

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

SULEIMAN ABU GHAITH
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98 Cr. 1023 (LAK)

MOTION IN LIMINE TO
ADMIT DEFENDANT'S
STATEMENT TO LAW
ENFORCEMENT WITHOUT
MODIFICATION

TO THE HONORABLE LEWIS A. KAPLAN:

The defense submits this motion in limine to admit into evidence the defendant Suleiman Abu Ghaith's statement to law enforcement, without modification, subject to any appropriate limiting instructions for the jury. This motion is submitted in response to the intention of the government to introduce a redacted version of the statement; the defense maintains its positions with regard to pretrial suppression.

I. Background

As the Court is aware, Mr. Ghaith was apprehended in a foreign country and transferred to the United States by airplane. United States law enforcement personnel questioned Mr. Abu Ghaith during the course of transit, which lasted approximately 14 hours. Although accounts of exact interview break times vary somewhat, the questioning appears to have been conducted over a period of approximately 11 to 12 hours. Minutes of Hearing on Motion to Suppress ("MTS Hrg.") on September 17, 2013, at 17 (testimony of Deputy United States Marshal Brian McHugh) and 89 (testimony of Arabic interpreter Nehad Abusuneima).

A. Mr. Abu Ghaith's Statement

At the outset, according to the Federal Bureau of Investigation ("FBI") 302 prepared in connection with the interview, Mr. Abu Ghaith stated, "I am willing to tell you anything and will

not hold back. I will be honest with you. Through your questions, I may have questions.” FBI 302 dated 3/6/2013, attached as Exhibit A, at 1. The interview ranged over a variety of subjects including:

- Mr. Abu Ghaith’s unawareness of any current or pending threats against the United States (*id.* at 1);
- His personal life, family and background (*e.g.*, *id.* at 1-2, and document generally);
- His custody in Iran generally (*id.* at 2);
- His *Miranda* rights (*id.* at 2);
- His interest in learning, events in Bosnia, and the Taliban (*id.* at 2);
- His travel to Afghanistan for 20 days in June of 2001, when Usama bin Laden asked to meet with him (*id.* at 2-3);
- His views on Usama bin Laden, including their differences (*id.* at 3);
- His travel to Afghanistan in July of 2001, when he brought his family to live in a house in Kandahar (*id.* at 3);
- His awareness of Al Qaeda training camps, though he did not attend them for training (*id.* at 3);
- A request by Usama bin Laden to teach at the “House of Pomegranates,” which Mr. Abu Ghaith did not have the opportunity to do (*id.* at 3);
- Speeches that Mr. Abu Ghaith gave at training camps to provide spiritual advice (*id.* at 3, 19), and his belief that there is an obligation in Islam to prepare oneself for defense and to train as any nation trains its young people for defense, though not all camps teach the correct ideology (*id.* at 19);
- A request by Usama bin Laden for Mr. Abu Ghaith to join Al Qaeda, which he declined (*id.* at 3-4);
- An agreement by Mr. Abu Ghaith to offer his services as a religious scholar and orator for Al Qaeda (*id.* at 4);
- His refusal to provide “bayat” to Usama bin Laden, except for a personal agreement concerning religious matters and oratory (*id.* at 4);

