia from 2001 to 2003. These communications include e-mails that may have originated from or were directed to the following e-mail addresses: [amar\\_colo@hotmail.com](mailto:amar_colo@hotmail.com) or [ammarcolo@hotmail.com](mailto:ammarcolo@hotmail.com)). These communications include discussions of subjects ranging from Dr. Al-Timimi's work in the United States to Bin Laden to the Muslim response to 9-11, and communications to both President Bush and Congress.

Ammar Ammonette performed a coordinating role vis-à-vis Dr. Al-Hawali and Dr. Al-Timimi. However, some of these calls are just between Dr. Al-Timimi and Mr. Ammonette.

7. **Anwar Al-AuLaqi.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. AuLaqi met with Dr. Al-Timimi at his house in October 2002 to discuss his reaction to 9-11, the congressional letter, and other individuals later associated with his trial. Telephone calls were made to Dar Al-Arqam and to Dr. Al-Timimi's home. We also ask for any reports or notes generated in connection with AuLaqi's visit to Dr. Al-Timimi's home in October 2002 when he was accompanied by Nabil Gharbieh and Rubeel Iqbal.

8. **Bassem Khafagi.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. Khafagi and Al-Timimi discussed his views of 9-11 and other issues relevant to his trial.



9. **Adel Tahir.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. Adel Tahir specifically spoke with Dr. Al-Timimi between 9-11 and the dinner with Kwon. The FBI prepared at least one 302 on his involvement. There were multiple calls between Dr. Al-Timimi and Tahir in September 2001, including repeated calls on September 13th.

10. **Mohammad Al-Kahtami.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. Dr. Al-Timimi spoke with Kahtami before and after 9-11 on issues related to his trial.

11. **Counsel communications.** Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators. At least one telephone call involving Ashraf Nubani and Royer was intercepted by the government. Other counsel included Martin MacMahon, Alan Yamamoto, and Edward MacMahon.

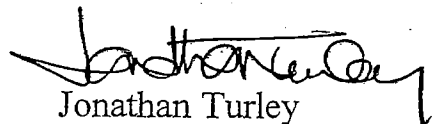
12. **Center for Islamic Information and Education** also know as **Dar al-Arqam** in Falls Church, Virginia. Any of the previously defined material that references or involves Dr. Al-Timimi or the underlying alleged conspiracy or conspirators.

13.

If any of these individuals, organizations, references or terms are unclear, I hope that you will not hesitate to contact me.

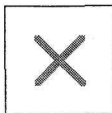
Thank you for your assistance in this matter.

Sincerely,



Jonathan Turley  
Counsel to Dr. Ali Al-Timimi

cc: William E. Olson, Esq.  
Kate Seikaly, Esq.



U.S. Department of Justice  
United States Attorney's Office

Eastern District of Virginia

2100 Jamieson Avenue

703/299-3721

Alexandria, Virginia 22314

FAX 703/299-3981

February 16, 2005

Edward B. MacMahon, Jr.  
P.O. Box 903  
107 East Washington Street  
Middleburg, Virginia 20118

Re: U.S. v. Al-Timimi, Crim. No. 1:04cr385; Discovery Letter #11

Dear Ed:

10 Enclosed with the copy of this letter I am delivering to the SCIF are four tapes seized from your client's house that we haven't yet returned: *Broadcast to London, A Word of Advice to the Salafis of the United Kingdom*, and *Dars al-Jumma*, and *Songs of the Mujahideen*.

20 Please note that we are also in possession of the tapes of a variety of your client's lectures, including *Keys to Paradise, Principles of Fiqh, The New World Order, Conquest of India Prior to the Day of Judgment, Muslims in America in the face of Fundamentalism and Terrorism, The Role of Muslim Students in North American Universities, Purification of the Soul, Tawheed and Shirk, The Acts of Worship During Shawwal, Was History Violated When Buddha's Statues Were Annihilated, Signs of the Day of Judgment, Faith, Divine Decree, Prophets Companions, Family and Wives, Jehilliyah at the end of the 20th Century*, and *the Luminous Creed*. We also are in possession of his article, *Ali Timimi on the Destruction of the Buddha Statues*" that was provided to us by Martin McMahon.

