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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	Case No. 1:05-cv-093-EJL-MHW PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST THE UNITED STATES

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Pursuant to Federal Rule of Civil Procedure 56, Plaintiff Abdullah al-Kidd respectfully moves for summary judgment against Defendant United States. The motion is based on Plaintiff's Memorandum of Law, Statement of Undisputed Material Facts, and accompanying exhibits, filed in conjunction with this motion. Plaintiff is also opposing the United States' Motion for Summary Judgment, and is filing a separate Statement of Facts and exhibits in opposition to the United States' Motion.

Dated: December 21, 2011 /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of December, 2011, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,

Plaintiff,

v.

ALBERTO GONZALES, Attorney General of the United States; *et al.*,

Defendants.

Case No. 1:05-cv-093-EJL-MHW

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT UNITED STATES' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

There are three defendants before the Court in these summary judgment proceedings: the United States and FBI agents Gneckow and Mace. This brief concerns only the claims against the United States under the Federal Tort Claims Act (FTCA). Specifically, Plaintiff Mr. al-Kidd (1) moves for summary judgment against the United States on his false imprisonment and abuse of process claims, and (2) opposes the government's summary judgment motion on these claims. The claims against the individual defendants, agents Gneckow and Mace, are addressed in a separate motion and memorandum.

BACKGROUND

The United States previously moved to dismiss both of Plaintiff's FTCA claims. The Court denied that motion, finding that Plaintiff's complaint had set forth sufficient allegations to proceed on his claims of false imprisonment and abuse of process. Mem. Order 9, 12, 16 (Dkt. No. 78).[1]

To avoid repetition, Plaintiff will not fully repeat the factual and procedural background of the case, and respectfully requests that the background section of his brief regarding the individual defendants be incorporated herein. Plaintiff makes only the following additional point to respond to a statement in the United States' brief. The government suggests that the length of Mr. al-Kidd's detention was due to his own acts. U.S. Br. 22. As the transcript of Mr. al-Kidd's March 17, 2003 Virginia hearing shows, *see* Pl. Ex. 19, that is a highly misleading account of what occurred.

[1] Neither of Plaintiff's FTCA claims is affected by the Supreme Court's ruling, since both are based on state law, and not the Fourth Amendment. *See Ashcroft v. al-Kidd*, 131 S. Ct. 2074 (2011) (analyzing only Fourth Amendment pretext claim).

When Mr. al-Kidd was brought before the Magistrate Judge in Virginia, he was not appointed counsel. He explained to the Court that he had always cooperated with the FBI, would continue to cooperate and did not understand why the FBI had arrested him given his prior cooperation. The Magistrate Judge stated that although he was entitled to a release hearing in Virginia, he might be "better served" going to Idaho for the hearing, at which point the government attorney represented that Mr. al-Kidd would be brought to Idaho "as quickly as possible." Acting without counsel, Mr. al-Kidd acquiesced to the Magistrate Judge's suggestion and agreed to have the hearing in Idaho. Pl. Facts ¶ 42. The fact that it took the government so long to transfer him to Idaho simply cannot be attributed to Mr. al-Kidd. Indeed, not only did the government delay the transfer from Virginia for another seven days, it also first brought him to an Oklahoma detention center where he was subjected to harsh conditions, including two strip searches within 24 hours. *See al-Kidd v. Sugrue*, No. CIV-06-1133-R, 2007 WL 2446750, at *8 (W.D. Okla. Aug. 23, 2007) (holding that Mr. al-Kidd's clearly established Fourth Amendment rights were violated because warden "could not have reasonably believed in 2003" that strip-searches and body cavity inspections of "a material witness detainee such as the Plaintiff . . . did not violate the law").

ARGUMENT

I. NEITHER PROSECUTORIAL IMMUNITY NOR THE DISCRETIONARY FUNCTION EXCEPTION SHIELDS THE UNITED STATES FROM LIABILITY.

Defendant's initial argument is that both the FTCA claims should be dismissed because the United States is either (a) entitled to absolute prosecutorial immunity, or (b)

shielded by the discretionary function exception to the FTCA. Both arguments are incorrect.

A. Defendant's Assertion Of Prosecutorial Immunity Is Meritless.

Defendant's FTCA liability is focused on actions taken by law enforcement agents: gathering facts to support probable cause for a warrant, and swearing to those facts in support of the warrant application. The Supreme Court has squarely held that neither of these functions is covered by prosecutorial immunity. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 274 (1993) (gathering evidence to establish probable cause); *Malley v. Briggs*, 475 U.S. 335, 340-41 (1986) (swearing to facts in affidavit in support of arrest warrant application). In fact, Defendant does not cite—and Plaintiff has not found—a single case extending prosecutorial immunity to a *law enforcement* officer for procuring an arrest warrant—and certainly not a material witness warrant.

Ultimately, Defendant appears to recognize that courts have not afforded police officers absolute *prosecutorial* immunity. Defendant attempts to shoehorn this case into the prosecutorial box by stating that the warrant application was submitted by AUSA Lindquist. But that theory proves too much. All material witness warrants—indeed, virtually all federal arrest and search warrants—are technically sought by a prosecutor. If Defendant's novel theory were correct, it would mean that police officers would always be entitled to absolute prosecutorial immunity.[2]

[2] Extending absolute *prosecutorial* immunity to cover a *law enforcement* officer would be particularly inappropriate in a case like the instant one. Agent Gneckow not only requested that a material witness warrant be sought, but also gave Lindquist incomplete information regarding impracticability. Pl. Facts ¶ 38, Pl. Ex. 2, Gneckow Dep. 201 ("So you didn't provide [Lindquist] with additional facts beyond those in the affidavit? A. Right.").

Notably, even actual prosecutors are not entitled to absolute immunity where they *swear to facts*, as Mace and Gneckow did here in the affidavit. *See Kalina v. Fletcher*, 522 U.S. 118, 131 (1997) (prosecutor was not protected by absolute immunity for "personally attesting to the truth of the averments" in a certification of probable cause). Moreover, the fact that AUSA Lindquist reviewed the agents' affidavit cannot be the basis for extending absolute immunity to the agents' actions. In fact, as the Ninth Circuit recently made clear in an *en banc* decision, a law enforcement officer is not entitled even to *qualified* immunity simply because a prosecutor signed off on the warrant. *See Millender v. County of Los Angeles*, 620 F.3d 1016, 1034 (9th Cir. 2010) (*en banc*) ("[A] neutral magistrate's approval (and, a fortiori, a non-neutral prosecutor's) cannot absolve an officer of liability."), *cert. granted*, 131 S. Ct. 2057 (2011).[3]

In sum, the United States' liability in this case is premised on the actions of its FBI agents. There is thus no conceivable ground for affording the United States absolute *prosecutorial* immunity.

B. The Discretionary Function Exception Does Not Apply In This Case.

Defendant's "discretionary function" argument was made at the motion to dismiss stage and was based on the very same case on which Defendant now largely relies, *General Dynamics Corp. v. United States*, 139 F.3d 1280, 1283 (9th Cir. 1998). This

[3] Significantly, as the Supreme Court and Ninth Circuit made clear, it is not evident that AUSA Lindquist would receive absolute prosecutorial immunity even if he had not sworn to facts and had merely submitted the warrant application. The Supreme Court in this case specifically declined to decide whether a prosecutor has absolute immunity for the act of seeking a material witness warrant. *Al-Kidd*, 131 S. Ct. at 2085; *see also al-Kidd v. Ashcroft*, 580 F.3d 949, 963 (9th Cir. 2009) ("We hold . . . that when a prosecutor seeks a material witness warrant in order to investigate or preemptively detain a suspect, rather than to secure his testimony at another's trial, the prosecutor is entitled at most to qualified, rather than absolute, immunity."), *overruled on other grounds*.

Court expressly rejected the argument. *See* Mem. Order 14 (Dkt. No. 78) (discussing *General Dynamics*). As this Court explained, the discretionary function exception does not shield the United States from liability for the act of *unlawfully* seeking a warrant. *See* Mem. Order 15-16 (Dkt. No. 78); *see also Galvin v. Hay*, 374 F.3d 739, 758 & n.13 (9th Cir. 2004) (holding that discretionary function does not apply where officials "violate constitutional rights or federal statutes" or "exceed the scope of . . . [their] authority") (internal quotation marks and citations omitted); *Nurse v. United States*, 226 F.3d 996, 1002 (9th Cir. 2000) ("Governmental conduct cannot be discretionary if it violates a legal mandate."); *cf. El Badrawi v. Dep't of Homeland Sec*., 579 F. Supp. 2d 249, 275 (D. Conn. 2008) ("[I]f El Badrawi succeeds in proving his false arrest/false imprisonment claim, he will have succeeded in showing that the defendants acted unconstitutionally. . . . The discretionary functions exception does not bar El Badrawi's FTCA claims.").

Defendant nonetheless argues that the discretionary function exception applies because seeking a warrant involves a "policy" judgment about what facts to include in the affidavit and whether to seek the warrant at all. But drafting a factual affidavit in support of a warrant is not the type of "policy" judgment with which the discretionary function exception is concerned. *Whisnant v. United States*, 400 F.3d 1177, 1181 (9th Cir. 2005) (explaining that the discretionary function exception applies to "social, economic, or political policy" considerations).

Agents may have discretion whether to seek a material witness warrant once probable cause is established. But they certainly do not have policy discretion to seek an arrest warrant *without* probable cause. A law enforcement officer has a non-discretionary duty to comply with the material witness statute and Fourth Amendment's probable cause

requirement, and clearly may not make a "policy" judgment to withhold accurate, material facts from the Magistrate Judge.[4]

Defendant also argues that because AUSA Lindquist reviewed and officially submitted the warrant, the discretionary function exception should apply. But as discussed above in Section I.A, Defendant cannot avoid liability for its agents' factual affidavit by shifting the focus onto the AUSA. A material witness warrant will always be officially submitted by an AUSA. That does not relieve the agents of the responsibility to comply with the probable cause requirements of the statute and the Fourth Amendment, or of their obligation to supply all of the available material information in an accurate manner.

In short, the discretionary function exception is designed to shield true "policy" decisions. As this Court previously held, the discretionary function does not relieve the United States and its agents from complying with a "legal mandate." Mem. Order 15 (Dkt. No. 78).

II. MR. AL-KIDD IS ENTITLED TO SUMMARY JUDGMENT, AND THE GOVERNMENT'S MOTION SHOULD BE DENIED, AS TO HIS FALSE IMPRISONMENT CLAIM BECAUSE PROBABLE CAUSE WAS LACKING FOR HIS ARREST.

[4] Defendant's reliance on *General Dynamics* is thus misplaced, as that case involved whether to bring a prosecution. Defendant also cites a few district court cases, *see* U.S. Br. 5, but none involved a material witness warrant. Moreover, all but one of Defendant's cases (*Casillas v. United States*, No. 07-395, 2009 WL 735193 (D. Ariz. Feb. 11, 2009)) are old decisions from outside of this Circuit, and *Casillas* does not even cite the Ninth Circuit's controlling decision in *Galvin*, 374 F.3d at 758 & n.13. As this Court made clear in denying Defendant's motion to dismiss, *Galvin* rejects the idea that the United States can take refuge in the discretionary function exception where an official "violates the constitution or a statute." Mem. Order 15 (Dkt. No. 78) (discretionary function does not excuse violation of a "legal mandate").

The FTCA specifically permits the government to be held liable for false imprisonment when such a claim arises out of the acts or omissions of federal officers. *See* 28 U.S.C. § 2680(h); *Galvin*, 374 F.3d at 741-42; *see also El Badrawi v. United States*, 787 F. Supp. 2d 204, 229-30 (D. Conn. 2011) (granting summary judgment to plaintiff on FTCA false imprisonment claim).

This Court has previously set forth the standard for making out a FTCA false imprisonment claim: a person must unlawfully restrain the physical liberty of another without adequate legal justification or without probable cause. Mem. Order 5 (Dkt. No. 78) (citing *Clark v. Alloway*, 170 P.2d 425, 428 (Idaho 1946)). In denying the United States' motion to dismiss, the Court concluded that Plaintiff had alleged sufficient facts to satisfy this standard. The remaining question is therefore factual: whether the arrest warrant was supported by probable cause. Mem. Order 7, 9 (Dkt. No. 78); *see also Sprague v. City of Burley*, 710 P.2d 566, 574 (Idaho 1985).[5]

[5] The United States contends that it cannot be held liable for false imprisonment, and should be given a form of immunity, because its officers simply executed a warrant issued by a magistrate and there was nothing irregular in the process of issuing that warrant. But the United States unsuccessfully made this identical legal argument in its motion to dismiss in this case. As this Court correctly held in rejecting that argument, Plaintiff's case is based on the actions of the officers who *procured* the warrant and who are alleged, among other things, to have omitted material information from the affidavit; Plaintiff's case is *not* based on the act of simply *executing* the warrant (which was done by officers in Virginia who did not work on the al-Kidd matter, *see* Pl. Facts ¶¶14-15; Pl. Ex. 2, Gneckow Dep. 189-92, and who thus had no reason to know whether or not the warrant established probable cause). *See* Mem. Order 6 (Dkt. No. 78) (noting the protection of a facially valid warrant "is limited to when the officer is not involved in the procurement of the warrant"); *see also Bender v. City of Seattle*, 664 P.2d 492, 499-500 (Wash. 1983) (explaining that where an officer *procures* a warrant, immunity is not proper because the officer "is in a position to control the flow of information to the magistrate" and "should not be allowed to 'cleanse' the transaction by supplying only those facts favorable to the issuance of a warrant").

The government's reliance on *Hansen v. Lowe*, 100 P.2d 51 (Idaho 1940), is thus misplaced. U.S. Br. 15. In direct contrast to this case, *Hansen* involved officers who

A. There Was No Probable Cause To Believe That It Would Be Impracticable To Secure Mr. al-Kidd's Testimony By Subpoena.

The affidavit on which Mr. al-Kidd's arrest warrant was based consisted of only three sentences directly pertaining to whether Mr. al-Kidd's testimony could be secured voluntarily or by subpoena, without the need for arrest:

> Kidd is scheduled to take a one-way, first class flight (costing approximately $5,000.00) to Saudi Arabia on Sunday, March 16, 2003, at approximately 6:00 EST. He is scheduled to fly from Dulles International Airport to JFK International Airport in New York and then to Saudi Arabia.
>
> * * *
>
> It is believed that if Al-Kidd travels to Saudi Arabia, the United States Government will be unable to secure his presence at trial via subpoena.

Pl. Facts ¶ 25 (citing Pl. Ex. 1, Pl. Docs 2038). Defendants thus sought to establish impracticability based on nothing more than their assertion that Mr. al-Kidd was taking a trip without a return ticket and was flying first-class. Those facts were untrue, as the government now concedes. *See infra* at 11-12. But even if true, no reasonable officer could have viewed the affidavit as sufficient in light of the Ninth Circuit's longstanding interpretation of the material witness statute.

In *Bacon v. United States,* 449 F.2d 933 (9th Cir. 1971), the Ninth Circuit ruled that the FBI had failed to establish probable cause of flight risk—despite the fact that the witness had "access to large sums of money," had "personal contact with fugitives from justice," and had fled to an "adjoining rooftop" when the FBI sought her arrest. *Id.* at

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executed—but did not procure—the warrant. *Hansen*, 100 P.2d at 56 (providing immunity for officers who executed seemingly valid warrants because it is not realistic for them "to examine into the merits of the case and every step taken by the officers who issued process"). Indeed, in rejecting the United States' motion to dismiss, this Court expressly pointed to *Hansen* to show why the government's theory was incorrect in a case where, as here, the officers were the ones who procured the warrant. Mem. Order 6-7 (Dkt. No. 78).

944-45. The Court emphasized that the witness's access to large sums of money was "at best remotely relevant to her possible recalcitrance." *Id.* at 944. The Court discounted the importance of the money, even in conjunction with the fact that the witness had personal contacts with fugitives, explaining that it "at most tends to show that *if* Bacon wished to flee, she might be able to do so successfully. It does not support the conclusion that she would be *likely* to flee or go underground." *Id.* (emphasis in original).

The Court also concluded that the witness's capture on the adjoining rooftop did not establish flight risk. Significantly, the Court did not dispute that an "inference can be drawn that Bacon wished to avoid apprehension" by fleeing when the FBI came to arrest her at her home. *Id.* at 944. But the Court refused to draw the "further inference" that the witness would not have complied with a subpoena to testify. *Id*.

In *Arnsberg v. United States,* 757 F.2d 971 (9th Cir. 1985), the officers obtained a warrant only *after* having made several attempts to subpoena the witness—looking for him at work and his home, calling his friends, and twice leaving a subpoena with his employees—*and after* the witness said he would not testify voluntarily. *Id.* at 974. The Ninth Circuit nonetheless concluded that the arrest was invalid, stating that the facts "only show a man somewhat obstinately insisting upon his right to refuse to appear before a grand jury until personally served." *Id*. at 976-77. *See also Mayfield v. Gonzales,* 2005 WL 1801679, at *9 (D. Or. July 28, 2005) (applying *Bacon,* denying defendants' motions, and permitting discovery on what information was known to agents who submitted warrant regarding "flight risk" for witness); *Perkins v. Click,* 148 F. Supp. 2d 1177, 1183 (D. N.M. 2001) (finding no probable cause of flight risk where witness

had ties to the community and "made no indication to any officer that she would be a reluctant witness").

Under these precedents, no reasonable officer could have assumed that the affidavit in this case—even on its face—contained sufficient facts of impracticability. After discovery, it is even clearer that probable cause of impracticability was lacking.

Omissions

1. The complaint alleged, and discovery now shows, the following material omissions from the affidavit.

First, and critically, the affidavit wholly failed to mention that the FBI had asked Mr. al-Kidd to meet and submit to questioning on multiple occasions, and that Mr. al-Kidd had *never* failed to appear at one of these meetings (which took place at his mother's house, where Mr. al-Kidd was living at the time). Pl. Facts ¶¶ 8, 34.

Second, although the agents were aware that Mr. al-Kidd was a native-born U.S. citizen, they omitted it from the affidavit. Pl. Facts ¶ 31(a). The affidavit also intentionally omitted the known facts that Mr. al-Kidd had U.S. citizen family-members in the United States. Pl. Facts ¶ 31(b). The affidavit likewise omitted to mention that Mr. al-Kidd had longstanding ties to Idaho and was a former football player and graduate of the University of Idaho, even though the agents were aware of these facts. Pl. Facts ¶ 31(a). The government thus allowed the Magistrate Judge to assume that Mr. al-Kidd was simply a Saudi national returning home, who lacked any significant ties to the United States or Idaho.

Third, the FBI never told Mr. al-Kidd not to travel or to contact the FBI if he intended to travel. Pl. Facts ¶¶ 23, 31(e). Nor did the FBI tell Mr. al-Kidd he might be needed as a witness. *Id.* Mr. al-Kidd, moreover, had heard nothing from the FBI for over

eight months before his arrest. Pl. Facts ¶¶ 9, 31(d). All of these facts were known to the agents, yet were omitted from the affidavit.

As shown below, the affidavit also contained reckless or intentional false statements concerning Mr. al-Kidd's plane ticket. But even if the false statements were not corrected, the affidavit would not have established probable cause given the omissions discussed above. In arguing otherwise, Defendant is remarkably claiming that a material witness arrest is permissible simply because the witness has a one-way ticket to Saudi Arabia—even if he is a native-born U.S. citizen with substantial ties to the community, has never been told not to travel or that he may be needed at some future time, and has shown up to *every* pre-arranged meeting with the FBI whenever he was asked. If that extraordinary position were accepted, it would mean that *any* U.S. citizen could be arrested merely for taking a trip on a one-way ticket to a country without an extradition treaty—regardless of the citizen's prior cooperation with the government and ties to the United States, no matter how innocent the trip, and regardless of the fact that the citizen was never told not to travel.

Notably, Defendant does not address these omissions in its discussion of impracticability. U.S. Br. 14-16. But these omissions were plainly material and would have given Magistrate Judge Williams a complete and accurate picture of why probable cause was lacking.

False Statements

The affidavit was also false. It stated that Mr. al-Kidd had a one-way, first class ticket costing approximately $5,000. Defendant admits that these statements were incorrect and that Mr. al-Kidd had a roundtrip, coach-class ticket costing approximately $1,700. Pl. Facts ¶ 25; U.S. Br. 15 n.6.

Defendant contends, however, that the misrepresentations regarding Mr. al-Kidd's airline ticket were of little importance. Defendant argues that the only meaningful fact was that Mr. al-Kidd was flying to Saudi Arabia on a ticket without a scheduled return date—not whether he was traveling on a one-way, first-class ticket costing roughly $5,000, or as it turned out, a round-trip, coach ticket costing roughly $1,700. U.S. Br. 16. Yet, in the entire affidavit, there were only four sentences that specifically addressed flight risk, *see* Pl. Facts ¶25 (citing Pl. Ex. 1, Pl. Docs 2038), and *the agents* chose to include those details about the ticket. It defies reality to assume that experienced FBI agents included those details for no reason—especially after September 11th.[6]

B. There Was No Probable Cause To Believe That Plaintiff Had Material Testimony.

The affidavit stated that Mr. al-Kidd's testimony was "crucial" to the government's case. Yet it never precisely explained what information Mr. al-Kidd possessed that was germane to the charges against Al-Hussayen (and, in fact, Mr. al-Kidd was never called as a witness). Pl. Facts ¶ 44. Instead, the affidavit contained largely irrelevant information or statements attempting to cast Mr. al-Kidd in a suspicious light.

The government claims that because Mr. al-Kidd worked at same charity as Al-Hussayen, he would have had information relating to the visa and false statement charges against Al-Hussayen. But the affidavit submitted to the Court never explained why that would be so—or even stated that Mr. al-Kidd worked at the same charity. While the

[6] Defendant also appears to suggest that agent Gneckow lacked any responsibility for the mistakes. But discovery has revealed that agent Gneckow never asked to see documentation of Mr. al-Kidd's travel plans—even though he was made aware of confusion surrounding the details of the ticket. Pl. Facts ¶¶ 27-30. Moreover, agent Gneckow cannot shift responsibility to other agents. Upon being told about Mr. al-Kidd's flight plans by agent Alvarez, agent Gneckow told agent Alvarez that he would "t[ake] [it] upon [him]self" to follow up and verify the information. Pl. Facts ¶ 29.

affidavit mentions "Al-Multaqa," for example, the Al-Hussayen indictment pending at the time of al-Kidd's arrest contained no mention of Al-Multaqa. Pl. Facts ¶ 36. Instead, the affidavit provided a bunch of disparate facts that simply left the Magistrate in the position of having to *assume* that Mr. al-Kidd had something material to offer at the trial.

Moreover, even if the affidavit had explained why Mr. al-Kidd's testimony was potentially material to the visa-related charges pending against Al-Hussayen, that would plainly not have been sufficient to satisfy the statute, which must be construed to comply with the Fourth Amendment. The Fourth Amendment permits only "reasonable" arrests. U.S. Const. amend. IV. It is draconian enough to allow the arrest of an uncharged and innocent U.S. citizen—even where the witness may have critical and dispositive information about a serious crime. But neither the Fourth Amendment nor the statute can permit such an arrest where the government is vaguely claiming that the witness has potentially relevant evidence and that potentially relevant evidence is clearly cumulative and unnecessary for the government to prove the charges. Here, there is little question Mr. al-Kidd's testimony was not necessary given all of the other information (including documentary evidence) the government possessed about Al-Hussayen's employment and activities. Pl. Facts ¶ 37.

Indeed, if the material witness statute did not contain the proportionality requirement dictated by the Fourth Amendment's reasonableness provision, the government could routinely arrest multiple people to provide cumulative testimony for even a non-serious offense. For example, if the government had seven people lined up to testify to accounting fraud in a large company, it is inconceivable that the material witness statute or the Fourth Amendment would permit the government to arrest an

eighth person to provide cumulative testimony simply because that person was travelling to Saudi Arabia or China or some other country without an extradition treaty.

As both the Ninth Circuit and several Supreme Court Justices in this case noted, the material witness statute's compliance with the Fourth Amendment has never squarely been upheld. *Al-Kidd v. Ashcroft*, 580 F.3d 949, 965-66 (9th Cir. 2009); *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2085-86 (2011) (Kennedy, J., concurring); *see also infra* Section III.B. But even assuming the statute is constitutional on its face, it must be interpreted in a manner consistent with the Fourth Amendment's reasonableness clause. *See al-Kidd*, 131 S. Ct. at 2086 (Kennedy, J., concurring). That cannot mean that the statute allows the arrest of an innocent and cooperative American merely because he potentially has material information in the barest sense of that term. And, not surprisingly, the government itself understands this point and has issued guidelines defining a "material witness" as one who has "significant" information about a criminal prosecution that is "necessary" to resolve the matter. DOJ Bureau of Justice Statistics, *Compendium of Federal Justice Statistics* 124 (2003), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cfjs03.pdf.

III. PLAINTIFF SHOULD BE GRANTED SUMMARY JUDGMENT ON HIS ABUSE OF PROCESS CLAIM, AND DEFENDANT'S MOTION SHOULD BE DENIED.

In its Order denying the United States' motion to dismiss, the Court set forth the elements of an abuse of process claim: "'(1) an ulterior, improper purpose; and (2) a willful act in the use of process not proper in the regular conduct of the proceeding.'"

Mem. Order 12-13 (Dkt. No. 78) (quoting *Beco Constr. Co., Inc. v. City of Idaho Falls*, 865 P.2d 950, 954 (Id. 1993)).[7]

There are two related reasons why there was an abuse of process in this case. First, the United States, through its agents, used the material witness statute not to secure testimony, but to preventively detain and investigate Mr. al-Kidd. *See infra* Section III.A. Second, even if the purpose of Mr. al-Kidd's arrest had in fact been to obtain his testimony, there would have been an abuse of process, because the material witness statute may not constitutionally be used to arrest a *cooperative* witness. *See infra* Section III.B.

A. There Was An Abuse Of Process Because Mr. al-Kidd Was Arrested For Investigative Reasons And Not Solely To Secure His Testimony.

Assuming the material witness statute is constitutional, it may be used only to secure testimony. Defendant does not dispute that point. Defendant contends, however, that there was no abuse of process because Mr. al-Kidd was viewed "solely" as a witness and that his arrest was for the "sole" purpose of obtaining his testimony for the Al-

[7] Defendant now belatedly attempts to redefine the legal standard set forth by this Court. First, Defendant suggests the plaintiff must show the defendant's "primar[y]" purpose was improper. U.S. Br. 20. The Idaho Supreme Court has never so held; in *Beco*, it held simply that "*an* ulterior, improper purpose" was needed. 865 P.2d at 954 (emphasis added). Defendant also asserts that there must be a "threat or some form of extortion[]." U.S. Br. 22 (internal quotation marks omitted). But the Idaho Supreme Court has never suggested that abuse of process involves such a narrow, rigid inquiry; nor do the secondary authorities on which Defendant relies. *See* Restatement (Second) of Torts § 682; *Prosser and Keeton on the Law of Torts* § 121 at 898. Indeed, the Third Circuit recently rejected an identical argument, explaining that the secondary authorities mention extortion simply to illustrate "the classic example" of abuse of process. *Gen. Refractories Co. v. Fireman's Fund Ins. Co*., 337 F.3d 297, 305-06 (3d Cir. 2003) (internal quotation marks and citation omitted). What is required—as this Court has already held—is simply a willful act to use the process for the improper end. The procurement of the material witness warrant, the execution of that warrant, and the post-arrest interrogations and extended detention of Plaintiff undoubtedly constitute such "willful acts."

Hussayen trial. U.S. Br. 17, 20. Yet the government's only support for its position is the self-serving testimony of its own agents about what they were thinking at the time. *Id*. 19-20. In contrast, all of the relevant *objective* evidence in the record conclusively undermines the government's position—including documents obtained during discovery showing Mr. al-Kidd was the subject of an investigation until 2004, well after his arrest. Eight pieces of evidence are especially relevant:

First, numerous documents obtained during discovery dispel any possible doubt that Mr. al-Kidd was the subject of an investigation the time of his arrest, and was not viewed solely as a witness. These documents—the dates of which range from 2002 to 2004—are the FBI's own investigation sheets and memoranda. The documents specifically and unambiguously list Mr. al-Kidd himself as one of the *subjects* of a terrorism investigation. *See* Pl. Facts ¶¶ 3-7.

Second, within days of Mr. al-Kidd's arrest, FBI Director Mueller appeared before Congress and testified about a number of the government's recent "major successes" in combating terrorism and gave various examples. The first example was the capture of Khalid Shaikh Mohammed, alleged to be the "mastermind" of the September 11 attacks and now held at Guantanamo Bay. The next example was the arrest of Mr. al-Kidd. Director Mueller then listed three additional examples, all involving individuals who had been *charged* with terrorism-related offenses. Unbelievably, the Director's testimony did not mention that Mr. al-Kidd had been arrested only as a witness, and not on criminal charges. Instead, he stated:

> I am pleased to report that our efforts have yielded major successes over the past 17 months. Over 212 suspected terrorists have been charged with crimes, 108 of whom have been convicted to date. Some are well-known—including Zacarias

> Moussaoui, John Walker Lindh and Richard Reid. But, let me give you just a few recent examples:
>
> In March, Khalid Shaikh Mohammed was located by Pakistani officials and is in custody of the U.S. at an undisclosed location. Mr. Mohammed was a key planner and the mastermind of the September 11th attack. . . .
>
> On March 16, Abdullah al-Kidd, a U.S. native and former University of Idaho football player, was arrested by the FBI at Dulles International Airport en route to Saudi Arabia. The FBI arrested three other men in the Idaho probe in recent weeks. And the FBI is examining links between the Idaho men and purported charities and individuals in six other jurisdictions across the country.

See Pl. Facts ¶ 17 (citing Pl. Ex. 1, Pl. Docs 3-4; Pl. Ex. 21).

Remarkably, the government stated in discovery that not only does Director Mueller have no recollection of this testimony, but that *no one* at the Department of Justice—past or present—has *any* knowledge about who drafted the al-Kidd passage or how it made its way into the Director's congressional testimony in discovery. Pl. Facts ¶ 17. The government could not even produce prior drafts of the Director's testimony. But leaving all that aside, if Mr. al-Kidd genuinely had been viewed by the FBI as a witness, and not as a suspect, it is inconceivable that Director Mueller would have told the U.S. Congress that Mr. al-Kidd's arrest was one of the government's world-wide "major successes," listing his arrest as second in importance only to Khalid Shaikh Mohammed, without ever mentioning that Mr. al-Kidd had been arrested only on a material witness warrant.