- The September 11, 2001 attacks, of which he was unaware beforehand (*id.* at 4);
- His view on why Usama bin Laden wanted to bring him into Al Qaeda for intra-political reasons (*id.* at 4-6);
- Abu Hafs Al-Mauritani and his reputation (*id.* at 4), though Mr. Abu Ghaith recalled meeting him in June 2001 but did not get to know him until they were in custody in Iran together (*id.* at 18);
- Events on September 12, 2001, and Mr. Abu Ghaith's agreement to give a speech that day on video about the events on September 11, 2011 (*id.* at 5);
- His participation in three to four other videos (*id.* at 6);
- An explanation that the speeches in these videos were based on bullet points provided by Usama bin Laden (*id.* at 5-6);
- A further explanation that the videos were shot before the arrest of Richard Reid, and that Mr. Abu Ghaith had no prior knowledge of the "shoe bomb" plot (*id.* at 6);
- His understanding that the videos were for "propaganda purposes" (*id.* at 6);
- His view that, after the United States invasion of Afghanistan, the videos became "words without meaning" (*id.* at 6);
- His book "Twenty Guidelines on the Path of Jihad," which addresses a huge misunderstanding of the concept of jihad and reflects Mr. Abu Ghaith's views on the subject now and prior to September 11, 2001 (*id.* at 7), specifically, his view that the image of jihad was poorly portrayed and was not in line with the true principles of the concept, which involves "aware[ness] of the entire political, religious and historical situation" (*id.* at 14), and the means by which the book was gotten out of Iran for publication (*id.* at 14-15);
- The Palestinian cause and its importance to Muslims (*id.* at 7);
- The opening of Iran to Arab families in Afghanistan following the U.S. invasion of that country, and subsequent developments (*id.* at 7);
- His arrest on April 23, 2003 in Shiraz, Iran, along with Saif al-Adl and Mohammed al-Masri, whom Mr. Abu Ghaith met for the first time upon arrest and whose identities he did not learn until later (*id.* at 8, 11);
- His custody in Iran at various locations, and the conditions of confinement (*id.* at 8-10, 20);

- Initial limitations on communications with family (*id.* at 9-10);
- An inquiry by Mr. Abu Ghaith to Mr. al-Adl and Mr. al-Masri whether they were involved in the U.S. Embassy bombings in Tanzania and Kenya, and their response (*id.* at 11);
- Mr. Abu Ghaith's belief that Al Qaeda did little to nothing to assist him and other detainees in Iran (*id.* at 11);
- His marriage to Fatima bin Laden, Usama bin Laden's daughter, who was also detained in Iran (*id.* at 11);
- Mr. Abu Ghaith's current and prior marriages, and his 11 children (*id.* at 12);
- Further details regarding the conditions of confinement in Iran, and their gradual improvement (*id.* at 12-13);
- A protest by Mr. Abu Ghaith and fellow detainees against their conditions of confinement, which resulted in Mr. Abu Ghaith being beaten and hospitalized, and trauma to one of his daughters (*id.* at 12);
- Improvements in communication with family outside Iran (*id.* at 13);
- Mr. al-Mauritani's escape from Iranian custody (*id.* at 14);
- Mr. Abu Ghaith's understanding of the initial process of his release from Iran, and his understanding that he would be returning to Kuwait to be with his family (*id.* at 15);
- His waiver of initial presentment and the interviewers' interest in further interviewing him (*id.* at 16);
- Photographs of and background concerning Faiz al-Kandari and Anas al-Kandari (*id.* at 16-18);
- The presence of "spies" at a guest house across the street from the House of Pomegranates (*id.* at 17);
- Mr. Abu Ghaith's desire to speak to a lawyer at presentment, since he had not been afforded the opportunity to see a lawyer or a judge during his entire 11 years of custody in Iran (*id.* at 18);
- Two or three sermons that Mr. Abu Ghaith gave at Usama bin Laden's compound attended by 10-15 individuals including family members (*id.* at 19);

- His explanation that he never gave any speeches at any guest house in Afghanistan and never asked any trainees to pledge bayat to Usama bin Laden during any of his speeches (*id.* at 19);
- His assertion that he never asked any trainees to pledge bayat to Mullah Omar, noting that Arab fighters would not generally pledge bayat to someone like Mullah Omar because they had their own groups (*id.* at 19);
- The process by which Mr. Abu Ghaith was taken out of Iran into Turkey (*id.* at 20-21); and
- His arrest in Turkey (*id.* at 21).

