

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

NOLLE PROSEQUI
AND UNSEALING ORDER

KHALID SHEIKH MOHAMMED, :

a/k/a "Mukhtar," :

a/k/a "Mukhtar al-Baluchi," :

a/k/a "Al-Mukh," :

a/k/a "Abdulrahman Abdullah :

al-Ghamdi," :

a/k/a "Salem Ali," :

(S14) 93 Cr. 180 (KTD)

WALID BIN ATTASH, :

a/k/a "Khallad Bin Attash," :

a/k/a "Saleh Saeed Mohammed :

Bin Yousaf," :

a/k/a "Tawfiq Muhammad Salih :

Bin Rashid," :

a/k/a "Silver," :

RAMZI BIN AL-SHIBH, :

a/k/a "Abu Ubaydah," :

a/k/a "Ahad Abdollahi Sabet," :

ALI ABDUL AZIZ ALI, :

a/k/a "Aliosh," :

a/k/a "Ali A," :

a/k/a "Isam Mansur," :

a/k/a "Ammar al-Baluchi," :

a/k/a "Hani," and :

MUSTAFA AL-HAWSAWI, :

a/k/a "Hashem Abdulrahman," :

a/k/a "Hashem Abdollahi," :

a/k/a "Mustafa Ahmed," :

a/k/a "Zaher," :

a/k/a "Khal," :

Defendants. :

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1. The filing of this nolle prosequi will dismiss this federal criminal indictment against the defendants KHALID SHEIKH MOHAMMED, a/k/a "Mukhtar," a/k/a "Mukhtar al-Baluchi," a/k/a "Al-Mukh," a/k/a "Abdulrahman Abdullah al-Ghamdi," a/k/a

"Salem Ali," WALID BIN ATTASH, a/k/a "Khallad Bin Attash," a/k/a "Saleh Saeed Mohammed Bin Yousaf," a/k/a "Tawfiq Muhammad Salih Bin Rashid," a/k/a "Silver," RAMZI BIN AL-SHIBH, a/k/a "Abu Ubaydah," a/k/a "Ahad Abdollahi Sabet," ALI ABDUL AZIZ ALI, a/k/a "Aliosh," a/k/a "Ali A," a/k/a "Isam Mansur," a/k/a "Ammar al-Baluchi," a/k/a "Hani," and MUSTAFA AL-HAWSAWI, a/k/a "Hashem Abdulrahman," a/k/a "Hashem Abdollahi," a/k/a "Mustafa Ahmed," a/k/a "Zaher," a/k/a "Khal."

2. On December 14, 2009, Indictment (S14) 93 Cr. 180 (KTD) was returned and, upon Sealed Affirmation and Application of the Government, ordered to be filed under seal. The Indictment charges the defendants with various offenses relating to the terrorist attacks on September 11, 2001. In particular, the Indictment charges the defendants in ten counts as follows:

a. Count One: Conspiracy to Commit Acts of Terrorism Transcending National Boundaries, in violation of Title 18, United States Code, Section 2332b(a)(2) & (c)(1)(a);

b. Count Two: Acts of Terrorism Transcending National Boundaries, in violation of Title 18, United States Code, Sections 2332b(a)(1) & (c)(1)(A), and 2;

c. Count Three: Conspiracy to Commit Violent Acts and Destroy Aircraft, in violation of Title 18, United States Code, Sections 32(a)(7) and 34;

d. Count Four: Violence on and Destruction of Aircraft, in violation of Title 18, United States Code, Sections 32(a)(1) & (5), 34, and 2;

e. Count Five: Conspiracy to Commit Aircraft Piracy,

in violation of Title 49, United States Code, Section 46502(a)(1)(A) & (a)(2)(B);

f. Count Six: Aircraft Piracy, in violation of Title 49, United States Code, Section 46502(a)(1)(A) & (a)(2)(B), and Title 18, United States Code, Section 2;

g. Count Seven: Murder of a United States Officer and Employee, in violation of Title 18, United States Code, Sections 1111, 1114, and 2;

h. Count Eight: Murder of a United States Officer and Employee, in violation of Title 18, United States Code, Sections 1111, 1114, and 2;

i. Count Nine: Destruction of Commercial Property, in violation of Title 18, United States Code, Sections 844(i) and 2; and

j. Count Ten: Conspiracy to Kill Americans, in violation of Title 18, United States Code, Section 2332(b).

