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 10 United States of America

11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) Crim. Case No. 10CR4246-JM
 14)
 Plaintiff,)
 15) **UNITED STATES' TRIAL**
 v.) **MEMORANDUM**
 16 BASAALY SAEED MOALIN,)
 aka "Basal")
 17 aka "Muse Shekhnor Roble")
 MOHAMED MOHAMED MOHAMUD,)
 18 aka "Mohamed Khadar")
 aka "Sheikh Mohamed") Date: January 28, 2013
 19 ISSA DOREH,) Time: 9:00 a.m
 aka "Sheikh Issa") Hon. Jeffrey T. Miller
 20 AHMED NASIR TAALIL MOHAMUD,)
)
 21 Defendants.)

22
 23 I

24 **STATUS OF THE CASE**

25 A. INDICTMENT

26 On June 8, 2012, the grand jury returned a Second
 27 Superseding Indictment charging defendants Basaaly Saeed
 28 Moalin ("Moalin"), Mohamed Mohamed Mohamud ("Mohamud"), Issa

1 Doreh ("Doreh"), and Ahmed Nasir Taalil Mohamud ("Nasir")
2 as follows:

3 Count 1: Conspiracy to provide material support to
4 terrorists, in violation of 18 U.S.C. §
5 2339A(a) (all defendants);

6 Count 2: Conspiracy to provide material support to
7 a foreign terrorist organization, in
8 violation of 18 U.S.C. § 2339B(a)(1) (all
9 defendants);

10 Count 3: Conspiracy to launder monetary
11 instruments, in violation of 18 U.S.C. §
12 1956(a)(2)(A) and (h) (all defendants);

13 Count 4: Providing, and attempting to provide,
14 material support to terrorists, in
15 violation of 18 U.S.C. § 2339A(a) (Moalin
16 only); and

17 Count 5: Providing, and attempting to provide,
18 material support to a foreign terrorist
19 organization, in violation of 18 U.S.C. §§
20 2339B(a)(1) and 2 (Moalin, Doreh and
21 Mohamud only).

22 B. JURY TRIAL

23 A jury trial is set for 9:00 a.m., on January 28, 2013.

24 C. CUSTODY

25 All defendants are in custody.

26 D. INTERPRETER

27 The United States does not anticipate requiring an
28 interpreter for any of its witnesses. Defendant Nasir used

1 a Somali-language interpreter during the last court
2 proceeding.

3 E. LENGTH OF TRIAL

4 The United States estimates that its case-in-chief will
5 require approximately six to seven trial days (exclusive of
6 jury selection).

7 F. COURTROOM COMPUTER SYSTEM

8 The United States will use a projection-based evidence
9 presentation system which will include individual monitors
10 located at the bench, the jury box, the witness stand, and
11 at counsel tables. The projection system also will display
12 exhibits on the large screen facing the jury box.

13 G. JURY INSTRUCTIONS

14 The United States' proposed jury instructions have been
15 submitted under separate cover.

16 H. STIPULATIONS

17 Defendants stipulated that they will not use the call
18 summaries or draft transcripts produced to them in discovery
19 for any purpose at trial (including examination, cross-
20 examination, impeachment, or as trial exhibits).

21 **II**

22 **STATEMENT OF FACTS**

23 A. AL-SHABAAB AND ADEN AYROW

24 Al-Shabaab (aka the "Youth") is a violent and brutal
25 militia group that used intimidation and violence to
26 undermine Somalia's Transitional Federal Government (TFG)
27 and its supporters. Al-Shabaab originally formed within the
28 Council of Islamic Courts (CIC), a Somali-based Islamic

1 group. The most prominent CIC figure was Sheikh Hassan
2 Dahir Aweys, an individual with links to al-Qaeda.

3 Al-Shabaab emerged as the core of the CIC's military
4 strength. Aden Hashi Ayrow, a protégé of Aweys who
5 received training in Afghanistan, became a CIC militia
6 commander in the early 2000s. During this time, al-Shabaab
7 engaged in many acts of terrorism, including, for example,
8 the 2003 killing of an Italian nurse who treated
9 tuberculosis and HIV/AIDS patients, the 2005 killing of
10 Somali peace activist Abdulkadir Yahya, and the 2006
11 killings of a Swedish journalist and an Italian nun.

