



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

May 19, 2010

BY HAND

The Honorable Loretta A. Preska
Chief United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable George A. Yanthis
Chief United States Magistrate Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

**Re: United States v. Faisal Shahzad,
10 Mag. 928**

Dear Chief Judge Preska and Chief Magistrate Judge Yanthis:

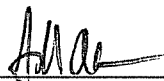
On May 12, 2010, the Government wrote Your Honors a sealed, ex parte letter regarding the status of proceedings with respect to the above-named defendant. Yesterday, the defendant was assigned counsel and presented before Magistrate Judge James C. Francis IV.

The Government has prepared a redacted version of the May 12 letter, which is attached as Exhibit A. The Government respectfully requests that the redacted letter be docketed in the 10 Mag. 928 matter, and that the original, un-redacted letter of May 12 remain sealed. The Government respectfully submits that docketing the redacted version of the May 12 letter appropriately

balances both the public's right of access to judicial proceedings and legitimate law enforcement interests.

Respectfully submitted,

PREET BHARARA
United States Attorney

By: 

Brendan R. McGuire
Jeffrey A. Brown
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EXHIBIT A



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 12, 2010

BY HAND

EX PARTE/UNDER SEAL

The Honorable Loretta A. Preska
Chief United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable George A. Yanthis
Chief United States Magistrate Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: United States v. Faisal Shahzad,
10 Mag. 928

Dear Chief Judge Preska and Chief Magistrate Judge Yanthis:

The Government respectfully submits this letter to advise Your Honors of the status of proceedings against the above-named defendant.¹ Although there is no legal requirement to report to the Court on the status of the defendant's detention at this juncture, the Government recognizes that under the unusual circumstances of this case, and in deference to the Court's ultimate supervisory authority, a report on the status of the case serves the interests of justice.

In connection with his attempt to detonate explosive and incendiary devices in Times Square on May 1, 2010, the

¹ Because of the sensitive nature of the information contained herein, the Government respectfully requests that this letter be filed under seal and that its docketing be delayed. See, e.g., In re New York Times Co. to Unseal Wiretap & Search Warrant Materials, 577 F.3d 401, 410 n.4 (2d Cir. 2009) (noting that "proceedings may be nonpublic when, and to the extent, circumstances warrant secrecy," such as when there is a need to "protect[] a defendant's right to a fair trial" or to "protect confidential information or sensitive evidence"). See generally United States v. Alcantara, 396 F.3d 189, 199-200 (2d Cir. 2005).

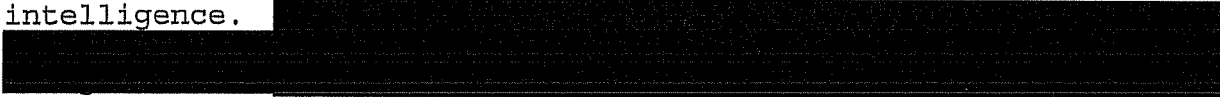
Chief Judge Loretta A. Preska, U.S.D.J.
Chief Magistrate Judge George A. Yanthis, U.S.M.J.
May 12, 2010
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defendant was arrested on May 3, 2010, and thereafter charged in a five-count criminal complaint, which is attached as Exhibit A. The complaint charges the defendant with attempting to use a weapon of mass destruction; attempting an act of terrorism transcending national boundaries; using a destructive device in connection with an attempted act of terrorism; unlawfully transporting an explosive; and attempting to damage and destroy property by means of an explosive.

On May 4, 2010, subsequent to his arrest, the defendant, without counsel, knowingly and voluntarily waived his *Miranda* rights and executed a written waiver of speedy presentment. On each day since his arrest, the defendant has been re-advised of his *Miranda* rights and his right to speedy presentment, and on each day through and including the date of this letter he has executed a new written waiver of rights.

These procedures exceed those required by law. Indeed, it is well-settled that a defendant may, without the advice or assistance of counsel, waive his right to a prompt presentment following an arrest. See, e.g., United States v. Gibson, 530 F.3d 606, 613 (7th Cir. 2008); United States v. Cabrera, No. 05 CR 1278 (NRB), 2008 WL 2803902, at *5 (S.D.N.Y. July 15, 2008); United States v. Pena Ontiveros, 547 F. Supp. 2d 323, 339 (S.D.N.Y. 2008); United States v. Torres, No. 98 FR 183, 2002 WL 72929, at *8 (S.D.N.Y. Jan. 17, 2002); United States v. Berkovich, 932 F. Supp. 582, 588 (S.D.N.Y. 1996). As the District Court stated in Cabrera: "Delays attributable to a defendant's cooperation with law enforcement officials, particularly when the defendant has knowingly and voluntarily waived his right to speedy presentment, have been routinely found to be reasonable by the district courts in the Second Circuit." 2008 WL 2803902, at *5. As a result of his speedy presentment waiver, the defendant has not yet made a court appearance pursuant to Rule 5 of the Federal Rules of Criminal Procedure.

Since his arrest, the defendant has been questioned - and continues to be questioned - by federal agents on a number of sensitive national security and law enforcement matters for the purpose of preventing potential future attacks, identifying associates of the defendant and possible facilitators of the attempted attack, as well as gathering other actionable intelligence.



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[REDACTED]

Federal law enforcement agents are vigorously and expeditiously pursuing leads relating to this and other information provided by the defendant, a process which has required the participation of hundreds of agents in different cities working around the clock since the defendant's arrest. Uninterrupted access to the defendant has been, and continues to be, critical to this process, which requires, among other things, an ability to promptly verify with him the accuracy of information developed in the investigation.

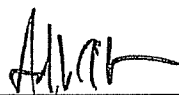
[REDACTED]

[REDACTED] In short, uninterrupted access has been, and continues to be, extremely beneficial, if not essential, to the investigation.

We will continue to inform Your Honors periodically of the status of the defendant and are prepared, of course, to address any questions that Your Honors may have.

Respectfully submitted,

PREET BHARARA
United States Attorney


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