Third, although Mr. al-Kidd had never failed to meet with the FBI, he was arrested without ever being served with a subpoena, postpone his trip, or relinquish his passport. Pl. Facts ¶¶ 8, 23, 31(f)-(g). That fact is particularly striking given that another Al-Hussayen witness who was seeking to travel to Saudi Arabia *was* given the opportunity to relinquish his passport and was not arrested as a material witness—even

though that witness was actually a Saudi national, and not a U.S. citizen like Mr. al-Kidd. Pl. Facts ¶ 45. The FBI's decision to arrest Mr. al-Kidd under these circumstances strongly suggests that the government wanted him detained and not simply to postpone his trip.

Fourth, the manner in which Mr. al-Kidd was treated after his arrest also strongly shows that the government did not view him primarily as a witness. Immediately after his arrest, Mr. al-Kidd was interrogated at Dulles Airport—with agent Gneckow's knowledge and consent—by two local FBI "terrorism agents." Pl. Facts ¶ 15; Pl. Ex. 2, Gneckow Dep. 190. The agents seized numerous items from Mr. al-Kidd (including his laptop computer) and questioned him extensively (without counsel) about his *own* religious beliefs, his personal opinions on various Islamic organizations, the purpose of his previous visit to Yemen, and the contents of his luggage. Pl. Facts ¶ 15. Yet if Mr. al-Kidd were truly being arrested solely as a witness in the Al-Hussayen matter, there would have been little need for this type of interrogation; rather, he would simply have been given an opportunity to surrender his passport, postpone his trip, or otherwise ensure his availability for trial. At worst, he would have been afforded a prompt detention hearing and told he was needed as a witness. Yet, by arresting him, the government was able to detain and investigate him about his own activities.

Fifth, following his interrogation at Dulles Airport, Mr. al-Kidd was incarcerated under harsh conditions, including repeated strip-searches and full shackling—conditions utterly inconsistent with the government's position that the FBI viewed him merely as a witness. Pl. Facts ¶¶ 18-20. As Justice Ginsburg stated in this case, there is no "even

arguably legitimate basis" for subjecting a presumptively innocent witness to such "harsh custodial conditions." *Al-Kidd*, 131 S. Ct. at 2089 (Ginsburg, J., concurring).

Sixth, after the arrest, the FBI drafted a search warrant affidavit seeking permission to examine the contents of Mr. al-Kidd's laptop computer, stating that it might yield "evidence" of criminal activity "as to . . . al-Kidd." Pl. Facts ¶ 16. Although the search warrant was never submitted to a Magistrate, it leaves little doubt that, at the time of Mr. al-Kidd's arrest, the FBI still viewed him as more than a witness and was still actively contemplating the possibility that Mr. al-Kidd himself could be linked to terrorist activity.

Seventh, in opposing Mr. al-Kidd's release, the government took the position that Mr. al-Kidd was "dangerous." Pl. Facts ¶ 43. As a legal matter, it is clear that dangerousness is not one of the factors that should be considered where the detainee is a witness. *See* S.Rep. No. 98–225, at 28 n.100 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3211 (legislative history of Bail Act) ("Of course a material witness is not to be detained on the basis of dangerousness."). The government did not state that Mr. al-Kidd had a criminal history or point to any specific action taken by Mr. al-Kidd that would suggest he was a danger to the community. Yet the government still took the position that he was dangerous to the community, a position that could only have been based on the FBI's view that he was not simply a *witness*.

Eighth, the government not only failed to call Mr. al-Kidd as a witness at the Al-Hussayen trial, but did not even move to have Mr. al-Kidd released from his draconian release restrictions—even though Mr. al-Kidd had labored under those restrictions for close to fourteen months at the time of the trial's conclusion. Pl. Facts ¶¶ 22, 46.

Instead, Mr. al-Kidd had to move for his release himself. Pl. Facts ¶ 47. Why the government would not have promptly released him upon the trial's conclusion is inexplicable, unless the government did not view him solely as a witness and wanted to keep him under the restrictions.

Defendant attempts to dismiss the significance of some of these individual points, but its piecemeal arguments fail to take into account their cumulative impact. *See United States v. Esparza*, 546 F.2d 841, 844 (9th Cir. 1976). Moreover, even as to the individual facts, Defendant's arguments are flawed.

For instance, Defendant seeks to dismiss the significance of Director Mueller's testimony by noting that it occurred a few days after Mr. al-Kidd's arrest. *See* U.S. Br. 21 n.10. But that fact has little bearing on Plaintiff's point; that the testimony revealed that the FBI did not actually view Mr. al-Kidd as a witness.

Defendant also perplexingly suggests that Director Mueller's testimony is immaterial because there is no evidence that he or any other national official personally authorized the arrest of Mr. al-Kidd. U.S. Br. 21 n.10. That argument is patently flawed. As an initial matter, the facts create a dispute about the extent of national DOJ's involvement, given that Headquarters was routinely advised about the status of the al-Kidd and Al-Hussayen investigations. Pl. Facts ¶¶ 6-7. But, in any event, even if no one at national DOJ played any direct role, that simply means that they are not liable personally as supervisors. It is wholly irrelevant to the point that Plaintiff is making here: that Mueller's testimony shows that the government viewed Mr. al-Kidd as more than a mere witness, even if Director Mueller had no personal involvement in his arrest, interrogation, and unlawful conditions of confinement.

Defendant further argues that the United States cannot be held liable for the conditions under which Mr. al-Kidd was confined. But that argument also misses the point. As Justice Ginsburg noted, the way he was treated and the conditions under which he was held after his arrest are certainly indicative of how the government viewed him. *Al-Kidd*, 131 S. Ct. at 2089 (Ginsburg, J., concurring) ("[E]ven if the initial material witness classification had been proper, what even arguably legitimate basis could there be for the harsh custodial conditions to which al-Kidd was subjected[?]"). Mr. al-Kidd was interrogated by the FBI, shackled, repeatedly strip-searched, and held in high-security conditions. Pl. Facts ¶¶ 15, 18-21. This treatment is not consistent with Defendant's contention that Mr. al-Kidd was detained as a witness.

Finally, Defendant draws a line between so-called intelligence investigations and criminal investigations, *see* U.S. Facts ¶¶ 1-3, and seems to suggest that this line is relevant to whether an abuse of process occurred here. *See* U.S. Br. 20. Specifically, the government admits, as it must, that Mr. al-Kidd was the subject of a terrorism "intelligence" investigation, U.S. Facts ¶¶ 8-9; this investigation continued well after Mr. al-Kidd's arrest, until at least 2004. *See* Pl. Facts ¶ 5 (citing Pl. Ex. 2., Gneckow Dep. 55-57; Pl. Ex. 3, Cleary Dep. 109-10). The government also admits, as it must, that Mr. al-Kidd was the subject of a "criminal" investigation between 2001 and 2002. Pl. Facts ¶ 5 (citing Pl. Ex. 5 at 2724). Defendant suggests, however, that although Mr. al-Kidd remained the subject of an intelligence investigation until at least 2004, he suddenly stopped being a criminal suspect around 2002—though, tellingly, none of the government witnesses could pinpoint the date. *See* U.S. Br. 20; Pl. Facts ¶ 5. According to the

government, this means that Mr. al-Kidd was viewed solely as a witness and that there was therefore no abuse of process.

Defendant's argument is legally and factually flawed. First, and dispositively, even assuming that Mr. al-Kidd was no longer a *criminal* suspect at the time of his arrest, but only the subject of an intelligence investigation, his arrest was still an abuse of the material witness statute. Indeed, the government cannot seriously argue that it may not use the material witness statute for the purpose of arresting a criminal suspect, but *may* use the statute's arrest powers for investigative purposes. As this Court made clear in its prior orders, the statute may only be used to secure testimony. Mem. Order 15 (Dkt No. 78). Moreover, as a factual matter, Defendant ignores that there was a blurry line, at best, between the FBI's intelligence and criminal investigations after September 11th, 2001; in fact, the FBI merged its intelligence and criminal investigations at some point in 2002 or 2003, thereby formally eliminating the distinction for counterterrorism investigations. Pl. Facts ¶ 6.[8]

In sum, Defendant has offered no objective evidence to support its contention that Mr. al-Kidd was viewed solely as a witness. Here, all of the objective documentation

[8] Even if it were somehow relevant whether Mr. al-Kidd was technically viewed as the subject of a "criminal" or "intelligence" investigation, there is ample evidence—ignored by Defendant—that he was in fact viewed as a criminal suspect at the time of his arrest. Among many other things, there is (i) a document showing that agent Gneckow sent Mr. al-Kidd's name to the U.S. Attorney's office for that office to evaluate whether there was sufficient evidence to indict him, Pl. Facts ¶ 5 (citing Pl. Ex. A, U.S. Docs 666 (filed under seal)); (ii) documents listing Mr. al-Kidd on the subject line of the *criminal* investigation related to Al-Hussayen, Pl. Facts ¶ 5 (citing Pl. Ex. 5, U.S. Docs 3002-03, 3007); (iii) Director Mueller's testimony labeling Mr. al-Kidd's arrest one of the FBI's great "successes," lumping Mr. al-Kidd together with the arrests of others who had actually been *charged* with terrorism offenses, Pl. Facts ¶ 17; and (iv) the FBI's draft search warrant averring that Mr. al-Kidd's computer might reveal evidence with which to charge Mr. al-Kidd with the *criminal* offense of providing Material Support to Terrorism under 18 U.S.C. §2339B. Pl. Facts ¶ 16.

shows that Mr. al-Kidd was not in fact viewed as a witness. Summary judgment for Plaintiff is therefore proper. At a minimum, there is a genuine dispute of fact regarding the purpose for which the government sought Mr. al-Kidd's arrest. In light of the ample record evidence discussed above, a reasonable fact-finder could certainly conclude that the government arrested Mr. al-Kidd for the improper purpose of investigating and preventively detaining him. That is all that is needed to defeat Defendant's summary judgment motion. *See Espinosa v. City and County of San Francisco*, 598 F.3d 528, 537 (9th Cir. 2010) ("[T]his court has often held that in police misconduct cases, summary judgment should only be granted 'sparingly' because such cases often turn on credibility determinations by a jury."); *accord Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (*en banc*).

B. There Was An Abuse Of Process Because The Material Witness Statute May Not Constitutionally Be Used To Arrest A Cooperative Witness.

The material witness statute permits an arrest only where the government can establish probable cause that it would be "impracticable" to secure the witness's testimony by subpoena. But like all statutes, it must be interpreted against constitutional norms, here the Fourth Amendment. Neither the Ninth Circuit nor the Supreme Court has ever addressed whether the material witness statute is consistent with the Fourth Amendment. *See al-Kidd v. Ashcroft*, 580 F.3d 949, 966-67 & n.15 (9th Cir. 2010) ("The Supreme Court has never held that detention of innocent persons as material witnesses is permissible under the Fourth Amendment . . . ."); *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2086 (2011) (Kennedy, J., concurring) ("Given the difficulty of these issues, the Court is correct to address only the legal theory put before it, without further exploring when

material witness arrests might be consistent with statutory and constitutional requirements.").

There are two prongs to the Fourth Amendment. The "Warrant Clause" allows an arrest based on a judicial warrant "issue[d] . . . upon probable cause." U.S. Const. amend. IV. But the term probable cause has historically been understood in the Fourth Amendment to mean probable cause of guilt. *See, e.g., Brinegar v. United States*, 338 U.S. 160, 175 (1949) ("The substance of all the definitions of probable cause is a reasonable ground for belief *of guilt*.") (internal quotation marks omitted).

Under the other clause of the Fourth Amendment, an arrest is permitted without a judicial warrant provided that the arrest is not "unreasonable." U.S. Const. amend. IV. But insofar as the material witness statute allows the arrest of a U.S. citizen who has never affirmatively refused to be available, the statute is not reasonable. Thus, as Justice Kennedy noted in his *al-Kidd* concurrence, it is far from clear that the material witness statute satisfies either clause of the Fourth Amendment. *See al-Kidd*, 131 S. Ct. at 2086 (Kennedy, J., concurring).

Significantly, the first material witness statute allowed the arrest of a witness only where the witness *affirmatively* refused to testify—a limitation that is hardly surprising, since the statute gives the government the extraordinary power to arrest a wholly innocent and uncharged person. *See* First Judiciary Act, ch. 20, § 33, 1 Stat. 73, 91 (1789). Consistent with its common law origins, the 1789 statute was exceedingly limited, authorizing imprisonment only where a witness *refused* to give his "recognizance[]," or promise, to testify. *Id.* The 1789 statute simply provided that a witness could be ordered to promise to appear and testify. As long as he agreed to do so,

he could not be detained; in fact, the statute did not even authorize the magistrate to require a bond or surety from the witness. *See* Br. of Amici Curiae Legal History and Criminal Procedure Law Professors in Support of Respondent at *10, *Ashcroft v. al-Kidd,* 131 S. Ct. 2074 (2011) (No. 10-98), 2011 WL 317147 (explaining that under the 1789 statute, "detention was used only when witnesses refused to offer a recognizance or provide a reasonable surety"). As contemporaneous enactments, the Fourth Amendment and the First Judiciary Act must be read together, and together they confirm that the only seizure of a witness that is "reasonable" under the Constitution is the seizure of an uncooperative witness.

Although the current material witness statute uses the term "impracticable," it must be understood against this historical backdrop and be limited to situations where the witness has been uncooperative. Otherwise, the statute would permit—in direct contravention of the Fourth Amendment—the arrest of someone (like Mr. al-Kidd) who has done nothing wrong and, indeed, has never once refused to meet with the government when requested to do so.

CONCLUSION

The Court should grant Plaintiff summary judgment on his FTCA false imprisonment and abuse of process claims. Alternatively, the Court should deny Defendant's motion for summary judgment in its entirety.

Dated: December 21, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of December, 2011, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	Case No. 1:05-cv-093-EJL-MHW PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT UNITED STATES

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1. Abdullah al-Kidd is a U.S. citizen born in 1972 in Wichita, Kansas. Ex. 1, Pl. Docs 448. His mother, father, sister, and children are all native-born U.S. citizens who reside in the United States. *Id*.
2. Al-Kidd graduated from the University of Idaho, where he played on the football team. Ex. 1, Pl. Docs 448. He converted to Islam before graduating. *Id*.
3. Following September 11, 2001, the FBI began a terrorism investigation in Idaho. Ex. 2, Gneckow Dep. 216; *see also* Ex. 1, Pl. Docs 4. This included a Joint Terrorism Task Force investigation into al-Kidd, Ex. 2, Gneckow Dep. 54-57; Ex. 3, Cleary Dep. 21, 109-12, including surveillance of him and his then-wife (which indicated no illegality). Ex. 1, Pl. Docs 2400-24; Ex. 3, Cleary Dep. 121, 125-26.
4. The FBI had al-Kidd's name added to the Treasury Enforcement and Communication System (TECS) database, with a "lookout" to track his international travel. Ex. 4, Alvarez Dep. 18-19. *See also* Ex. 3, Cleary Dep. 118; Ex. 22, NCIC Printout (FBI added al-Kidd's name to the Violent Gang and Terrorist Organization File).
5. Al-Kidd was the subject of an intelligence investigation from December 2001 until at least 2004. *See* Ex. 2, Gneckow Dep. 55-57; Ex. 3, Cleary Dep. 109-10. He was also a co-subject in the criminal investigation of Sami Al-Hussayen, a graduate student at the University of Idaho. Ex. 5, U.S. Docs 2724, 3002-03, 3007; *see also* Ex. 2, Gneckow Dep. 45-46 ("a possible co-subject" has not been "ruled out definitively" from criminal suspicion); Ex. 6, Mace Dep. 73 (equating "subject" with "suspect"). The FBI Agent sent al-Kidd's name as a proposed "defendant[]" to the U.S. Attorney's office to evaluate him for potential prosecution. Ex. A, U.S. Docs 666 (filed under seal); *see also* Ex. 7, Lindquist Dep. 53.

6. "Intelligence" and "criminal" investigations worked in tandem; both types of investigations could lead to criminal charges. *See* Ex. 8, Dezihan Dep. 51-53, 82-83 (intelligence and criminal formally merged in 2002), 114-15, 161-62 (FBI shared periodic updates with U.S. Attorney's Office); Ex. 2, Gneckow Dep. 17; Ex. 3, Cleary Dep. 18, 30.
7. FBI Headquarters received updates and provided guidance on al-Kidd's investigation. *See* Ex. 8, Dezihan Dep. 85-86, 102, 104, 106; Ex. 2, Gneckow Dep. 23-24 (headquarters was kept informed of terrorism investigations); Ex. 5, U.S. Docs 2724-26 (electronic communication sent to headquarters).
8. The FBI asked to meet with al-Kidd twice. Ex. 2, Gneckow Dep. 63; Ex. 3, Cleary Dep. 147, 173. Both times, al-Kidd voluntarily met with FBI Agent Joseph Cleary in his mother's home and answered questions at length; al-Kidd never missed one of these meetings. Ex. 3, Cleary Dep. 170-71, 173-74, 179-81. Cleary found al-Kidd "cooperative" and agreed that he "volunteered a lot of information." *Id*. 174, 181.
9. After the second interview, Cleary asked if he could contact al-Kidd again, and al-Kidd agreed. Ex. 3, Cleary Dep. 174-75. However, neither Cleary nor any other FBI agent ever followed up to request another interview. *Id.* Eight months passed between the last meeting and al-Kidd's arrest. *See* Ex. 16, Gneckow Resp. 1st ROG #10, 12 (al-Kidd's final pre-arrest interview was on July 3, 2002).
10. The FBI never told al-Kidd to keep his meetings with the FBI secret, nor told him not to talk to the press. Ex. 9, Gneckow Resp. 1st RFA #21; Ex. 2, Gneckow Dep. 199-200; Ex. 3, Cleary Dep. 176-78. Al-Kidd spoke with a reporter at one point for an article in which multiple law enforcement officials were also quoted. Ex. 20, Seattle Post-Intelligencer article.

11. In April 2002, al-Kidd applied to a university in Saudi Arabia to pursue language and religious studies. Ex. 10, al-Kidd Dep. 113, 118.

12. In late 2002, al-Kidd also began making plans to travel to Saudi Arabia for work. Ex. 10, al-Kidd Dep. 132-33 (al-Kidd applied to Berlitz in December 2002); Ex. 1, Pl. Docs 9-18 (Berlitz employment contract, signed January 2003), 26 (al-Kidd obtained a work visa).

13. In the first week of February 2003, al-Kidd learned that the university had accepted him and awarded him a scholarship, and he decided to accept. Ex. 10, al-Kidd Dep. 119. In February, he began the process of applying for a visa. *Id*. 120-21, 137; *see also* Ex. 5, U.S. Docs 98 (reservation monitoring printout showing al-Kidd's flight had a "visa" requirement); Ex. 11, Alvarado Dep. 229-30. The Saudi Cultural Mission paid for his plane ticket. Ex. 10, al-Kidd Dep. 125.

14. On March 16, 2003, while al-Kidd was checking in for his flight to Saudi Arabia at Dulles Airport in Virginia, he was arrested by FBI agents. Ex. 1, Pl. Docs 121-22.

15. The agents took al-Kidd to a police station in the airport and, with Gneckow's consent, interrogated him. Ex. 1, Pl. Docs 26; Ex. 2, Gneckow Dep. 189-92. They questioned him at length, without counsel, about numerous matters unrelated to Al-Hussayen's charges—including al-Kidd's own religious beliefs and opinions on various Islamic organizations, the purpose of his previous trip to Yemen, and the contents of his luggage. Ex. 1, Pl. Docs 26-31. The FBI agents searched al-Kidd's belongings, Ex. 5, U.S. Docs 2997, and seized numerous items, including his laptop. *Id*. 1982.

16. The FBI later drafted a search warrant application to search al-Kidd's laptop. Ex. B, U.S. Docs 1583 (filed under seal). The draft affidavit avers that al-Kidd's computer "contains . . .

evidence in support of Title 18 Section 2339(A) and or (B) (Providing material support to terrorism) *as to . . . al-Kidd*." Ex. 5, U.S. Docs 1583 (emphasis added) (filed under seal).

17. Within days of Plaintiff's arrest, FBI Director Robert Mueller testified before Congress that Plaintiff's arrest—along with that of Khalid Shaikh Mohammed, a "mastermind" of the September 11th attacks—as a "major success[]" in the government's anti-terrorism efforts. Ex. 1, Pl. Docs 3-4 (Testimony before House Subcommittee, Mar. 27, 2003); Ex. 21, Mueller Testimony before Senate Subcommittee (Apr. 10, 2003) (same). Director Mueller never mentioned that Plaintiff was arrested as a witness. The government has never been able to explain why Director Mueller's testimony highlighted Mr. al-Kidd. *See* Ex. 18, U.S. Resp. 4th RFA, #73-84 (FBI was unable to determine how al-Kidd came to be mentioned in Director Mueller's testimony).

18. Over the next 15 days, al-Kidd was incarcerated in three different facilities in Virginia, Oklahoma, and Idaho. Each time he was transferred, al-Kidd was shackled with handcuffs, leg restraints, and a belly chain. Ex. 13, Pl. Resp. 1st ROG #14; Ex. 1, Pl. Docs 123-24, 702-04; Ex. 14, *al-Kidd v. Sugrue*, No. 06-cv-1133, 2007 WL 2446750, at *1 (W.D. Okla. Aug. 23, 2007).

19. Al-Kidd was strip-searched multiple times over the course of his detention. Ex. 1, Pl. Docs 703-04, 2184; Ex. 13, Pl. Resp. 1st ROG #14; *see also* Ex. 14, *Sugrue* at *1. In Virginia, he was held under high-security conditions, often spending 22 to 23 hours a day in his cell. Ex. 1, Pl. Docs 122-23, 450, 2183; Ex. 13, Pl. Resp. 1st ROG #14.

20. In the detention center in Oklahoma, al-Kidd was made to remove his clothes and sit naked in view of other, fully clothed detainees. Ex. 1, Pl. Docs 2184; Ex. 14, *Sugrue* at *1.

21. While al-Kidd was incarcerated in Ada County Jail, Gneckow and Cleary questioned him. Ex. 2, Gneckow Dep. 63, 187-89; Ex. 3, Cleary Dep. 141.

22. On March 31, 2003, al-Kidd was released from detention, but was ordered to live with his wife and in-laws in Nevada and was prohibited from traveling outside of Nevada and three other states. Al-Kidd agreed to the conditions of release, including surrendering his passport. Ex. 5, U.S. Docs 1279-80 (detention hearing transcript); Ex. 1, Pl. Docs 1783.

23. Prior to al-Kidd's arrest, no FBI agent had ever told al-Kidd he could not leave the United States, or to contact the FBI before traveling. Ex. 15, U.S. Resp. 1st RFA #8-9. Nor had any FBI agent told al-Kidd his testimony might be needed, asked him to surrender his passport, or attempted to serve him with a subpoena. Ex. 15, U.S. Resp. 1st RFA #10-13; Ex. 2, Gneckow Dep. 198-99.

24. Al-Kidd was arrested on a material witness warrant issued in the case of Al-Hussayen. Agent Gneckow drafted the warrant affidavit. Ex. 2, Gneckow Dep. 165-66, 171-72. Gneckow did not know the legal standard for obtaining a material witness warrant, and had not received any training in obtaining material witness warrants. *Id*. 128.

25. The affidavit stated that al-Kidd was "scheduled to take a one-way, first class flight (costing approximately $5,000.00) to Saudi Arabia on Sunday, March 16, 2003 . . . ." Ex. 1, Pl. Docs 2038. But in fact, al-Kidd had a round-trip, coach-class ticket costing approximately $1,700. Ex. 5, U.S. Docs 3779. His ticket was open-ended, meaning that a return had been purchased but the date had not yet been scheduled. Ex. 2, Gneckow Dep. 183.

26. Gneckow learned of al-Kidd's travel plans on March 13, 2003, from an oral conversation with ICE officer Robert Alvarez. Ex. 2, Gneckow Dep. 135-36, 162-63, 170; Ex. 4, Alvarez

Dep. 31-32, 52. Gneckow and Alvarez worked in the same office. Ex. 2, Gneckow Dep. 135-36.

27. Alvarez did not know al-Kidd's exact departure date, but he gave Gneckow a range of possible departure dates. Ex. 2, Gneckow Dep. 174-75.

28. Gneckow did not inquire about the confusion regarding al-Kidd's departure date. Ex. 2, Gneckow Dep. 174-75. Nor did he ask to look at any paperwork showing al-Kidd's flight information. *Id*. 163, 173. Gneckow also did not attempt to find out the class of the ticket, or whether al-Kidd had purchased a return flight. *Id*. 169-70, 173-74. Gneckow made no attempt to find out when al-Kidd had made his travel plans or booked his ticket. Ex. 16, Gneckow Resp. 1st ROG #12; Ex. 2, Gneckow Dep. 149-50.

29. Although the flight information caused Gneckow "concern," he did not ask Alvarez "to do any follow-up research" about al-Kidd's travel plans or to show him any documents to verify the information. Instead, Gneckow "took [it] upon [him]self" to verify the information by calling an FBI agent stationed at Dulles Airport. Ex. 2, Gneckow Dep. 165-67.

30. Gneckow asked the FBI agent at Dulles Airport whether al-Kidd's name appeared on an upcoming flight manifest. Ex. 2, Gneckow Dep. 145-46. Gneckow did not ask the agent about the class of the ticket, the booking date, the price, or whether a return trip had been purchased. *Id*. 169-70, 174-75; Ex. 16, Gneckow Resp. 1st ROG #7, 12.

31. Gneckow also knowingly omitted numerous facts from the affidavit, including:

    (a) Al-Kidd is a native-born U.S. citizen and a graduate of the University of Idaho. *See supra* ¶¶1-2; Ex. 16, Gneckow Resp. 1st ROG #9; Ex. 9, Gneckow Resp. 1st RFA #1, 2; Ex. 2, Gneckow Dep. 156, 193; *see also* Ex. 6, Mace Dep. 36.

(b) Al-Kidd has U.S. citizen family members residing in the United States. *See supra* ¶1; Ex. 2, Gneckow Dep. 156, 193-94.

(c) Al-Kidd had voluntarily spoken to the FBI on multiple occasions prior to his arrest, and had never failed to attend one of these meetings. *See supra* ¶¶8-9; Ex. 16, Gneckow Resp. 1st ROG #10; Ex. 9, Gneckow Resp. 1st RFA #8.

(d) Prior to his arrest, al-Kidd had not heard from the FBI for more than eight months. *See supra*, ¶9; Ex. 16, Gneckow Resp. 1st ROG #10, 12; Ex. 2, Gneckow Dep. 149.

(e) The FBI never informed al-Kidd that his testimony might be needed in Al-Hussayen's trial, that he could not travel abroad, or that he should inform the FBI before traveling abroad. *See supra* ¶23; Ex. 9, Gneckow Resp. 1st RFA #9-11, 16-18.

(f) The FBI never asked al-Kidd if he would be willing to testify in Al-Hussayen's trial, voluntarily relinquish his passport, or postpone his trip to Saudi Arabia. *See supra* ¶23; Ex. 9, Gneckow Resp. 1st RFA #12-14, 19; Ex. 2, Gneckow Dep. 197-99.

(g) The FBI never attempted to contact al-Kidd or to subpoena his testimony after learning of his travel plans. Ex. 9, Gneckow Resp. 1st RFA #13, 14.

32. The affidavit stated that al-Kidd "and/or" his then-wife "received payments from Sami Omar Al-Hussayen and his associates in excess of $20,000." Ex. 1, Pl. Docs 2037. From 1999 to 2001, al-Kidd received salary for his work with a Muslim organization with which Al-Hussayen was affiliated, al-Multaqa. Ex. 10, al-Kidd Dep. 21, 82-83. Gneckow knew "well before" submitting the affidavit that the money al-Kidd received was his salary, Ex. 2, Gneckow Dep. 76, but omitted that fact from the affidavit.

33. Gneckow conceded he would not have sought a material witness warrant for a "cooperative businessman" with a one-way ticket to Saudi Arabia. Ex. 2, Gneckow Dep. 220.

34. At the time of the warrant application, Gneckow knew that al-Kidd had voluntarily spoken to the FBI on multiple occasions. Ex. 9, Gneckow Resp. 1st RFA #8. Gneckow had not been present at those interviews and had never met al-Kidd; his knowledge of the interviews was based solely on what he learned from Cleary. Ex. 2, Gneckow Dep. 62-65.

35. The affidavit also stated that al-Kidd had information "crucial" to the Al-Hussayen prosecution. Ex. 1, Pl. Docs 2038. In fact, al-Kidd had little knowledge of Al-Hussayen. Ex. 10, al-Kidd Dep. 159-61.

36. When asked what information al-Kidd had that could be relevant at trial, Gneckow testified that al-Kidd could "talk about" al-Multaqa and its website. Ex. 2, Gneckow Dep. 157-59. The Al-Hussayen indictment pending at the time of al-Kidd's arrest, however, did not mention either al-Multaqa or al-multaqa.com. Ex. 12, Indictment, *U.S. v. Al-Hussayen*, No. 3:03-cr-0048 (Dkt. #1).

37. Prosecutors on Al-Hussayen's case had obtained numerous of pages of documentary evidence about Al-Hussayen's activities, making al-Kidd's testimony redundant. See Ex. 2, Gneckow Dep. 54 (referencing bank records); Ex. 12, Indictment, *Al-Hussayen*, at ¶¶ 7-9, 11, 13, 15-21, 23 (referring to business records, emails, websites, and other documents) (Dkt. #1).

38. On or about March 13, 2003, Gneckow contacted AUSA Kim Lindquist and requested that the government seek the material witness warrant. Ex. 2, Gneckow Dep. 129, 170-71. Gneckow did not tell Lindquist any information that was not ultimately included in the affidavit. *Id*. 201.

39. Prior to contacting Lindquist, Gneckow had made no efforts to locate al-Kidd. Ex. 2, Gneckow Dep. 143. Nor did Gneckow recall what efforts were made to ascertain al-Kidd's

location after his conversation with Lindquist. *Id*. 143-44 (Gneckow could not recall whether he "ask[ed] someone to do a drive-by," "mak[e] a phone call," or take any other steps).

40. FBI Agent Scott Mace, who signed and submitted the affidavit, did not know the legal standard for obtaining a material witness warrant. Nor had he received any training in obtaining a material witness warrant. Ex. 6, Mace Dep. 14.

41. Mace did not know whether charges were pending against Al-Hussayen, what those charges were, or whether al-Kidd had testimony material to those charges. Ex. 6, Mace Dep. 48-50. He did not inquire into the materiality of al-Kidd's testimony or the impracticability of obtaining his testimony by subpoena, *see* Ex. 17, Mace Resp. 1st ROG #1, 13, but "took it on face value that what [Gneckow] was telling [him] was true." Ex. 6, Mace Dep. 17-18, 30-31. Mace appeared in court alongside AUSA George Breitsameter, who had no prior knowledge of al-Kidd or the Al-Hussayen case. *Id*. 19-21; Ex. 7, Lindquist Dep. 95-96.