30 Enclosed is a diagram created by Timimi regarding the two different kinds of jihad that was presented to the interviewing agents on 08/21/2003. Also enclosed is a print-out from [www.alfir.com](http://www.alfir.com) that contains Al-Timimi's article on the space shuttle, that was presented to Al-Timimi during that same interview. [10J8, 10J10]

40 I understand that you recently obtained the return of many items seized from your client's house during the search in February 2003. Also enclosed with the copy of this letter that I am delivering to the SCIF are copies of what I understand to be all of the documents seized from your client's house the originals of which have not yet been returned to you. These documents include:

Hawali's statement on 9/11 and his message to George Bush, Arabic
Uqla fatwa, Arabic
Web-Site, Arabic, contains UBL statement
Web-Site, Arabic, w article by Timimi about Space Shuttle

**Discovery Letter #11****February 16, 2005****Page 2**

Business card for Markaz-Ud-Dawa-Wal-Irshad, phone number 7231106
Timimi phone records, invoice dates Jan, Feb, Mar, April, May, June, Sep, Oct 2001
Powerpoint slides London lecture 1998
Safar Al-Hawali, <u>The Day of Wrath</u>
Will of Yong Kwon, dated 02/20/2001
Stationary with letterhead for JIMAS, containing hand-written notation "What is our position when someone asks reference to civilians being killed Palestine?"
Stationary with letterhead for JIMAS, containing hand-written notation "Since Jihaad is the only way to get back to this land, does one have to go to the battle field. . ."
Stationary with letterhead for JIMAS, containing "Assalamualaikum, Please could you advise us Muslims how we can liberate the land of the Holy City Jerusalem . . ."
Booklet from Islamic Information & Support Centre of Australia, titled Sheikh Ali At-Timimi, oZ' Tour 2000 Tour Guide, providing description of Timimi's lectures and venues
Al-Ghunayman's Fatwa on Aiding the Taliban, from Timimi's house
10/23/2000 e-mail from Nabil to Timimi regarding trip to Delaware
Bin Laden Tape according to BBC, 02/12/2003, from jihadunspun.com
An article entitled <u>Our Struggle with the Jews</u>
al-Hawali, <u>Jerusalem between the True Promise and the Bogus Promise</u> , 1999
Piece of paper containing Arabic and English writing with contact information for Anwar Awlaki.
E-Mail Timimi to Ameer Al-Shawa, 04/12/1999
"Kissinger's Promise" by Hawali
Document Entitled <u>US Public Opinion Toward Islam and Muslims after the Sept. 11 Attacks</u>
Business Card for Senator Sajid Mir, Amir/President, Markazi Jamiat Ahle-Hadith
Timimi outline for lecture on The Strangers al-Guraba, by Sheikh al-Awda, London, 11/98
Hawali's Letter to Congress Re Use of Force Against Iraq
(1) Al-Barraak's Fatwa on Aiding the Taliban; (2) English version of the Uqla fatwa; and (3) Uqla fatwa in Arabic printed from www.aloqla.com web-site on 10/22/2001.
MSN Registration Page with name Safar Hawali at top.
E-Mail dated 09/15/1999 from Tareq Ben Rayes to altimimi@myself.com
Article containing interview of Hafiz Sayeed 10/03/1999, <a href="http://www.mishkat.com.mirror">http://www.mishkat.com.mirror</a>
Hand-written notes about death to America
handwritten note, warning to America that if it does not repent from its war against Muslims...then it will be destroyed.
Article of 35 pages on jihad by Ayman Al-Zawahiri.
When the Hour will come
hand-written, predicts destruction of west and America
A Call To Muslims to <u>Leave America</u>
Hawali and Khaliq's telephone numbers.
Printed paper on situation on Muslims in US.

