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February 26, 2014

The Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
Via ECF & E-mail

Re: *United States v. Sulaiman Abu Ghayth*
S14 98 Cr. 1023 (LAK)

Dear Judge Kaplan:

This letter is submitted as a skeletal motion to (1) renew the defense motions to: (a) dismiss the indictment, (b) for a bill of particulars, and (c) to continue the trial; and (2) to compel the production of material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). This submission is made in skeletal form in light of the impending trial date, and the defense may seek to supplement the arguments below in due course.

Background. During the course of the defense investigation, it came to our attention that there might be a second person with the name Sulaiman Abu Ghayth, or a very similar name (the “Other Individual”). Defense interviews with men who were previously detained at Guantanamo Bay have indicated that the Other Individual was: (1) of North African or possibly Yemeni descent; (2) an “insider” in al Qaeda; (3) close to Usama bin Laden; and (4) present in and around Afghanistan and Tora Bora at the time alleged in the indictment. Further, it appears that the Other Individual received serious military training through al Qaeda.

Based on further investigation, the defense developed reason to believe that this information about the Other Individual may be reflected in material that is in the possession of the Government, such as computer discs, phone books and other items recovered through United States military raids and operations, including one such raid on a house where Khalid Sheikh Mohammed had resided.

Following these developments, on July 3, 2013, the defense requested the production of relevant discovery from the Government:

C. Documents found on a hard drive associated with Khalid Shaykh Muhammad (ISN KU-010024), seized during raids on March 1, 2003 in Pakistan, including a

document with a list of captured mujahideen referred to as “the captured brothers,” including any associated document with a reference number TD-314/13174-03.

D. Documents and/or statements alleging that Sulaiman Abu Ghayth received sniper training in Kandahar, including any related documents with a reference number TD-314/43855-02.

E. A computer file containing names of contact points and telephone numbers for al Qaeda mujahideen in Pakistan.

F. A computer file used by suspected al Qaeda members that contained a list of 78 associates incarcerated in Pakistan that was recovered by allied personnel in a suspected al Qaeda safe house in Pakistan, and a second file with a list of 324 Arabic names recovered from a safe house in Pakistan, and any other documents recovered from al Qaeda affiliated safe houses in Pakistan that list captured fighters, including any related documents with the following reference numbers:

- e. TD-314/13174-03
- f. TD-314/48336-03
- g. TD-314/27689-02
- h. AFGP-2002-807467

G. A document entitled “Asra.doc” that was recovered from a hard drive associated with Khalid Sheik Mohammed (ISN 10024), which was seized in or about March 2003 in Pakistan, including any documents with the reference number TD-314113174-03.

H. A list of 84 Taliban and al Qaeda fighters that was seized from Ali Muhammad Abdul Aziz (ISN 212), and may contain information about who travelled with Usama Bin Laden during the withdrawal from Tora Bora and his escape from Afghanistan, including documents with reference numbers:

- i. TD-314/52609-05
- k. TD-314/00845-02
- k. IIR 7 739 3396 02
- I. IIR 7 739 3268 02

I. Documents, statements and/or other information relating to Sulaiman Abu Ghayth being at Tora Bora in November 2001, including documents with reference numbers:

m. SIR 2 Sep 05
n. TD-314/30896-03

See Exhibit A to the Defense's Motion For a Bill of Particulars and Discovery, docket no. 1273. When the Government did not provide an adequate response to these requests, the defense moved for a bill of particulars accordingly. *Id.*

On or about February 5, 2014, the defense received thousands of pages of 3500 material relating to "CW" (the subject of the Government's prior motion for testimony by video deposition), who is anticipated to provide testimony concerning the "shoe-bombing" plot involving Richard Reid. Yesterday defense counsel came across a reference by CW to "Suleiman" or "Salman" in response to an inquiry by a member of the prosecution team as to whether any other people with a name similar to the Defendant's name were in the relevant vicinity during the time period pertinent to this case. This discussion was in the context of CW being asked to provide his opinion as to the persons, places and things set forth on various "brevity cards."¹

The defense notified the Government last night of its preliminary findings. Meanwhile, the defense conducted further investigation into Arabic variations on the name Sulaiman Abu Ghayth, and we have discovered that an individual by the name of Abdul Rahman Abdul Abu Ghityh Sulayman (ISN 223) is currently detained at Guantanamo Bay. Mr. Sulayman filed a *habeas* challenge to his detention, and the court determined the following facts:

- Mr. Sulayman is a Yemeni national who travelled to Afghanistan at the suggestion of a Taliban recruiter.
- He lived in al Qaeda affiliated guesthouses in Kabul and Kandahar for at least seven months.
- He received military training while in Afghanistan.
- In late December 2001 he was arrested near Jalalabad by Pakistani authorities.
- He was transferred to the custody of the United States and transferred to Guantanamo in February 2002.

The similarities among Mr. Sulayman and the government's theory of the instant case continue. A publicly available summary of Mr. Sulayman's August 4, 2006 Administrative Review Board Hearing² states the following about him:

¹ "Brevity cards" are small pieces of paper with a list of names corresponding to numbers. The Government has long suggested that the presence of a name it believes to be the Defendant's name on several "brevity cards" is evidence that he played a leadership role in al Qaeda. It should be noted that when CW, in recent briefings, suggested that the name on certain "brevity cards" was in fact the Defendant's name, it was not an identification based upon personal knowledge, but rather upon a passing familiarity with a name which he may have heard. According to unclassified investigations, Department of Defense documents refer to the Other Individual as a soldier with a high level of military training, who had close connections to Usama bin Laden and was part of the force which retreated from Kandahar with the inner circle, and who had been a one-time spokesman for bin Laden and al Qaeda. Given the similarity between the nature of this description and the government's case against the Defendant, and the similarity of the names themselves, the Other Individual may well be the person listed on one or more "brevity cards," rather than the Defendant.

