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2 requested . . . the replay of certain videotapes. The replay  
3 before the Hamid jury is scheduled to begin at 9:00 a.m. on  
4 [Monday] April 17, 2006." Order, ECF No. 314. The docket  
5 minutes show that on Tuesday, April 18, 2006, the video replay  
6 was completed and the jury resumed deliberations and eventually  
7 recessed until Wednesday, April 19, 2006, at 9:00 a.m. On  
8 Wednesday, April 19, 2006, the docket minutes show another note  
9 was received from the jury, dated April 19, 2006. The trial  
10 transcript shows that the April 19, 2006 note concerned the  
11 phrase material and/or resources in a jury instruction. RT  
12 4656:5-25, 4675, 4693:8-25, 4694-4697:1-4. Further discussion  
13 was held on this jury instruction issue on Thursday, April 20,  
14 2006, and a supplemental jury instruction was given later that  
15 day. RT 4706-4708:1-8. On Friday, April 21, 2006, the judge  
16 received a jury note signed by the foreperson at 4:05 p.m.,  
17 stating: "There is impass [sic] with a juror who does not seem to  
18 fully comprehend the deliberation process. I'm available to  
19 discuss this with you and counsel at anytime [sic]." The note is  
20 attached to an order filed April 26, 2006. ECF No. 326. The  
21 judge responded with the following written communication: "Jury,  
22 Please continue your deliberations." Id.

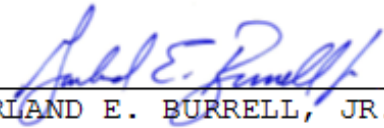
23 The trial transcript reveals that on Monday, April 24, 2006,  
24 at 1:55 p.m., the jury requested in a note: "Testimony of Agent  
25 Harry Sweeney of 6/4/05 interview with Hamid Hayat." RT 4782:4-  
26 4787:25 (April 24, 2006). This testimony covered Hayat's  
27 confession. The judge responded to the jury in writing on April  
28 24, 2006, at 2:40 p.m., stating: "I am considering your request

1 and estimate it could take until 4:30 p.m. or approximately 9:00  
2 o'clock a.m. on Tuesday, [April 25, 2006,] before the court  
3 reporter prepares that testimony." RT 4794:25, 4795:2-4 (April  
4 24, 2006). The readback of agent Harry Sweeney's testimony of  
5 the interview with Hamid Hayat occurred on Tuesday, April 25,  
6 2006. After the readback on April 25, 2006, the jury returned a  
7 guilty verdict on all four charged counts. ECF No. 328.

8 Even though the jury returned guilty verdicts after the  
9 agent Sweeney interview with Hayat was read back to the jury, the  
10 April 21, 2006 jury note evinces that one juror was clearly  
11 struggling to reach a verdict on which other jurors agreed.  
12 Therefore, "additional exculpatory evidence, [on Hayat's] alibi  
13 defense [and testimony from an Arabic language expert on the  
14 meaning of the supplication Hayat carried], had a strong  
15 likelihood of tipping the scales [for that juror] in the other  
16 direction." Foster v. Wolfenbarger, 687 F.3d 702, 710 (6th Cir.  
17 2012). "And, because the jury was required to reach a unanimous  
18 verdict on each count, the outcome could have differed if only  
19 'one juror would have struck a different balance.'" Weeden v.  
20 Johnson, 854 F.3d 1063, 1071 (9th Cir. 2017) (quoting Wiggins,  
21 539 U.S. at 537).

22 Therefore, the F&Rs filed January 11, 2019, ECF No. 734, are  
23 adopted in part and the movant's convictions and sentence are  
24 vacated. Further, the Clerk of Court shall close the companion  
25 case No. 14-cv-1073 and enter judgment for the movant.

26 Dated: July 29, 2019

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GARIAND E. BURRELL, JR.  
Senior United States District Judge