B. The Government's Opening

During opening statements, the government made a number of references to evidence that it apparently intends to establish based on Mr. Abu Ghaith's statements. The government's eyewitnesses have already testified, accordingly, the relevant source for the following propositions of fact may only be Mr. Abu Ghaith's own statement:

- Mr. Abu Ghaith had for months prior to September 11, 2001 been helping al-Qaeda recruit and incite fighters (March 5, 2014 Trial Transcript ("Tr.") at 14);
- He moved to Afghanistan because extremist groups like Taliban and al-Qaeda were present there (*id.* at 18);
- Usama bin Laden asked Mr. Abu Ghaith to meet in Spring of 2001 and he agreed to work for al-Qaeda (*id.*);
- Prior to September 11, 2001 (*id.* at 18-19):
 - Mr. Abu Ghaith "traveled to al-Qaeda locations throughout Afghanistan";
 - "He went to al-Qaeda military training camps";
 - "He spoke to hundreds of young recruits. His message: Continue your terrorist training, train for war, for violent jihad. Prepare to fight your enemy."; and

- During one session at a secret al-Qaeda compound where recruits stayed before going to get trained, Mr. Abu Ghaith spoke and urged al-Qaeda recruits “to support Usama bin Laden and fight with al-Qaeda.”
- Mr. Abu Ghaith “admitted that he met with Usama bin Laden as soon as he got to Afghanistan, months before [September 11, 2001], and immediately agreed to help al-Qaeda” (*id.* at 25);
- “He admitted that the purpose of his speeches was to motivate al-Qaeda trainees, to help them understand the importance of their terrorist training” (*id.* at 25); and
- “[He] admitted that he understood that he was valuable to Usama bin Laden because he can provide al-Qaeda with a precious resource, a precious commodity, people, fighters for al-Qaeda” (*id.* at 26).

II. Legal Principles

“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.” *Chambers v. Mississippi*, 410 U.S. 284, 294 (U.S. 1973). *See also United States v. Nixon*, 418 U.S. 683, 709 (U.S. 1974) (“The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.”); *and Washington v. Texas*, 388 U.S. 14, 22 (1967) (“the truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury”).

III. Mr. Abu Ghaith’s Statement Is Admissible In Unredacted Form.

Mr. Abu Ghaith’s statement to law enforcement appears to be the only means by which the government can prove certain material evidence. The government’s eyewitnesses have

testified, and the defense is aware of no outstanding proof to meet the allegations set forth in Section II.B. above. The lynchpin of the government's case against Mr. Abu Ghaith is his own statement to law enforcement.

Under these circumstances, it is inappropriate to introduce the statement in piecemeal fashion. As a preliminary matter, there is no reason to believe that the government did not have every opportunity during its 11-12 hour interview of Mr. Abu Ghaith to ask any relevant questions on the topics covered. Indeed, testimony from law enforcement establishes that Mr. Abu Ghaith was fully cooperative during the interview:

Q: How would you characterize the overall tenor of the interview?

A: It was, I would say, a pleasant conversation. It was respectful on both sides.

Q: Did he strike you as intelligent?

A: Yes, very intelligent.

Q: What makes you say that?

A: His answers were well thought out. His memory was sharp. It was, he provided a significant amount of detail, and he, based on his responses to my questions, he, I didn't have to repeat. He knew exactly where I was, you know, what I was asking for, and he responded immediately.

Minutes of MTS Hearing on September 23, 2014, at 58 (testimony of FBI Special Agent Michael Butsch). *See also* testimony of FBI Intelligence Analyst Heather D'Agostino, Minutes of MTS Hearing on September 17, 2013, at 147 ("In between breaks, when both interviewers were not in the presence of Abu Ghayth, they would come to a different section of the aircraft where we would talk about the sequencing of questioning, so I did pose certain questions through the interviewers.").

In any event, Mr. Abu Ghaith's right to present a defense must include cross-examination on the accuracy, credibility and scope of any statement that the government seeks to introduce in

recorded or testimonial form. Any assertion within his statement is material: where, as here, the government's proof hinges on a defendant's statement, the jury must be entitled to deliberate on the statement as it was made to law enforcement, without modification. Fairness requires it. Once the government elects to question a criminal defendant and then introduces his statement against him at trial, the statement becomes an issue of fact for the jury.

The prohibition against hearsay is inoperative. Any potential prejudice to the government is cured through appropriate limiting instructions.

IV. Conclusion

For the foregoing reasons, Mr. Abu Ghaith's statement to law enforcement is admissible in unredacted form. The defense reserves the right to make additional arguments for admissibility for impeachment purposes or for completeness or context under Rule 106 of the Federal Rules of Evidence.

Dated: March 12, 2014
New York, New York

/s/
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