12 Ayrow also gained notoriety for his militia's ties to
13 al-Qaeda, which it forged by protecting al-Qaeda figures in
14 Somalia. In 2002, al-Qaeda figures, including Abu Taha al-
15 Sudani, Saleh Ali Saleh Nabhan, and Fazul Abdullah Mohamed,
16 launched attacks on an Israeli-owned hotel and Israeli
17 passenger jet in Mombasa, Kenya. After the attacks, the
18 group fled to Somalia where Ayrow's militia harbored them.
19 Two years later, in August 2004, Ayrow's house was attacked
20 by other militia leaders trying to apprehend one of these
21 al-Qaeda figures, Abu Taha al-Sudani. After his house was
22 raided, Ayrow set up camp in an Italian colonial-era
23 cemetery. His fighters desecrated the cemetery and
24 established a mosque and a training center on the site,
25 which became known as the Salahudin Center.

26 Al-Shabaab emerged as its own entity when the
27 Ethiopians displaced the CIC in approximately 2007. Al-
28 Shabaab used assassinations, improvised explosive devices,

1 mines, mortars, automatic weapons, suicide bombings, and
2 general tactics of intimidation and violence against the
3 TFG, TFG officials, civilians, Ethiopian forces, African
4 Union peacekeeping forces, and others. Aden Ayrow called
5 for foreign fighters to join al-Shabaab in a "holy war" in
6 Somalia.

7 On February 26, 2008, the United States Department of
8 State designated al-Shabaab as a Foreign Terrorist
9 Organization (FTO). The designation became effective on
10 March 18, 2008, when published in the Federal Register.
11 Until his death by missile strike on May 1, 2008, Ayrow was
12 one of al-Shabaab's most well-known and infamous leaders.
13 Other prominent al-Shabaab leaders included (among others):

- 14 • al-Shabaab's emir, Ahmed Abdi Aw Mohamed, aka
15 "Abu Zubeyr," aka "Godane";
- 16 • Mukhtar Robow, aka "Abu Mansour," an al-
17 Shabaab commander and spokesman;
- 18 • Fuad Shongole, a top al-Shabaab leader; and
- 19 • Mahad Karate, an al-Shabaab commander.

20 B. DEFENDANTS

21 Before their arrests, Moalin was a San Diego-based cab
22 driver, Mohamud was Imam of the al-Ansar Mosque in San
23 Diego, and Doreh was an employee of the now-defunct Shidaal
24 Express, a money services business that transferred funds
25 to Somalia. Nasir was an Anaheim-based cab driver.
26 Beginning on a date unknown, but continuing to at least
27 August 5, 2008, these defendants conspired together-and with
28

1 others-to provide money to al-Shabaab and others engaged in
2 violent attacks on the TFG and its supporters.

3 The Federal Bureau of Investigation intercepted
4 numerous telephone calls between the defendants and others
5 concerning their provision of material support to Aden
6 Ayrow, al-Shabaab and others engaged in killing and the use
7 of weapons of mass destruction in Somalia. These intercepts
8 included numerous conversations between Moalin and Aden
9 Ayrow, who typically used the code names "Shikhalow" and
10 "Majadhub." The FBI also obtained transaction records from
11 Shidaal Express documenting the money transfers discussed
12 in the recorded conversations.

13 In the recorded conversations, the parties typically
14 refer to the defendants by their first names or aliases,
15 such as:

- 16 • Defendant Moalin: "Basaaly" or "Basal"
- 17 • Defendant Mohamud: "Sheikh Mohamed" or "Mohamed
18 Khadar"
- 19 • Defendant Doreh: "Sheikh Issa"
- 20 • Defendant Nasir: "Ahmed Nasir."

21 To avoid confusion (particularly as "Mohamud" is a common
22 first and last name), in summarizing audio calls, this
23 memorandum uses the names typically appearing in the
24 transcripts, rather than the defendants' last names.

25 C. THE JANUARY TRANSFERS AND THE MOGADISHU HOUSE

26 In December 2007, Ayrow told Basaaly that he needed
27 over \$3,000 for his forces in the Bay and Bakool regions of
28 Somalia. Ayrow told Basaaly to call the "cleric" [Sheikh

1 Mohamed] immediately about the matter. Basaaly stated that
2 he would "take care of the issue swiftly" with Sheikh
3 Mohamed and "the Saleban clan cleric whom you talked to, by
4 the name of Sheikh Issa."