42. On March 17, 2003, after his arrest, al-Kidd was brought before a judge in Virginia for a detention hearing. Al-Kidd was not afforded counsel at this hearing. Al-Kidd asked for his testimony to be "expedite[d]." Ex. 19, Hearing, *U.S. v. al-Kidd*, No. 03-94 at 2-3 (E.D. Va. Mar. 17, 2003). The judge stated that "the fastest way for you to get to Idaho and see the people that can . . . discuss why you were arrested" would be to "waive your right to a hearing here today," and consent to a transfer to Idaho. *Id.* at 3. The government attorney represented that the transfer would occur "as quickly as possible," and al-Kidd consented. *Id.* at 4. Yet the government delayed transferring al-Kidd until March 24. *See* Ex. 14, *Sugrue* at *1.

43. At al-Kidd's detention hearing in Idaho on March 25, 2003, the government opposed his release, contending that he was dangerous. Ex. 1, Pl. Docs 1795, 1797.

44. Al-Kidd was never called as a witness or deposed for Al-Hussayen's trial. Ex. 7, Lindquist Dep. 35, 101-02.

45. Another witness connected to the Al-Hussayen trial, a student named Saleh Al-Kraida, was served with a summons and asked to surrender his passport and postpone his travel. Ex. 12, Summons, *Al-Hussayen* (Dkt. #205); Minutes & Order, *Al-Hussayen* (Dkt. #259, #260). Al-Kraida was a Saudi national, had plans to leave the United States, and had already vacated his student housing. *See* Ex. 12, Aff., *Al-Hussayen* ¶¶ 6(a), 6(q), 11 (Dkt. #203). At no point was Al-Kraida or any other witness besides al-Kidd arrested in connection with Al-Hussayen's trial. Ex. 2, Gneckow Dep. 211.

46. On June 10, 2004, a jury acquitted Al-Hussayen of material support charges (which had been added in a superseding indictment) and failed to reach a verdict on the visa fraud and false statement charges. Ex. 12, Jury Verdict, *Al-Hussayen* (Dkt. #671).

47. The government did not move to have al-Kidd's restrictions lifted, leaving al-Kidd to file a motion himself. Ex. 12, Motion, *Al-Hussayen* (Dkt. #665). The Court granted the motion on June 16, 2004. Ex. 12, Order, *Al-Hussayen* (Dkt. #680).

Respectfully submitted,

/s/_____
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TABLE OF EXHIBITS

Exhibit 21. Testimony of FBI Director Robert Mueller before Senate Subcommittee (Apr. 10, 2003)

Exhibit 22. NCIC Document

Exhibit 23. Deposition of FBI Special Agent Robert Davis

Exhibit A. Filed Separately Under Seal

Exhibit B. Filed Separately Under Seal

Exhibit 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CV:05-093-S-EJL
	)	
ALBERTO GONZALES, Attorney General of the United States, et al.,	)	
	)	
Defendants.	)	

The deposition of ABDULLAH AL-KIDD, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before Lisa R. Lisit, a Notary Public within and for the County of Cook and State of Illinois, and a Certified Shorthand Reporter of said State, taken at 219 South Dearborn Street, Suite 500, Chicago, Illinois, on the 11th day of December, 2007, at the hour of 9:35 a.m.

A. Between 1999 and 2002, I was inconsistent.
Q. Why were you inconsistent?
A. I didn't have the money all the time.
Q. Why did you not have the money?
A. Because I had very little means.
Q. Why did you very little means?
A. I was paid very little, and there was a portion of time that I had nearly almost nothing.
Q. Were you working during this time period?
A. Yes.
Q. Where were you working?
A. I worked for al-Multaqa from 1999 to 2001.
Q. When did you stop working at al-Multaqa?
A. August of 2001.
Q. What did you do from August of 2001 to the point in time in 2002, when you were still not making or unable to make payments?
A. Can you repeat your question?
Q. Sure. Sure. You said the period of time when you were inconsistent was from 1999 to 2002. And you just said that you worked at al-Multaqa -- al-Multaqa?
A. That's fine.

What do you mean you were given a blank check by a multimillionaire?

A. A person offered to invest in my project.

Q. And did you accept that offer?

A. No, I did not.

Q. Why not?

A. Because I didn't want to become this famous music mogul.

Q. Why did you not want to become that person?

A. Because that's not my goal in life.

Q. What is your goal in life?

A. To be a good human being.

Q. And so did you inform this multimillionaire -- presumably you informed this multimillionaire that you were not going to accept the offer; is that correct?

A. I just didn't answer any phone calls.

Q. And when was this period that you weren't answering any phone calls?

A. In these months prior to August '99.

Q. So are we talking about June and July?

A. June and July, mm-hmm.

Q. So did you just -- strike that.

So you started to work at al-Multaqa in I

think -- I just want to clarify -- September of '99?

A. It was in August of '99.

Q. That you moved to Moscow and started working there?

A. Right.

Q. And how long did you work there?

A. Up until August of 2001.

Q. And then you went to Yemen; is that correct?

A. Yes.

Q. And you were in Yemen until April of '02; is that right?

A. Yes.

Q. You came back from Yemen, and what did you do in terms of employment?

A. Probably in late June or July I got a job at YouthCare.

Q. So you were looking for employment from -- strike that.

Were you actively seeking employment from April of 2002 to June or July of '02?

A. Yes, I was.

Q. And in what field, what areas of employment were you looking?

home I have no money.
Q. Where does all your money go?
A. It goes to bills -- electricity, that's behind. Heat bill, that's behind -- my basic necessities.
Q. I think I understand now. I'm just trying to clarify.
So you had that period where you had no income --
A. I had no income.
Q. -- and you had bills that accumulated?
A. Yes.
Q. And you are now paying off those bills?
A. Yes.
Q. Okay. That makes sense.
What was the purpose -- you had planned to go to Saudi Arabia in March of 2003, correct?
A. Yes.
Q. What was the purpose of that trip?
A. I wanted to study Islamic law.
Q. And you had a scholarship at a university; is that correct?
A. Yes.
Q. And was that scholarship specifically to study Islamic law at a particular university?

A. Yes.

Q. How long were those studies going to last?

A. When you mean "studies," what do you mean?

Q. Your study of Islamic law. Was there a program? Was there a set time period for that program?

A. Well, it's a university just like any university. I would have been first in the language program, but there's a semester break.

I would have returned to the United States and then returned back to Saudi Arabia and then entered into the semester.

Q. Was there any specific time period? Was it a two-year program? A three-year program?

A. Well, the Arabic program is a two-year program which -- yes, the Arabic program is a two-year program. And then after that, you enter into the university.

Q. So by "Arabic program," do you mean study of Arabic language?

A. Yeah, in the university everything is taught in the Arabic language so you have to go through the Arabic course before you can enter into

correct?

A. Yes.

Q. What was the plan in terms of Saadia?

A. In terms of what?

Q. Well, you're looking at an extended period in Saudi Arabia. What was Saadia going to do during this time?

A. She was going to join me.

Q. So what was the plan in terms of her joining you?

A. After I left she was to join me in one month.

Q. When did you learn that Saadia was pregnant with Zainab?

A. When I was in Ada County.

Q. You mean when you were detained at the Ada County facility?

A. Yes, sir.

Q. Who made the arrangements for your scholarship at -- strike that.

At what university in Saudi Arabia were you going to study?

A. A university called Umm al-Qora University. That's U-m-m a-l, dash, Q-o-r-a University.

Q. Umm al-Qora?
A. Mm-hmm.
Q. Who made arrangements for you to obtain a scholarship from Umm al-Qora?
MR. GELERNT: Vague.
You can answer.
BY THE WITNESS:
A. I applied to get a scholarship.
Q. To the university?
A. Yes.
Q. When did you apply?
A. I applied for -- at which particular time?
Q. That's the question. When did you apply?
A. I have applied at the university more than one time.
Q. When was the first time?
A. The first time was in 1999.
Q. And what happened?
A. I was denied.
Q. Why?
A. I don't know.
Q. You just received a denial letter? Is that all that --
A. I don't recall getting a denial letter.

I had no response.

Q. So do you know for a fact that you were denied or are you assuming that you were denied?

A. I know that I was denied.

Q. How do you know that?

A. Because I know an individual that worked at the university.

Q. Who is that individual?

A. His name is Hulayl al-Omairy, H-u-l-a-y-l, a-l, dash, O-m-a-i-r-y.

Q. When was the second time you applied to Umm al-Qora?

A. In April of 2002.

Q. And were you accepted -- I'm sorry. What happened?

A. Nothing. I just applied.

Q. So were you accepted or rejected? Do you know?

A. No, it doesn't happen like that.

Q. Maybe that's what I'm -- so how does it happen?

A. I mean, I submitted my application and I had to wait until they gave me a response.

Q. And did you ever receive a response?

A. Yes, I did.

Q. And what was the response?
A. That I was accepted.
Q. When did you receive that response?
A. I received that response in the first -- approximately the first week of February of 2003.
Q. Other than these two instances, have you ever applied to Umm al-Qora?
A. No.
Q. Now, in addition to when you applied to attend the university in both instances, did you also have to apply for a scholarship?
A. If you're accepted they give you a scholarship.
Q. Where were you going to live in Saudi Arabia?
A. They have housing. They provide housing.
Q. "They" being the university?
A. Yes.
Q. So were you going to live on the university or in some type of housing that the university paid for?
A. Yes.
Q. So you were not going to have any housing costs?

A. No.
Q. What about Saadia? Where was she going to live?
A. With me.
Q. Had she booked a flight to go to Saudi Arabia?
A. No, not yet.
Q. Why not?
A. Because the plan was that I was to get there and get settled and contact the university that my family was coming so I could get into the family housing.
Q. Was the university going to pay for her travel?
A. No.
Q. What was her parents' view of this plan for her to go to Saudi Arabia?
A. They at first were apprehensive about it because it came out of -- you know, it was kind of sudden.
Q. Why was it sudden?
A. Because the letter came to me in the first part of February, and in the letter it told me that I had, if I'm not mistaken, about two weeks to begin the process of, you know, the visa

application process and so forth.

Q. Did they know that you had applied to study in Saudi Arabia? Her parents?

A. Yes, I told them.

Q. And what was their reaction?

A. There was no reaction.

Q. Were they supportive?

A. Oh, yes, when I -- yes.

Q. Were they happy for you?

MR. GELERNT: Happy that he applied?

MR. MEEKS: Were they happy for him that he had applied.

BY THE WITNESS:

A. Or happy for me that I got accepted?

Q. I'm talking about the application.

A. Oh, I'm sorry. I didn't tell them about the application. I'm sorry. I misunderstood you.

Q. So you did not tell Saadia's parents that you had applied?

A. No, and what I had told them is that I had applied for jobs in Saudi Arabia.

Q. Why did you not tell them that you had applied for this?

A. Because that was so up in the air that it was not something solid or even remotely solid

attend mosque as often as you did or services at a mosque as often as you did?

A. We attended together.

Q. Did you ever attend apart?

A. Well, if I was outside of the home like at work and I had the ability to stop at the mosque during prayer, I would do so.

Q. Did they pray as often as you did?

A. I wasn't keeping track of their prayer.

Q. Who paid for your flight arrangements to Saudi Arabia?

A. The Saudi Cultural Mission.

Q. And that is located where?

A. In Washington, D.C., I believe, or in Virginia, in the surrounding area.

Q. The Saudi Cultural Mission -- is that what you said?

A. Yes.

Q. -- is that a government agency?

A. Yes, it's part of the embassy -- Saudi Embassy.

Q. Did they book your ticket for you?

A. No, I booked it -- excuse me. I'm sorry. What do you mean by "booked"?

Q. I mean who actually picked up the phone

February?

A. Because prior to the acceptance letter, I was actually offered a job to work in Saudi Arabia.

Q. What job were you offered?

A. I was offered to teach ESL at Dar al-Kibbrah which is a school of the Berlitz language out of Jersey.

Q. I thought earlier you testified you had not made arrangements to teach ESL in Saudi Arabia?

A. I don't recall saying that.

Q. Well, let's just talk about that for a moment. So the Berlitz Language Institute, you had made arrangements with them to teach ESL in Saudi Arabia; is that correct?

A. Yes, sir.

Q. When were those arrangements made?

A. I applied in December, and shortly -- I think at the end of December and shortly after that, they offered me a position.

Q. December of 2002?

A. Yes.

Q. And so were you planning to go to Saudi Arabia to take this position?

A. At that particular time, I was excited about the opportunity to teach in I think -- yeah,

I started to prepare for that.

Q. Were you planning to go to Saudi Arabia to teach ESL at the Berlitz school regardless of whether you received a scholarship or admittance to Umm al-Qora University?

A. As I stated before, actually Umm al-Qora University was not even in my mind at this particular time. Too much time had passed from the time that I had put the application in so it wasn't even in the framework in the late part of December, early part of January.

Q. When did you apply to Berlitz to teach ESL?

A. As I best recall, it was at the end of December.

Q. And was that specifically to teach ESL in Saudi Arabia?

A. Yes.

Q. Had you told Saadia's parents that you had sought this employment?

A. That I sought this employment?

Q. That you applied.

A. I don't recall telling them.

Q. Why not?

A. Why I don't recall?

A. From the time that I had finalized the process of the paperwork and visa and so on and so forth.

Q. So what visa requirements did you have to fulfill?

A. The things I stated before in regards to the background check and the medical testing.

Q. You submitted that to the Saudi Cultural Mission?

A. Yes.

Q. And then they would then make arrangements for you to get some type of visa then?

A. Yes.

Q. Do you remember when you sent that paperwork to the Saudi Cultural Mission?

A. It was probably -- I started that process -- as I stated before, I got the letter in the first part of February. And since I had already started the process for the job, a lot of the same things applied so I would say within the second and third week of February I had sent all that stuff in to the cultural mission.

Q. When did you receive a visa from them?

A. It would have probably been the last -- the last week of February or the first week

A. At different places.
Q. Within one state? Within the state of Washington or outside?
A. Outside -- sometimes outside the state of Washington.
Q. And then you went to work for al-Multaqa after that again?
A. Between -- I worked for three months in 1994 consistently. After that -- which was in the summer.
After that time of that summer, I didn't do anything for al-Multaqa other than work the youth camps up until 1999, as I best recall.
Q. And then in 1999 --
A. After 1999, I worked as like a full-time role.
Q. And that was from '99 until --
A. -- August 2001 --
Q. -- when you left for Yemen, correct?
A. Yes.
Q. And what did you do at al-Multaqa -- al-Multaqa?
A. al-Multaqa, yes.
Q. -- al-Multaqa? And what did you do during this time period?

A. In which time period?
Q. 1999 to August of 2001.
A. I arranged the English library. I made labels for tapes. I made labels for tape albums. I designed a couple book covers that were never used.
I used to speak at universities, churches, synagogues to represent Islam. That was pretty much my role.
Q. From '94 to 99, when you attended the youth camp, were you paid or was that as a volunteer?
A. I was paid for the three months, but after that I was a volunteer.
Q. For the three months, were you referring to the 1994 time period?
A. Yes.
Q. Was al-Multaqa located in Moscow, Idaho at that time -- I'm sorry. Where was it located at that time in 1994?
A. Seattle, Washington.
Q. But then, when you went to work in 1999, it was in Moscow; is that correct?
A. Yes, sir.
Q. They just moved operations -- or why did

surrounding area for a while so I met all of the new people to the area.

Q. Did Sami Omar al-Hussayen have a title at al-Multaqa --

A. At which particular time?

Q. -- a connection to al-Multaqa?

A. At which time are you speaking?

Q. 1991 to 2001, during that period.

A. To my general understanding, yes.

Q. What was your understanding of his connection?

A. He was one of the people doing work for the al-Multaqa.

Q. Do you know what kind of work he was doing?

A. In August of 1999, no, I did not.

Q. At any point from August of -- did you start working there in August of '99?

A. Yes.

Q. At any time from August '99 to August 2001, do you know what he was doing for al-Multaqa?

A. He was -- did a lot of logistics. There was a newsletter, an Arabic newsletter that, to the best of my understanding -- because again, you

know, I didn't really -- I knew Sami. I saw him, but our interaction was very limited -- but from what I understood, he was one of the people that worked on this newsletter.

And he did -- like I said, he did a lot of logistics, a lot of administrative things.

Q. Would you describe your relationship with him as professional or personal or both?

A. It was not personal. I couldn't classify it as professional.

Q. How would you classify it?

A. I mean, it was just -- there seemed to be -- I don't really know how to explain this, but there seemed to be some kind of barrier between us.

Q. Can you -- okay. What do you mean by that?

A. I mean, it just -- you know, I actually rarely even saw Sami. He was pretty much -- he was seen on Fridays in the mosque, but for the most part he was in his home or in his office. He was not a person that was easily accessible.

Q. And when you say "office," do you mean his office at al-Multaqa?

A. No.

Q. What do you mean, "his office"?

A. On campus.

Q. When did you learn that Sami al-Hussayen had been arrested?

A. I found out via a thread on the Internet approximately probably the last week of February.

Q. When you say "a thread on the Internet," what do you mean?

A. Well, I went to, you know, one of the Internet Web -- I don't know -- one of the news sites.

You know, sometimes when you click open -- I'm not saying this is how I did it, but you know, when you click on Google it might have a couple lines. If you open up your Yahoo mail account, it might have a few lines. It was something like that.

Q. Do you recall what your reaction was when you learned that he had been arrested?

A. I was surprised.

Q. Why were you surprised?

A. Because I was surprised that, you know, Sami was arrested. It wasn't -- I certainly didn't expect him to be arrested.

Q. Did you talk to anyone about the fact that he had been arrested?

CERTIFICATE

I, LISA R. LISIT, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, ABDULLAH AL-KIDD, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the testimony given by the foregoing witness.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 26th day of December, 2007.

LISA R. LISIT, CSR, RPR
Notary Public, Cook County, Illinois

C.S.R. No. 084-004297

Exhibit 11

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
Case No. CV:05-093-S-EJL

ABDULLAH AL-KIDD,

Plaintiff,

vs.

ALBERTO GONZALES, Attorney General
of the United States, et al.,

Defendants.

DEPOSITION OF JAIME A. ALVARADO

New York, New York

Wednesday, November 7, 2007

Reported by:

Toni Allegrucci

JOB NO. 198421

Q. Okay. I'm actually asking about the line above that, the one that begins T-K-D-E.

A. No, not 100 percent. I would be guessing. I'm not 100 percent on that, I don't know.

Q. So then the line after that you said that did mean something to you?

A. Some airlines put the nationality of the passenger there.

Q. And so from this you gather that Mr. Al-Kidd was?

A. That this particular subject was a U.S. national.

Q. So do you know what AP fax means at the beginning of that line?

A. No.

Q. Or OSI SV?

A. No.

Q. Okay. And then on the last line, can you tell me what that means?

A. I can only tell you that it says "passenger advised Visa requirement." I guess they have to have a Visa to get into

that country.

Q. Into?

A. Saudi Arabia.

Q. So after you determined that Mr. Al-Kidd was the subject of a text record and the subject of a JTTF investigation you printed out this sheet?

A. Right.

Q. Okay.

MR. JADWAT: I'm going to give the reporter a document Bates stamped US 99 to be marked.

(Plaintiff's Exhibit 7, document, marked for identification, as of this date.)

Q. Again, I'm going to ask you to focus on what's underneath the handwriting on this page, okay?

A. Um-hm.

Q. What is this page?

A. As I mentioned to you before, some airlines have different type of reservation systems, this particular one the history is so short. That is the history that you are

Q. Any questions at all.

A. No, I was the one feeding him the information about the reservation.

Q. So he didn't ask you to follow-up on any of the information you gave him?

A. All this information was turned over to my deputy, because remember, I didn't work, I think I was off both days, Saturday and Sunday, so he was advised, my deputy, to keep track.

Q. Right. But you did have a phone call with Alvarez on Friday?

A. Probably. I don't recall.

Q. Okay. In either of those phone conversations, did you tell Mr. Alvarez that Mr. Al-Kidd definitely did not have a ticket for a return flight?

A. No, I never told him that.

Q. Can you turn back please to Exhibit 6. This is your handwriting on this exhibit; is that correct?

A. Yes.

Q. Well, actually, before I ask you about the exhibit, do you recall whether you

the reservation?

A. No.

Q. So in either of the conversations that you had with Mr. Alvarez, did you definitively tell him that Mr. Al-Kidd had a one-way ticket?

A. I might have mentioned it to him, that there was one-way ticket, that the reservation didn't show the return. In certain cases the agent would say do you know if he is coming back, then I would say yeah, he has a return ticket on this and this and this date.

I might have said to him it looks like it's a one-way ticket, there's no date.

Q. But you certainly did not tell him as you said before, did you not tell him that there's no return?

A. I can't remember that. I might have I wrote it down. And if he did get a copy of that he had to read it one-way ticket. Again, it was my personal information anyway.

Q. Right. And you had an

C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, Toni Allegrucci, a Notary Public within and for the State of New York, do hereby certify:

That JAIME A. ALVARADO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of November, 2007.

_____

TONI ALLEGRUCCI

Exhibit 12

[THOMAS E. MOSS
UNITED STATES ATTORNEY
KIM R. LINDQUIST
ASSISTANT UNITED STATES ATTORNEY
TERRY L. DERDEN
FIRST ASSISTANT UNITED STATES ATTORNEY
and CRIMINAL CHIEF
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. SAMI OMAR AL-HUSSAYEN, Defendant.	Cr. No. [redacted] C-EJL INDICTMENT (Vio. 18 U.S.C. 1546(a); 1001(a)(1) and (2), 3237 and 3238)

THE GRAND JURY CHARGES:

At all times pertinent to this Indictment:

VISA FRAUD AND FALSE STATEMENT

The Student Visas

Background

1. In order for a foreign student to study in the United States on an F-1 student visa

the student must declare and promise under oath to United States authorities that the student seeks a presence in the United States **solely for the purpose of pursuing the student's course of studies**. In relation thereto, the foreign student must truthfully and fully declare his associations with organizations to the appropriate United States Government authorities in order for those authorities to evaluate any such association and related activities in relation to the interests of the United States.

2. **SAMI OMAR AL-HUSSAYEN** was a citizen of Saudi Arabia. Between about August 7, 1994 and September 23, 1998, **AL-HUSSAYEN** studied in the United States as a foreign student. He studied at Ball State University in Muncie, Indiana, where he obtained a Masters of Science degree in computer science; and at Southern Methodist University in Dallas, Texas.

3. On or about September 23, 1998, **AL-HUSSAYEN** applied to the University of Idaho at Moscow, Idaho, by submitting an International Application Form requesting that he be admitted to the Computer Science PhD program for the Spring 1999 Semester.

4. In or about January, 1999, **AL-HUSSAYEN** was admitted to the Computer Science PhD program at the University of Idaho, with an emphasis on computer security and intrusion techniques. University of Idaho records indicated that he began his studies the Spring 1999 Semester. At the time he published his permanent address as 311 Sweet Ave., Apt. #6, Moscow, Idaho.

The year 1999 transactions

5. On or about May 17, 1999, United States Immigration and Nationalization (INS) Form I-20 was issued by the University of Idaho, allowing **AL-HUSSAYEN** to study in the Computer Science PhD program beginning no later than August 24, 1999, and ending no later than December 17, 2004.

6. On or about July 17, 1999, while outside the United States, **AL-HUSSAYEN** signed the Student Certification of the INS Form I-20 at section #11, which read in pertinent part:

> I have read and agreed to comply with the terms and conditions of my admission. . . . I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, **and solely for the purpose of pursuing a full course of study at [the University of Idaho].** I also authorize the named school to release any information from my records which is needed. [Emphasis added.]

AL-HUSSAYEN falsely made said certification, knowing of his internet and business activities alleged hereafter. On or about July 20, 1999, the United States Government issued an F-1 student visa to **AL-HUSSAYEN** at Riyadh, Saudi Arabia. The visa was valid for twenty-four months, or until July 20, 2001. (See Counts One and Two hereafter.)

7. On or about August 11, 1999, **AL-HUSSAYEN** was admitted by the United States Government into the United States at John F. Kennedy International Airport in New York City, New York, as an F-1 student. **AL-HUSSAYEN** was admitted into the United States by the United States Government pursuant to the July 20, 1999 visa and in direct reliance upon **AL-HUSSAYEN's** certification on the INS Form I-20 dated July 17, 1999. (See Count Three hereafter.)

The year 2000 transactions

8. On or about July 7, 2000, a second INS Form I-20 was issued by the University of Idaho and designated "for Continued attendance at this school" and in order "to add dependant." On or about this same day and in Moscow, Idaho, **AL-HUSSAYEN** signed the Student Certification of said INS Form I-20 at section #11 and which read in pertinent part:

> I have read and agreed to comply with the terms and conditions of my admission. . . . I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, **and solely for the purpose of pursuing a full course of study at [the University of Idaho].** I also authorize the named school to release any information from my records which is needed. [Emphasis added.]

AL-HUSSAYEN falsely made said certification, knowing of his internet and business activities alleged hereafter. (See Counts Four and Five hereafter.) On or about July 9, 2000,

AL-HUSSAYEN departed from the United States at the John F. Kennedy International Airport in New York City, New York.

9. On or about August 25, 2000, **AL-HUSSAYEN** was admitted into the United States by the United States Government at Washington, D.C., as an F-1 student. **AL-HUSSAYEN** was admitted into the United States by the United States Government pursuant to the student visa dated July 20, 1999 as previously referenced and in reliance upon **AL-HUSSAYEN's** certification on the INS Form I-20 dated July 7, 2000. (See Count Six hereafter.)

The year 2002 transactions

10. On or about January 10, 2002, **AL-HUSSAYEN** departed the United States at the John F. Kennedy International Airport in New York City, New York. On or about January 13, 2002, **AL-HUSSAYEN** signed and submitted to the United States embassy a DOS Form DS-156 for the purpose of obtaining another F-1 student visa. Section 36 of the form reads in pertinent part:

> I certify that I have read and understand all the questions set forth in this application and the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the United States. I understand that possession of a visa does not automatically entitle the bearer to enter the United States of America upon arrival at a port of entry if he or she is found inadmissable.

At section nineteen of the Form DS-156, **AL-HUSSAYEN** stated that the purpose of his entry into the United States was to "study;" and, at section twenty-six, that he would do so at the University of Idaho. At section 20 he stated his permanent address in the United States to be 311 Sweet Ave. #6, Moscow, Idaho, 83843. As part of his application for the F-1 student visa, **AL-HUSSAYEN** relied upon and/or submitted the INS Form I-20 dated July 7, 2000, as previously referenced.

11. On or about January 14, 2002, the DOS Form DS-156 was formally stamped as received by the United States Government at the United States Embassy in Riyadh, Kingdom of Saudi Arabia. However, the application was refused because the birth date of **AL-**

HUSSAYEN on the visa application and the July 7, 2000 INS Form I-20 did not match the birth date on his passport.

12. On or about January 14, 2002, and in conjunction with the same F-1 student visa application, **AL-HUSSAYEN** submitted a DOS Form DS-157 Supplemental Non-immigrant Visa Application to the United States Government at the United States Embassy in Riyadh, Kingdom of Saudi Arabia, which DOS Form DS-157 was attached to the original DOS Form DS-156 submitted on January 14, 2002. Section 13 of the DOS Form DS-157 required the applicant to "[l]ist all Professional, Social, Charitable Organizations to Which You Belong (Belonged) or Contribute (Contributed) or with Which You Work (Have Worked)." **AL-HUSSAYEN** listed "ACM & IEEE." ("ACM" stands for the Association for Computive Machinery, and "IEEE" stands for the Institute of Electrical and Electronic Engineers.) **AL-HUSSAYEN** listed no other affiliations. **AL-HUSSAYEN** falsely and intentionally did not list the Islamic Assembly of North America (hereafter the IANA) and other entities. (See Counts Seven and Eight hereafter.)

13. On or about March 19, 2002, the University of Idaho provided an INS Form I-20 for **AL-HUSSAYEN** "for Continued attendance at this school" and to "correct birth-date." On or about April 6, 2002, **AL-HUSSAYEN** signed the Student Certification of the INS Form I-20 at section eleven, which stated in pertinent part:

> I have read and agreed to comply with the terms and conditions of my admission. . . . I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, **and solely for the purpose of pursuing a full course of study at [the University of Idaho].** I also authorize the named school to release any information from my records which is needed. [Emphasis added.]

AL-HUSSAYEN falsely made the certification, knowing of his internet and business activities alleged hereafter. On or about the same day of April 6, 2002, **AL-HUSSAYEN** formally submitted the INS Form I-20 dated April 6, 2002, to the United States Government at the United States Embassy in Riyadh, Kingdom of Saudi Arabia, and the United States Government issued **AL-HUSSAYEN** an F-1 student visa in direct reliance upon **AL-**

HUSSAYEN's certifications on the DOS Form DS-156 dated January 14, 2002, and attached DOS Form DS-157, together with the INS Form I-20 dated April 6, 2002. (See Counts Nine and Ten hereafter.)

14. On or about May 9, 2002, **AL-HUSSAYEN** was admitted by the United States Government into the United States at the John F. Kennedy International Airport in New York City, New York, as an F-1 student by virtue of the F-1 student visa issued April 6, 2002, and in direct reliance upon **AL-HUSSAYEN'S** certifications on the DOS Form DS-156 dated January 14, 2002, and attached DOS Form DS-157, together with the INS Form I-20 dated April 6, 2002. During the admission at the John F. Kennedy International Airport, **AL-HUSSAYEN** was inspected by INS and Customs officials. During the inspections, the INS Form I-20 dated April 6, 2002, was photocopied by the Customs officials, with the Customs officials retaining the copy and the original being returned to **AL-HUSSAYEN.** (See Count Eleven hereafter.)

The Web-site Activities

15. From at least October 2, 1998, until the date of this Indictment, **AL-HUSSAYEN** engaged in computer web-site activities that exceeded his course of study at the University of Idaho. These activities included expert computer services, advice, assistance and support to organizations and individuals, including the IANA, in the form of web-site registration, management, administration and maintenance. A number of those web-sites accommodated materials that ~~both~~ advocated violence against the United States.

16. The IANA was incorporated in 1993 in Colorado as a non-profit, charitable organization. It maintained offices in Ann Arbor, Michigan. Its official mission statement was that of *Da'wa*: the proselytizing and spreading the word of Islam. The IANA did this, in part, by providing a number of media outlets as vehicles for advocating Islam, such as internet web-sites with "bulletin boards," internet magazines, toll-free telephone lines, and audio ("radio.net") services. The IANA solicited and received donations of monies both from within the United States and without. The IANA also hosted regular Islamic

conferences in the United States, with participation by individuals affiliated with other charitable organizations also located within the United States.

17. **AL-HUSSAYEN** was the formal registered agent for the IANA in Idaho (since May 11, 2001) and a business associate of the IANA in its purpose of *Da'wa* (proselytizing), which included the web-site dissemination of radical Islamic ideology the purpose of which was indoctrination, recruitment of members, and the instigation of acts of violence and terrorism.

