

1 DENNIS K. BURKE
United States Attorney
District of Arizona

2
3 MICHAEL T. MORRISSEY
Assistant U.S. Attorney
Arizona State Bar No. 012531
Two Renaissance Square
4 40 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
5 Telephone: (602) 514-7500
mike.morrissey@usdoj.gov

6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 United States of America
10
11 Plaintiff,
12 v.
13 Elton Simpson,
14 Defendants.

CR-10-055-PHX-MHM
**GOVERNMENT'S
SUPPLEMENTAL TRIAL
MEMORANDUM**

15 I. The Statutory Definition of International Terrorism Is Broad

16 The definition of international terrorism contained in 18 U.S.C. § 2331 has been
17 incorporated into many parts of the federal criminal code. The definition contained in
18 Section 2331 is used in numerous statutory provisions, including those relating to
19 biological toxins, determining civil liability for acts of international terrorism against
20 U.S. nationals, and many other uses. *See* Nicholas J. Perry, “The Numerous Federal
21 Legal Definitions of Terrorism: The Problem of Too Many Grails,” 30 J. Legis. 249, 257
22 (2004)(listing at least nine instances where Section 2331's definition is incorporated into
23 the United States Code, the Fed. R. Crim. P., and the C.F.R.).

24 Section 2331's definition is broad, because it is part of a broad effort to combat
25 terrorism where that effort can be effective. The Seventh Circuit, sitting *en banc* in *Boim*
26 *v. Holy Land Foundation*, 549 F.3d 685 (7th Cir. 2008), construed whether
27
28

1 under 18 U.S.C. § 2333, civil liability attached for acts of international terrorism, as
2 defined in Section 2331, where donors provided money to a terrorist group. The Court
3 noted that in bringing such donors within the reach of section 2333, “the first link in the
4 chain” is the definition contained in Section 2331. *Id* at 690. The Court stated:

5 By this chain of incorporations by reference (section 2333(a) to section 2331(1)
6 to section 2339A to section 2332), we see that a donation to a terrorist group that
7 targets Americans outside the United States may violate section 2333. Which
8 makes sense as a counterterrorism measure.

9 *Id.* As the Court noted, damages are not an effective remedy against terrorists, “whereas
10 suits against financiers of terrorism can cut the terrorists lifeline.” *Id.* at 691.

11 Accordingly, in section 2333, using the definition of international terrorism contained in
12 section 2331, Congress acted where it could, against those who funded but did *not* in fact
13 carry out violent acts themselves. As the Court stated:

14 And given such foreseeable consequences, such donations would “**appear** to be
15 intended... to intimidate or coerce a civilian population” to “affect the conduct of
16 a government by ... assassination,” as required by section 2331(1) in order to
17 distinguish terrorist acts from other violent crimes, though it is not a state of mind
18 requirement; **it is a matter of external appearance rather than subjective**
19 **intent**, which is internal to the intender.

20 *Id.* at 694 (bold added).

21 The logic of *Boim* shows how, in the case at bar, defendant’s false statement to
22 the FBI, regarding whether he had discussed with anyone traveling to Somalia, is covered
23 by Section 2331. Viewed objectively, defendant’s statements about making it to the
24 battlefield in Somalia, where the “kuffar” are “fighting against us because they don’t
25 want us to establish sharia,” because jihad is “bad to the kaffir” (Exhibit 2, recording of
26 5/29/09), and his statements about making it to Somalia from South Africa (Exhibit 4,
27 recording of 10/23/09) are statements about violence. Because the test is objective, not
28 subjective, defense counsel’s theory that perhaps defendant would not, in fact, have
followed through on violence, is irrelevant. *Id.*; see also *Wultz v. Islamic Republic of*
Iran, 2010 WL 4228350 (D.D.C.), at 33 (Section 2331 requires only that a defendant’s
acts *appear* to be intended” to achieve one of three enumerated goals)(emphasis in

1 original). Objectively, defendant's statements were about fighting jihad in Somalia.
2 Quite properly, the FBI investigated those statements, in part by asking defendant about
3 them. Defendant responded by willfully making a false statement – denying he had
4 discussion about traveling to Somalia. The proof of the falsity of those statements in
5 contained in defendant's own recorded statements. Just as in the context of civil liability
6 for funding terrorism, where Congress intended to punish individuals here who fund
7 terror overseas, in the false statement context, of Section 1001, Congress intended to
8 punish those who lie, and obstruct investigations, in the language of Section 2331(1), into
9 "activities that" (A) involve violent acts...(B) that appear to be intended to coerce a
10 population or government.... (C) outside the territorial jurisdiction of the United States.

11 That is the gravamen of the offense. Had defendant been charged with material support
12 of terrorism, the prosecution would not have been required to prove "an actual terrorist
13 act." *See Boim*, 549 F.3d at 692. Here, the prosecution was not required to prove that
14 defendant made it to Somalia, or in his words, had sufficient "connects" to find the
15 mujihadeen. (Exhibit 1, recording of July 31, 2007). Defendant's statements, and his
16 false denials of them, meet the definition of false statement involving international
17 terrorism under Sections 1001 and 2331.

18 Respectfully submitted this 5th day of November, 2010.

19
20 DENNIS K. BURKE
United States Attorney
District of Arizona

21
22 s/ Michael T. Morrissey
MICHAEL T. MORRISSEY
23 Assistant U.S. Attorney
24

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on November 5, 2010, I
27 electronically transmitted the attached
document to the Clerk's Office using the

1 CM/ECF System for filing:

2

3 Gerald Williams
4 Kristina Sitton
5 850 W. Adams Street, Suite 201
6 Phoenix, Arizona 85007
7 attorneys for defendant Elton Simpson

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32