5 Basaaly immediately called Sheikh Issa, informing him
6 that the "cleric" just called and requested money for the
7 forces stationed where the fighting is occurring. Basaaly
8 urged Sheikh Issa to contact Sheikh Mohamed. The next day,
9 Basaaly told Ahmed Nasir that "the young men who are firing
10 the bullets" need money, that these men are "the strongest
11 men after those in Mogadishu," and that they killed 60
12 Ethiopians and destroyed up to five vehicles in just the
13 last month. Basaaly advised Ahmed Nasir that they needed
14 money for the forces "doing that job." Ahmed Nasir
15 indicated that he would look for it.

16 On December 28, 2007, Basaaly told Sheikh Mohamed that
17 the men have been "crying out to me over the phone." Sheikh
18 Mohamed stated that he would "complete the task" pertaining
19 to the men.

20 On January 1, 2008, Basaaly told Ayrow that they had
21 sent him a "small amount" under the name "Yusuf Mohamed
22 Ali." Ayrow then reported that "these two nights we gave
23 the non-Muslims a holiday to remember." Laughing, Basaaly
24 observed that if those attacked had been Somali, they would
25 have known where to run, but instead "they have to die
26 because they don't know where to run to." The Shidaal
27 Express records reflect that, on January 1, 2008, two
28 transfers of \$1,950 (totaling \$3,900) were sent from San

1 Diego to "Yusuf Mohamed Ali" in Mogadishu. Two days later,
2 Ayrow told Basaaly that "we received the three." On January
3 3, 2008, Basaaly gave Ayrow access to his house in
4 Mogadishu. Basaaly gave Ayrow detailed instructions to the
5 house, and told Ayrow that "you can use it for anything you
6 want - I mean - if you want to hide stuff in there."
7 Basaaly told Ayrow that he could bury his "stuff" deep in
8 the ground and then plant trees on top. Basaaly told Ayrow
9 he would have trees brought over from a farm near Mogadishu
10 for this purpose. Basaaly also told Ayrow that the house
11 has an attic where he used to store documents and weapons.
12 Basaaly stated that the house's only drawback was that it
13 is "easily identifiable" and an "easy target" because of its
14 location and trees. Ayrow shrugged off this concern,
15 stating, "No one would know. How could anyone know, if the
16 house is used only during the nights?"

17 A few days later, Basaaly told Ahmed Nasir that the
18 "young men" had created an efficient structure to fight
19 against the police, the tax collectors, and the upper
20 administration, and that the "situation" is in a "very good
21 phase." Basaaly stated that "you can sense that" from the
22 fact that "up to eight tax collectors were killed the other
23 day" and "the continuous attacks against the camps, you
24 know, never stopped."

25 D. THE FEBRUARY TRANSFERS

26 On January 20, 2008, Basaaly advised Ayrow to focus on
27 "military" matters, but to allow clan members in the
28 Guriceel area to establish a local administration and handle

1 "the overall politics." Ayrow replied that, in Islam,
2 "politics and military go together" and that "Islam has its
3 own political principles" where "the fighter, the politician
4 and the missionary must all come together in a single unit."
5 Ayrow stated, "And we, the Shabaab, have a political
6 section, a military section and a missionary section. We
7 have all that."

8 During this same conversation, Ayrow told Basaaly that
9 "[t]he other day, we planted a land mine for Abdi Qaybdiid
10 [Mogadishu police commissioner] who was traveling on that
11 road; he was almost hit." Ayrow told Basaaly to tell
12 "Sheikh Mohamed" that "he must let us know the amount of
13 money we can expect every month, even if it is one hundred
14 dollars." Ayrow stated, "We want to support the insurgent
15 with it."

16 Ayrow then told Basaaly that the TFG's Nur Adde and
17 Ahmed Abdisalan (the TFG's Prime Minister and Deputy Prime
18 Minister) "arrived today" and that "as soon as they arrived
19 at the Presidential Palace, we hit them with 12 mortar
20 shells." Ayrow observed that Villa Somalia (the
21 Presidential Palace) "is still full of smoke." Basaaly
22 replied: "God is great. God is great. It is something to
23 be thankful of the fact that you are capable to deny them
24 the opening of new offices and to work as a functioning
25 government."

26 On February 3, 2008, Ayrow asked Basaaly if he had
27 reached "Sheikh Mohamed." Ayrow stated, "You are running
28 late with the stuff. Send some and something will happen."

1 On February 9, 2008, Basaaly asked Sheikh Issa if the money
2 held by "Mohamed Khadar" had been sent. Sheikh Issa replied
3 affirmatively, noting that "the Dhunkaal one" had been sent.