18. **AL-HUSSAYEN** was either the registrant or the administrative contact for a number of internet web-sites which either belonged to or were linked to the IANA. A number of said IANA-related web-sites were registered to **AL-HUSSAYEN** directly, to the IANA or to Dar Al-Asr, a Saudi Arabian company that provided web hostings on the internet. **AL-HUSSAYEN** registered web-sites on behalf of Dar Al-Asr, identifying himself as the administrative point of contact for Dar Al-Asr and giving his Moscow, Idaho street address and University of Idaho e-mail address for reference.

19. Of the afore-referenced web-sites, **AL-HUSSAYEN** was the sole registrant of web-sites **www.alasr.ws** (created September 11, 2000), **www.cybermsa.org** (created March 15, 2001) and **www.livcislam.net** (created July 8, 2002). Web-sites **www.alasr.net** (created August 15, 1999), **www.almawred.com** (created November 1, 1999) and **www.heejrah.com** (February 22, 2000) were registered to Dar Al-Asr, with **AL-HUSSAYEN** as the administrative contact person. Web-site **www.almanar.net** (created October 2, 1998) was registered to Al-Manar Al-Jadeed Magazine, with **AL-HUSSAYEN** as the administrative contact person. **Iananet.org** (created August 11, 1995) was registered to IANA and designed and maintained by the web-site entity Dar Al-Asr. **Ianaradionet.com** (created May 25, 1999) was registered to IANA, with **AL-HUSSAYEN** as the head of its supervisory committee and member of its technical committee. **Islamway.com** (created August 18, 1998) was registered to IANA, with direct links to **AL-HUSSAYEN's** web-sites, including **www.alasr.ws** and **www.cybersma.org**. The registration of web-sites www.alhawali.org and www.alhawali.com

(both created November 18, 2000) referenced Al-Asr and **AL-HUSSAYEN**, with **AL-HUSSAYEN** as the administrative contact for **www.alhawali.com.** These two web-sites corresponded to a radical sheikh referenced in paragraph 21 hereafter. Web-site www.islamtoday.net (created March 17, 2000) was related to a radical sheikh also referenced in paragraph 21 hereafter and posted articles to some of the Dar Al-Asr and **AL-HUSSAYEN** web-sites.

20. One of the afore-referenced web-sites registered by **AL-HUSSAYEN** was **www.alasr.ws.** On September 11, 2000, **AL-HUSSAYEN** registered the www.alasr.ws web-site. In about June of 2001, an article entitled "Provision of Suicide Operations" was published on the internet magazine of the website **www.alasr.ws**. The article was written by a radical Saudi sheikh. A portion of the article read as follows:

> The second part is the rule that the *Mujahid* (warrior) must kill himself if he knows that this will lead to killing a great number of the enemies, and that he will not be able to kill them without killing himself first, or demolishing a center vital to the enemy or its military force, and so on. This is not possible except by involving the human element in the operation. In this new era, this can be accomplished with the modern means of bombing or **bringing down an airplane** on an important location that will cause the enemy great losses. [Emphasis added.]

21. Www.alasr.ws and other web-sites registered or linked to, or technically advised by **AL-HUSSAYEN,** including www.islamway.com (previously mentioned), also posted other violent *jihad* (holy war)-related messages by other radical sheikhs, including those referenced in preceding paragraph 19.

Financial and Business Activities

22. From on or about August 17, 1994, until the date of this Indictment, **AL-HUSSAYEN**, at various times, maintained at least six United States bank accounts in Indiana, Texas, Idaho and Michigan. From at least January 23, 1997, until the date of this Indictment, **AL-HUSSAYEN** used said bank accounts to receive large sums of monies from within and without the United States, and to transfer and cause to be transferred large sums of monies to the IANA and other organizations and individuals.

23. From at least January 23, 1997, until the date of this Indictment, **AL-HUSSAYEN** received into and disbursed out of his bank accounts approximately $300,000.00 in excess of the university study-related funds he received during the same period of time, such as the monthly stipend he was given by the Saudi Arabian Government, and the living expenses that corresponded thereto. These excess funds included $49,992.00 paid to **AL-HUSSAYEN** on September 10, 1998, and $49,985.00 paid to him on September 25, 1998.

24. From at least November 16, 1999, to the date of this Indictment, **AL-HUSSAYEN** made disbursements of the excess funds referenced in the preceding paragraph to the IANA and to the IANA's officers, including a leading official of the IANA. A portion of these funds was used to pay operating expenses of the IANA, including salaries of IANA employees. Furthermore, in 1999, 2000 and 2001 wire transfers were made from **AL-HUSSAYEN** to individuals in Cairo, Egypt; Montreal, Canada; Riyadh, Kingdom of Saudi Arabia; Amman, Jordan; and Islamabad, Pakistan. **AL-HUSSAYEN** also made disbursements to other organizations and individuals associated therewith during the time referenced in this paragraph.

25. From at least November 16, 1999, to the date of this Indictment, **AL-HUSSAYEN** maintained frequent business contact with the leading IANA official referenced above. Not only did **AL-HUSSAYEN** disburse money directly to the official in the form of wire transfers and personal checks, their relationship also included the maintenance of a checking account in a Michigan bank in **AL-HUSSAYEN's** name alone, but with the official's home address and the official's apparently exclusive use of the account. Among the deposits into the account was a $4,000.00 wire transfer from **AL-HUSSAYEN**, 311 Sweet Avenue, Apt 6, Moscow, Idaho, to **AL-HUSSAYEN,** 219 Fieldcrest Street, Ann Arbor, Michigan. In addition, numerous telephone calls between **AL-HUSSAYEN** and the official were made during the time referenced in this paragraph.

26. From at least March of 1995 until about February of 2002, the IANA received into its bank accounts approximately three million dollars ($3,000,000.00), including the funds received from **AL-HUSSAYEN** as referenced above, and disbursed approximately the same amount. The deposits included a three hundred thousand dollar ($300,000.00) transfer from a Swiss bank account on or about May 14, 1998.

27. From about December of 1994 to about July of 2002, **AL-HUSSAYEN** traveled and otherwise funded travel for other individuals, including travel related to the IANA, through **AL-HUSSAYEN's** bank accounts and to locations in numerous states, as well as foreign countries.

28. From at least January 1, 1997, until on or about August 28, 2002, telephones corresponding to **AL-HUSSAYEN** had contact with telephones subscribed to individuals or entities in numerous states, as well as foreign countries. Subscribers corresponding to or associated with some of the numbers included the IANA and the source of the $49,992.00 and $49,985.00 transfers previously referenced paragraph 23.

THE VIOLATIONS

In material reliance upon the information contained in the INS I-20 forms and the DOS Forms DS- 156 and DS-157 as heretofore referenced, the United States Government issued **AL-HUSSAYEN** F-1 student visas and allowed him to enter and remain in the United States. However, **AL-HUSSAYEN** entered into and remained in the United States for purposes other than that of solely pursuing his studies, including, but not limited to, material support of the IANA and others by means of his web-site and business activities, and knowingly and wilfully made false statements and omissions to the authorities of the United States in relation thereto. By not truthfully stating and revealing the nature and extent of his activities and affiliations in the United States, **AL-HUSSAYEN** thereby deprived the authorities of the United States of the knowledge thereof and the opportunity to evaluate and address the same within the context of the laws of the United States, resulting in felony violations by the Defendant, **SAMI OMAR AL-HUSSAYEN**, consisting of Counts One through Eleven.

COUNT ONE
FALSE STATEMENT TO THE UNITED STATES
(Violation 18 U.S.C. 1001(a)(2) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about July 17, 1999, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, in a matter within the jurisdiction of the Executive Branch of the United States Government, knowingly and willfully made a materially false, fictitious and fraudulent statement and representation to authorities of the United States in relation to **SAMI OMAR AL-HUSSAYEN's** status as a foreign student in the United States, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted an Immigration and Naturalization (INS) form I-20, thereby knowingly and willfully representing to United States Government authorities that he sought to enter into the United States for the sole purpose of pursuing a full course of study at the University of Idaho, when, in fact, **SAMI OMAR AL-HUSSAYEN** knowingly had been, was and would be engaged in activities other than his course of study at the University of Idaho, including, but not limited to, his involvement with the Islamic Assembly of North America; in violation of Title 18, United States Code, Sections 1001(a)(2) and 3238. (See previous paragraphs 5 and 6.)

COUNT TWO
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about July 17, 1999, until the date of this Indictment, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an application and other document required by the immigration

laws and regulations of the United States and (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted an Immigration and Naturalization (INS) form I-20, thereby knowingly and willfully representing to United States Government authorities that he sought to enter into the United States for the sole purpose of pursuing a full course of study at the University of Idaho, when, in fact, **SAMI OMAR AL-HUSSAYEN** knowingly had been, was and would be engaged in activities other than his course of study at the University of Idaho, including, but not limited to, his involvement with the Islamic Assembly of North America; in violation of Title 18, United States Code, Sections 1546(a) and 3238. (See previous paragraphs 5 and 6.)

COUNT THREE
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3237)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about August 11, 1999, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an application and other document required by the immigration laws and regulations of the United States, (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, and (3) knowingly used a non-immigrant visa obtained by a false statement and claim, in that **SAMI OMAR AL-HUSSAYEN**, in entering into the United States, presented to United States Government authorities a student visa procured by means of a false statement and claim and other document containing such false statement and claim; in violation of Title 18, United States Code, Sections 1546(a) and 3237. (See previous paragraphs 5 through 7.)

COUNT FOUR
FALSE STATEMENT TO THE UNITED STATES
(Violation 18 U.S.C. 1001(a)(2) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about July 7, 2000, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, in a matter within the jurisdiction of the Executive Branch of the United States Government, knowingly and willfully made a materially false, fictitious and fraudulent statement and representation to authorities of the United States in relation to **SAMI OMAR AL-HUSSAYEN's** status as a foreign student in the United States, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted an Immigration and Naturalization (INS) form I-20, thereby knowingly and willfully representing to United States Government authorities that he sought to enter into the United States for the sole purpose of pursuing a full course of study at the University of Idaho, when, in fact, **SAMI OMAR AL-HUSSAYEN** knowingly had been, was and would be engaged in activities other than his course of study at the University of Idaho, including, but not limited to, his involvement with the Islamic Assembly of North America; in violation of Title 18, United States Code, Sections 1001(a)(2) and 3238. (See previous paragraph 8.)

COUNT FIVE
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about July 7, 2000, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an application and other document required by the immigration laws and regulations of the

United States and (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted an Immigration and Naturalization (INS) form I-20, thereby knowingly and willfully representing to United States Government authorities that he sought to enter into the United States for the sole purpose of pursuing a full course of study at the University of Idaho, when, in fact, **SAMI OMAR AL-HUSSAYEN** knowingly had been, was and would be engaged in activities other than his course of study at the University of Idaho, including, but not limited to, his involvement with the Islamic Assembly of North America; in violation of Title 18, United States Code, Sections 1546(a) and 3238. (See previous paragraph 8.)

COUNT SIX
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3237)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about August 25, 2000, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an application and other document required by the immigration laws and regulations of the United States, (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, and (3) knowingly used a non-immigrant visa obtained by a false statement and claim, in that **SAMI OMAR AL-HUSSAYEN**, in entering into the United States, presented to United States Government authorities a student visa procured by means of a false statement and claim and other document containing such false statement and claim; in violation of Title 18, United States Code, Sections 1546(a) and 3237. (See previous paragraphs 8 and 9.)

COUNT SEVEN
FALSE STATEMENT TO THE UNITED STATES
(Violation 18 U.S.C. 1001(a)(2) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about January 14, 2002, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, in a matter within the jurisdiction of the Executive Branch of the United States Government, knowingly and willfully made a materially false, fictitious and fraudulent statement and representation to authorities of the United States in relation to **SAMI OMAR AL-HUSSAYEN's** status as a foreign student in the United States, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted Department of State (DOS) form DS-156 and form DS-157, thereby knowingly and wilfully failing and refusing to inform United States Government authorities of his involvement with the Islamic Assembly of North America and other entities; in violation of Title 18, United States Code, Sections 1001(a)(2) and 3238. (See previous paragraphs 10 through12.)

COUNT EIGHT
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about January 14, 2002, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an application and other document required by the immigration laws and regulations of the United States and (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student

visa, signed and submitted Department of State (DOS) form DS-156 and form DS-157, thereby knowingly and wilfully failing and refusing to inform United States Government authorities of his involvement with the Islamic Assembly of North America and other entities; in violation of Title 18, United States Code, Sections 1546(a) and 3238. (See previous paragraphs 10 through 12.)

COUNT NINE
FALSE STATEMENT TO THE UNITED STATES
(Violation 18 U.S.C. 1001(a)(2) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about April 6, 2002, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, in a matter within the jurisdiction of the Executive Branch of the United States Government, knowingly and willfully made a materially false, fictitious and fraudulent statement and representation to authorities of the United States in relation to **SAMI OMAR AL-HUSSAYEN's** status as a foreign student in the United States, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted an Immigration and Naturalization (INS) form I-20, thereby knowingly and willfully representing to United States Government authorities that he sought to enter into the United States for the sole purpose of pursuing a full course of study at the University of Idaho, when, in fact, **SAMI OMAR AL-HUSSAYEN** knowingly had been, was and would be engaged in activities other than his course of study at the University of Idaho, including, but not limited to, his involvement with the Islamic Assembly of North America; in violation of Title 18, United States Code, Sections 1001(a)(2) and 3238. (See previous paragraphs 10 through 13.)

COUNT TEN
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3238)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about April 6, 2002, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an application and other document required by the immigration laws and regulations of the United States and (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, in that **SAMI OMAR AL-HUSSAYEN**, in applying for and receiving a student visa, signed and submitted an Immigration and Naturalization (INS) form I-20, thereby knowingly and willfully representing to United States Government authorities that he sought to enter into the United States for the sole purpose of pursuing a full course of study at the University of Idaho, when, in fact, **SAMI OMAR AL-HUSSAYEN** knowingly had been, was and would be engaged in activities other than his course of study at the University of Idaho, including, but not limited to, his involvement with the Islamic Assembly of North America; in violation of Title 18, United States Code, Sections 1546(a) and 3238. (See previous paragraphs 10 through 13.)

COUNT ELEVEN
VISA FRAUD
(Violation 18 U.S.C. 1546(a) and 3237)

The previous numbered paragraphs one through twenty-eight are hereby re-alleged as though set forth in full herein.

On or about May 9, 2002, within and as the same pertains to the District of Idaho, **SAMI OMAR AL-HUSSAYEN**, Defendant herein, (1) knowingly made under oath and subscribed as true to the United States a false statement with respect to a material fact in an

application and other document required by the immigration laws and regulations of the United States, (2) knowingly presented such application and other document required by the immigration laws and regulations of the United States which contained a materially false statement, and (3) knowingly used a non-immigrant visa obtained by a false statement and claim, in that **SAMI OMAR AL-HUSSAYEN**, in entering into the United States, presented to United States Government authorities a student visa procured by means of a false statement and claim and other document containing such false statement and claim; in violation of Title 18, United States Code, Sections 1546(a) and 3237. (See previous paragraphs 10 through 14.)

Dated this 13th day of February, 2003.

A TRUE BILL

FOREPERSON

THOMAS E. MOSS
UNITED STATES ATTORNEY

KIM R. LINDQUIST
Assistant United States Attorney

TERRY L. DERDEN
First Assistant United States Attorney
Chief, Criminal Section

CRIMINAL COVERSHEET

DEFENDANT'S NAME: Sami Omar Al-Hussayen

Juvenile: No

DEFENDANT'S STREET ADDRESS:

Service Type: Sealed

Interpreter: No
If yes, language:

DEFENSE ATTORNEY:
ADDRESS:

TELEPHONE NO.:

INVESTIGATING AGENT & AGENCY: Michael J. Gneckow, Federal Bureau of Investigation
TELEPHONE NO.: (208) 664-5128

CASE INFORMATION: (List any miscellaneous, magistrate, CVB or other related defendants/case numbers).

CRIMINAL CHARGING INFORMATION

_ Complaint X Indictment _ Information _ Superseding Indictment

X Felony _Class A Misdemeanor _ Class B or C Misdemeanor (Petty Offense)

County of Offense: Latah Estimated Trial Time: 10 days

TITLE/SECTION	COUNT	BRIEF DESCRIPTION	PENALTIES (Include Supervised Release and Special Assessment)
18 U.S.C. §§ 1001(a)(1) and (2), 3238	1, 4, 7, 9	False Statement to the United States	Each count: Incarceration for not more than 5 years and/or $250,000 fine; 3 years supervised release; $100 special assessment
18 U.S.C. §§ 1546(a), 3237, 3238	2, 3, 5, 6, 8, 10, 11	Visa Fraud	Each count: Incarceration for not more than 25 years and/or $250,000 fine; 5 years supervised release; $100 special assessment

Date: February 12, 2003

AUSA: Kim R. Lindquist
Telephone No.: (208) 334-1211

STATE AND DISTRICT OF IDAHO

BOISE, IDAHO

UNITED STATES OF AMERICA v. SAMI OMAR AL-HUSSAYEN	Case No. 03-048-C-EJL

AFFIDAVIT

I, Mary Martin, the undersigned, being duly sworn, depose and state as follows:

I am a Special Agent of the FBI for fifteen (15) years and have been involved in multiple investigations involving crimes under Title 18 of the United States Code. This Affidavit is based upon facts acquired by fellow FBI Special Agent William R. Long and other law enforcement officials pertaining to this investigation. On October 17, 2003, Special Agent William R. Long advised your affiant of the following:

1) Long is a Special Agent with the Federal Bureau of Investigation (FBI) currently assigned to the Coeur d'Alene, Idaho Resident Agency, within the FBI's Salt Lake City Division. He has been a Special Agent with the FBI for over 14 years. Special Agent Long is experienced and has received

training in the investigation of violations of federal law, including but not limited to, Title 18, United States Code, and Title 21, United States Code. Special Agent Long has extensive experience in the use of standard investigative techniques including, but not limited to, the interviewing of witnesses, obtaining and review of business, financial, and communication records, execution of search warrants, visual surveillance, court ordered electronic surveillance, development and use of informants and cooperating witnesses, grand jury investigations, and the making of arrests. Special Agent Long has testified in state and federal court on numerous occasions during his career.

2) Since 1998, Special Agent Long has specialized in the investigation of domestic terrorism matters.

3) Since 2001, Special Agent Long has become experienced and received specialized training in the areas of international terrorism and counterterrorism. This experience includes receiving specialized training in these areas offered by the United States Department of Justice, the FBI, and other agencies.

4) Special Agent Long is currently a member of the Inland Northwest Joint Terrorism Task Force (INJTTF) and as such, works alongside other federal, state, and local law enforcement officers, including agents of the United States Bureau of Immigration and Customs Enforcement.

5) On February 13, 2003, an indictment was filed in the United States District Court for the District of Idaho against Sami Omar Al-Hussayen alleging violations of Title 18,

United States Code, §§ 1001(a)(1) and (2), and 3238 - False Statements to the United States; and Title 18, United States Code, §§ 1546(a), 3237 and 3238 - Visa Fraud. Currently, Special Agent Long and other agents are involved in a continuing investigation of Sami Omar Al-Hussayen and his associates regarding matters related to international terrorism. During the course of this investigation, Special Agent Long and other agents have developed information regarding the close association between AL-Hussayen and Saleh Abdulaziz Al-Kraida.

6) On February 26, 2003, Special Agent Long, Joint Terrorism Task Force Detective L. Richard Fairbanks, and Immigration and Naturalization Service Special Agent James I. Sheperd interviewed Saleh Abdulaziz Al-Kraida at his residence in Moscow, Idaho. During the interview, Al-Kraida provided significant information regarding the AL-Hussayen investigation to the agents, including the following:

a) That Al-Kraida is a citizen of Saudi Arabia and has entered the United States for the purpose of obtaining his Masters Degree in Agricultural Engineering at the University of Idaho.

b) That Al-Kraida is personally acquainted with Sami Omar Al-Hussayen and has almost daily contact with Al-Hussayen.

c) That Al-Hussayen, Al-Kraida, and other associates regularly meet at an apartment in Moscow, Idaho, known as "Almultaqa." In Arabic, Almultaqa means "the gathering

place." Almultaqa is normally used for dinners and social events among associates of Al-Hussayen.

d) That there is a computer and a credit card sales machine located at Almultaqa.

e) That Al-Hussayen used to sell books, tapes, magazines, and other items via the computer or telephone from the Almultaqa location.

f) That the profits from these sales were for Islamic charities, including the Islamic Assembly of North America.

g) That the sales of these items stopped shortly after September 11, 2001.

h) That many of these books, tapes, and magazines contained Islamic extremist messages. He stated that extremist Islamic views include the use of violence against those who do not convert to Islam.

i) That Sheikhs Safar Al-Hawali and Salman Al-Ouda wrote, published, and recorded many of the tapes, books, and magazines containing extremist messages, sold by Al-Hussayen at Almultaqa.

j) That no gatherings occurred at Almultaqa for three or four months after September 11, 2001. The meetings prior to September 11, 2001, involved discussions which Al-Kraida now considers to be extremist. Al-Kraida believed that the meetings and the items sold at Almultaqa would have invited suspicion by the FBI or other law enforcement authorities, due to the extreme nature of the content. Many of the extremist ideas discussed at Almultaqa

originated with Sheikhs Al-Hawali and Al-Ouda. When asked to rate how extreme Sheikhs Al-Hawali and Al-Ouda are, Al-Kraida rated them a "B-plus," with an "A" being the most extreme.

k) That Sami Omar Al-Hussayen was involved personally with the Islamic Assembly in North America (IANA) and attended IANA conferences in the past.

l) That Al-Hussayen then spoke about those conferences to members of the mosque in Moscow, Idaho during lectures and meetings.

m) That in the past, representatives from the Global Relief Foundation (GRF), including persons from Iraq, Saudi Arabia, and Kuwait, had visited the mosque in Moscow, Idaho to collect donations.

n) That this visit by GRF representatives was arranged by Abduhl Rahman Al-Jugheman, a close associate of Sami Omar Al-Hussayen.

o) That donations had also been collected at the mosque in Moscow, Idaho for the "Help the Needy" organization.

p) Al-Kraida also provided other information about Sami Omar Al-Hussayen, his associates, and personal information about himself.

q) During the interview of Al-Kraida, Al-Kraida told investigating agents that he intended to return to Saudi Arabia upon his graduation from the University of Idaho.

7) The FBI is currently investigating the Islamic Assembly of North America (IANA) regarding suspected ties to international terrorism.

8) On February 26, 2003, the FBI executed a search warrant on the offices of the "Help the Needy" (HTN) organization in Syracuse, New York. That continuing investigation involves, in part, alleged violations of the Iraqi Embargo by members of HTN.

9) The Global Relief Foundation has been designated by the US Department of Treasury, Office of Foreign Asset Control, as an organization supporting international terrorism.

10) The investigation of Sami Omar Al-Hussayen has revealed that Sheikhs Al-Ouda and Al-Hawali have direct association with Usama Bin Laden. Suspected ties to the Al Qaida terrorist organization are being investigated by the FBI.

11) On October 16, 2003, United States Bureau of Immigration and Customs Enforcement Special Agent Jeffrey L. Wolstenholme, acting in his official capacity as an Immigration officer, contacted the University of Idaho concerning the student status of Al-Kraida. He learned that Al-Kraida has completed his masters degree requirements. He has requested and received from the University a "letter of completion" regarding his degree requirements. Al-Kraida appeared in person at University offices during the past week to request this letter. Al-Kraida told University officials that he intends to leave the United States prior to graduation ceremonies scheduled in December, 2003. Further, University officials confirmed that Al-Kraida vacated his apartment in University housing on September 30, 2003. He left a forwarding address of Post Office Box 3103, Moscow, Idaho.

The records of the United States Bureau of Immigration and Customs Enforcement do not reflect that Al-Kraida has yet left the United States on an international commercial flight.

12) Due to Al-Kraida's admitted involvement with the defendant, Sami Omar Al-Hussayen, Al-Kraida is believed to be in possession of information germane to this matter which will be crucial to the prosecution. It is believed that if Al-Kraida travels to Saudi Arabia the United States government will be unable to secure his presence at trial via subpoena.

Respectfully submitted,

Mary Martin
Federal Bureau of Investigation
Boise, Idaho

Subscribed and sworn to before me this 17 day of October, 2003.

Mikel H. Williams
United States Magistrate Judge

THOMAS E. MOSS
UNITED STATES ATTORNEY
DISTRICT OF IDAHO
KIM R. LINDQUIST
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
WELLS FARGO CENTER, SUITE 201
877 WEST MAIN STREET
BOISE, IDAHO 83702
TELEPHONE: (208) 334-1211
MAILING ADDRESS: P.O. BOX 32
BOISE, IDAHO 83707

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA	CR No. 03-048-C-EJL
vs.	SUMMONS FOR MATERIAL WITNESS
SAMI OMAR AL-HUSSAYEN,	
Defendant.	

TO: THE UNITED STATES MARSHAL FOR THE DISTRICT OF IDAHO:

WHEREAS, upon the Application for Summons of Material Witness filed by the United States Attorney for the District of Idaho and the Affidavit of Special Agent Mary Martin, and it appearing therefrom that the testimony of Saleh Abdulaziz Al-Kraida is, and will be, material in the above-entitled action,

YOU, **SALEH ABDULAZIZ AL-KRAIDA**, ARE, THEREFORE, DIRECTED TO APPEAR before the Honorable Mikel H. Williams, United States Magistrate Judge, at 10:30 a.m., November 4, , 2003, at the United States Courthouse, ~~Boise~~ Moscow, Idaho, for the purpose of setting the methods, terms and conditions of release.

IT IS FURTHER ORDERED that you, **SALEH ABDULAZIZ AL-KRAIDA**, deliver your passport into the hands of the serving agents at the time of the service of this Summons upon you until such time as your appearance for arraignment, set forth above.

UPON ORDER OF THE HONORABLE MIKEL H. WILLIAMS, UNITED STATES MAGISTRATE JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, dated October 17, 2003.

CAMERON S. BURKE, Clerk
United States District Court
District of Idaho

Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

CRIMINAL PROCEEDINGS: Initial Appearance for a Material Witness

MAGISTRATE JUDGE: Mikel H. Williams
DEPUTY CLERK: Anne Lawron
ESR: Nancy Persinger

DATE: November 4, 2003
TIME: .5 hours

In the matter of detention of a material witness: SALAH ABDULAZIZ AL-KRAIDA
Case No. CR03-048C-EJL – USA v Sami Omar Al-Hussayen

Counsel for: United States (AUSA): Nancy Cook
Defendant: Sunil Ramalingam - retained
Probation:
Interpreter:
(X) Defendant's Constitutional Rights explained
( ) Defendant Sworn ( ) Examined on Finances ( ) Financial Affidavit
( ) Counsel Appointed ( ) Federal Defender ( ) CJA _____
(X) Application for Summons and affidavit) Copy furnished to defendant
( ) Complaint) ( ) Read by Clerk ( ) Waived Reading ( )Read to defendant in Spanish
( ) United States requested Detention Hearing
( ) Flight Risk ( ) Danger to Society
Hearing Set_____
( ) Detention Hearing held
WITNESSES:
Govt)
Dft)
EXHIBITS:
Govt)
Dft)
( ) WAIVER of detention hrg and ORDER OF DETENTION for a material witness entered
( ) Order of Temporary Detention entered
( ) ORDER of Detention for a Material Witness entered
(X) ORDER specifying Methods & Conditions of Release
(X) Personal Recognizance
( ) Unsecured_____
(X) Special Conditions: defendant shall be made available for a deposition.
(X) Order Counsel shall notify the court when the deposition is complete and the witness will be allowed to leave the US. Deposition should be taken within 7 days. Govt to file a notice of taking deposition and serve the dft who can file any objections. This deposition shall take place in Boise and the goverment shall make all arrangements for the dft to be present. Order of release entered.
( )BOISE ( )MOSCOW ( )CDA ( ) POCATELLO

** MAGISTRATE MINUTE ENTRY **

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United States District Court

DISTRICT OF

UNITED STATES OF AMERICA

V.

In re: Saleh Al-Kraida, a material witness

Defendant

ORDER SETTING CONDITIONS OF RELEASE

Case Number: CR03-048C-EJL

IT IS ORDERED that the release of the ~~defendant~~ witness is subject to the following conditions:

(1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified) _____ Place

for deposition. on _____ Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

(V) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of _____ dollars ($_____) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

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Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:
(Name of person or organization) __________
(Address) __________
(City and State) __________ (Tel. No.) __________

who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: __________
Custodian or Proxy

(X) (7) The ~~defendant~~ witness shall:

( ) (a) maintain or actively seek employment.
( ) (b) maintain or commence an educational program.
( ) (c) abide by the following restrictions on his personal associations, place of abode, or travel: __________
( ) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses: __________
( ) (e) report on a regular basis to the following agency: __________
( ) (f) comply with the following curfew: __________
( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
( ) (h) refrain from excessive use of alcohol, and any use or possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
( ) (i) undergo medical or psychiatric treatment and/or remain in an institution, as follows: __________
( ) (j) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property: __________
( ) (k) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money: __________
( ) (l) execute a bail bond with solvent sureties in the amount of $ __________
( ) (m) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling, or the following limited purpose(s): __________
( ) (n) surrender any passport to __________
( ) (o) obtain no passport.
(X) (p) witness shall remain available for deposition and provide notification to the court when complete.

Advice of Penalties and Sanctions

Violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for the defendant's arrest, a revocation of release, an order of detention, as provided in 18 U.S.C. §3148, and a prosecution for contempt as provided in 18 U.S.C. §401 which could result in a possible term of imprisonment or a fine.

The commission of any offense while on pretrial release may result in an additional sentence upon conviction for such offense to a term of imprisonment of not less than two years nor more than ten years, if the offense is a felony; or a term of imprisonment of not less than ninety days nor more than one year, if the offense is a misdemeanor. This sentence shall be consecutive to any other sentence and must be imposed in addition to the sentence received for the offense itself.

18 U.S.C. §1503 makes it a criminal offense punishable by up to five years of imprisonment and a $250,000 fine to intimidate or attempt to intimidate a witness, juror or officer of the court; 18 U.S.C. §1510 makes it a criminal offense punishable by up to five years of imprisonment and a $250,000 fine to obstruct a criminal investigation; 18 U.S.C. §1512 makes it a criminal offense punishable by up to ten years of imprisonment and a $250,000 fine to tamper with a witness, victim or informant; and 18 U.S.C. §1513 makes it a criminal offense punishable by up to ten years of imprisonment and a $250,000 fine to retaliate against a witness, victim or informant, or threaten or attempt to do so.