² Available at <http://www.documentcloud.org/documents/76351-isn-223-abdul-rahman-abdul-abu-ghityh-sulayman.htm> (last visited February 26, 2014).

c. Connections/Associations

1. The detainee was reported to have been seen with Usama bin Laden in the Tora Bora, Afghanistan region.
2. The detainee has been identified as an al-Qaida spokesman in Usama bin Laden's entourage.
3. The detainee's name was found on computer equipment that was confiscated during a raid on an alleged al-Qaida residence in Pakistan.
4. The detainee's name was found on a chart on computer equipment that was connected to an al-Qaida operative. The chart listed the names of captured mujahedin.

In addition to these findings, Mr. Sulayman's August 26, 2008 JTF-GTMO Assessment³ states that he:

- is assessed to be a member of al-Qaida;
- fought at Usama Bin Laden's (UBL) Tora Bora Mountain Complex in late 2001;
- received basic and advanced training including artillery, urban warfare, and instructor training at al Qaeda facilities;
- stayed at al Qaeda associated guesthouses; and
- his name was listed on an al Qaeda affiliated document.

According to now publicly available documents, on several occasions Mr. Sulayman was referred to as "Sulayman Abu Ghaith" or "Sulayman Abu Ghayth," by both detained witnesses and by the United States Department of Defense. *See, e.g.,* the 2008 JTF-GTMO Assessment for Abdul Rahman Ahmed (ISN 441), page 6.⁴ *See also* 2005 Administrative Review Board Summary for Abdul Aziz Abdul Rahman Abdul Aziz al Baddah (ISN 264), at 2 ("10. While in Kabul, the detainee observed Sulayman Abu Ghaith, an engineering advisor to Metrafi and a spokesman for al-Qaida, Hammoud (FNIJ) and Metrafi plan the daily missions of al Wafa within the community.")⁵

In sum, the Other Individual is in the custody of the United States government, shares a name very similar to the Defendant's, and has been accused of conduct that is similar, if not identical, to the allegations in this case.

Nevertheless, nothing provided by the government in motion practice or discovery indicates the existence of the Other Individual. Even more troublingly, a draft report by Government expert Evan Kohlmann describes the Defendant as the press spokesman for al Qaeda based on a declassified factual finding which actually concerns the Other Individual, and not the Defendant.

³Available at <http://www.documentcloud.org/documents/82864-isn-223-abdul-rahman-abdul-abu-ghityh-sulayman.html>

⁴Available at <http://www.documentcloud.org/documents/82882-isn-441-abdul-rahman-ahmed-jtf-gtmo-detainee.html>

⁵ Available at <http://www.documentcloud.org/documents/76507-isn-264-abdul-aziz-abdul-rahman-abdul-aziz-al.html>

Relevance. Information about the Other Individual pertains to the defense in this case in more than one way. The following list of examples is non-exhaustive:

Phase of Case	Relevance
Motion to Dismiss the Indictment	Information about the Other Individual may be material to the Defendant's motion to dismiss the indictment on the basis that the prosecution violates due process. As set forth in the omnibus pretrial motions filed by the defense, docket no. 1263 at 11-23, witnesses have died or been compromised by extreme conditions of confinement, and the Government has delayed the prosecution for tactical advantage. Intelligence bearing on another individual who fits aspects of the charges provides further evidence in support of dismissal.
Motion for a Bill of Particulars	As mentioned above, the defense has requested information about specific individuals and materials that bear upon a determination of the Defendant's alleged role in this case. Intelligence about the Other Individual is discoverable insofar as such information may be material to particularization of the charges against the Defendant.
Motion for a Continuance	Information about the Other Individual in the CW 3500 material on the eve of trial has placed the defense in an urgent and untenable position. Yet to be discovered information may undermine the Government's theory of the case and evidence ranging from witness testimony to the "brevity cards," which may or may not reflect the name of the Defendant or the Other Individual. Additional time is necessary to seek any relevant and necessary information from the Government, and to conduct and complete defense investigations.

Accordingly, the defense renews its motions to dismiss the indictment, for a bill of particulars and to continue the trial. A *Brady* request has just been submitted to the line prosecution team and "walled-off" counsel at the United States Attorney's Office, attached as Exhibit A, and the defense moves to compel the production of material sought in that letter – whether classified or unclassified – for the reasons set forth above.

The defense may seek to supplement these applications as appropriate. The Court's consideration of this submission is appreciated.

Sincerely,

s/
Zoë Dolan

Cc: AUSAs Michael Ferrara, Nicholas Lewin, John Cronan and Diane Gujarati
Mr. Michael Macisso & Mr. Harry Rucker

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AUSA Nicholas Lewin
AUSA Michael Ferrara
AUSA John Cronan
AUSA Diane Gujarati
United States Attorney's Office
Southern District of New York
Via ECF & E-mail

Re: *United States v. Sulaiman Abu Ghayth*
S14 98 Cr. 1023 (LAK)

Dear Gentlemen & Ms. Gujarati:

This letter is submitted pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). Please provide at this time any information or material in the possession of the government relating to Abdul Rahman Abdul Abu Ghityh Sulayman, which may pertain to the defense in this case. For the purposes of this letter, the term "government" is given the same meaning as contemplated by the defense in prior litigation in this case. A motion seeking the production of this information or material among other things will be filed presently.

Sincerely,

s/
Zoë Dolan

Cc: Honorable Lewis A. Kaplan
Via ECF & E-mail