4 On February 13, 2008, Sheikh Mohamed told Basaaly that
5 he believed "Dhunkal was able to get the stuff there." The
6 next day, Basaaly asked Ayrow, "Did you receive Dhunkaal's
7 stuff?" Ayrow asked Basaaly whether he used the name "Yusuf
8 Mohamed Ali as the receiver." Basaaly replied
9 affirmatively, telling Ayrow that the amount was "2,000."

10 The Shidaal Express records reflect that, on February
11 13, 2008, two transfers totaling \$2,000 (\$1,300 and \$700)
12 were sent from San Diego to "Yusuf Mohamed Ali" in
13 Dhusamareeb, Somalia. The sender was listed as "dhunkaal
14 warfaa."

15 E. THE APRIL TRANSFERS

16 On March 18, 2008, notice of al-Shabaab's designation
17 as a foreign terrorist organization was published in the
18 Federal Register, an event widely reported. The next day,
19 Basaaly told an associate that al-Shabaab was added to the
20 "terrorist list" and that "Adan" and "Robow" were among
21 those specifically mentioned. On March 20, 2008, Basaaly
22 listened over the telephone to a radio news report of al-
23 Shabaab's designation as a foreign terrorist organization.

24 On March 30, 2008, Ayrow told Basaaly to "tell Sheikh
25 Mohamed that we are waiting news from him and news from
26 you." Basaaly indicated they were trying, but the situation
27 was difficult because of the drought. On April 12, 2008,
28 Ayrow told Basaaly that "[i]t rained everywhere" and "the

1 water tanks are full." Ayrow stated: "The help for the
2 drought is over; so now it is the time to finance the
3 jihad."

4 Ayrow told Basaaly that the Ethiopians are in Adaado
5 (near Dhusamareeb). Basaaly replied, "I was told they are
6 only a few men so why do you not prepare to finish them
7 off?" Ayrow stated, "We will try, God willing." Basaaly
8 then warned Ayrow that the men could just be a scouting team
9 who would call in aircraft "once they have located your
10 position." Basaaly observed: "[A]lthough you cannot do much
11 about big, high speed planes, you can prepare for
12 helicopters. They would never come back if you destroy
13 one." Ayrow replied that the "Ethiopian helicopters are not
14 a threat but the Americans are." Basaaly replied, "Yes.
15 Therefore, get ready for that."

16 On April 12, 2008, Ayrow again urged Basaaly to provide
17 money, stating that he didn't believe that even 200 men
18 "will have bullets to shoot at the enemy they can see" but
19 "if we had bullets for this enemy we would have destroyed
20 them." Basaaly replied that he would do his best.

21 Within less than an hour, Basaaly told Sheikh Mohamed
22 that he had received calls "from the young man" who stated
23 that "he does not have anything to throw at them." Sheikh
24 Mohamed stated that it is "best that this thing does not
25 become public."

26 On April 17, 2008, Basaaly spoke with Sheikh Mohamed
27 again, asking whether they could commit to a date to provide
28 Ayrow funds. Sheikh Mohamed asked Basaaly whether he and

1 "the others" had any money. Sheikh Mohamed told Basaaly
2 that they would meet concerning the matter. Basaaly told
3 Sheikh Mohamed to hold back twenty or thirty trusted people
4 at the Mosque on Friday and "tell them to pay this much,
5 something they can afford."

6 On April 21, 2008, Basaaly informed Sheikh Issa that
7 Basaaly told "the religious scholar" [Sheikh Mohamed] that
8 "the men are in need of those matters, so process it - push
9 it." Sheikh Issa replied, "We were discussing that this
10 morning and we agreed to meet."

11 On April 23, 2008, Basaaly asked Sheikh Mohamed whether
12 "Dhunkaal" left. Sheikh Mohamed replied, "Dhunkaal left.
13 Dhunkaal left." However, Sheikh Mohamed could not recall
14 the false name used to send the funds, stating that he had
15 left the paper at home. Sheikh Mohamed called Sheikh Issa
16 at Shidaal Express, who told him that the funds were sent
17 from "Abdiweli Ahmed" to "Dhunkaal Mohamed Yusuf." Basaaly
18 asked Sheikh Issa to redirect the funds to Dhusamareeb,
19 rather than Mogadishu.