It is a criminal offense under 18 U.S.C. §3146, if after having been released, the defendant knowingly fails to appear as required by the conditions of release, or to surrender for the service of sentence pursuant to a court order. If the defendant was released in connection with a charge of, or while awaiting sentence, surrender for the service of a sentence, or appeal or certiorari after conviction, for:

(1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, the defendant shall be fined not more than $250,000 or imprisoned for not more than ten years, or both;
(2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, the defendant shall be fined not more than $250,000 or imprisoned for not more than five years, or both;
(3) any other felony, the defendant shall be fined not more than $250,000 or imprisoned not more than two years, or both;
(4) a misdemeanor, the defendant shall be fined not more than $100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be consecutive to the sentence of imprisonment for any other offense. In addition, a failure to appear may result in the forfeiture of any bail posted.

Acknowledgement of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

[signature]

Signature of ~~Defendant~~ Witness

374 Taylore ave. #2

Address

Moscow ID 208 ~~[illegible]~~ 885 6082

City and State Telephone

Directions to United States Marshal

(X) The defendant is ORDERED released ~~after processing~~.
( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 11/4/2003

[signature] Stephen H. Williams

Signature of Judicial Officer

U.S. Mag Judge

Name and Title of Judicial Officer

United States District Court
for the
District of Idaho
November 5, 2003

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 3:03-cr-00048

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Kim R Lindquist, Esq. 1-208-334-1413
US ATTORNEY'S OFFICE
Box 32
Boise, ID 83707

Sunil Ramalingam
312 17th St
PO Box 717
Lewiston ID 83501

David Z Nevin, Esq. 1-208-345-8274
NEVIN HERZFELD BENJAMIN & MCKAY
PO Box 2772
Boise, ID 83701

Scott McKay, Esq. 1-208-345-8274
NEVIN HERZFELD BENJAMIN & MCKAY
PO Box 2772
Boise, ID 83701

U.S. Marshal
HAND DELIVERED

Probation
HAND DELIVERED

_____ Chief Judge B. Lynn Winmill
__✓__ Judge Edward J. Lodge
_____ Chief Magistrate Judge Larry M. Boyle
__✓__ Magistrate Judge Mikel H. Williams

Visiting Judges:
_____ Judge David O. Carter
_____ Judge John C. Coughenour
_____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 11-5-03

BY: _____
(Deputy Clerk)

ORIGINAL

Samuel Richard Rubin
FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO
350 North 9th Street, Suite 301
Boise, Idaho 83702
(208) 388-1600
Fax (208) 388-1757

Attorneys for A Material Witness
ABDULLA AL-KIDD

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
(HONORABLE EDWARD J. LODGE)

UNITED STATES OF AMERICA, Plaintiff, Vs. ABDULLA AL-KIDD, A Material Witness.	CR-03-48-C-EJL **REQUEST FOR DISMISSAL AS TO ALL CONDITIONS OF A MATERIAL WITNESS**

TO: TOM MOSS, UNITED STATES ATTORNEY
KIM LINDQUIST, ASSISTANT UNITED STATES ATTORNEY

FACTUAL BACKGROUND

On March 14, 2003, an affidavit was submitted to United States Magistrate Judge Mikel H. Williams requesting an arrest warrant for a material witness, Abdulla Al-Kidd, a/k/a Lavoni T-Kidd, in case CR03-048-C-EJL, *United States of America v. Sami Omar Al-Hussayen.* The application suggested that Mr. Al-Kidd was a material witness, material both to the prosecution and the defendant, and that unless the court detained or imposed restrictions on the travel of the material witness, he would not be available at future proceedings.

An affidavit accompanied the application from Special Agent Scott Mace but was based upon information given to Mr. Mace by Special Agent Michael James Gneckow.

In the affidavit, in addition to the background information about Mr. Gneckow, information was described that ostensibly had been developed regarding the involvement of Mr. Al-Kidd with the defendant.

The government indicated that it believed that if Mr. Al-Kidd traveled to Saudi Arabia, the United States Government would be unable to secure his presence at trial via subpoena.

Mr. Al-Kidd, as a result, was arrested by the government in the Eastern District of Virginia prior to March 16, 2003 and has been held as a material witness since that date. A pretrial services report was filed on March 17, 2003 from the Eastern District of Virginia recommending release and is believed to be a part of the court record.

ARGUMENT

Mr. Kidd has lived under the conditions set by the Court since March 31, 2003. As a result he has been limited in his travel, limited in his employment opportunities, limited in his educational opportunities, and these conditions have caused personal and domestic difficulties for Mr. Kidd who was required to live within the home of his in-laws (this condition has now been modified). Previously Mr. Kidd requested that his deposition be taken and that he be discharged from custody although the government agreed to his release from custody they decided not to take his deposition and rather wanted him to be available for trial.

Mr. Kidd was never subpoenaed for trial; never called as a witness; never advised that he would not be called as a witness nor was his counsel so advised. The evidence in this trial has now been concluded and it does not appear that Mr. Kidd's testimony was necessary or relevant to the determination as to the guilt or innocense of the defendant in this case.

Based upon the foregoing Mr. Al-Kidd requests that any terms and conditions imposed upon him be extinguished; that he be dismissed from this proceeding as a material witness; that

his passport be returned to him; and that he be dismissed from any further involvement in these proceeding.

Respectfully submitted this 3 day of June, 2004.

Samuel Richard Rubin
Federal Defenders of Eastern Washington and Idaho
Attorneys for Material Witness Abdulla Al-Kidd

CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of June, 2004, I served a true and correct copy of the foregoing REQUEST FOR DISMISSAL OF ALL CONDITIONS AS TO MATERIAL WITNESS upon Kim Lindquist, Asst. U.S. Attorney, P.O. Box 32, Boise, Idaho 83707 and to David Z. Nevin, Esq., P.O. Box 2772, Boise, ID 83701 by first class U.S. mail, postage prepaid.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **SAMI OMAR AL-HUSSAYEN,** **Defendant.**	CASE NO: CR03-048-C-EJL **VERDICT**

We, the jury, unanimously find Sami Omar Al-Hussayen:

Count One –

Part A: Conspiracy to Provide and Conceal Material Support or Resources to Terrorists from on or about September 13, 1994 to on or about February 26, 2003 (18 U.S.C. §371)

✓ **Not Guilty**

____ **Guilty**

Part B: Conspiracy to Provide and Conceal Material Support or Resources to Terrorists from on or about October 26, 2001 to on or about February 26, 2003 (18 U.S.C. §§371 & 2339A)

✓ **Not Guilty**

____ **Guilty**

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Count Two – Providing and Concealing Material Support and Resources to Terrorists (18 U.S.C. §2339A)

✓ **Not Guilty**

____ **Guilty**

Count Three – Conspiracy to Provide Material Support and Resources to a Designated Foreign Terrorist Organization (18 U.S.C. §2339B)

✓ **Not Guilty**

____ **Guilty**

Count Four – False Statement to the United States (18 U.S.C. §§1001(a)(2) & 3238)

✓ **Not Guilty**

____ **Guilty**

Count Five – Visa Fraud (18 U.S.C. §§1546(a) & 3238)

✓ **Not Guilty**

____ **Guilty**

If you found the defendant not guilty on both of Counts Four and Five, move on to Count Seven. If you found the defendant guilty on either or both of Counts Four and/or Five, move on to Count Six.

Count Six – Visa Fraud (18 U.S.C. §§1546(a) & 3237)

____ **Not Guilty**

____ **Guilty**

Count Seven – False Statement to the United States (18 U.S.C. §§1001(a)(2) & 3238)

____ **Not Guilty**

____ **Guilty**

Count Eight – Visa Fraud (18 U.S.C. §§1546(a) & 3238)

____ **Not Guilty**

____ **Guilty**

If you found the defendant not guilty on both of Counts Seven and Eight, move on to Count Ten. If you found the defendant guilty on either or both of Counts Seven and/or Eight, move on to Count Nine.

Count Nine – Visa Fraud (18 U.S.C. §§1546(a) & 3237)

____ **Not Guilty**

____ **Guilty**

Count Ten – False Statement to the United States (18 U.S.C. §§1001(a)(2) & 3238)

____ **Not Guilty**

____ **Guilty**

Count Eleven – Visa Fraud (18 U.S.C. §§1546(a) & 3238)

____ **Not Guilty**

____ **Guilty**

Count Twelve – False Statement to the United States (18 U.S.C. §§1001(a)(2) & 3238)

____ **Not Guilty**

____ **Guilty**

Count Thirteen – Visa Fraud (18 U.S.C. §§1546(a) & 3238)

____ **Not Guilty**

____ **Guilty**

If you found the defendant not guilty on each of Counts Ten, Eleven, Twelve, and Thirteen, please sign and date the verdict form. If you found the defendant guilty on any one of Counts Ten, Eleven, Twelve, or Thirteen, move on to Count Fourteen.

Count Fourteen – Visa Fraud (18 U.S.C. § 1546(a) & 3237)

____ **Not Guilty**

____ **Guilty**

DATED this 10th day of June, 2004.

Foreperson

U.S. DISTRICT COURT

2004 JUN 16 AM 10:41

CAMERON S. BURKE, CLERK, IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **SAMI OMAR AL-HUSSAYEN,** **Defendant.**	CASE NO: CR03-048-C-EJL **ORDER**

Pending before the Court in the above entitled action is a request for dismissal as to all conditions of a material witness. Mr. Abdulla Al-Kidd, a/k/a Lavoni T-Kidd, has been detained as a material witness in this case and subject to certain restrictions. The trial in this matter concluded on June 10, 2004 with Mr. Al-Kidd not having been called as a witness. While the trial did not resolve all of the counts in the action, the Government has notified the Court that it has no opposition to releasing Mr. Al-Kidd as a material witness and lifting the conditions imposed upon him as a result of his material witness status in this matter.

Based on the foregoing and the Court being fully advised in the premises, the Court **HEREBY GRANTS** the request (Docket No. 665). Mr. Al-Kidd is released of all terms and conditions imposed upon him in relation to his status as a material witness in this case, he is dismissed as a material witness in this matter, and his passport shall be returned to him.

IT IS SO ORDERED this 16th day of June, 2004.

EDWARD J. LODGE
UNITED STATES DISTRICT COURT JUDGE

ja

United States District Court
for the
District of Idaho
June 16, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 3:03-cr-00048

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Kim R Lindquist, Esq. 1-208-334-1413
US ATTORNEY'S OFFICE
Box 32
Boise, ID 83707

Dick Rubin via
Federal Defenders
hand-delivered
+ passport returned-ja

David Z Nevin, Esq. 1-208-345-8274
NEVIN BENJAMIN & MCKAY
PO Box 2772
Boise, ID 83701

Scott McKay, Esq. 1-208-345-8274
NEVIN BENJAMIN & MCKAY
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Charles F Peterson, Esq. 1-208-336-2059
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913 W River St #420
Boise, ID 83702

Joshua L Dratel, Esq.
14 Wall St, 28th Floor
New York, NY 10005

U.S. Marshal
HAND DELIVERED

Probation
HAND DELIVERED

_____Chief Judge B. Lynn Winmill
____✓Judge Edward J. Lodge
_____Chief Magistrate Judge Larry M. Boyle
_____Magistrate Judge Mikel H. Williams

Visiting Judges:
_____Judge David O. Carter
_____Judge John C. Coughenour
_____Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 6-16-04

BY: Jill Angelo
(Deputy Clerk)

THOMAS E. MOSS, IDAHO BAR NO. 1058
UNITED STATES ATTORNEY
KIM R. LINDQUIST, IDAHO BAR NO. 2459
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
MK PLAZA, PLAZA IV
800 PARK BOULEVARD, SUITE 600
BOISE, IDAHO 83712-9903
TELEPHONE: (208) 334-1211
FACSIMILE: (208) 334-1038

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. SAMI OMAR AL-HUSSAYEN, Defendant.	Cr. No. CR-03-048-C-EJL MOTION TO DISMISS

The United States of America, by and through Thomas E. Moss, United States Attorney, and the undersigned Assistants United States Attorney for the District of Idaho, hereby moves the Court to dismiss Counts Six through Fourteen of the Second Superseding Indictment, on the following grounds:

Following trial, the jury failed to reach a verdict on the afore-referenced Counts, resulting in the Court declaring a mistrial as to the same. Careful review and evaluation of the trial circumstances and results, including discussions with trial jurors, confirm the United States' confidence that retrial of the unresolved counts would result in conviction. However, subsequent discussions between the parties have resulted in the Defendant agreeing, among other things, to renounce his appeal of the Immigration Court's existing order for his removal from the United States and to be immediately deported. Given such, together with the fact that a conviction on the

unresolved counts will not likely result in incarceration additional to that which the Defendant has already received, the United States believes that it would be in the best interests of justice that the unresolved charges be dismissed and that the Defendant be removed from the United States forthwith.

Respectfully submitted this 30 day of July, 2004.

THOMAS E. MOSS
UNITED STATES ATTORNEY
By:

KIM R. LINDQUIST
Assistant United States Attorney

TERRY L. DERDEN
First Assistant United States Attorney and
Criminal Chief

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing MOTION TO DISMISS was mailed to all parties named below this 30th day of June, 2004.

David Z. Nevin
Nevin, Herzfeld, Benjamin & McKay
Attorneys at Law
Post Office Box 2772
Boise, Idaho 83701

P. Racca

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **SAMI OMAR AL-HUSSAYEN,** **Defendant.**	**Cr. No. 03-048-C-EJL** **ORDER GRANTING UNITED STATES' MOTION TO DISMISS**

Based upon the United States' Motion to Dismiss Counts Six through Fourteen of the Second Superseding Indictment, and good cause appearing, now therefore,

IT IS HEREBY ORDERED THAT the Counts Six through Fourteen of the Second Superseding Indictment are DISMISSED.

IT IS SO ORDERED this 1st day of July, 2004.

EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Idaho
July 1, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 3:03-cr-00048

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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Charles F Peterson, Esq. 1-208-336-2059
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913 W River St #420
Boise, ID 83702

Joshua L Dratel, Esq.
14 Wall St, 28th Floor
New York, NY 10005

U.S. Marshal
HAND DELIVERED

Probation
HAND DELIVERED

_____Chief Judge B. Lynn Winmill
__✓__Judge Edward J. Lodge
_____Chief Magistrate Judge Larry M. Boyle
_____Magistrate Judge Mikel H. Williams

Visiting Judges:
_____Judge David O. Carter
_____Judge John C. Coughenour
_____Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 7-1-04

BY: _____
(Deputy Clerk)

Exhibit 13

LEE GELERNT
lgelernt@aclu.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2616
Fax: (212) 549-2654

R. KEITH ROARK, ISB No. 2230
Keith@roarklaw.com
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, ID 83333
Tel: (208) 788-2427
Fax: (208) 788-3918

CYNTHIA WOOLLEY, ISB No. 6018
Cynthia@ketchumidaholaw.com
LAW OFFICES OF CYNTHIA J. WOOLLEY, PLLC
P.O. Box 6999
180 First Street West, Suite 107
Ketchum, ID 83340
Tel: (208) 725-5356
Fax: (208) 725-5569

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, vs. ALBERTO GONZALES, Attorney General of The United States; et al., Defendants.	**Case No. CIV05-093-EJL-MHW** **PLAINTIFF'S RESPONSES TO FEDERAL DEFENDANTS' FIRST SET OF INTERROGATORIES**

contained in federal government databases have also negatively affected Plaintiff's efforts to secure one or more job positions.

INTERROGATORY 14: Describe in detail all facts that support the allegations in paragraph 145 of your complaint.

OBJECTIONS: Plaintiff incorporates each of the General Objections by reference herein. Plaintiff objects to the extent that this Interrogatory calls for legal conclusions. Plaintiff also objects that this Interrogatory is unduly burdensome. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows.

ANSWER: Plaintiff's arrest and detention were humiliating and emotionally devastating. While detained and during transfers, he was subjected to harsh, punitive conditions and excessive restraints on his liberty, including but not limited to twenty-two- to twenty-three-hour-per-day lockdown, multiple strip searches, and shackling. The arrest, detention, conditions of confinement and transfers, and the overall manner in which he was treated made Plaintiff feel as though he was being treated like a criminal. Plaintiff was upset and hurt that he was subjected to such harsh and excessive measures after he had voluntarily made himself available for questioning on numerous occasions, and had treated FBI agents as guests in his mother's home. The experience caused Plaintiff to have trouble sleeping and caused him to feel betrayed, violated, fearful, anxious, and depressed.

Plaintiff's arrest and detention were reported in numerous articles available in print and on the Internet and television, and FBI Director Robert Mueller in testimony to Congress touted Plaintiff's arrest, alongside the example of the capture of Khalid Shaikh Mohammed, as a major success of the FBI's efforts to counter terrorism. The manner in which Plaintiff was treated and

portrayed caused serious harm to Plaintiff's reputation and caused him embarrassment, humiliation, depression, and despair. Plaintiff felt he had to explain and defend himself to family, friends, and the general public, which took a tremendous psychological toll. Plaintiff felt powerless to stop what was happening to him and left him with feelings of hopelessness and distrust of others, as well as sleeplessness, nightmares, and anxiety.

These harms were further compounded by the conditions imposed upon Plaintiff's release from detention. Upon his release, Plaintiff had extreme difficulty finding employment. Plaintiff felt inadequate because he was not able to provide more for his family, and he experienced a diminished sense of self-worth. The loss of his scholarship and opportunity to study abroad and pursue long-held aspirations, and the consequent loss of the opportunities he would otherwise have had, also took a tremendous toll on Plaintiff. Further, as detailed in the response to Interrogatory No. 12, Plaintiff experienced extreme stress from living with his now-former wife in her parents' house in Las Vegas. The restrictive and uncomfortable living conditions he endured, paired with the ubiquitous media coverage of his arrest as a material witness and his detention, overwhelmed Plaintiff and plunged him into a deep depression. His feelings of powerlessness and despair were compounded by fact that the demise of his marriage led to his being separated from his daughter.

INTERROGATORY 15: Describe all efforts you made to find employment following your arrest, and identify all persons or companies to whom you applied for employment and the dates on which you applied.

Exhibit 14

Not Reported in F.Supp.2d, 2007 WL 2446750 (W.D.Okla.)
(Cite as: 2007 WL 2446750 (W.D.Okla.))

United States District Court,
W.D. Oklahoma.
Abdullah AL-KIDD, Plaintiff,
v.
John SUGRUE, Defendant.

No. CIV-06-1133-R.
Aug. 23, 2007.

Charles S. Thornton, American Civil Liberties Union of Oklahoma, Oklahoma City, OK, Lee Gelernt, American Civil Liberties Union Fnd, New York, NY, Robin L. Goldfaden, American Civil Liberties Union Immigrants' Rights, Oakland, CA, for Plaintiff.

J. Marcus Meeks, U.S. Dept of Justice Torts Div, Washington, DC, for Defendant.

ORDER

DAVID L. RUSSELL, United States District Judge.

***1** Defendant John Sugrue has moved for summary judgment on Plaintiff's Amended Complaint assertedly based upon qualified immunity and Plaintiff's lack of standing to pursue declaratory relief [Doc. No. 44]. Defendant Sugrue, who is sued in his individual capacity in this *Bivens* action, asserts that Plaintiff cannot establish a Fourth Amendment violation; that the law does not clearly establish that the Federal Transfer Center's visual search policy violated the Fourth Amendment; and that Defendant is entitled to qualified immunity because he did not personally participate in the search of Plaintiff, the manner and circumstances of which are alleged to have violated the Fourth Amendment.

The following facts are undisputed. On March 16, 2003, Plaintiff Abdullah Al-Kidd was arrested in Virginia on a material witness arrest warrant issued on application made by the United States Attorney's Office for the District of Idaho. At the detention hearing before a magistrate judge in the Eastern District of Virginia, Plaintiff agreed to a continuance to be transferred to Idaho for the detention hearing after being assured that the transfer would occur quickly. Plaintiff remained in a detention facility in Virginia until March 24, 2003, when he was transported by airplane to the Federal Transfer Center (FTC) in Oklahoma City, Oklahoma. During the entire duration of the trip, Plaintiff was shackled at the hands, waist and ankles. Upon Plaintiff's arrival at the FTC, Plaintiff was taken to a “shower cell,” where he was asked to remove all of his clothes. Pursuant to what is apparently an unwritten policy of the FTC, a visual strip search and visual body cavity search of the Plaintiff was conducted by an FTC staff person standing outside the “shower cell” door. After the search was completed, the staff person confiscated Plaintiff's clothes and left Plaintiff naked in the shower cell for approximately one and one-half to two hours until other arriving detainees had been processed through the Receiving and Discharge area of the FTC. Plaintiff attests that because there was no bench or chair in the shower cell, he had to sit naked on the floor. He further attests that the cell was extremely cold to the point where he was shivering. Plaintiff attests that because the cell was so close to the desk where a female FTC staff person sat, with her back to the Plaintiff, processing detainees, each detainee who was being processed by the female employee could see the

Plaintiff. Plaintiff further attests that because he was cold and embarrassed, he curled up on the floor at the back of the shower cell, with his knees pulled up against his chest but that he was still in plain view of other detainees. Eventually, an FTC staff person gave Plaintiff a prison uniform to put on, shackled the Plaintiff and took him to a single-occupant cell in FTC's Special Housing Unit for administrative detention. Once Plaintiff was inside his cell with the door locked, his handcuffs and shackles were removed through a slot in the door. Plaintiff attests that the cell was completely closed off from neighboring cells by concrete walls, making it impossible for anything to be passed to him from other cells. He further attests that he was never permitted to leave his cell. The following morning, before being taken to the plane for transport to Idaho, Plaintiff was again handcuffed and shackled, taken from his cell and escorted to a barred cell where he was again subjected to another strip search and visual body cavity search. Plaintiff attests that at least two other detainees could see him being searched.

***2** It is FTC's policy to conduct a visual inspection of all body surfaces and body cavities of each inmate that arrives at FTC, regardless of whether the inmate is a sentenced prisoner, is awaiting trial, a material witness, or is being detained for some other purpose. The BOP Inmate Systems Supervisor at the FTC attests that uniform application of the visual search policy ensures that it is not administered in a discriminatory manner. The purpose of this policy is to prevent and deter the introduction of contraband and weapons into the FTC. All FTC inmates are also subjected to a visual search upon departure from the FTC. The stated purpose of these searches is to prevent contraband or weapons from leaving the facility and to deter the creation or obtaining of contraband and weapons within the FTC.

The FTC's Inmate Systems Supervisor, Johnny Rose, attests that the procedures for conducting visual searches are designed to ensure maximum privacy for the inmates. Inmates are searched in one of eleven four-foot by four-foot search booths which have a curtain on the fourth side, allowing the FTC staff person to open the curtain and view the inmate, or in one of two four-foot by five-foot shower cells, having a barred, locked door on the fourth side. Mr. Rose attests that because of the configuration and size of the booths and shower cells, it is difficult if not impossible for other inmates and staff to see into them while a search is being conducted, and that while an inmate is being searched in a shower cell, other inmates are not moved past the shower cell doors. Mr. Rose attests that it is FTC policy to have an inmate disrobe only long enough to perform a visual search and that inmates are given institutional clothing as soon as possible after visual searches are performed. However, he states that there are occasions when staff will leave an inmate who's been searched in a shower cell, which is locked, for a short period while the staff person attends to other duties.

It is also FTC policy or practice for each inmate to be placed in a “boss chair” and then passed through a metal detector after the inmate is visually searched for the purpose of detecting metal objects that could not be detected by the visual search.

A significant number of inmates arrive at FTC on a daily basis and include sentenced prisoners, pretrial detainees, other types of detainees and material witnesses of all custody classifications and security levels. Inmates housed at FTC come from both state and federal facilities and prisons all over the country. On the day Plaintiff arrived at FTC, 187 inmates of all categories were admitted to FTC. According to the sworn Declaration of Johnny Rose:

> The FTC has limited information about an inmate upon his or her arrival. The movement paperwork that arrives with the inmate will provide the basis for an inmate's detention, but it may say nothing about the underlying conviction, charges, or specific reasons why an inmate is being detained. The movement paperwork also

> may or may not indicate where an inmate was housed prior to arriving at the FTC. If an inmate was housed in a non-Federal facility, the movement paperwork may not indicate security concerns that arose during the inmate's stay in the non-Federal facility. The limited information that the FTC has about an inmate upon arrival necessitates a visual cavity search of all inmates to prevent the introduction of contraband or weapons into the facility.
>
> ***3** Declaration of Johnny Rose (Exhibit "3" to Defendant's Brief) at ¶ 6 (emphasis added).

Defendant John Sugrue was warden of the FTC at the time Plaintiff was detained there in March of 2003. As Warden, Defendant Sugrue had oversight of all staff and was responsible for the overall operations of the FTC, although he was not directly involved in the daily operations of each department. Defendant Sugrue had no knowledge of and no personal interaction with the Plaintiff during the time Plaintiff was at the FTC. Rick Sharp, an Inmate Systems Supervisor at FTC, had no recollection of Plaintiff and none of FTC's staff persons recalled Plaintiff coming into the FTC or going out. Mr. Sharp also testified that a Form 129 for Plaintiff, showing that Plaintiff was a federal material witness, *could have been* included in the "movement papers" with which Plaintiff arrived at the FTC.

Despite the routine visual searches and use of the "boss chair"/metal detector upon inmates' arrival at FTC and departure therefrom, inmates still attempt to smuggle contraband and weapons in and out of the FTC. Since December of 1999, there have been eight (8) documented incidents of inmates attempting to do so, in each of which instance the material was discovered during the visual search or when the inmate sat in the boss chair. There have been at least three instances since 2000 where weapons or contraband have been discovered on inmates while in the FTC. There is no information in the record as to the type(s) of FTC inmates on which contraband or weapons were discovered during visual searches, use of the boss chair or otherwise, i.e., whether the inmates were convicted prisoners, pretrial detainees, material witnesses or other types of detainees.

Qualified Immunity

Qualified immunity is a defense to a *Bivens* action. *See Robbins v. Wilkie*, --- U.S. ----, 127 S.Ct. 2588, --- L.Ed.2d ---- (2007); *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). Under the qualified immunity doctrine, government officials performing discretionary functions generally are immune from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Douglas v. Dobbs*, 419 F.3d 1097, 1100 (10th Cir.2005), *cert. denied*, 546 U.S. 1138, 126 S.Ct. 1147, 163 L.Ed.2d 1001 (2006). "When a defendant asserts a qualified immunity defense, the burden shifts to the plaintiff, who must first establish that the defendant violated a constitutional right." *Cortez v. McCauley*, 478 F.3d 1108, 1114 (10th Cir.2007) (citing *Reynolds v. Powell*, 370 F.3d 1028, 1030 (10th Cir.2004)). If no constitutional violation is established no further inquiry is necessary. *See id.*, *citing Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). If a constitutional violation has been shown, the plaintiff must show that the constitutional right which was violated was clearly established. *See Saucier v. Katz*, 533 U.S. at 201, 121 S.Ct. at ----, 150 L.Ed.2d at 281. The inquiry as to whether a constitutional right was clearly established must be undertaken not in a broad general sense but in a more particularized and relevant sense. "The contours of the right must be sufficiently clear that a reasonable officer would understand that what he is doing violates that right." *Saucier*, 533 U.S. at 201-02, 121 S.Ct. at ----, 150 L.Ed.2d at 281-82, *quoting Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523, 531 (1987). Ultimately, however, the inquiry is whether the law was sufficiently clear to given an official "fair warning" that his conduct deprived his victim of a constitutional right. *United States v. Lanier*, 520 U.S. 259, 270-71, 117 S.Ct. 1219, 137 L.Ed.2d 432, 445 (1997). This does not mean, however, that a plaintiff must point to a case involving

identical or even very similar facts, although doing so would provide strong support for the conclusion that the law is clearly established. *Hope v. Pelzer,* 536 U.S. 730, 741, 122 S.Ct. 2508, 153 L.Ed.2d 666, 679 (2002). General statements of the law may give fair and clear warning because they "apply with obvious clarity to the specific conduct in question, even though 'the very action in question has [not] previously been held unlawful.' " *Lanier,* 520 U.S. at 270-71, 117 S.Ct. 1219, 137 L.Ed.2d at 446, *quoting Anderson v. Creighton,* 483 U.S. at 640, 107 S.Ct. 3034, 97 L.Ed.2d at 531. Thus, "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope v. Pelzer,* 536 U.S. 730, 741, 122 S.Ct. 2508, ----, 153 L.Ed.2d 666, 679 (2002). "The more obviously egregious the [subject] conduct is in light of prevailing constitutional principles, the less specificity is required from prior case law to clearly establish the violation." *Meyer v. Board of County Commissioners of Harper County, OK,* 482 F.3d 1232, 1242 (10th Cir.2007) (quoting *Pierce v. Gilchrist,* 359 F.3d 1279, 1298 (10th Cir.2004)).

Did Defendant Violate Plaintiff's Fourth Amendment Rights By Causing Plaintiff to be Subjected to the Strip Searches and Visual Body Cavity Searches?

***4** In determining whether a strip search is constitutional under the Fourth Amendment to the United States Constitution, the Court must balance the need for the particular search against the grave invasion of privacy it entails. *Bell v. Wolfish,* 441 U.S. 520, 559, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); *Nelson v. McMullen,* 207 F.3d 1202, 1206 (10th Cir.2000); *Cottrell v. Kaysville City, Utah,* 994 F.3d 730, 734 (10th Cir.1993); *Chapman v. Nichols,* 989 F.2d 393, 395-96 (10th Cir.1993); *Hill v. Bogans,* 735 F.3d 391, 393-95 (10th Cir.1984); *Draper v. Walsh,* 790 F.Supp. 1553, 1558 (W.D.Okla.1991); *Morreale v. City of Cripple Creek,* 113 F.3d 1246, 1997 WL 290976 (10th Cir. May 27, 1997) (No. 96-1220) at *7; *Ellis v. Sharp,* 30 F.3d 141, 1994 WL 408129 at *3 (10th Cir. Aug. 4, 1994) (No. 93-6242). In arriving at that balance, the Court must consider the scope of the intrusion, the manner in which it was conducted, the justification for initiating the search and the place where the search took place. *Id.* Personal body searches of inmates must be reasonable under the circumstances. *Levoy v. Miller,* 788 F.2d 1437, 1439 n * * (10th Cir.1986). *See Ohio v. Robinett,* 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347, 354 (1996) (Reasonableness under the Fourth Amendment is "measured in objective terms by examining the totality of the circumstances.").