**Discovery Letter #11**  
**February 16, 2005**  
**Page 3**

Turki Fala, "Jihad or International Peace?"
Hand-written on "The New World Order"
Hand-written notes regarding Hadith on dealing with the infidels.
Fatwa by Sheikh Uqla, regarding destruction of Buddhist statues in Afghanistan.
UBL statement on "The War that America is Launching on Afghanistan is a Religious One".
UBL introduction for book authored by Seikh Uqla "Selected Sayings in Assisting Infidels"
questions and answers. conditions that need to be met in order to wage jihad.
re speech about the "hour"
re ruling on Muslims hijra from kufr lands
re Islam facing a new attack.
re knowledge of the end of time and a warning of becoming divided.
re wisdom of using Allah to punish his people, so they will learn to be patient and persist in jihad
comments regarding verses from the Qur'an regarding the jews and how they will be punished.
hand-written re status of ummah, courses of action re jihad, making Islam dominant
Timimi's resume in Arabic
UBL/Zawahiri/Gaith comments on 9/11/01
hand-written contact info for Benkahla and Abu Ali.
Hawali on "Muslims and the Study of the Future"
hand-written notes re signs of day of judgement.
hand-written notes re "Muslims and the Study of the Future".
hand-written notes re "Muslims & the Study of the Future".
Typed speech re sermon given at the Sacrifice of Eid.
answers to test question, includes full discussion of rulings from Surat al-Bakara regarding jihad.
printed and hand-written re requirements to prepare for jihad, includes info re training & preparing means for war.
hand-written statement saying that the scholars are going to issue a statement regarding 9/11
hand-written outline of speech, Muslims should become knowledgeable about jihad etc
hand-written comments re the 2 kinds of jihad.
Internet article by Salman Al-Awda
outline on a lecture "Relation between Muslims and Others"
outline the signs of the end of time
Timimi notes on "Christianization of Muslim"
Sheikh Jarbuh comments on Hawali's statement about 9/11
Hand-Written - Safar Al-Hawali "The Causes for Victory"
Hand-Written - "The Future of the Islamic World in Light of the International Reconciliation"
Hawali "The Future of the Islamic World in Light of the International Reconciliation"
Email, Chandia to Timimi, re: event in Iowa
Copy of Timimi passport
IANA question re: Palestine & Talaban, closing with "Jazak Allah Khair"
"The Status of our Senior Scholars and the clarification of the Lie upon them!"

**Discovery Letter #11**  
**February 16, 2005**  
**Page 4**

**Please note that some of the documents have exhibit numbers on them. Aside from those marked 7A1, 7A20, 7A38, 7A39, 10J8 and 10J10 - - which I expect to use at trial - - the presence of exhibit numbers on these items does *not* indicate that they will be exhibits in the government's case; it only means that they were given numbers as a preliminary matter, but those documents may ultimately not be selected as exhibits for introduction at trial. Naturally, I will provide you an exhibit list of the exhibits we hope to introduce in March, so that we can then discuss stipulations.**

**Thank you for your cooperation.**

**Sincerely,**

**Paul J. McNulty**  
**United States Attorney**

**By: \_\_\_\_\_**  
**Gordon D. Kromberg**  
**Assistant United States Attorney**

**From:** Edward Mac Mahon <ebmjr@crosslink.net>  
**Subject:** Fw: Discovery Letters 8 and 9 issue re: Khan  
**Date:** January 12, 2005 8:51:36 AM EST  
**To:** Ali Al-Timimi <aaltimim@gmu.edu>  
**Cc:** Alan Yamamoto <yamamoto.law@verizon.net>

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----- Original Message -----

**From:** Edward Mac Mahon  
**To:** Gordon.Kromberg@usdoj.gov  
**Sent:** Wednesday, January 12, 2005 8:48 AM  
**Subject:** Re: Discovery Letters 8 and 9 issue re: Khan

Gordon - I have no idea what that is supposed to mean and the same goes with the non-response as to Auluqi - will prepare a motion to compel discovery and we can let the Judge rule on this - also - would like to set up a time asap with Brinkema re: CIPA issues as well - sorry to miss you in the SCIF - I had to go home - Ed

----- Original Message -----

**From:** Gordon.Kromberg@usdoj.gov  
**To:** 'ebmjr@crosslink.net'  
**Sent:** Tuesday, January 11, 2005 3:43 PM  
**Subject:** RE: Discovery Letters 8 and 9 issue re: Khan

Ed,

You ask if there are any calls intercepted by any means between Ali and Hawali. I am aware of no calls with Hawali in the materials I sent you, and no calls with Hawali in any materials that you are entitled to receive.