20 On April 24, 2008, Basaaly asked Ayrow if he had
21 "received the little that we sent you." Basaaly told Ayrow
22 that the transfer "was sent from San Diego directed to
23 Dhunkaal." Basaaly stated that the transfer was "three
24 bundles [\$3,000]" but "[t]hey will break it because they do
25 not want to show that the transfer was one." Later that
26 day, Basaaly informed Sheikh Mohamed that Basaaly had told
27 Ayrow "that a transfer was coming his way." Sheikh Mohamed
28

1 expressed satisfaction, stating "[i]t is possible that we
2 will send some more."

3 On April 25, 2008, Ayrow told Basaaly that he had
4 received "1,900." Less than an hour later, Basaaly asked
5 Sheikh Mohamed, "how many stones did we send him?" Sheikh
6 Mohamed replied, "It was three stones [\$3,000]." Basaaly
7 stated, "Yes, naturally they sent it in installments."
8 Basaaly then called Ayrow and told him that the entire
9 transfer was "three stones" but was structured, so if that
10 Ayrow had received "19" [\$1,900], he should go look for the
11 rest. Basaaly also told Ayrow that Sheikh Issa helps them
12 by waiving the typical hawala transfer fee.

13 The Shidaal Express records reflect that, on April 23,
14 2008, two transfers totaling \$3,000 (\$1,900 and \$1,100) were
15 sent from San Diego to "Dunkaal Mohamed Yusuf" and "Mohamed
16 Yusuf dunkaal," respectively, in Dhusamareeb.

17 F. AYROW'S DEATH

18 On May 1, 2008, a friend told Basaaly that "birds
19 targeted the house where Shikhalow [Ayrow], 'Slim Limbs',
20 used to stay one hour ago." When Basaaly expressed doubt
21 that the house could be targeted at night, the friend
22 replied, "Are you saying that birds cannot launch something
23 from the sky? Where do you live?"

24 Later that morning, Basaaly asked another associate if
25 he had "information about Dhusamareeb. Was there a plane
26 attack today?" The associate replied, "I don't know the
27 exact time but last night an airplane dropped a missile on
28 a house of three bedroom thought to be inhabited by the main

1 man." About an hour later, Basaaly contacted Sheikh
2 Mohamed, stating: "Naturally, I think you have heard what
3 happened." Sheikh Mohamed replied, "Man, I am sitting in
4 front of it and looking at it right now." Basaaly told
5 Sheikh Mohamed that Robow [al-Shabaab's spokesman] had just
6 announced that "Majadhub" [Ayrow] is among "the people who
7 are gone."

8 On May 1, 2008, Basaaly also discussed Ayrow's death
9 with Sheikh Issa, noting that a "container" put him "deep
10 in the ground." Basaaly observed that Ayrow had taught the
11 non-Muslims a lesson. Sheikh Issa commented that Ayrow's
12 death would not "diminish him."

13 G. THE CONSPIRATORS CONTINUE FUNDING
14 THE VIOLENCE AFTER AYROW'S DEATH

15 On June 17, 2008, Basaaly discussed with an associate
16 named "Hassan" how best to support the fighters financially
17 post-Ayrow.^{1/} Basaaly stated that he had met with Sheikh
18 Issa and "the other man who is our leader here" [Sheikh
19 Mohamed]. Basaaly explained that "three other men and I,
20 the four of us are doing a job here." He stated that "we
21 want our things to reach whoever can inflict pain to them."
22 He commented that "the young guys [al-Shabaab aka "the
23 Youth"] inflict more pain" and that "I am very confident in
24 the young guys with whatever I give."

25
26
27 ^{1/} "Hassan" is Mohamed Abdi Yusuf, a St. Louis-based
28 cab driver who, in 2012, pled guilty to conspiracy to
provide material support to al-Shabaab and who is now
serving a 140-month prison sentence.

1 On July 1, 2008, Basaaly spoke with Hassan again about
2 the system for funding the fighters. Hassan chided Basaaly
3 for speaking too explicitly during the call, asking Basaaly,
4 "Do you believe or you do not that there is eavesdropping
5 and listening going on?" Hassan asked Basaaly whether
6 "Mohamed Khadar" is a "member of your men." Basaaly
7 affirmed that Khadar is one of their "best men" and "on the
8 front line." When Basaaly started to explain, Hassan cut
9 him off, stating: "I told you. I got what I wanted to know
10 from you. Don't go into details, man."