In this case, no probable cause or reasonable suspicion that Plaintiff was concealing weapons or contraband on his person was articulated as the justification or need for the strip and body cavity searches at issue. Rather, the searches were conducted pursuant to an FTC policy to conduct such searches on all arriving and departing FTC inmates. The stated purpose for this policy as applied to arriving inmates is to prevent and deter the introduction of contraband and weapons into the FTC and as applied to departing inmates is to deter the creation or obtaining of contraband and weapons within the FTC. Thus, the articulated need for the searches in this case is the maintenance of institutional security at the FTC by preventing and deterring the introduction, creation or obtaining of contraband or weapons in the FTC. Maintaining a safe and secure detention facility is a legitimate penological interest. *See Bell v. Wolfish,* 441 U.S. at 540 & 546, 99 S.Ct. 1861, 60 L.Ed.2d at 469 & 473; *Block v. Rutherford,* 468 U.S. 576, 586, 104 S.Ct. 3227, 82 L.Ed.2d 438, ---- (1984). However, Plaintiff had neither been arrested for or convicted of any crime. Plaintiff was merely a material witness who had voluntarily agreed to be transferred to the District of Idaho for a detention hearing. Plaintiff was either a material witness detainee or a material witness subject to possible detention following a detention hearing in Idaho.

"A strip search is an invasion of personal rights of the first magnitude." *Nelson v. McMullen,* 207 F.3d at 1206, *quoting Chapman v. Nichols,* 989 F.2d at 395. Strip searches involving the visual inspection of body cavities, like those herein, are even more intrusive and among the most dehumanizing and degrading of experiences. *See Levoy v. Mills,* 768 F.2d at 1439. In this case Plaintiff was twice required to remove all of his clothes and

subjected to a visual inspection of his body cavities. Thus, the scope of the intrusion upon Plaintiff's privacy interests was great.

***5** There is no dispute at to where the searches of Plaintiff were conducted. Although Defendant's Inmate Systems Supervisor, Johnny Rose, attests that "[t]he procedures for conducting visual searches are designed to ensure maximum privacy for the inmates," Declaration of Johnny Rose at ¶ 9; that it is difficult if not impossible for other inmates and staff to see inside the cell while a search is being conducted," *id.* at ¶ 11; and that while an inmate is searched in a shower cell, other inmates are not moved past the shower stall doors, *see id.* at ¶ 12, his description of the shower cells indicates that it was certainly possible for other inmates or staff to see into the shower cell while the search of Plaintiff was being conducted and to see Plaintiff when he was left nude in the shower cell. Moreover, because Mr. Rose's statements pertain only to routine procedures and not to what occurred while and after Plaintiff was strip searched, they do not directly or completely controvert Plaintiff's statements that inmates being processed and a female staff person could see Plaintiff when he was left naked in the shower cell following the initial strip search or that at least two inmates could see him when he was strip searched before his departure from the FTC. Likewise, Mr. Rose's statements that FTC policy is to have an inmate disrobe only long enough for a visual search and that inmates are given institutional clothing as soon as possible after the visual searches, *see id.* at ¶ 14, do not directly or completely controvert Plaintiff's statement that he was left naked in the shower cell for one and one-half to two hours following the visual search conducted when he arrived at FTC because, again, Mr. Rose's statements pertain to what generally or ordinarily occurs and not to what specifically occurred after Plaintiff was strip searched. It is unnecessary, however, for the Court to resolve any factual disputes in the record concerning the place where the initial search of Plaintiff was conducted and the manner in which it was conducted. Likewise, it is unnecessary for the Court to resolve any factual discrepancy in the record as to the place or manner in which the search of Plaintiff before his departure from FTC was conducted. Neither of the searches of Plaintiff was performed in a place and manner that ensured his privacy and prevented others from viewing Plaintiff while and after he was being searched.

If the Court balances the need to search Plaintiff, a material witness who had never been arrested for or convicted of committing a crime, for weapons or contraband to prevent or deter the introduction, creation or obtaining of same in the FTC against the grave invasion of the Plaintiff's privacy occasioned by the strip searches of Plaintiff and visual inspections of his body cavities, considering the factors set forth in *Bell v. Wolfish*, both of the searches of Plaintiff were objectively unreasonable and violated the Fourth Amendment.

***6** However, the searches of Plaintiff herein were conducted pursuant to an FTC policy requiring searches of all incoming and departing inmates or detainees. A search conducted pursuant to such a prison policy which impinges on inmates' constitutional rights is valid if it is reasonably related to legitimate penological interests. *See Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64, 70 (1987); *Farmer v. Perrill*, 288 F.3d 1254, 1260 (10th Cir.2002). Maintenance of facility security by preventing and deterring the introduction, creation or obtaining of weapons and contraband is a legitimate penological interest. However, the searches of Plaintiff and the manner in which they were conducted were not reasonably related to the FTC's security needs. There is no logical or legitimate reason to think that individuals like Plaintiff, who are detained merely because they are material witnesses and who have not been charged with or convicted of a crime, may be concealing weapons or contraband. Strip searches and body cavity inspections of material witness detainees are irrational and arbitrary or an "exaggerated response" to security needs and the likelihood of the articulated concern that inmates subject to searches would learn which detainees would not be searched and ask or force them to smuggle contraband or weapons into the FTC, *see* Declaration of Johnny Rose at ¶ 19. This is particularly true inasmuch as it is also FTC policy to conduct pat searches of all inmates and subject them to the "boss chair"/metal detector

procedure. With respect to the strip search of Plaintiff upon his arrival, it is illogical or irrational to believe that another inmate could have asked or forced Plaintiff to conceal a weapon or contraband in transit to the FTC because Plaintiff was shackled. The strip search of Plaintiff before his departure from the FTC, after Plaintiff had been strip searched upon arrival at FTC, shackled, placed in a single-person cell to which no other inmates had access and which Plaintiff was not allowed out of for the duration of his stay at FTC, bears no rational relationship to any security needs or interest of the FTC. Moreover, accommodation of the constitutional rights of material witness detainees like Plaintiff by ascertaining their status as material witnesses would pose little burden on FTC staff. *Compare with Turner v. Safly*, 482 U.S. at 90, 107 S.Ct. 2254, 96 L.Ed.2d at 79-80. It is not reasonable for FTC staff to conduct strip searches and visual body cavity inspections on material witness detainees merely because they don't know that they are merely material witness detainees and not convicted prisoners. *See Ellis v. Sharp*, 30 F.3d 141, 1994 WL 408129 at *2 (10th Cir. Aug. 4, 1994).

Finally, "the existence of obvious, easy alternatives" to policy-dictated routine strip and body cavity searches of all material witness detainees "at de minimis cost to the valid penological interests," such as a stamp on material witnesses' moving papers identifying their status as such, coupled with a pat-down search or a pat-down search and use of the "boss chair"/metal detector procedure, is evidence that FTC's policy of strip searches and body cavity inspections for all incoming and outgoing "inmates," as applied to material witness detainees, is not reasonable and not reasonably related to legitimate penological interests. *See id.*, 482 U.S. at 90-91, 107 S.Ct. 2254, 96 L.Ed.2d at 80. The record herein shows that Defendant's policy as applied to Plaintiff is not reasonably related to legitimate penological interests in facility security and that Defendant violated Plaintiff's Fourth Amendment rights by causing Plaintiff to be subjected to strip searches and body cavity inspections both upon his arrival at FTC and before his departure therefrom. With respect to the place and manner in which the searches of Plaintiff were conducted, genuine issues of material fact exist as to whether the conditions of the searches violated Plaintiff's Fourth Amendment rights. However, Plaintiff's version of the material facts as to where the searches were conducted, whether Plaintiff could be viewed by other inmates during the searches and the length of time during which Plaintiff remained naked and visible to other inmates following the initial search supports a claim for the violation of Plaintiff's Fourth Amendment rights by the place and manner in which the searches were conducted. *See Walker v. City of Orem*, 451 F.3d 1139, 1130 (10th Cir.2006) (denial of summary judgment on the issue of qualified immunity is proper where the plaintiff's version of facts in summary judgment proceedings supports a claim for a violation of a constitutional right).

Was the Law Clearly Established Such that Defendant Should Have Known that Subjecting Plaintiff to the Strip Searches and Body Cavity Inspections Violated Plaintiff's Constitutional Rights?

***7** As early as 1984, the Tenth Circuit held that strip searches of persons arrested for minor traffic offenses of whom officials had no reasonable suspicion that they were carrying or concealing weapons or drugs, conducted pursuant to a blanket policy requiring all detainees to be strip searched, were unconstitutional as violative of such detainees' Fourth Amendment rights, even when such detainees were or were to be intermingled with the prison population. *See Hill v. Bogans*, 735 F.2d 391 (10th Cir.1984). In 1993, the Tenth Circuit stated that "[e]very circuit court, including our own, which had considered the constitutionality of strip searches conducted under such circumstances has concluded that such searches are unconstitutional." *Chapman v. Nichols*, 989 F.2d 393, 395 (10th Cir.1993) (citing cases from the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Circuits). The Tenth Circuit has in fact consistently and continuously condemned strip searches with or without visual inspection of body cavities of pretrial detainees arrested for minor offenses as unreasonable as a matter of law and unconstitutional under the Fourth Amendment. *See Cottrell v. Kaysville City, Utah*, 994 F.2d at 734; *Chapman*, 989 F.2d at 395-96; *Hill v. Bogans*, 735 F.2d at 393-94; *Morreale v. City of Cripple Creek*, 1997 WL

290976 at *6-7; *Ellis v. Sharp*, 1994 WL 408129 at *2. *Cf. Foote v. Spiegel*, 118 F.3d 1416, 1425-26 (10th Cir.1997) (no qualified immunity for strip search of person arrested for possession of drugs but not placed in general inmate population where there was no reasonable suspicion she had additional drugs or a weapon on her person). Moreover, the Tenth Circuit has consistently condemned strip searches with or without body cavity inspections even of convicted prisoners as unreasonable and violative of the Fourth Amendment when they are conducted in full view of other inmates and staff, at least without sufficient justification for conducting the searches in an open area. *See Farmer v. Perrill*, 288 F.3d at 1259-61; *Nelson v. McMullen*, 207 F.3d at 1207; *Hayes v. Marriott*, 70 F.3d 1144, 1146-48 (10th Cir.1995). Finally, the Tenth Circuit has specifically held that it was clearly established by May of 1993 that a strip search of a person arrested for a minor traffic offense, conducted in view of other persons, without sufficient justification for the search or for conducting it in a public area, violates the Fourth Amendment and that a reasonable officer would have known that by May of 1993. *See Farmer v. Perrill*, 288 F.3d at 1260, *citing Hill v. Bogans*, 735 F.2d 391; *Foote v. Spiegel*, 118 F.3d at 1425 ("[I]t was clearly established in May 1994 that a strip search of a person arrested for driving under the influence of drugs but not placed in the general jail population is not justified in the absence of reasonable suspicion that the arrestee has drugs or weapons hidden on his or her person.") (citing *Cottrell*, 994 F.2d at 734). In *Chapman v. Nichols*, the Tenth Circuit in 1993 concluded as a matter of law that a belief that "a strip search policy applied to minor offense detainees without particularized reasonable suspicion was lawful if conducted in private" was "not objectively reasonable" in light of clearly established law, rejecting a defense of qualified immunity. 989 F.2d at 398. The Tenth Circuit further observed in *Chapman* that "no circuit case has upheld the grant of qualified immunity when asserted against a claim based on an across-the-board policy of strip searching minor offense detainees." *Chapman v. Nichols*, 989 F.2d at 398 (citing cases). *Accord Draper v. Walsh*, 790 F.Supp. 1553, 1560-61 (W.D.Okla.1991).

***8** In the case before this Court, Plaintiff had not even been arrested for a minor offense; he was arrested and detained as a material witness. He was not intermingled with convicted prisoners at FTC and was handcuffed and shackled while in the presence of other inmates. If an official could not have reasonably believed in 1993 that a strip search policy applied to minor offense detainees was constitutional in light of clearly established law, *a fortiori*, Defendant could not have reasonably believed in 2003 that the strip search/body cavity inspection policy of FTC, applied to a material witness detainee such as the Plaintiff, did not violate the law and deprive Plaintiff of his Fourth Amendment rights. Likewise, if the searches in question occurred where Plaintiff could be and was viewed by other inmates, as Plaintiff attests but as to which a genuine issue of material fact exists, Defendant Sugrue could not have reasonably believed that the manner of conducting the searches was reasonable and did not violate Plaintiff's Fourth Amendment rights. However, an issue remains as to whether Defendant Sugrue caused the deprivation of Plaintiff's Fourth Amendment rights by the *place and manner* in which the strip searches were conducted, i.e., whether there is any basis for Defendant's personal liability for the place/manner in which Plaintiff maintains the strip searches were conducted.

Did Defendant Personally Participate in the Asserted Constitutional Violations

Defendant Sugrue does not argue that he cannot be liable for deprivations of Plaintiff's constitutional rights occasioned by conducting strip searches and body cavity inspections of Plaintiff at the FTC because he did not personally participate in them. Nor does he argue that he did not promulgate and/or enforce the FTC policy on strip searched and body cavity searches. The Court therefore presumes that Defendant Sugrue promulgated and enforced the FTC policy on strip searches and body cavity searches and therefore, that he is liable for the violation of Plaintiff's Fourth Amendment rights occasioned by the searches by "causing" such violations. *See Thomas v. Ashcroft*, 470 F.3d 491, 496-97 (2nd Cir.2006) (personal involvement of a supervisory defendant ne-

cessary for liability in *Bivens* action may be shown by evidence that he created a custom or policy fostering the constitutional violation or allowed the custom or policy to continue after learning of it). *Cf. Worrell v. Henry*, 219 F.3d 1197, 1214 (10th Cir.2000) (supervisor is liable under 42 U.S.C. § 1983 where an affirmative link is shown between the constitutional deprivation and the supervisor's personal participation or exercise of control or direction). However, he argues that he cannot be liable for any deprivation of Plaintiff's Fourth Amendment rights resulting from the place and manner in which he was searched, that is, because the searches were conducted where Plaintiff could be viewed by other inmates and because Plaintiff was left naked in the shower cell for one and one-half to two hours, if this was in fact the case. This is so, Defendant Sugrue asserts, because the FTC search policy does not sanction any of these circumstances, and Defendant Sugrue cannot be liable for actions of the FTC staff that were contrary to policy procedures. In other words, Defendant Sugrue asserts that Plaintiff has failed to show Defendant's personal participation in these aspects of the searches or any affirmative link between the deprivation of Plaintiff's constitutional rights occasioned by these search conditions and Defendant's personal participation or exercise of control or direction. Defendant Sugrue is correct. However, Plaintiff, concurrently with his response to Defendant's motion for summary judgment, filed a motion pursuant to Rule 56(f), F.R.Civ.P . [Doc. No. 49], most of which is moot in light of the foregoing. But in his Rule 56(f) motion, Plaintiff asserts that he should be permitted to conduct discovery directed to how often the practice of leaving detainees naked in their cells or shower cells during or after searches has occurred and for what length of time detainees have been so left, whether Defendant Sugrue was aware of, condoned or tolerated this “practice” and what measures, if any, Defendant took to prevent this practice from occurring at the FTC, including what training was conducted in that regard. Plaintiff also requests that he be permitted to take the deposition of the individual responsible for Plaintiff's initial search and prolonged wait before he was furnished any clothes to understand whether Plaintiff was “singled out” for the treatment he received and to determine whether such treatment was at the direction of “someone in a supervisory position,” presumably to include Defendant. Defendant asserts that this discovery should not be permitted “because Plaintiff has not satisfied his burden under Rule 56(f) of showing that this discovery would rebut Defendant's assertion of qualified immunity.” Defendant's Opposition to Plaintiff's Rule 56(f) Motion at pp. 4-5. As should be obvious from the foregoing, Defendant is wrong. If the searches took place in the place/manner as Plaintiff attests and Plaintiff was left naked in the shower cell for one and one-half to two hours, Plaintiff's constitutional rights were violated thereby, constitutional rights which were clearly established at the time of those searches, and Defendant would not be entitled to qualified immunity if he personally participated in or caused the violations. Under extant case law,

> ***9** [P]ersonal involvement of a supervisory defendant may be shown by evidence that the defendant (1) directly participated in the constitutional violation; (2) failed to remedy the violation after learning of it through a report or appeal; (3) created a custom or policy fostering the violation or allowed the custom or policy to continue after learning of it; (4) was grossly negligent in supervising subordinates who caused the violation; or (5) failed to act on information indicating that unconstitutional acts were occurring.
>
> *Thomas v. Ashcroft*, 470 F.3d 491, 496-97 (2nd Cir.2006) (citing *Wright v. Smith*, 21 F.3d 496, 501 (2nd Cir.1994).

In this circuit, in the Section 1983 context, a supervisor may be liable for the unconstitutional acts of his subordinates if the plaintiff shows that an affirmative link exists between the constitutional deprivation and either the supervisor's personal participation, his exercise of control or direction, his acquiescence in the constitutional violation or his failure to supervise. *See Serna v. Colorado Department of Corrections*, 455 F.3d 1146, 1151 (10th Cir.2006); *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179, 1187 (10th Cir.2001); *Worrell v. Henry*, 219 F.3d 1197, 1214 (10th Cir.2000); *Green v. Branson*, 108 F.3d 1296, 1304 (10th Cir.1997); *Winters v.*

Board of County Commissioners, 4 F.3d 848, 855 (10th Cir.1993); *Meade v. Grubbs,* 841 F.3d 1512, 1527 (10th Cir.1988). The supervisor's state of mind is critical to showing the affirmative link. *See Serna,* 455 F.3d at 1151. Mere negligence is insufficient to hold a supervisor liable under § 1983; rather, a plaintiff must show that the supervisor acted knowingly or with deliberate indifference that a constitutional violation would occur, *id.*, which requires that a plaintiff show that the supervisor was aware of facts from which the inference could be drawn that a substantial risk of the violation of constitutional rights existed and that the supervisor actually drew the inference. *See Serna,* 455 F.3d at 1154-55.

If, for example, Plaintiff can show that FTC inmates were with some frequency searched where they could be viewed by other inmates and/or were left naked in shower cells where they could be viewed by other inmates, that Defendant Sugrue was aware of this practice and condoned or acquiesced in it and that he had the requisite state of mind, then Defendant Sugrue may be liable for the claimed deprivation of Plaintiff's constitutional rights and not qualifiedly immune. Similarly, if Plaintiff can show that Defendant Sugrue directed this treatment of Plaintiff, Defendant may be liable and not enjoy qualified immunity for Plaintiff's *Bivens* claim based upon the place and manner of the strip searches. Accordingly, Plaintiff's Rule 56(f) motion is GRANTED insofar as Plaintiff asks the Court to hold Defendant's motion directed to the place and manner of the strip searches in abeyance and allow Plaintiff to conduct discovery as to whether the frequency with which detainees were strip searched where they could be viewed by others and left naked in their cell for more than a few minutes, whether Defendant Sugrue was aware of and tolerated or condoned any such practice, what measures, if any, he took to prevent such practices from occurring and as to whether anyone in a supervisory position directed the treatment Plaintiff received. Plaintiff is GRANTED a period of sixty (60) days in which to conduct such discovery. Plaintiff is directed to file his supplemental brief responding to Defendant's argument that he cannot be liable for any constitutional deprivation occasioned by the place and manner in which the strip searches of Plaintiff were conducted due to lack of personal participation within seventy-five (75) days of the date of this Order.

Declaratory Relief

***10** Defendant asserts that Plaintiff is not entitled to declaratory relief on his Fourth Amendment *Bivens* claims for the same reason that the Court concluded he was not entitled to such relief on his Fifth Amendment claim: Plaintiff lacks standing to pursue this claim. Plaintiff does not take issue with this argument and the Court concludes that Plaintiff lacks standing to pursue declaratory relief on his Fourth Amendment claims. *See PeTA v. Rasmussen,* 298 F.3d 1198, 1202-03, 1203 n. 2 (10th Cir.2002); *Bauchman v. West High School,* 132 F.3d 542, 548-49 (10th Cir.1997); *Green v. Brown,* 108 F.3d at 1299-1300.

Conclusion

In accordance with the foregoing, Defendant's motion for summary judgment [Doc. No. 44] on Plaintiff's Fourth Amendment *Bivens* claims predicated on the strip searches and visual body cavity inspections of Plaintiff, based upon qualified immunity, is DENIED; Defendant's motion for summary judgment on Plaintiff's claims for declaratory relief is GRANTED; Plaintiff's Rule 56(f) motion [Doc. No. 49] is GRANTED in part as set forth herein and DENIED in part as moot; and Defendant's motion for summary judgment on Plaintiff's Fourth Amendment *Bivens* claims predicated on the place and manner (duration) of the strip searches, based upon lack of personal participation, is HELD IN ABEYANCE pending completion of discovery permitted Plaintiff herein and the filing of Plaintiff's supplemental brief as ordered herein. Defendant is GRANTED leave to file a reply brief to Plaintiff's supplemental brief within ten (10) days after the filing of Plaintiff's supplemental brief. Plaintiff is *sua sponte* GRANTED partial summary judgment on the issue of Defendant's liability on Plaintiff's Fourth Amendment *Bivens* claim based upon the fact that he was twice subjected to a strip search and visual inspection of his body cavities.

It is so ordered.

W.D.Okla.,2007.
Al-Kidd v. Sugrue
Not Reported in F.Supp.2d, 2007 WL 2446750 (W.D.Okla.)

END OF DOCUMENT

Exhibit 15

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Attorneys for the Federal Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	)	Case No. CV:05-093-S-EJL RESPONSE OF DEFENDANT THE UNITED STATES OF AMERICA TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant the United States of America ("Defendant" or the "United States") hereby responds to Plaintiff's First Set of Requests for Admissions.

OBJECTIONS

Defendant states the following General Objections to Plaintiff's First Set of Requests for Admissions, which are hereby incorporated in and made part of each of the following specific responses.

Request No. 8

Admit that no federal officer or employee instructed Abdullah al-Kidd that he could not travel outside the United States.

Response: Admitted.

Request No. 9

Admit that no federal officer or employee instructed Abdullah al-Kidd that he should report to the FBI or an attorney for the United States of America if he was planning travel outside the United States.

Response: Admitted.

Request No. 10

Admit that, prior to the arrest of Abdullah al-Kidd, no federal officer or employee informed Mr. al-Kidd that his testimony might be wanted for a criminal proceeding.

Response: Admitted.

Request No. 11

Admit that, prior to the arrest of Abdullah al-Kidd, no federal officer or employee asked Mr. al-Kidd if he would postpone his travel to Saudi Arabia, relinquish his passport, or agree to return to the United States to testify in any criminal proceeding.

Response: Admitted.

Request No. 12

Admit that, prior to the arrest of Sami Omar Al-Hussayen, no federal officer or employee advised Abdullah al-Kidd that Mr. Al-Hussayen in particular was the target of a criminal investigation.

Response: Admitted.

Request No. 13

Admit that, prior to the arrest of Abdullah al-Kidd, no federal law enforcement officer or employee advised Mr. al-Kidd that he might have information considered material to a criminal proceeding against Sami Omar Al-Hussayen.

Response: Admitted.

Request No. 14

Admit that no federal officer or employee instructed Abdullah al-Kidd that he should not disclose that he had been interviewed by the FBI.

Response: Defendant admits that no federal officer or employee commanded Abdullah al-Kidd not to disclose that he had been interviewed by the FBI, but denies the request to the extent it seeks an admission that no federal officer or employee requested al-Kidd not to disclose that he had been interviewed by the FBI.

Request No. 15

Admit that no federal officer or employee provided to any person responsible for physical custody of Abdullah al-Kidd any instruction that he be subjected to the least restrictive conditions of confinement possible while held as a material witness.

Response: Defendant objects to this request as over-broad because the allegations and claims in Plaintiff's Second Amended Complaint against any federal employee concerning Plaintiff's "conditions of confinement" have been transferred to the United District Court for the Western District of Oklahoma and are no longer part of this proceeding. Defendant also objects to this request because the phrase "least restrictive conditions of confinement possible" is vague,

Exhibit 16

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	Case No. CV:05-093-S-EJL RESPONSE OF DEFENDANT MICHAEL GNECKOW TO PLAINTIFF'S FIRST INTERROGATORIES

Pursuant to Federal Rules of Civil Procedure 26 and 33, and Local Civil Rule 26.1, Federal Defendant Michael Gneckow hereby responds to Plaintiff's First Interrogatories.

GENERAL OBJECTIONS

Defendant Gneckow states the following General Objections to Plaintiff's First Interrogatories, which are hereby incorporated in and made part of each of the following specific interrogatory responses.

1. Defendant objects to Plaintiff's First Interrogatories to the extent that they seek to

INTERROGATORY NO. 6: Please describe how and when you came to be aware that Plaintiff was planning to travel to Saudi Arabia in 2003.

OBJECTIONS: Defendant Gneckow answers this interrogatory subject to the General Objections noted above.

ANSWER: On or about March 13, 2003, S/SA Robert Alvarez received information (telephonically) from U.S. Customs and Border Protection that Plaintiff had purchased a one-way, first-class ticket for travel to Saudi Arabia for approximately $5000. SA Gneckow obtained this information in person from S/SA Alvarez on or about March 13, 2003. S/SA Alvarez also indicated that Plaintiff was scheduled to depart in about two or three days.

INTERROGATORY NO. 7: Please describe every step you took to investigate or otherwise gather information about Plaintiff's plans for travel to Saudi Arabia in 2003, including every person, document, and/or database you consulted, and state the information you acquired at each step in this process.

OBJECTIONS: Defendant Gneckow answers this interrogatory subject to the General Objections noted above.

ANSWER: See Response to Interrogatory No. 6. Prior to Plaintiff's arrest, a special agent with the FBI, Washington Field Office, confirmed that Plaintiff was listed on the flight manifest to Saudi Arabia. At or around that time, SA Gneckow was notified by telephone of this confirmation, but he does not remember the special agent's name. Sometime after Plaintiff was arrested, SA Gneckow received three different reports dated March 12, 2003, March 20, 2003, and April 3, 2003, respectively, from the United States Customs Service concerning, among

other things, Plaintiff's scheduled trip to Saudi Arabia.

INTERROGATORY NO. 8: Please indicate all knowledge you had as of the time when the Affidavit was filed with the Court, and the sources or bases of such knowledge, regarding Mr. al-Kidd's airplane ticket for travel to Saudi Arabia, including but not limited to its date of purchase, purchase price, manner of purchase, class of ticket (e.g., first-class, coach), and whether for one-way or round-trip travel.

OBJECTIONS: Defendant Gneckow answers this interrogatory subject to the General Objections noted above.

ANSWER: See Response to Interrogatory No. 6.

INTERROGATORY NO. 9: Please describe your knowledge, as of the time when the Affidavit was filed with the Court, of Plaintiff's connections to the United States, including but not limited to his citizenship, place of birth, prior residences, education, work history, and family in the United States.

OBJECTIONS: Defendant Gneckow answers this interrogatory subject to the General Objections noted above.

ANSWER: At the time the material witness arrest warrant was sought for Plaintiff, SA Gneckow knew that:

Plaintiff was a United States citizen;

Plaintiff had attended the University of Idaho from 1991 to 1996;

Plaintiff had lived in Kent, Washington and Moscow, Idaho;

Plaintiff's mother resided in Kent, Washington;

Plaintiff divorced from his first wife, Stephanie J. Kidd, in 1994 and, at the time of the application for the material witness arrest, owed her over $10,000 in back child support;

in mid-2000, Plaintiff began working at the Walla Walla State Prison where he was supposed to be a Muslim advisor to the Muslim inmates, and that Plaintiff was terminated from that position;

Plaintiff separated from his second wife, Nadine Zegura, and traveled to Sanaa, Yemen in 2001, returning to the United States in early 2002 after he was arrested by the Yemeni security forces in the aftermath of 9/11; and

at the time of his interviews with the FBI in June and July 2002, Plaintiff was unemployed.

INTERROGATORY NO. 10: Please describe what you knew about the FBI's contacts, including but not limited to any meetings or interviews, with Plaintiff up to and including March 14, 2003.

OBJECTIONS: Defendant Gneckow answers this interrogatory subject to the General Objections noted above.

ANSWER: SA Gneckow knew that Plaintiff had been interviewed on June 10, 2002, and July 3, 2002, by SA Joseph Cleary, FBI Spokane, prior to his arrest on March 14, 2003.

INTERROGATORY NO. 11: Please describe any information of which you were aware, as of the time when the Affidavit was filed with the Court, that related to the likelihood of whether

Office to use the material witness arrest warrant option. SA Gneckow also believed that because Plaintiff was leaving the country imminently to travel to Saudi Arabia (which does not have an extradition treaty with the United States), and that Plaintiff failed to cooperate in previous contacts with the FBI, there was no guarantee Plaintiff would comply with a subpoena and that there was no other practicable means to secure Plaintiff's presence at Al-Hussayen's trial short of arrest as a material witness.

INTERROGATORY NO. 12: Please describe any efforts you made to verify or investigate any of the facts asserted in the Affidavit.

OBJECTIONS: Defendant Gneckow answers this interrogatory subject to the General Objections noted above.

ANSWER: SA Gneckow relied on the information provided by S/SA Alvarez from his agency about Plaintiff's original flight schedule information to Saudi Arabia. Once it was confirmed by the Washington Field Office special agent (whose name SA Gneckow cannot recall) that Plaintiff was on the flight manifest to Saudi Arabia, SA Gneckow did not believe there was need to conduct additional checks about the trip. SA Gneckow obtained financial information concerning the relationship between Plaintiff and Al-Hussayen and his associates during the criminal investigation of Al-Hussayen. SA Gneckow obtained other information, such as documents which indicated a relationship between Plaintiff and IANA and/or Al-Multaqa from a storage facility in Moscow, Idaho in April 2002. SA Gneckow also was aware Plaintiff had been interviewed on June 10, 2002, and July 3, 2002, by SA Joseph Cleary, FBI Spokane, prior to his arrest on March 14, 2003.

Exhibit 17

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	Case No. CV:05-093-S-EJL RESPONSE OF DEFENDANT SCOTT MACE TO PLAINTIFF'S FIRST INTERROGATORIES

Pursuant to Federal Rules of Civil Procedure 26 and 33, and Local Civil Rule 26.1, Federal Defendant Scott Mace hereby responds to Plaintiff's First Interrogatories.

GENERAL OBJECTIONS

Defendant Mace states the following General Objections to Plaintiff's First Interrogatories, which are hereby incorporated in and made part of each of the following specific interrogatory responses.

1. Defendant objects to Plaintiff's First Interrogatories to the extent that they seek to

impose obligations that exceed the scope of the Federal Rules of Civil Procedure.

2. Defendant objects to Plaintiff's First Interrogatories to the extent that they require answers that are not relevant to Plaintiff's claims or Defendant's defenses nor reasonably calculated to lead to the discovery of admissible evidence.

3. Defendant object to Plaintiff's First Interrogatories to the extent that they require the disclosure of information protected from disclosure by the law enforcement privilege, the investigation files privilege, or the official information privilege.

4. Defendant's responses to Plaintiff's First Interrogatories are made without waiving:

(a) The right to object to the competence, relevance, materiality, or admissibility as evidence of any information, or the subject matter thereof, in any aspect of this civil action or any other matter;

(b) The right to object at any time and upon any grounds to any other discovery requests;

(c) The right at any time and for any reason to revise, supplement, correct, add or to clarify these responses;

(d) The right to amend or supplement these responses if the Federal Defendants discover additional information; and

(e) Any applicable privilege, including the but not limited to the attorney/client privilege, the law enforcement privilege, the investigation files privilege and the official information privilege.