The indictment also contains a notice of special findings to support death sentences, pursuant to Title 18, United States Code, Sections 3591 and 3592.

3. In December 2010, the United States Congress enacted the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Section 1032 of which bars the use of funds authorized to be appropriated by the Act to transfer the defendants from the United States Naval Station, Guantanamo Bay, Cuba, to the United States, even for prosecution. In light of this opposition by Congress to a federal criminal prosecution, the Government does not believe there is any reasonable

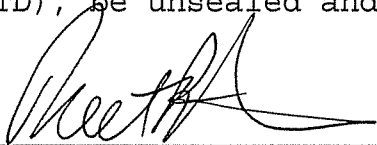
likelihood that the defendants will be tried in this forum in the near future.


4. Both the public generally, and the victims of the terrorist attacks of September 11, 2001, and their families specifically, have a strong interest in seeing the defendants prosecuted in some forum. Because a timely prosecution in federal court does not appear feasible, the Attorney General intends to refer this matter to the Department of Defense to proceed in military commissions.

5. In light of the foregoing, the Attorney General has directed that the undersigned seek dismissal of Indictment (S14) 93 Cr. 180 (KTD). Accordingly, we hereby direct, with leave of the Court, that an order of nolle prosequi be filed as to defendants KHALID SHEIKH MOHAMMED, a/k/a "Mukhtar," a/k/a "Mukhtar al-Baluchi," a/k/a "Al-Mukh," a/k/a "Abdulrahman Abdullah al-Ghamdi," a/k/a "Salem Ali," WALID BIN ATTASH, a/k/a "Khallad Bin Attash," a/k/a "Saleh Saeed Mohammed Bin Yousaf," a/k/a "Tawfiq Muhammad Salih Bin Rashid," a/k/a "Silver," RAMZI BIN AL-SHIBH, a/k/a "Abu Ubaydah," a/k/a "Ahad Abdollahi Sabet," ALI ABDUL AZIZ ALI, a/k/a "Aliosh," a/k/a "Ali A," a/k/a "Isam Mansur," a/k/a "Ammar al-Baluchi," a/k/a "Hani," and MUSTAFA AL-HAWSAWI, a/k/a "Hashem Abdulrahman," a/k/a "Hashem Abdollahi," a/k/a "Mustafa Ahmed," a/k/a "Zaher," a/k/a "Khal," with respect to Indictment (S14) 93 Cr. 180 (KTD).

6. Upon dismissal of the Indictment, there is no longer any basis for maintaining Indictment (S14) 93 Cr. 180 (KTD); the Government's Affirmation and Application of December

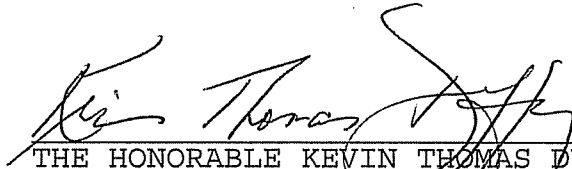
14, 2009; or the Order of the same date, signed by the Honorable James C. Francis IV, United States Magistrate Judge, under seal. Accordingly, the undersigned further ask that Indictment (S14) 93 Cr. 180 (KTD); the Government's Affirmation and Application of December 14, 2009; and the Order of the same date, signed by Magistrate Judge Francis, all under docket (S14) 93 Cr. 180 (KTD), be unsealed and entered on the docket.


PREET BHARARA
United States Attorney
Southern District of New York


NEIL H. MacBRIDE
United States Attorney
Eastern District of Virginia

Dated: New York, New York
April 4, 2011

SO ORDERED:


THE HONORABLE KEVIN THOMAS DUFFY
United States District Judge
Southern District of New York

Dated: New York, New York
April 4, 2011