11 That same day, Basaaly told a contact named "Kay" that,
12 since Ayrow's death, Basaaly had difficulty establishing a
13 new al-Shabaab connection in Somalia. Kay told Basaaly that
14 he would connect him with Mahad Karate (an al-Shabaab
15 commander). Basaaly told Kay that he could give Karate the
16 code name "Dhunkaal" for Basaaly's future contact with
17 Karate.

18 On July 8, 2008, Basaaly and Ahmed Nasir listened to a
19 news report of a telephonic press conference held by al-
20 Shabaab spokesman, Mukhtar Robow. During the press
21 conference, Robow stated that the "mujahedin waged an attack
22 in the middle of the night against the headquarters of the
23 apostate government [TFG] headed by Abdullahi and the
24 Tigrean [Ethiopian] troops of Meles Zenawi in Baidoa."
25 Robow stated that the "mujahedin" attacked the airport and
26 the presidential compound.

27 After listening to this news report, Basaaly told Ahmed
28 Nasir that "soon we want to talk to the man who was just

1 speaking [Robow]." Basaaly explained that he was waiting
2 for some contacts in Canada to connect him. Ahmed Nasir
3 asked to be included. Ahmed Nasir stated that he was
4 collecting money from other cab drivers, but some had not
5 yet paid. Basaaly thanked Ahmed Nasir for his efforts.

6 Later on July 8, 2008, Basaaly, Sheikh Issa and Sheikh
7 Mohamed all spoke with "Hassan." In a heavily-coded
8 conversation, Hassan first informed Sheikh Issa that Hassan
9 had collected some "papers" for the "students of the Koran
10 School" that he was ready to send to Sheikh Issa, Basaaly
11 and Sheikh Mohamed for inclusion in a transfer from San
12 Diego. Hassan asked Sheikh Issa if he could give Hassan
13 "the VIN number of a car so I can load it just like before."
14 Sheikh Issa transferred the phone to Basaaly, who teased
15 Hassan for talking in code. Basaaly stated, "I will not
16 say, 'Students are so and so' I will talk direct, you know?"
17 Hassan replied, "Man, I don't like that; man, talk to me
18 like the others do."

19 Hassan then told Basaaly that he had "2 cartons"
20 [\$2,000] to send him. Basaaly replied that he would give
21 him a bank account number for the deposit. Basaaly then
22 passed the phone to Sheikh Mohamed. Hassan introduced
23 himself to Sheikh Mohamed, stating that he is a "member of
24 the group." Sheikh Mohamed replied that "phones are
25 problematic so, whatever you guys have . . . handle it that
26 way."

27 On July 10, 2008, Basaaly told Ahmed Nasir that they
28 had collected about \$10,000 "including from the mosque."

1 Basaaly stated that they "sent \$5,000 as emergency to the
2 men involved in the fighting in the Galgadud region."
3 Basaaly explained that they would divide the \$5,000 between
4 the "men from the Youth" and another Islamist insurgent
5 group known as "Jabiso."^{2/}

6 On July 11, 2008, Basaaly spoke with Mahad Karate.
7 Basaaly told Karate that he was not the "top responsible
8 guy" in San Diego, but rather there are "big shots scholars
9 who give utmost importance to these matters." Basaaly
10 explained that he mostly took care of the communication and
11 "the connection." Basaaly explained that they needed a new
12 al-Shabaab connection in Somalia to receive future
13 transfers. Karate told Basaaly to send funds directly to
14 a man named Omar Mataan.

15 Later that day, Basaaly spoke with Omar Mataan. Mataan
16 stated that he was in Dhusamareeb. Basaaly told Mataan that
17 he would use the name "Dhunkaal" to send the funds.

18 On July 17, 2008, Basaaly told the owner of the Shidaal
19 Express that he wanted to send the "two cartons" [\$2,000]
20 discussed with Sheikh Issa. On July 22, 2008, Basaaly told
21 Omar Mataan that "we threw two cartons addressed to you" to
22 Dhusamareeb. The next day, Basaaly asked Sheikh Issa to
23 "keep an eye" on the "two cartons" allocated for "the
24 youngsters."

25

26

27 ^{2/} The \$5,000 was sent in a series of structured
28 transfers to Farah Yare, who, in a telephone call with
Basaaly, Sheikh Mohamed and Sheikh Issa, described attacks
on the Ethiopians carried out alongside "the Youth" [al-
Shabaab].

1 The Shidaal Express records reflect that, on July 23,
2 2008, two transfers totaling \$2,000 (\$1,650 and \$350) were
3 sent from San Diego to "Omer Mataan" and "Omer matan,"
4 respectively, in Dhusamareb.