Gordon

-----Original Message-----

From: [ebmjr@crosslink.net](mailto:ebmjr@crosslink.net) [mailto:[ebmjr@crosslink.net](mailto:ebmjr@crosslink.net)]  
Sent: Thursday, January 06, 2005 5:41 PM  
To: Kromberg, Gordon  
Subject: Re: Discovery Letters 8 and 9 issue re: Khan

Will let you know - gave them to the client after we spoke this morning - any news on a response to the section 5 notice? Would like to get those items out of scif for review - finally, do you know if there are any calls intercepted by any means - warrant, FISA, NSA - between Ali and Dr. Hawali at any time after 911 - would be helpful if they are in one place and we could all hear them or have them translated.

Ed

----- Original Message -----

From: [Gordon.Kromberg@usdoj.gov](mailto:Gordon.Kromberg@usdoj.gov)  
To: Edward B. MacMahon Jr. (E-mail)  
Sent: Thursday, January 06, 2005 5:06 PM  
Subject: Discovery Letters 8 and 9 issue re: Khan

Ed,

My discovery letter #8, I said that I was ready to give you 11 cd-roms containing materials of Masaud Khan, and in Discovery Letter #9, I said that I had given you those cd-roms. John Wyman points out that he (John Wyman) gave me 12 cd-roms containing materials of Khan to give to you.

So, either I gave you 12 but said that they were only 11, or I gave you only 11, in which case I'd like to know which one I missed.

So, can you please let me know how many cd-roms I gave you regarding Khan? They should either have the name "Khan" on them, or maybe a "301" phone number (Royer, Hamdi, Chapman, Aatique all had different area codes than 301).

Thanks,

Gordon

Gordon D. Kromberg  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
703.299.3721 phone  
703.299.3981 fax  
703.926.9823 cell









































UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

FILED  
April 25, 2006

No. 05-4761  
CR-04-385

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ALI AL-TIMIMI

Defendant - Appellant

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O R D E R

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Appellant has filed a motion to vacate his appeal and remand his case for further proceedings before the trial court. Previously, this Court granted a motion to stay the briefing schedule pending resolution of outstanding issues.

The motion to vacate and to remand raises appellant's concern, based on recent developments, that the government may have undisclosed intercepts of either the appellant or various individuals material to his trial. While this is the main purpose of the requested order, appellant has also raised questions relating to alleged violations of attorney-client communications and access to evidence claimed as classified by the government.

Appellee, the United States, has consented to the motion while emphasizing that its consent to the motion does not reflect its views

on the merits of Al-Timimi's contentions, or its views on the jurisdiction of the district court in the Eastern District of Virginia over Al-Timimi's allegations regarding conditions of his incarceration.

Having considered the motion and positions of the parties, IT IS HEREBY ORDERED

- (1) Appellant's motion to vacate and to remand his case pending further proceedings is GRANTED.
- (2) IT IS FURTHER ORDERED, without ruling on the government's jurisdictional question regarding the prison conditions, that the district court may consider upon remand issues raised by appellant and order whatever relief or changes in the case, if any, that it considers appropriate.
- (3) IT IS FURTHER ORDERED that, following a final order by the district court, appellant may timely file without prejudice a new notice of appeal with this Court.

This order is entered at the direction of Judge Widener, with the concurrences of Judge Michael and Judge Hamilton, and with the agreement of the parties.

For the Court,

/s/ Patricia S. Connor

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CLERK

MFRO4017475

**MEMORANDUM FOR THE RECORD**

9/11 Personal Privacy

**Event:** Interview of FBI Special Agent Tim Ervin

**Type of event:** Interview

**Dates:** October 17, 2003

**Special Access Issues:** None

**Prepared by:** Michael Jacobson

**Team Number:** 1A

**Location:** FBI, Washington Field Office

**Participants – Non-Commission:** Assistant General Counsel Bob Sinton

**Participants – Commission:** Hyon Kim, Raj De, Michael Jacobson

The WFO interest in [redacted] and [redacted] originated out of a lead from an FBI Office in Ohio. Ervin thinks that it was the Akron Office. [redacted] was married to a woman whose family lived there. The Akron office was investigating her family, and during a surveillance spotted [redacted] vehicle. They sent this lead to WFO. The initial lead made him seem like a great target, but upon close examination it turned out that he was not. His connection to the hijackers was really weak.