INTERROGATORIES

INTERROGATORY NO. 1: Please describe any knowledge you had, as of the time when your

Affidavit was signed by you and filed with the Court, of any investigation(s) or surveillance of Plaintiff.

OBJECTIONS: Defendant Mace answers this interrogatory subject to the General Objections noted above.

ANSWER: On March 14, 2003, Special Agent (SA) Scott Mace was contacted by SA Michael Gneckow who is assigned to the Federal Bureau of Investigation, Salt Lake City Division, Coeur d'Alene Resident Agency. SA Gneckow told SA Mace that he was seeking an arrest warrant for Abdullah Al-Kidd as a material witness in the matter of United States of America v. Sami Omar Al-Hussayen. SA Gneckow provided SA Mace with a copy of an affidavit that he had prepared in support of the application for an arrest warrant and asked that SA Mace present it to the nearest available U.S. Magistrate Judge who sat in Boise, Idaho. SA Mace reviewed the affidavit and inserted a preamble above the first paragraph which included the following language: "This affidavit is based upon facts acquired by fellow FBI Special Agent Michael James Gneckow and other law enforcement officials pertaining to the investigation. On March 14, 2003 Special Agent Michael James Gneckow advised your affiant of the following:". The affidavit from that point consisted of eight paragraphs that had been written by Special Agent Gneckow.

SA Mace spoke to SA Gneckow by telephone after having received the affidavit to ensure that SA Mace could answer questions which he, SA Mace, anticipated the Magistrate Judge might ask. SA Mace does not recall the specific questions that he asked of SA Gneckow, but he does recall that SA Gneckow and he discussed the contents of the affidavit in enough depth that SA Mace was comfortable that the facts were accurate and that he understood the facts well enough to articulate to the Magistrate Judge. SA Mace's discussion with SA Gneckow was in

the facts asserted in your Affidavit.

OBJECTIONS: Defendant Mace answers this interrogatory subject to the General Objections noted above.

ANSWER: See Response to Interrogatory No. 1.

INTERROGATORY NO. 13: Please describe any suspicions about Plaintiff of which you were aware when you prepared and signed your Affidavit, including but not limited to any suspicion that he was connected in any way to any criminal or terrorist activity or persons suspected of involvement in such activity.

OBJECTIONS: Defendant Mace answers this interrogatory subject to the General Objections noted above.

ANSWER: See Response to Interrogatory No. 1. SA Mace had no knowledge of Plaintiff prior to discussing the affidavit prepared by SA Gneckow in support of the application for an arrest warrant for Plaintiff as a material witness in the matter of United States of America v. Sami Omar Al-Hussayen, nor did SA Mace participate in the investigation which developed those facts. Based on his discussion with SA Gneckow concerning the contents of the affidavit, SA Mace was satisfied that probable cause existed to seek an arrest warrant for Plaintiff as a material witness in the matter of United States of America v. Sami Omar Al-Hussayen.

Exhibit 18

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	)	Case No. CV:05-093-S-EJL RESPONSE OF DEFENDANT THE UNITED STATES TO PLAINTIFF'S FOURTH SET OF REQUESTS FOR ADMISSION

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant the United States hereby responds to Plaintiff's Fourth Set of Requests for Admissions.

OBJECTIONS

Defendant states the following General Objections to Plaintiff's Fourth Set of Requests for Admissions, which are hereby incorporated in and made part of each of the following specific responses.

1. Defendant objects to Plaintiff's Fourth Set of Requests for Admissions to the

Response: Defendant objects to the term "possible" as confusing, conjectural and speculative, and objects to the term "federal intelligence investigation" as vague on its face and vague due to the time period in question. Based on these objections, Defendant is unable to admit or deny this request.

Request No. 71

Admit that, at some point between March 16, 2004 and June 16, 2004, Mr. al-Kidd was a possible subject of a federal criminal investigation.

Response: Defendant objects to the term "possible" as conjectural and speculative, and objects to the term "federal criminal investigation" as vague due to the time period in question. Based on these objections, Defendant is unable to admit or deny this request.

Request No. 72

Admit that, at some point between March 16, 2004 and June 16, 2004, Mr. al-Kidd was a possible subject of a JTTF investigation.

Response: Defendant objects to the term "possible" as conjectural and speculative. Based on this objection, Defendant is unable to admit or deny this request.

Request No. 73

Admit that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest was included in the testimony of the director of the FBI, Robert Mueller before the House on March 23, 2003.

Response: Admitted.

Request No. 74

Admit that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest was included in the testimony of the director of the FBI, Robert Mueller, before the

Senate on April 10, 2003.

Response: Admitted.

Request No. 75

Admit that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest in the testimony of Director Mueller before the House on March 23,2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant.

Response: Admitted.

Request No. 76

Admit that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest in the testimony of Director Mueller before the Senate on April 10, 2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant.

Response: Admitted.

Request No. 77

Admit that, as of the present time, the FBI is unable to determine how mention of Mr. al-Kidd's arrest became included in the testimony of the director of the FBI, Robert Mueller, before the House on March 23,2003.

Response: Admitted.

Request No. 78

Admit that, as of the present time, the FBI is unable to determine how mention of Mr. al-Kidd's arrest became included in the testimony of the director of the FBI, Robert Mueller, before the Senate on April 10, 2003.

Response: Admitted.

Request No. 79

Admit that, as of the present time, Director Mueller is unable to determine why mention of Mr. al-Kidd's arrest was included in his testimony before the House on March 23, 2003.

Response: Defendant objects to this request as confusing and states that Director Mueller has not undertaken an individual effort to determine why Mr. al-Kidd's arrest was included in his testimony before the House on March 23, 2003. The United States admits that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest was included in Director Mueller's testimony before the House on March 23, 2003.

Request No. 80

Admit that, as of the present time, Director Mueller is unable to determine why mention of Mr. al-Kidd's arrest was included in his testimony before the Senate on April 10, 2003.

Response: Defendant objects to this request as confusing and states that Director Mueller has not undertaken an individual effort to determine why Mr. al-Kidd's arrest was included in his testimony before the Senate on April 10, 2003. The United States admits that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest was included in Director Mueller's testimony before the Senate on April 10, 2003.

Request No. 81

Admit that, as of the present time, Director Mueller is unable to determine why mention of Mr. al-Kidd's arrest in his testimony before the House on March 23, 2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant.

Response: Defendant objects to this request as confusing and states that Director Mueller has not undertaken an individual effort to determine why mention of Mr. al-Kidd's arrest in his testimony before the House on March 23, 2003, did not include mention that Mr. al-Kidd was

arrested on a material witness warrant. The United States admits that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest in Director Mueller's testimony before the House on March 23, 2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant.

Request No. 82

Admit that, as of the present time, Director Mueller is unable to determine why mention of Mr. al-Kidd's arrest in his testimony before the Senate on April 10, 2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant.

Response: Defendant objects to this request as confusing and states that Director Mueller has not undertaken an individual effort to determine why mention of Mr. al-Kidd's arrest in his testimony before the Senate on April 10, 2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant. The United States admits that, as of the present time, the FBI is unable to determine why mention of Mr. al-Kidd's arrest in Director Mueller's testimony before the Senate on April 10, 2003, did not include mention that Mr. al-Kidd was arrested on a material witness warrant.

Request No. 83

Admit that, as of the present time, Director Mueller is unable to determine how mention of Mr. al-Kidd's arrest became included in his testimony before the House on March 23, 2003.

Response: Defendant objects to this request as confusing and states that Director Mueller has not undertaken an individual effort to determine how mention of Mr. al-Kidd's arrest became included in his testimony before the House on March 23, 2003. The United States admits that, as of the present time, the FBI is unable to determine how mention of Mr. al-Kidd's arrest became included in Director Mueller's testimony before the House on March 23, 2003.

Request No. 84

Admit that, as of the present time, Director Mueller is unable to determine how mention of Mr. al-Kidd's arrest became included in his testimony before the Senate on April 10, 2003.

Response: Defendant objects to this request as confusing and states that Director Mueller has not undertaken an individual effort to determine how mention of Mr. al-Kidd's arrest became included in his testimony before the Senate on April 10, 2003. The United States admits that, as of the present time, the FBI is unable to determine how mention of Mr. al-Kidd's arrest became included in Director Mueller's testimony before the Senate on April 10, 2003.

Request No. 85

Admit that at least one Federal employee, other than Director Mueller, was involved in preparing the testimony of Director Mueller regarding Mr. al-Kidd before the House on March 23, 2003.

Response: Admitted.

Request No. 86

Admit that at least one Federal employee, other than Director Mueller, was involved in preparing the testimony of Director Mueller regarding Mr. al-Kidd before the Senate on April 10, 2003.

Response: Admitted.

Request No. 87

Admit that at least one prior draft of the text of the written testimony of Director Mueller before the House on March 23, 2003, other than the final draft as submitted to the House, was prepared by one or more Federal employees.

Response: The United States has made a reasonable inquiry into the subject matter of this

Exhibit 19

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	:	
v.	:	CRIMINAL ACTION NO. 03-94-MG
ABDULLAH AL-KIDD,	:	March 17, 2003
Defendant.	:	

TRANSCRIPT OF MOTION PROCEEDINGS
BEFORE THE HONORABLE LIAM O'GRADY,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: United States Attorney's Office
By: JOHN McADAMS, ESQ.
2100 Jamieson Avenue
Alexandria, Virginia 22314

For the Defendant: ABDULLAH AL-KIDD

* * *

DON McCOY, RMR
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P-R-O-C-E-E-D-I-N-G-S

THE DEPUTY CLERK: United States vs. Abdullah Al-Kidd, Case Number 03-94-M.

MR. McADAMS: Good afternoon, Your Honor; John McAdams

for the Government

THE COURT: Good afternoon, Mr. McAdams.

MR. McADAMS: Your Honor, the witness appears before Your Honor as a material witness pursuant to 18 USC 3144. A material witness warrant was issued for the witness by a United States Magistrate Judge in the District of Idaho.

The Government is requesting that he be transferred to the District of Idaho.

THE COURT: Does the Government have a position on a bond?

MR. McADAMS: Yes, Your Honor. The Government would seek the witness be detained without bond until transferred to the District of Idaho.

THE COURT: Mr. Al-Kidd.

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you have been arrested pursuant to a material witness warrant?

THE DEFENDANT: Yes, sir. I was informed yesterday.

THE COURT: All right, and the Government is required to bring you to the nearest location from your arrest so that you would have what's called a Rule 5 hearing, which is what you are

having right now, and told why you are being held, and give you certain other information, including your right to a bond hearing.

The Government has indicated that they are seeking detention until you are transferred to Idaho, where the U. S. Attorney's Office and the people out there can further review the conditions of your bond.

You have some choices today. You can either have a hearing here, and I'll appoint counsel if you cannot afford one.

Within the next three days we will have a detention hearing here. Or you can go out to Idaho and have that same detention hearing at a location where the people there may be a little more familiar with the specifics of why they need you as a material witness and what arrangements should be made.

We will do the best we can here, but you may be better served going out to Idaho and having your detention hearing out there, but the choice is yours. If you would rather have a detention hearing, then we will set one and we will appoint counsel for you.

THE DEFENDANT: The only question I guess I have is that I have always been forthright with the intelligence community that's contacted me, and I just would like to expedite this matter.

Had I known that they issued the warrant this past Friday, I would have turned myself in; however, I had a valid visa to leave this country. I wasn't fleeing anything, and I wasn't

charged with any crime. So I just want to know is there, based on those two choices that you gave me, when can I expedite -- you know, I'm a witness for the Government -- so I want to expedite my testimony in Idaho. I would like to get there as soon as possible.

THE COURT: I think quite clearly the fastest way for you to get to Idaho and see the people that can best determine that information is to waive your right to a hearing here today, or in the next three days and to have that hearing once you get out to Idaho before the Magistrate Judge who issued the warrant for a material witness. So you still will have the same rights.

You are still going to have the right to a detention hearing. It's an absolute right. It's a question of where you

have it. I think if you are looking to discuss why you were arrested and whether it was the right thing to do, given what you have just told me, then that probably is a discussion you need to have with the people who know you and who are responsible for requesting the material witness warrant.

So, if you want, I will order you to be transferred to Idaho for further hearings on your detention and the grounds under which you would proceed as a material witness.

THE DEFENDANT: How long would that possibly take for me to be transferred to Idaho?

THE COURT: I think pretty quickly.

MR. MCADAMS: Your Honor, I don't know the specifics.

The Marshal would make the arrangements, but we would certainly be doing this as quickly as possible.

THE DEFENDANT: Okay, then I'll accept that route, to be transferred to Idaho.

THE COURT: At your request, I'll transfer you to the District of Idaho that has filed the arrest warrant for you as a material witness, and you will be, as I said, entitled to the same hearing that you could have had here when you get to Idaho, and also at that stage you have the right to appointment of counsel if you can't afford one. You are so ordered transferred.

THE DEFENDANT: Thank you.

MR. MCADAMS: Thank you, Your Honor.

(Whereupon, the proceedings in the above-captioned matter were concluded.)

CERTIFICATE OF OFFICIAL REPORTER

COMMONWEALTH OF VIRGINIA)
) ss.
CITY OF ALEXANDRIA)

I, EDWARD DONOVAN McCOY, Registered Professional & Merit Reporter, and Official Court Reporter for the United States District Court for the Eastern District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that I was authorized to report, and did so report by computerized Stenograph machine the foregoing proceedings;

THEREAFTER, my Stenograph notes were reduced to printed form by computer-aided transcription under my supervision; and I further certify that the pages herein numbered contain a true and correct transcription of my Stenograph notes taken herein.

DONE and signed, this day of , 2005, in the City of Alexandria, Commonwealth of Virginia.

EDWARD DONOVAN McCOY, RMR
Official Court Reporter

(Virginia Court Reporters Association Certification No. 0313168)

Transcript of VA hearing

* * *

Exhibit 20

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CV:05-093-S-EJL
	)	
ALBERTO GONZALES, Attorney General of the United States, et al.,	)	
	)	
Defendants.	)	

The deposition of ABDULLAH AL-KIDD, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before Lisa R. Lisit, a Notary Public within and for the County of Cook and State of Illinois, and a Certified Shorthand Reporter of said State, taken at 219 South Dearborn Street, Suite 500, Chicago, Illinois, on the 11th day of December, 2007, at the hour of 9:35 a.m.

I N D E X

E X H I B I T S

(Witness viewing document.)

BY MR. MEEKS:

Q. Can you just generally describe this document that's marked as Exhibit 8?

A. This is the Seattle Post-Intelligencer article.

Q. Is this the article that you just testified -- or is this a fair and accurate representation of the article you just testified you recalled seeing that was a result of your meeting with the reporter from the Seattle Post-Intelligencer?

A. Yes.

Q. If you turn to page 2, towards the bottom, in fact the third paragraph from the bottom, it says in the first sentence, "Among those who have drawn the scrutiny of the FBI is a former University of Idaho football player, an American who converted to Islam nine years ago."

Is it your understanding that that's a reference to you?

A. Yes.

Q. We may have already identified this person, but I'm not sure. Who is -- I'm going to spell this -- O-u-l-l-a, Oulla, perhaps, Mansowr,

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/local/81080_investigation02.shtml

Inquiry targets Muslim charities in the Palouse

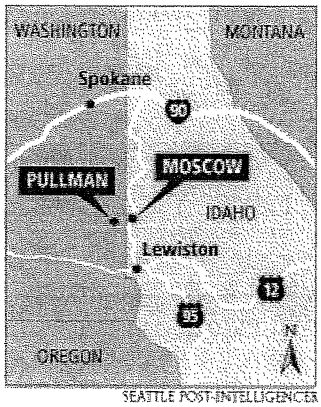
WSU and U. of Idaho groups investigated

Friday, August 2, 2002

By SAM SKOLNIK, DAIKHA DRIDI AND PAUL SHUKOVSKY
SEATTLE POST-INTELLIGENCER REPORTERS

MOSCOW, Idaho -- The FBI is investigating charitable donations by Muslim students and organizations at the University of Idaho and at Washington State University for possible links to international terrorism, according to criminal justice sources.

The inquiry is an integral part of efforts to understand a labyrinthine financial network that the Justice Department believes funded the Sept. 11 terrorist attacks, said these sources, who spoke on condition of anonymity.



The overwhelming majority of Muslims in the Moscow and Pullman area and around the nation make good-faith contributions as required by their religion to feed and clothe the needy, the sources said. However, authorities believe a tiny but dangerous minority has secreted itself within the network of Muslim charities to fund terrorism.

Leaders of Muslim student associations at WSU and Idaho, campuses that are only eight miles apart in the Palouse region of Eastern Washington and Northern Idaho, deny sending money to terrorist organizations.

"We have always made sure that the money we send to charity organizations goes to legitimate sources," said Irshad Altheimer, 25, the leader of WSU's Muslim Student Association. "We give money to organizations that address serious needs."

But echoing the concerns of Muslims around the country, Muslims in the Palouse say they are frustrated and afraid that what they consider legitimate charity groups could be regarded as suspect by federal authorities, especially after the Sept. 11 attacks.

They point out that The Holy Land Foundation, formerly the largest Muslim charity in the United States, had its assets frozen in December by the Bush administration because of alleged ties to Hamas, the Palestinian terrorist organization. The charity has denied that charge.

"It was even registered as a humanitarian organization by the United Nations, and it suddenly became illegal after Sept. 11," said Belal Nasralla, a Palestinian-born WSU student who is now an American citizen.

Growing suspicion by federal authorities of Muslim charity activities has made some people wary about making donations.

"They are afraid of sending money to an organization which could suddenly be labeled by the U.S.

government as supporting terrorism, and they are afraid of being held accountable for that," said Sayed Daud, a WSU pharmacy professor.

Nabil Albaloushi, the vice president of the Muslim Student Association at Idaho, said local fund raising is minimal, given both the small number of Muslims and the fact that most are non-affluent students and teachers. Muslims in Pullman estimate that they send only a few thousand dollars a year to charities.

"In Moscow, we don't have the activity that they have in Spokane and the bigger cities," said Albaloushi, who is studying for a doctorate in food engineering.

The Islamic Center of Moscow, a two-story white house that has been converted into a mosque, serves as spiritual home to the town's Muslim community of about 50; about 150 Muslims live in Pullman.

Albaloushi said he was unaware of any investigation into fund raising in his community. However, a student in Pullman said some students in Moscow had been contacted by the FBI several months ago and were uncomfortable talking with the media. The president of the University of Idaho's Muslim Student Association, Sami Omar Al-Hussayen, a doctoral student from Saudi Arabia, declined several requests for comment.

Charles Mandigo, special agent in charge of the FBI office in Seattle, said it is policy to "neither confirm nor deny whether we are conducting an ongoing investigation."

Local law enforcement officials said they knew of no investigations or declined to comment specifically.

Whitman County Sheriff Steve Tomson, a member of the Inland Northwest Joint Terrorism Task Force, which coordinates terror-related investigations in Eastern Washington, Northern Idaho and Montana, declined to comment specifically on any investigations.

But he noted that "law enforcement for some time has been looking at the activities of terrorist-related fund raising, with links to student communities, around the country. Somewhere along the line, some money gets diverted to terrorist groups.

"We have seen plenty of threat indicators for the state of Washington that give us great concern about the threat of terror cells," Tomson said. "That applies to Idaho as well."

But he cautioned that any potential wrong-doers would be a small minority within their communities.

"The vast majority of the people who attend these mosques are totally honorable and want nothing to do with terrorism," he said.

Among those who have drawn the scrutiny of the FBI is a former University of Idaho football player, an American who converted to Islam nine years ago. The man, who now lives in the Seattle area, was between 1992 and 2000 a part of the small Muslim community in Moscow and nearby Pullman that is the focus of the FBI's interest. The Seattle Post-Intelligencer is not naming him because he hasn't been charged with any crime.

This 29-year-old man said FBI agents visited him three or four times since he returned from a trip to Yemen in April. He said he went to the country to study Islamic law and learn Arabic.

"The FBI wanted to know what I was doing in Yemen, why I was there during the Sept. 11 period," he said.

He said FBI agents also wanted him to identify people tied to terrorist networks or ideologies, as well as speak about fund-raising activities.

He said he still has ties to his Muslim friends from Idaho, the majority of whom are Saudi Arabian citizens. He said he and Muslims from Idaho used to be active in a non-profit organization called Al Moultaqa.

"The goals of Al Moultaqa were mainly Islamic 'daawa' (calling people to Islam); we did not have any kind of fund-raising activity."

The organization sold books and tapes and used the money to produce more religious books and tapes.

"When Al Moultaqa organized youth summer camps, we would also collect money, mainly because most of the children who attend our summer camps came from poor families and could not afford to pay," he said.

The man said he did Web design for Al Moultaqa and attended many conferences on behalf of it but never dealt with the finance work.

Al Moultaqa was originally set up in Seattle until 1997, this man said, but was closed because of a lack of money. After 1997, Saudi students reopened it in Moscow. He said that among other tasks on behalf of Al Moultaqa, he led Muslim prayer in the Washington State Penitentiary in Walla Walla in 1999.

He said that by the time he decided to travel to Yemen, the activities of Al Moultaqa were already slowing down. Now the activities have ceased because Moscow's students do not want to arouse suspicions.

"Saudi students are really scared of having problems," he said. "They think if they have any kind of problems with the U.S. government, they would also be in trouble when they go back to their country."

When asked about Muslim charities in Moscow, the former football player named a group called Help the Needy -- and indeed signs advertising the group are on display in the mosques in Moscow and Pullman.

The organization was established in 1993 and is headquartered in the upstate New York town of Dewitt. The group's Web site says it provides food, clothes and lodging for orphans and families as well as medicines for hospitals.

Help The Needy provides aid to people in Iraq, according to the Web site. It is also listed on the British Web site of the Victims of War Fund, which reports distributing money to people on the Afghanistan-Pakistan border.

Ismail Diab, until recently a Palouse-area representative for the group, said in an interview that the charity helps "the most needy people on Earth, the Iraqi children," who he said have suffered greatly since the imposition of the United Nations economic embargo on the country.

Last year, he said, the group raised at least $450,000 from Muslims in the United States, and donated it to Iraq in the form of food. But the money was sent to assist suffering people, not the government.

Diab, 51, said he was not aware of any money raised for the group ending up in the hands of terrorists. "How can you put yourself in that situation, where you know it's illegal?"

Other officials with the group could not be reached for comment.

Officials at two organizations that maintain databases on non-profit groups say they could not find any Internal Revenue Service filings by Help The Needy. Because of its status as a religious-based non-profit operating abroad, however, Help The Needy is not obligated to file income and expenditure records.

As the FBI investigates student fund-raising activities in the Palouse, criminal justice sources say the Inland Northwest Terrorism Task Force is also investigating fund raising by the former president of the Spokane Islamic Center -- an hour to the north of Pullman and Moscow.

The man, a naturalized U.S. citizen from the Israeli-occupied territories, is the target of an investigation, in part because of his alleged support for the Palestinian terror group Hamas, these sources say.

Bevan Maxey, the man's attorney in Spokane, said FBI agents have raised the Hamas angle with different people connected with the inquiry. But "they're just fishing for information," he said. "I don't think it's a fair statement that he's a vocal supporter of Hamas."

Maxey said he knows nothing about the investigation into Islamic fund raising in the Palouse, and he denied that his client has sent any of the $600,000 he raised to Hamas or other groups that have been labeled as terrorists.

"It's a juicy inference, but I don't think there is any merit to it whatsoever," he said.

The man has not been arrested or charged with any crimes, though law enforcement officials confirm pertinent details of the investigation.

They also said the two investigations may be related. Said one: "You're on the right track."

Exhibit 21

DEPOSITION OF KIM LINDQUIST
CONDUCTED ON WEDNESDAY, JANUARY 9, 2008

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,	:	
Plaintiff,	:	
vs.	:	No. 05-cv-093-EJL-MHW
ALBERTO GONZALES, Attorney	:	
General of the United States,	:	
et al.,	:	
Defendants.	:	

DEPOSITION OF KIM LINDQUIST

Wednesday, January 9, 2008

Washington, D.C.

1:04 p.m.

Job No. 1-117718

Pages: 1 - 119

Reported by: Janet A. Hamilton, RDR

I N D E X

E X H I B I T S

(ATTACHED)

ROBERT S. MUELLER, III
2,737 words
10 April 2003
Congressional Testimony by Federal Document Clearing House
English

Statement of Robert S. Mueller, III Director, Federal Bureau of Investigation

before the Senate Appropriations Committee, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies

April 10, 2003

INTRODUCTION

Good morning. Chairman Gregg, Senator Hollings and members of the Subcommittee, I welcome the opportunity to appear before you to discuss the FBI's Fiscal Year (FY) 2004 budget request. The FBI is undergoing extraordinary, positive change, to better meet the threats posed by terrorists, foreign intelligence services, and criminal enterprises. We have changed our organizational structure to address the greatest threats facing our country, to be more dynamic and flexible, and to ensure accountability. And we are dramatically upgrading our information technology. These changes, and many others that are ongoing, will ensure that the FBI stays on top of current and future threats well into the 21St century.

The FBI's FY 2004 budget request will give us the resources we need to keep this positive momentum. Our total request is $4.6 billion. We are requesting program changes totaling $513 million, including 2,346 new positions, 503 of which are Special Agents. This morning, I would like to briefly walk you through our progress to date, our assessment of the threat and the changes we are making to align our organization and resources to address the threat.

Before beginning, let me make one caveat to my testimony. We are still analyzing the impact of the 2003 Omnibus Appropriations Act on our 2004 request. It is possible that some changes to the request may be required to reflect the 2003 enacted level. We will be working with the Appropriations Committee on this analysis.

COUNTERTERRORISM PROGRESS

The prevention of another terrorist attack remains the FBI's top priority. We are thoroughly committed to identifying and dismantling terrorist networks, and I am pleased to report that our efforts have yielded major successes over the past 18 months. Over 228 suspected terrorists have been charged with crimes, 113 of whom have been convicted to

date. Some are well-known --including John Walker Lindh and Richard Reid. But, let me give you just a few recent examples:

In March, Khalid Shaikh Mohammed was located by Pakistani officials and is in custody of the US at an undisclosed location. Mr. Mohammed was a key planner and the mastermind of the September 11th attack. Since the arrest, the FBI worked with other agencies to disrupt his financial network in the UAE and Pakistan and we are continuing to get extremely valuable information from him.

-On March 16, Abdullah al-Kidd, a US native and former University of Idaho football player, was arrested by the FBI at Dulles International Airport en route to Saudi Arabia. The FBI arrested three other men in the Idaho probe in recent weeks. And the FBI is examining links between the Idaho men and purported charities and individuals in six other jurisdictions across the country.

-In February, members of the Palestinian Islamic Jihad, including Professor Sami Al-Arian, were arrested by the FBI and charged under Racketeering Influence and Corrupt Organizations with operating a racketeering enterprise from 1984 until the present that engaged in violent activities.

-Six individuals in Portland, Oregon, were arrested by the FBI and charged with conspiracy to join al Qaeda and Taliban forces fighting against US and allied soldiers in Afghanistan.All six have entered plea negotiations.

-And, in Buffalo, the FBI arrested seven al-Qaeda associates and sympathizers. These individuals, members of a suspected sleeper cell, were indicted in September 2002 for providing material support to terrorism.

In addition, we are successfully disrupting the sources of terrorist financing, including freezing $125 million from 62 organizations and conducting 70 financial investigations, 23 of which have resulted in convictions.

COUNTERTERRORISM THREAT

Despite these successes, tangible terrorist threats remain. During this period, we are clearly focused on immediate threats to the nation because of the war in Iraq. In order to respond to potential threats, our Strategic Information and Operations Center at FBI Headquarters and our field special command posts are operating on a 24 hour basis.We established an Iraqi Task Force. And, our agents have interviewed over 9,000 individuals and are obtaining important information to help protect the American public.

But, even as we guard against this potential Iraqi threat, we believe that for the foreseeable future, the al-Qaeda network will remain one of the most serious threats facing this country. While the US has made progress in disrupting al-Qaeda at home and overseas, the organization maintains the ability and the intent to inflict significant casualties in the US with little warning.

CHANGING TO MEET TERRORIST THREATS

As al-Qaeda and other terrorist organizations change their tactics, the FBI, too, must evolve. And we are evolving.

Our new Analysis Branch in the Counterterrorism Division has produced 30 in-depth analytical assessments, including a comprehensive assessment of the terrorist threat to the homeland. We have also improved analyst training and dramatically beefed up our language translation capabilities.

I am now focusing on long-term strategies to enhance our ability to collect, analyze, and disseminate intelligence. I have put in place a new, formal structure that will enable the FBI to assess gaps and to establish formal policies and strategic plans for intelligence collection. A new Executive Assistant Director for Intelligence (EAD/I), Maureen A. Baginski, will have direct authority for the FBI's national intelligence program, and will ensure that we have optimum intelligence strategies, structure, and policies in place.

We are establishing, in every field office, Intelligence units staffed with Reports Officers. These specially-trained individuals collect and extract intelligence from FBI investigations and share that information with our law enforcement and intelligence partners.

FY 2004 COUNTERTERRORISM REQUEST

Our FY 2004 request includes approximately $1 billion in direct support for counterterrorism. Nearly 50% of all requested program changes, or $250 million, supports counterterrorism. In particular, the 430 positions proposed in the FY 2004 budget will strengthen operational support around the country and improve CT management and coordination at FBI Headquarters. New personnel would provide an increased level of guidance, legal advice, and operational support to investigators on the front line of the war on terrorism. We must also continue to grow our cadre of strategic analysts. The number of FBI counterterrorism cases more than doubled last year, and with the recent capture of high- ranking al-Qaeda operatives, the number of cases will continue to climb.

The requested amounts would support 66 JTTFs - critical multi-agency task forces that facilitate cooperation and information sharing, and act as a "first line" for preventing terrorist attacks. It would expand vital international partnerships by adding new FBI Legal Attaches in Sarajevo, Bosnia; Kuwait City, Kuwait; Tashkent, Uzbekistan; Kabul, Afghanistan; and Belgrade, Serbia, and by enhancing our presence in several existing locations to handle a growing workload.

Approval of this budget request would also improve FBI crisis response capabilities, so we are prepared to respond to the scene of a terrorist attack at home or abroad quickly and effectively, with the equipment we need.

COUNTERINTELLIGENCE PROGRESS

Mr. Chairman, so far this morning I have focused on the terrorist threats facing this country. Our counterintelligence efforts are also vital to national security. I want to emphasize that the FBI is thoroughly engaged in fighting the serious threat from foreign intelligence services and their assets. The FBI had several successful investigations in this area. Last month, Brian Regan agreed to accept a life sentence for attempted espionage and unlawful gathering of defense information. In October 2002, Ana Montes was sentenced to 25 years in prison following her plea of guilty to one count conspiracy to commit espionage on behalf of Cuba.