5 A few days earlier, Basaaly expressed concern to Ahmed
6 Nasir that they are "closely watched." They agreed they
7 would "stop the talking" and "lay low." They agreed to
8 continue their operation under the guise of helping the
9 "orphans" and the "poor" but "it is bullets."

10 **III**

11 **EXHIBIT LIST**

12 Before trial, the United States will provide a set of
13 pre-marked exhibits to defense counsel. The United States
14 will provide an exhibit list to the courtroom deputy at the
15 time of trial. The United States reserves the right to
16 supplement the exhibit list during the trial, and will
17 notify counsel and the Court of any changes.

18 **IV**

19 **WITNESS LIST**

20 The United States reserves the right to add, remove, or
21 change the order of witnesses called in its case-in-chief:

- 22 1. Matthew Bryden
- 23 2. Concepcion Flores, Citizenship and Immigration
24 Services
- 25 3. Isagani Camangian, Sr., Citizenship and Immigration
26 Services
- 27 4. Tom Gathman, Federal Bureau of Investigation
- 28 5. Eric Woltz, Federal Bureau of Investigation

1 2. The defendant became a member of the
2 conspiracy knowing of its unlawful object and
3 intending to help accomplish it.

4 18 U.S.C. § 2339A(a)(1).

5 A "conspiracy to kill persons in a foreign country"
6 means an agreement between two or more persons to commit an
7 act or acts outside the United States that would meet the
8 definition of murder if committed in the United States, with
9 one of the conspirators committing at least one act within
10 the jurisdiction of the United States to effect any object
11 of the conspiracy. 18 U.S.C. § 956.

12 A "conspiracy to use a weapon of mass destruction
13 outside the United States" means an agreement between two
14 or more persons, including at least one national of the
15 United States, to use a weapon of mass destruction outside
16 the United States. 18 U.S.C. § 2332a(b). "Weapon of mass
17 destructive" includes any "destructive device," as defined
18 in 18 U.S.C. § 921. 18 U.S.C. § 2332a(c)(2)(A).
19 Accordingly, the definition of "weapon of mass destruction"
20 includes any explosive or incendiary bomb, grenade, mine or
21 similar device, or any weapon (other than a shotgun) that
22 can expel a projectile by action of an explosive or
23 propellant and with a barrel bore more than one-half inch
24 in diameter. 18 U.S.C. § 921(a)(4).

25 The term "material support or resources" means any
26 property, tangible or intangible, or service, including
27 currency or monetary instruments or financial securities,
28

1 financial services, or other physical assets. 18 U.S.C. §
2 2339A(b)(1).

3 To establish a violation of 18 U.S.C. § 2339A(a)(1),
4 the United States need not prove all the elements of the §
5 956 or § 2332a conspiracies, as § 2339A(a)(1) criminalizes
6 material support given "in preparation for" the object
7 offenses. United States v. Hassoun, 476 F.3d 1181, 1188
8 (11th Cir. 2007); United States v. Stewart, 590 F.3d 93, 119
9 (2d Cir. 2009).

10 The essential elements of providing material support to
11 terrorists are:

- 12 1. That the defendant did provide or attempt to
13 provide material support or resources; and
- 14 2. That the defendant did so knowing that the
15 material support or resources were to be used
16 in preparation for, or in carrying out, either
17 a conspiracy to kill persons in a foreign
18 country, or to use a weapon of mass
19 destruction outside the United States.

20 18 U.S.C. § 2339A(a)(1).

21 B. CONSPIRACY TO PROVIDE (AND PROVIDING) MATERIAL
22 SUPPORT TO FOREIGN TERRORIST ORGANIZATION (COUNT 2)

23 The essential elements of conspiracy to provide
24 material support to a foreign terrorist organization are:

- 25 1. There was an agreement between two or more
26 persons to provide material support to a
27 designated foreign terrorist organization; and

28

1 2. The defendant became a member of the
2 conspiracy knowing of its unlawful object and
3 intending to help accomplish it.

4 18 U.S.C. § 2339B.

