

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-20331-CR-SCOLA/BANDSTRA

UNITED STATES OF AMERICA,

vs.

HAFIZ MUHAMMAD SHER ALI KHAN,
and IZHAR KHAN,

Defendants.

OMNIBUS ORDER

The Court held a hearing on December 26, 2012 to address various pretrial issues. After considering the record, relevant law, and the parties' arguments, and for the reasons stated on the record during the December 26 hearing, the Court makes the following rulings:

1. The Government's motion to preclude evidence relating to defenses of necessity and justification (DE 420) is **GRANTED**.
2. The Government's motion to preclude irrelevant evidence relating to Pakistan and the United States (DE 521) is **GRANTED**. But the Defendants can introduce evidence relating to historical events referenced in admissible evidence that the government uses in its case in chief.
3. The Government's motion to exclude defense photographs and videos (DE 522) is **DENIED without prejudice**. Just because a photograph or video is taken after the time period of the charged conspiracies does not necessarily mean that the photograph or video could not accurately depict something as it existed during the conspiracies. Arguments on the admissibility of photographs or videos will need to be tailored to the specific piece of evidence in question.
4. The Government's oral motion to reduce the number of photographs and videos that the Defendants plan on using at trial is **GRANTED in part**. The Defendants need to determine the actual number of photographs and videos they plan on using during the trial. So by

December 31, 2012, the Defendants will burn a new CD of the photographs and videos that they plan to use at trial.

5. The Government's motion for a pretrial ruling that the recordings and accompanying transcripts it plans on using are admissible (DE 584) is **GRANTED in part**. Foundation requirements for admitting these recordings are met and the recordings are not hearsay. Once the Government gives the Defendants the transcript excerpts that they will be publishing to the jury, then the Defendants must make relevance or Rule 403 objections in writing with specificity within three days of receiving the excerpts—that is, the Defendants must specify the page numbers and line numbers they are objecting to and the basis for the objection—in order to avoid any unnecessary delays in the presentation of the case.
6. The Defendants' motion to compel the government to declassify transcripts for which the Defendants filed a CIPA § 5 notice (DE 600) is **DENIED as moot**.
7. The Defendants' motion to preclude 404(b) or inextricably intertwined evidence (DE 602) is **GRANTED in part and DENIED in part** as follows:
 - a. Defendant Hafiz Khan seeks to preclude evidence relating to his alleged discussions of both bribing a Pakistan official and committing immigration fraud for the purpose of bringing Taliban sympathizers to the United States. The Court **DENIES** this part of the motion.
 - b. The Defendants seek to preclude evidence that they engaged in fraud in obtaining a United States Visa for Izhar Khan's fiancée. The Court **GRANTS** this part of the motion by agreement of the parties. The Government will not introduce this evidence in its case in chief.
 - c. Defendant Hafiz Khan seeks to preclude evidence that he discussed and engaged in fraud on the federal-healthcare system. The Court reserves ruling on this part of the motion, but instructs the parties not to refer to this alleged fraud or discussions of it in their opening statements. The Government represented that the healthcare fraud will not be part of its case in chief.
 - d. Defendant Hafiz Khan seeks to preclude evidence that he failed to disclose the existence of a foreign bank account to the United States Treasury despite having more than \$10,000 in the account. The Court **GRANTS** this part of the motion by agreement of the parties. The Government will not introduce this evidence in its case in chief.

8. The Government's oral motion to reduce the number of transcripts the Defendants plan on using at trial from around 400 or so to a more manageable number is **GRANTED**. The Defendants must notify the Government of the calls they will not use on a rolling basis commencing immediately. By December 31, 2012, the Defendants must provide the Government with the final list of transcripts that they will use at trial.
9. With respect to the Rule 15 depositions discussed in the Court's November 2, 2012 Order (DE 562), the depositions are to proceed as planned. The Court asks the Government to reach out to the Pakistan government and try to obtain a written assurance from the Pakistan government by January 25, 2012 that Pakistan will authorize the depositions to proceed or that Pakistan does not need to authorize the depositions to proceed.
10. The Government's motion to exclude defense experts (DE 507) is **GRANTED in part and DENIED in part** as follows:
 - a. Defense expert Dr. John Esposito may testify about the meaning of key terms and concepts, such as Sharia, jihad, mujahedeen, and others. Dr. Esposito may also testify about the broader history of the Taliban movements in Pakistan, specifically in the Swat region. Dr. Esposito may not testify about what either of the Defendants meant when they made a particular statement. For that matter, no expert may testify about what either of the Defendants was thinking or what their intent was when they made a particular statement—that is the province of the jury. Although Dr. Esposito may testify on these topics, the Defendants must provide a more complete disclosure regarding Dr. Esposito's opinions. Specifically, on or before January 4, 2013, the Defendants must disclose to the Government a written summary of Dr. Esposito's anticipated testimony describing his opinions, and the bases and reasons for those opinions.
 - b. Defense expert Alex Martinez may not testify as an expert witness, however, he may be called by the Defendants as a summary witness. In this capacity, Martinez may explain coding on transactional documents, such as Western Union records, and may also summarize voluminous banking records. The Defendants shall make the required pretrial disclosures regarding Martinez's status as a summary witness on or before January 4, 2013.
 - c. Defense expert Dr. Anita M. Weiss may testify as an expert witness on topics of the Swat Taliban, significant figures in the militant and political sphere of the Swat region, and

specific events that occurred in the region, such as acts of terrorism, military operations, earthquakes, floods, and others. She may not testify about the locals' views and opinions regarding these incidences. She may not testify about what she understands as having been the popular or mainstream views of specific events. She may not testify about the historical culture of the Pakistani region and the Swat communities. She may not testify about the public discourse of the region regarding specific events, nor may she testify about the influence of the United States in the region. Dr. Weiss may testify about the role of women and girls in the region as it relates to education and the historic norms of the region regarding women and girls. Finally, Dr. Weiss may not testify about her opinion as to whether the Defendants' actions in this case were consistent with a terrorist cell. Although Dr. Weiss may testify on these topics, the Defendants must provide a more complete disclosure regarding Dr. Weiss's opinions. Specifically, on or before January 4, 2013, the Defendants must disclose to the Government a written summary of Dr. Weiss's anticipated testimony describing her opinions, and the bases and reasons for those opinions.

DONE and ORDERED in chambers, at Miami, Florida, on December 27, 2012.



ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of record