COUNTERINTELLIGENCE THREATS

Intelligence threats fall into four general categories. The most significant - and our top counterintelligence priority -- is the potential for an agent of a hostile group or nation to enhance its capability to produce or use weapons of mass destruction. A second threat is the potential for a foreign power to penetrate the U.S. Intelligence Community. A third threat is the targeting of government supported research and development. The individuals awarded research and development contracts in support of ongoing operations and war-making capabilities constitute the highest risk. The fourth threat is the potential compromise of Critical National Assets (CNAs). The nation's CNAs are those persons, information, assets, activity, R&D technology, infrastructure, economic security or interests whose compromise would do damage to the survival of the United States.

CHANGING TO MEET INTELLIGENCE THREATS

Just as we have worked to transform ourselves within the counterterrorism program, we have made significant changes to the FBI's counterintelligence program. Last May, when I announced the second phase of the FBI reorganization, I indicated that we would be refocusing our counterintelligence program to focus on the four threats I outlined. That

effort is progressing with a centralized, nationally directed program. We established a Counterespionage Section responsible for overseeing all of the FBI's counterespionage efforts, including economic espionage, and we clarified our priorities and objectives in a "National Strategy for Counterintelligence."

With your support, we reprogrammed 216 positions from criminal investigations to counterintelligence, and we now have full-time counterintelligence squads in 48 of the 56 field offices.

FY 2004 COUNTERINTELLIGENCE BUDGET REQUEST

For FY 2004, we ask your support for program changes totaling $63 million and 599 positions, including 94 agents, to further our counterintelligence strategy. These resources would provide the necessary investigators, analysts, and surveillance capabilities needed to address emerging global threats, bolster both our fixed and mobile surveillance capabilities, and improve our ability to detect espionage activities targeting national assets and universities.

CYBER CRIME PROGRESS

Next, I would like to discuss our third priority - cyber. We have created a consolidated new Cyber Division at Headquarters to manage investigations into Internet-facilitated crimes, to support investigations throughout the Bureau that call for technical expertise, and to help us coordinate with public and private sector partners.

This strategy is proving successful. Our computer intrusion program, for example, has identified over 5,000 compromised computers, and resulted in 320 convictions and $20.4 million in restitutions. During 2002, Innocent Images National Initiative investigations resulted in 692 arrests, 648 indictments/informations, and 646 convictions. And despite using only 5% of all FBI resources, the Cyber Program is facilitating investigative activities across all Bureau programs.

CYBER CRIME THREAT

Unfortunately, we are seeing explosive growth in cyber crime -both traditional crimes such as fraud and copyright infringement that have migrated on-line, and new crimes like computer intrusions and denial of service attacks.

To date, terrorists have posed only low-level cyber threats, but some organizations are increasingly using information technology for communication. Terrorist groups are increasingly computer savvy, and with publicly available hacker tools, many have the capability to launch nuisance attacks against Internet-connected systems. As terrorists become more computer savvy, their attack options will increase.

CHANGING TO MEET CYBER THREATS

Looking forward, our Cyber Program will focus on identifying -and neutralizing: (1) individuals or groups conducting computer intrusions and spreading malicious code; (2) intellectual property thieves; (3) Internet fraudsters; and (4) on-line predators that sexually exploit or endanger children. Our success will depend on maintaining state-of the art technical capabilities to handle complex investigations and forming and maintaining public/private alliances.

FY 2004 BUDGET REQUEST

For FY 2004, the FBI is requesting $234.4 million to protect the US against cyber-based attacks and high-technology crimes. This request represents program changes of $62

million and 194 positions, including 77 agents. These resources will enable the FBI to staff computer intrusion squads in field offices, enhance technical capacities to identify persons illegally accessing networks, and provide funding for the training and equipment we need to more aggressively investigate cyber incidents. The requested resources will enable the FBI to increase its efforts to detect the sexual exploitation of children on the Internet. Over the past six years we have seen these cases grow in number from 113 to over 2,300. We must increase our commitment here. Finally, the resources would allow us to expand our ability to conduct computer forensics examinations. Right now, 6 out of 10 investigations require some level of computer forensics support. History tells us that the number of cases requiring this support will continue to grow and that the number of forensic examinations required per investigation will also continue to grow.

TECHNOLOGY PROGRESS

I would like to touch on our efforts to upgrade FBI technology. Over the past two years the FBI has made significant progress in modernizing our information technology infrastructure to better support our investigative needs. On March 28, we completed the Trilogy Wide Area Network - three days ahead of schedule. High-speed local area networks have been deployed to 622 FBI locations. Over 21,000 new desktop computers and nearly 5,000 printers and scanners have been provided. The Enterprise Operations Center, which will manage our computer networks, becomes operational early this spring.

We are now focused on implementing a corporate data warehousing capability that is key to FBI intelligence, investigative, and information sharing initiatives as well as to our records management system.

Trilogy will change the FBI culture from paper to electronic. It will replace redundant searches of stove-piped systems. Agents will search multiple databases - linking thousands of data points of evidence, leads and suspects - through a single portal. Trilogy is the base for a modern computer architecture. Trilogy computers, servers, and networks will support state-of-the-art applications. Using Trilogy to transport, the Integrated Data Warehouse will link 31 FBI databases for single-portal searches and data mining. The Collaborative Capabilities program will allow electronic data sharing with other agencies.

FY 2004 BUDGET REQUEST

We are now at the point in our information technology upgrade where it is essential that we preserve these investments by ensuring there is sufficient funding for life-cycle operations and maintenance of systems and for technology refreshment. The FY 2004 request includes increases of $82 million to fund technology refreshment and operations and maintenance. These resources will ensure that the equipment we have deployed stays in good working order, and that it is replaced in an orderly manner. The FBI can never again allow its equipment to become obsolete.

OTHER PROGRAMS

We are completely restructuring our internal security programs and processes. We have created a dedicated Security Division and are consolidating security functions under a single management structure. As we implement these changes to improve security, we are addressing recommendations in the Webster and Rand reports. The FY 2004 request includes increases of $37 million and 126 positions, including 32 agents. These resources will fund polygraph examinations, guard services, and other security expenses.

The FBI Laboratory's R&D efforts generated more than 120 projects, providing more than 100 deliverable products to the operational units, 58 technical publications, and 126 scientific presentations, in the last three years. The FBI's Combined DNA Index System software is used by 185 domestic and 23 foreign laboratories.The FY 2004 request includes $3.28 million and 32 positions funding nuclear DNA and the Federal Convicted Offender Program.

I will conclude with the FBI's Criminal Program. We have opened more than 85 major corporate fraud investigations. At the end of FY 2002, the FBI had five corporate fraud investigations with losses in excess of $1 billion. Currently, this number has increased to eight. Forty-five FBI field offices are participating in multi-agency corporate fraud working groups. The FY 2004 request includes $16 million and 164 positions, including 54 agents. The request will fund additional investigators to support this initiative.

CLOSING

The FBI has turned a corner in its history. With the support of Congress, we have been able to make dramatic and substantive changes. Our transformation continues because the threats facing the U.S. homeland continue to evolve. I want to reassure you that we are committed to protecting this country from those who seek to harm us through acts of terror, espionage, cyber attacks, or criminal acts. Every citizen must be able to enjoy the basic freedoms this great nation provides. The men and women of the FBI understand their roles in these challenging and uncertain times. With your support, we can give them the resources and tools they need to carry out our mission.

Thank you.

Exhibit 22

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,	)	
	)	Case No.
Plaintiff,	)	05-CV-093-EJL-MHW
	)	
vs.	)	
	)	
ALBERTO GONZALEZ, Attorney General of the United States; et al.,	)	
	)	
Defendant.	)	

DEPOSITION OF JOSEPH CLEARY

TAKEN ON BEHALF OF THE PLAINTIFF

AT COEUR D'ALENE, IDAHO

NOVEMBER 28, 2007, AT 10:00 A.M.

REPORTED BY:

PATRICIA L. PULLO, CSR
Notary Public

I N D E X

0324 48659 0744
NCIC REPLY

VA0990101
WARNING - APPROACH WITH CAUTION. HOWEVER, MAKE NO EFFORT TO ARREST INDIVIDUAL UNLESS THERE IS EVIDENCE OF A VIOLATION OF FEDERAL, STATE, OR LOCAL STATUTE(S). ONCE AN INDIVIDUAL IS IDENTIFIED WITHIN THIS SYSTEM, CONDUCT ALL LOGICAL INVESTIGATION UTILIZING TECHNIQUES AUTHORIZED IN YOUR JURISDICITION. DO NOT ALERT THE INDIVIDUAL TO THE FBI'S INTEREST AND CONTACT YOUR LOCAL FBI FIELD OFFICE AT THE EARLIEST OPPORTUNITY.

MKE/TERRORIST ORGANIZATION MEMBER - CAUTION
ORI/WAFBISE00 NAM/AL-KIDD, ABDULLAH ABDULRAHMAN SEX/M RAC/B POB/CA DOB/19721107
HGT/506 WGT/175 EYE/BR0 HAI/BLK FBI/232309MB1
SOC/553957151
OLN/ALKIDAA280QG OLS/WA OLY/2001
GNG/RDCL ISLMC XTMSTS*IFBI SGP/N0NE KN0WN
ECR/BD DOP/20070201 OCA/199N86678
MIS/CAUTI0N KN0WN RADICAL ISLAMIC EXTREMIST
ORI IS FBI SEATTLE 206 262-2000
NIC/T450009711 DTE/20020201 1242 EST

DEPOSITION EXHIBIT
Cleary #6
11-28-07 PP ID

Exhibit 23

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,	)	
	)	
Plaintiff,	)	Case No. 05-cv-093-EJL-MHW
	)	
vs.	)	
	)	
ALBERTO GONZALES, Attorney General of the United States, et al.,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF ROBERT DAVIS

TAKEN ON BEHALF OF THE PLAINTIFF

AT 115 SOUTH SECOND STREET, COEUR D'ALENE, IDAHO

NOVEMBER 30, 2007, AT 10:00 A.M.

REPORTED BY:

JULIE MCCAUGHAN, C.S.R. NO. 684
Notary Public

questions based on your long career at the FBI. What's the difference between a criminal investigation and an intelligence investigation?

A. Criminal investigations are generally pointed towards prosecution. Normally intelligence investigations have other goals.

Q. Okay. What are some of those other goals, if you know?

A. Well, just by virtue of the name of it, to develop intelligence information.

Q. Okay. So you ask a stupid question, you get -- can there be an intelligence investigation without a corresponding criminal investigation?

A. I guess it would depend on the time frame you're talking about. Things change.

Q. Things have changed at the FBI, you're saying?

A. They have.

Q. Okay. And so what would the relevant time period be?

A. There again, I would only be speculating. I'm not sure.

Q. Okay. But you had some reason for saying it would depend on the time frame?

A. Well, years ago, in the 80s, there were

strike that. You're saying you don't know what they are at this particular time?

A. Correct.

Q. Okay. I want to ask you about in 2001. Do you know what the standards were for initiating a JTTF intelligence investigation?

A. I did then. I'm not sure I can remember what they are, or what they were, now.

Q. How about for a JTTF criminal investigation?

A. It would have been -- I would give you the same answer because there would be a manual to look in, and lots of manuals, and so you would always consult the manual when you opened an investigation.

Q. How about putting aside JTTF? Do you recall what the standard was for opening a criminal investigation by the FBI in 2002?

A. Generally, it would have been information beyond a reasonable suspicion that someone had committed a criminal act.

Q. Okay. And how about for an intelligence investigation?

A. I don't know. I couldn't answer that question.

Q. Was there a formal procedure for opening a

REPORTER'S CERTIFICATE

I, JULIE MCCAUGHAN, Certified Shorthand Reporter, do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time any witnesses were placed under oath;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

That I am not a relative or employee of any attorney or of any of the parties, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal December 10, 2007.

_____

JULIE MCCAUGHAN, ID C.S.R. No. 684
Notary Public
816 Sherman Avenue, Suite 7
Coeur d'Alene, ID 83814

My Commission Expires February 9, 2010.

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(Cooperating Counsel for the ACLU)

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD, Plaintiff, v. ALBERTO GONZALES, Attorney General of the United States; *et al.*, Defendants.	Case No. 1:05-cv-093-EJL-MHW PLAINTIFF'S MOTION TO FILE DECLARATION AND EXHIBITS UNDER SEAL

Additional Counsel

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Plaintiff Abdullah al-Kidd, by and through his attorneys of record, respectfully moves this Court for an Order allowing plaintiff to file the Declaration of Lee Gelernt, and attached exhibits, under seal. This Declaration is in support of Plaintiff's Opposition To Defendant United States' Motion For Summary Judgment And In Support Of Plaintiff's Cross-Motion For Summary Judgment filed on this date herewith. Plaintiff is simultaneously filing a memorandum in support of this motion.

Dated: December 21, 2011 /s/
Lee Gelernt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of December, 2011, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,

Plaintiff,

v.

ALBERTO GONZALES, Attorney General of the United States; *et al.*,

Defendants.

Case No. 1:05-cv-093-EJL-MHW

PLAINTIFF'S RESPONSE TO DEFENDANT UNITED STATES' STATEMENT OF UNDISPUTED MATERIAL FACTS

Additional Counsel

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1-2. Plaintiff does not dispute these facts.

3. Plaintiff disputes this fact insofar as Defendants are suggesting a bright line between criminal and intelligence investigations, or that intelligence investigations do not often lead to criminal investigation and/or charges. "Intelligence" and "criminal" investigations work in tandem, and both types of investigations can lead to criminal charges. *See* Ex. 8, Dezihan Dep. 51-52, 82-83 (intelligence and criminal investigations formally merged in 2002), 114-15, 161-62 (FBI shared periodic updates with U.S. Attorney's Office); Ex. 2, Gneckow Dep. 17; Ex. 3, Cleary Dep. 18, 30.

Plaintiff also disputes that the testimony establishes that the FBI could open an intelligence investigation in 2001 absent suspicion of criminal activity. Defendants' witnesses could not articulate a clear standard for opening an intelligence investigation in 2001. *See* Ex. 2, Gneckow Dep. 26-27; Ex. 3, Cleary Dep. 30; Ex. 23, Davis Dep. 11, 13.

4. Plaintiff disputes these facts insofar as Defendants imply that Mr. al-Kidd was not a criminal suspect. Defendants omit that Plaintiff was under criminal suspicion from 2001 through at least 2003. *See* Ex. 2, Gneckow Dep. 45-46 ("a possible co-subject" has not been "ruled out definitively" from criminal suspicion); Ex. 6, Mace Dep. 73 (equating "subject" with "suspect"); Ex. 5, U.S. Docs 2724, 3002-03, 3007 (Plaintiff was a "subject" in Al-Hussayen's criminal investigation); *see also* Ex. A, U.S. Docs 666 (filed under seal) (FBI sent al-Kidd's name as a proposed "defendant[]");Ex. 7, Lindquist Dep. 53.

In addition, when Mr. al-Kidd was arrested at the airport, FBI agents took al-Kidd to a police station in the airport and, with Gneckow's consent, interrogated him. Ex. 2, Gneckow Dep. 189-92. They questioned him at length, without counsel, about his own religious beliefs and opinions on various Islamic organizations, the purpose of his previous trip to Yemen, and the

contents of his luggage. *Id*. 192; *see also* Ex. 1, Pl. Docs 26-31. The FBI agents searched al-Kidd's belongings, Ex. 5, U.S. Docs 2997, and seized numerous items, including his laptop. Ex. 2, Gneckow Dep. 125; Ex. 5, U.S. Docs 1982. The FBI later drafted a search warrant application to search al-Kidd's laptop, stating that it likely contained relevant to Plaintiff's possible criminal activities. Ex. 2, Gneckow Dep. 125-26; Ex. B, U.S. Docs 1583 (filed under seal).

5. Plaintiff disputes these facts to the extent they suggest Defendant Gneckow did not know that the transfers were salary when he prepared his affidavit. *See* Ex. 2, Gneckow Dep. 76 (testifying he knew "well before" submitting the affidavit that the payments were salary).

6. Plaintiff does not dispute these facts.

7. Plaintiff disputes that Gneckow ceased to view Plaintiff as a criminal suspect at some point in 2002. Plaintiff was the subject of an FBI investigation from December 2001 until at least 2004. *See* Ex. 2, Gneckow Dep. 55-57; Ex. 3, Cleary Dep. 109-10. The FBI conducted surveillance of al-Kidd and his then-wife in the spring and summer of 2002 (which indicated no illegality). Ex. 1, Pl. Docs 2400-24; Ex. 3, Cleary Dep. 121, 125-26. The FBI had al-Kidd's name added to the Treasury Enforcement and Communication System (TECS) database, with a "lookout" to track his international travel. Ex. 4, Alvarez Dep. 18-19. The FBI also added al-Kidd's name to the Violent Gang and Terrorist Organization File. *See* Ex. 3, Cleary Dep. 118; Ex. 22, NCIC Printout.

Plaintiff was also a co-subject in Al-Hussayen's criminal investigation. Ex. 5, U.S. Docs 2724, 3002-03, 3007; *see also* Ex. 2, Gneckow Dep. 45-46 ("a possible co-subject" has not been "ruled out definitively" from criminal suspicion); Ex. 6, Mace Dep. 73 (equating "subject" with "suspect"). The FBI sent al-Kidd's name as a proposed "defendant[]" to the U.S. Attorney's

Office, *see* Ex. A, U.S. Docs 666 (filed under seal), to evaluate him for potential prosecution. Ex. 7, Lindquist Dep. 53.

Prior to his arrest, Mr. al-Kidd had never failed to meet with the FBI when asked. Ex. 3, Cleary Dep. 170-71, 173-74, 179-81. No FBI agent told Mr. al-Kidd his testimony might be needed, asked him to surrender his passport, or attempted to serve him with a subpoena, Ex. 15, U.S. Resp. 1st RFA #10-13; Ex. 2, Gneckow Dep. 198-99. Within days of Plaintiff's arrest, FBI Director Robert Mueller testified before Congress that Plaintiff's arrest—along with that of Khalid Shaikh Mohammed, a "mastermind" of the September 11th attacks—was a "major success[]" in the government's anti-terrorism efforts. Ex. 1, Pl. Docs 3-4 (testimony before House Subcommittee, Mar. 27, 2003); Ex. 21, Testimony before Senate Subcommittee (Apr. 10, 2003) (same). Director Mueller never mentioned that Plaintiff was arrested as a witness. The government has never been able to explain why Director Mueller's testimony highlighted Mr. al-Kidd. *See* Ex. 18, U.S. Resp. 4th RFA, #73-84 (government was unable to determine how al-Kidd came to be mentioned in Director Mueller's testimony).

In addition, when Mr. al-Kidd was arrested at Dulles Airport, FBI agents took him to a police station in the airport and, with Gneckow's consent, interrogated him. Ex. 2, Gneckow Dep. 189-92. They questioned him at length, without counsel, about numerous matters unrelated to Al-Hussayen's charges—including al-Kidd's own religious beliefs and opinions on various Islamic organizations, the purpose of his previous trip to Yemen, and the contents of his luggage. *Id*. 192; *see also* Ex. 1, Pl. Docs 26-31. The FBI agents searched al-Kidd's belongings, Ex. 5, U.S. Docs 2997, and seized numerous items, including his laptop. Ex. 2, Gneckow Dep. 125; Ex. 5, U.S. Docs 1982. The FBI later drafted a search warrant application to search al-Kidd's laptop,

stating that it likely contained relevant to Plaintiff's possible criminal activities. Ex. 5, U.S. Docs 1583 (filed under seal).

Following his interrogation, Mr. al-Kidd was incarcerated in three different facilities in Virginia, Oklahoma, and Idaho. Each time he was transferred, al-Kidd was shackled with leg restraints, a belly chain, and handcuffs. Ex. 13, Pl. Resp. 1st ROG #14; Ex. 1, Pl. Docs 123-24, 702-04; Ex. 14, *al-Kidd v. Sugrue*, No. 06-cv-1133, 2007 WL 2446750, at *1 (W.D. Okla. Aug. 23, 2007). Al-Kidd was strip-searched multiple times over the course of his detention. Ex. 1, Pl. Docs 2184, 703-04; Ex. 13, Pl. Resp. 1st ROG #14; *see also Sugrue* at *1. In Virginia, he was held under high-security conditions, often spending 22 to 23 hours a day in his cell. Ex. 1, Pl. Docs 123, 450, 2183; Ex. 13, Pl. Resp. 1st ROG #14. In the detention center in Oklahoma, al-Kidd was made to remove his clothes and sit naked in view of other, fully clothed detainees. Ex. 1, Pl. Docs 2184; Ex. 14, *Sugrue* at *1. While al-Kidd was incarcerated in Ada County Jail in Idaho, Gneckow and Cleary questioned him. Ex. 2, al-Kidd Dep. 185; Ex. 2, Gneckow Dep. 63, 187; Ex. 3, Cleary Dep. 141.

At al-Kidd's detention hearing in Idaho on March 25, 2003, the government opposed his release, contending that he was dangerous. Ex. 1, Pl. Docs 1795, 1797. Al-Kidd was never called as a witness or deposed for Al-Hussayen's trial. Ex. 7, Lindquist Dep. 35, 101-02. Even so, the government did not move to have al-Kidd's release restrictions lifted, leaving al-Kidd to file a motion himself. Ex. 12, Motion, *U.S. v. Al-Hussayen*, No. 3:03-cr-0048 (Dkt. #665).

8-11. Plaintiff does not dispute these facts.

12. Plaintiff disputes these facts insofar as Defendants imply that Mr. al-Kidd was not supposed to speak to the press. Defendants omit that the FBI's investigation in Idaho was not secret, and that the reporter spoke with multiple people, including law enforcement officials. *See*

Ex. 20, Seattle Post-Intelligencer article. Defendants omit that the FBI never told Plaintiff not to talk to reporters or to keep his meetings with the FBI a secret. *See* Ex. 9, Gneckow RFA #21; Ex. 3, Cleary Dep. 176.

13. Plaintiff does not dispute these facts.

14. Plaintiff disputes these facts insofar as Defendants imply that Plaintiff prepared to leave the country "[d]uring th[e] same time period" as the Al-Hussayen indictment. Defendants omit that Plaintiff applied to the university in Saudi Arabia in April 2002, months before al-Hussayen's arrest. *See* Ex. 10, al-Kidd Dep. 113, 118. Defendants also omit that Plaintiff began making plans to travel to Saudi Arabia for work in late 2002. Ex. 10, al-Kidd Dep. 132-33 (al-Kidd applied to Berlitz in December 2002); Ex. 1, Pl. Docs 9-18 (Berlitz employment contract, signed January 2003), 26 (al-Kidd obtained a work visa). Defendants also omit that, in the first week of February 2003, al-Kidd learned that the university had accepted him and awarded him a scholarship, Ex. 10, al-Kidd Dep. 119. That same month, before Al-Hussayen's arrest, he began the process of applying for a visa. Ex. 10, al-Kidd Dep. 120-21, 137; *see also* Ex. 5, U.S. Docs 98 (reservation monitoring printout showing al-Kidd's flight had a "visa" requirement); Ex. 11, Alvarado Dep. 229-30. The Saudi Cultural Mission paid for his plane ticket. Ex. 10, al-Kidd Dep. 125.

15. Plaintiff does not dispute these facts.

16. Plaintiff disputes the fact that his reservation did not list a return flight to the extent it suggests that he had a one-way ticket. Plaintiff's ticket was open-ended. Open-ended tickets by definition have a return. Ex. 2, Gneckow Dep. 183.

17. Plaintiff does not dispute these facts.

18. Plaintiff disputes that Agent Alvarado had no reason to look for Plaintiff in particular. Plaintiff's name was specifically added to the TECS in 2002 with a "lookout" to track his international travel. *See* Ex. 4, Alvarez Dep. 18-19.

19. Plaintiff disputes these facts. It is unclear what Agent Alvarado told Agent Alvarez regarding whether Plaintiff had a return flight. *See* Ex. 11, Alvarado Dep. 257, 263. Further, Agent Alvarado never learned how much the ticket cost, nor did he attempt to find out how much it cost even though he could have obtained that information by calling the airline. *Id.* 260-61.

20-23. Plaintiff does not dispute these facts.

24. Plaintiff disputes that Defendant Gneckow "determined" that Plaintiff had left his home in Kent, Washington before seeking the material witness warrant. Prior to contacting Lindquist, Gneckow had made no efforts to locate al-Kidd. Ex. 2, Gneckow Dep. 143. Nor did Gneckow recall what efforts were made to ascertain al-Kidd's location after his conversation with Lindquist. *Id*. 143-44 (Gneckow could not recall whether he "ask[ed] someone to do a drive-by," "mak[e] a phone call," or take any other steps).

25. Plaintiff disputes that Defendant Gneckow simply "included the information" Agent Alvarez provided him regarding Plaintiff's flight reservation in his affidavit. Instead, Gneckow "took [it] upon [him]self" to verify the information by calling an FBI agent stationed at Dulles Airport. Ex. 2, Gneckow Dep. 165-67.

Gneckow learned of al-Kidd's travel plans on March 13, 2003, from an oral conversation with ICE officer Robert Alvarez. Ex. 2, Gneckow Dep. 135-36, 162-63, 170; Ex. 4, Alvarez Dep. 31-32, 52. Gneckow and Alvarez worked in the same office. Ex. 2, Gneckow Dep. 135-36. Alvarez told Gneckow verbally that Plaintiff was flying to Saudi Arabia on a one-way, first-class ticket. Alvarez gave Gneckow a range of possible departure dates. Gneckow did not

inquire about the confusion regarding al-Kidd's departure date. *Id*. 174-75. Nor did he ask to look at any paperwork showing al-Kidd's flight information. *Id*. 163, 173. Gneckow also did not attempt to find out the class of the ticket, or whether al-Kidd had purchased a return flight. *Id*. 169-70, 173-74. Gneckow made no attempt to find out when al-Kidd had made his travel plans or booked his ticket. Ex. 16, Gneckow Resp. 1st ROG #12; Ex. 2, Gneckow Dep. 149-50. Gneckow did not ask Alvarez "to do any follow-up research" about al-Kidd's travel plans or to show him any documents to verify the information. Instead, Gneckow contacted the FBI agent at Dulles Airport and asked whether al-Kidd's name appeared on an upcoming flight manifest. Ex. 2, Gneckow Dep. 146, 166. Gneckow did not ask the agent about the class of the ticket, the booking date, the price, or whether a return trip had been purchased. *Id*. 169-70, 174-75; Ex. 16, Gneckow Resp. 1st ROG #7, 12.

26. Plaintiff disputes the fact that the FBI Headquarters did not provide guidance on Mr. al-Kidd's investigation. To the contrary, FBI Headquarters received updates and provided guidance on al-Kidd's investigation. *See* Ex. 8, Dezihan Dep. 85-86, 102, 104, 106, 161-62; Ex. 2, Gneckow Dep. 23-24; Ex. 5, U.S. Docs 2724-26 (electronic communication sent to headquarters); Ex. 1, Pl. Docs 3-4 (Mueller testimony).

27. Plaintiff disputes these facts insofar as they imply Mr. al-Kidd had information germane to the visa and false statement charges against Al-Hussayen. In fact, al-Kidd had little knowledge of Al-Hussayen. Ex. 10, al-Kidd Dep. 159-61. Further, the Al-Hussayen indictment pending at the time of al-Kidd's arrest did not mention either al-Multaqa or al-multaqa.com. Ex. 12, Indictment, *U.S. v. Al-Hussayen*, No. 3:03-cr-0048 (Dkt. #1). While working at al-Multaqa, Plaintiff's duties were limited to arranging the English library, making tape labels, designing book covers, and speaking on Islam at public events. *See* Ex. 10, al-Kidd Dep. 156-57.

Finally, prosecutors on Al-Hussayen's case had obtained numerous of pages of documentary evidence about Al-Hussayen's activities, making al-Kidd's testimony redundant. See Ex. 2, Gneckow Dep. 54 (referencing bank records); Ex. 12, Indictment, *Al-Hussayen*, at ¶¶ 7-9, 11, 13, 15-21, 23 (Dkt. #1) (referencing business records, emails, websites, and other documents).

28. Plaintiff does not dispute these facts.

29. Plaintiff disputes that Defendant Mace had "no independent knowledge of al-Kidd." Defendant Mace admitted that he may have had been aware of Plaintiff as a football player at the University of Idaho. Ex. 6, Mace Dep. 13.

30. Plaintiff does not dispute these facts.

31. Plaintiff disputes that he "requested" a continuance of his detention hearing so that he could be transported to Idaho. Plaintiff appeared before the Magistrate Judge in Virginia on March 17th without counsel, and asked for his testimony to be "expedite[d]." Ex. 19, Hearing, *U.S. v. al-Kidd*, No. 03-94 at 2-3 (E.D. Va. Mar. 17, 2003). The judge stated that "the fastest way for you to get to Idaho and see the people that can . . . discuss why you were arrested" would be to "waive your right to a hearing here today" and consent to a transfer to Idaho. *Id*. at 3. The government attorney represented that the transfer would occur "as quickly as possible," and al-Kidd consented. *Id*. at 4. Yet the government delayed transferring al-Kidd until March 24. *See* Ex. 14, *Sugrue* at *1.

32-34. Plaintiff does not dispute these facts.

35. Plaintiff disputes that AUSA Lindquist decided not to call Mr. al-Kidd at trial "primarily" based on the defense's strategy "as the trial progressed." Mr. al-Kidd was never deposed for Al-Hussayen's trial. Ex. 7, Lindquist Dep. 101-02. Further, prosecutors had

obtained thousands of pages of documentary evidence about al-Hussayen's activities, making al-Kidd's testimony redundant. *See* Ex. 2, Gneckow Dep. 54 (referencing bank records); Ex. 12, Indictment ¶¶ 7-9, 11, 13, 15-21, 23, *Al-Hussayen* (Dkt. #1) (referencing business records, emails, websites, and other documents).

36. Plaintiff does not dispute these facts.

37. Defendants appear to have stated inadvertently that the jury found Al-Hussayen guilty on some counts, and could not reach a verdict on others. In fact, the jury found Al-Hussayen *not* guilty on all the terrorism charges and did not reach a verdict on the visa fraud charges. Ex. 12, Jury Verdict, *Al-Hussayen* (Dkt. #671).

38. Plaintiff disputes that the Chertoff memorandum is "guidance" on the use of the material witness statute, as it does not emphasize using the statute to preserve testimony. Rather, it is a letter template provided to prosecutors to use in response to inquiries. It is not probative of substantive Justice Department policy, but rather provides information about the Department's public communications. *See* Ex. 5, U.S. Docs 78-79.

Respectfully submitted,

/s/
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