There was one lead regarding [redacted] paying for a hotel room for his nephew in the Newark area on September 10, 2001. This was the same hotel in which the hijackers were staying that night. It turned out that his nephew did not actually stay in the hotel on September 10<sup>th</sup>. He actually was there on September 2<sup>nd</sup> or 3<sup>rd</sup>, Ervin believes, and he did not overlap with the hijackers.

This is one of the frustrating things about working CT investigations. In criminal cases only facts or witness statements go in the file. You then know that you can rely, to some extent, on the information in the file. There is no analysis or speculation put into criminal files. In CT, speculation and analysis is welcomed. It all goes in. He has talked to many criminal agents who are appalled by the things in ACS which aren't true in CT investigations. It's like a game of telephone. There are agents working CT who are desperate to break a big case. They put things together and into the files which are ridiculous fantasy.

Another problem is the coordination. After he'd been working the [redacted] investigation for a few months, he found out that an agent sitting next to him had also been tasked to work on the same investigation, and neither one of them knew about the other's involvement.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 5-3-07 BY UC 00302/CP  
*must refer*

9/11 Personal Privacy

9/11 Law Enforcement  
Privacy~~SECRET~~

Regarding the hijackers calls to the gas stations owned by [redacted] and [redacted] he doesn't think this is suspicious. [redacted] is a very wealthy man, who owns 11-12 gas stations. He's not that involved in day to day operations of the stations, and was not even sure who the managers were. He's very removed. He has no idea what the FBI has done to figure out who the hijackers called at the gas station. They did have a case agent for every lead, so there should be an agent out there who conducted this investigation. Every call the hijackers made generated a lead, he noted. To his knowledge, these particular gas stations are not places where there is significant extremist activity or where extremists tend to congregate.

[redacted] did not know Al-Rababah or Chehazeh, so his connections to [redacted] are so tangential. He can't remember exactly what the connection was. They've started feeling at the FBI that they are doing the "Kevin Bacon 6 degrees of separation" for investigations.

He doesn't recall about [redacted] connections to the apartment in Paterson. Newark would probably know more about that.

His overall assessment is that [redacted] is just focused on the money. He's very greedy, and that's the only thing he's concerned about.

[redacted] did own a gas station in Boston, and has some Syrian associates, but he doesn't remember anything else about it. He was more focused on [redacted] than on [redacted]. SA [redacted] would know more about [redacted] than he does.

He recalls that they ruled out the link between [redacted] and Bayoumi. He can't remember the details, though.

Ervin was asked about the café owner with the ties to [redacted] and the hijackers. He said that the café owner in San Diego had called into the FBI after 9/11 to say that he had seen a few of the hijackers in his café.

Basically, the bottom line is that there is nothing suspicious that panned out with respect to [redacted] and the hijackers.

[redacted] family is friends from the mosque with [redacted] and his family. They knew each other for years. [redacted] and [redacted] definitely did have a joint transaction to purchase a condo. [redacted] son, Ali, went off to Saudi Arabia and became radicalized. He can't recall what [redacted] did for a living, and doesn't remember whether he has ties to the Saudi Government. He also does not recall other ties between [redacted] and any other Saudi diplomats.

[redacted] name kept popping up because there was information about him in the system. An example is the connection to [redacted] and his son.

~~SECRET~~

9/11 Law Enforcement Privacy

~~SECRET~~

He's handled a few of the leads for the numbers the hijackers called. They were just dead ends. [redacted] had another promising lead. He was the agent for the kid who sold the hijackers the fake Ids and told a sensationalistic story about them.

Historically, the worse agents worked CT at the FBI. After 9/11, they forced many agents to work CT who didn't want to. Before 9/11, the agents working CT were usually those who were lazy and didn't really care. The agents who've been transferred over hate it now. The problem is that the CIA has the whole ballgame. If you really want to work CT and make a difference, you have to join the CIA [redacted]  
[redacted]

The Lackawanna 6 was a good case. The other prosecutions for terrorism are B.S. They would never have investigated the Virginia jihad group before 9/11.

The CIA is dramatically expanding its role and presence, both overseas and in the U.S. The FBI is trying to expand overseas as well. The whole ball game is overseas though. He doesn't think the FBI has any investigations in the US "worth a darn."

9/11 Classified Information

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