5 The essential elements of the offense of providing
6 material support to a foreign terrorist organization are:

- 7 1. That the defendant knowingly provided
8 material support or resources;
- 9 2. That the defendant knew that the support or
10 resources was going to al-Shabaab;
- 11 3. That al-Shabaab previously had been designated
12 as a foreign terrorist organization by the
13 Secretary of State;
- 14 4. That the defendant knew that one or more of
15 the following conditions existed:
 - 16 a. Al-Shabaab had been designated as a
17 foreign terrorist organization; or
 - 18 b. Al-Shabaab has engaged or engages in
19 terrorist activity; or
 - 20 c. Al-Shabaab has engaged or engages in
21 terrorism; and
- 22 5. That one or more of the following conditions
23 is met:
 - 24 a. The defendant is a citizen of the United
25 States; or
 - 26 b. The defendant is lawful permanent resident
27 of the United States; or

28

- 1 c. The offense occurred in whole or in part
- 2 within the United States; and/or
- 3 d. The offense occurred in or affected
- 4 interstate or foreign commerce.

5 18 U.S.C. § 2339B.

6 The United States need not prove that the defendant
7 acted with intent to further the terrorist activities of the
8 organization. See, e.g., Humanitarian Law Project v.
9 Holder, 130 S. Ct. 2705, 2717-18 (2010); United States v.
10 Warsame, 537 F. Supp. 2d 1005, 1014 (D. Minn. 2008).

11 C. CONSPIRACY TO LAUNDER MONETARY INSTRUMENTS

12 The essential elements of the offense of conspiracy to
13 launder monetary instruments are:

- 14 1. There was an agreement between two or more
- 15 persons to commit the crime of money
- 16 laundering in violation of Title 18, United
- 17 States Code, Section 1956(a)(2)(A); and
- 18 2. The defendant became a member of the
- 19 conspiracy knowing of its unlawful purpose and
- 20 intending to help accomplish it.

21 D. DEFENDANTS CANNOT ADMIT THEIR
22 OWN OUT-OF-COURT AUDIO CALLS

23 The Court should preclude the defendants from
24 introducing their own out-of-court statements, including
25 their recorded audio calls. While the United States may
26 admit the defendants' out-of-court statements against them
27 under Federal Rule of Evidence 801(d)(2), the defendants may
28 not rely upon this rule because they cannot introduce their

1 own out-of-court statements on their own behalf. In short,
2 the defendants cannot attempt to have "self-serving hearsay"
3 brought before the jury without the benefit of cross-
4 examination by the United States. See, e.g., United States
5 v. Fernandez, 839 F.3d 639, 640 (9th Cir. 1988) ("It seems
6 obvious defense counsel wished to place Fernandez's
7 statement to Bateman before the jury without subjecting
8 Fernandez to cross-examination, precisely what the hearsay
9 rule forbids.").

10 Furthermore, Federal Rule of Evidence 106, the "rule of
11 completeness," does not trump the hearsay rule and does not
12 authorize the introduction of otherwise inadmissible
13 evidence. The Ninth Circuit has repeatedly rejected efforts
14 to perform an end-run around the hearsay rule under the
15 guise of Rule 106. "Rule 106 does not render admissible
16 otherwise inadmissible hearsay." United States v. Mitchell,
17 502 F.3d 931, 965 n.9 (9th Cir. 2007); see also United
18 States v. Sine, 493 F.3d 1021, 1037 n.17 (9th Cir. 2007)
19 ("The Federal Rule of Evidence's 'principle of completeness'
20 also does not allow the admission of otherwise inadmissible
21 statements."); United States v. Ortega, 203 F.3d 675, 682
22 (9th Cir. 2000)(holding that the district court properly
23 precluded defendant from eliciting his hearsay statements
24 on cross-examination, notwithstanding the rule of
25 completeness); United States v. Collicott, 92 F.3d 973, 983
26 (9th Cir. 1996)("Because Zaidi's out-of-court statements to
27 Kehl do not fall within an exception to the hearsay rule,
28 they are inadmissible, regardless of Rule 106.").

1 Accordingly, the mere fact that the government
2 introduces an inculpatory portion of a defendant's recorded
3 statement does *not* permit the defense to offer exculpatory
4 portions of the same statement. United States v. Lentz, 524
5 F.3d 501, 526 (4th Cir. 2008); United States v. Bollin, 264
6 F.3d 391, 414 (4th Cir. 2001) ("The fact that some of the
7 omitted testimony arguably was exculpatory does not, without
8 more, make it admissible under the rule of completeness.");
9 Cf. Ortega, 203 F.3d at 682 ("Ortega's non-self-inculpatory
10 statements are inadmissible even if they were made
11 contemporaneously with other self-inculpatory statements.").
12 Likewise, Rule 106 would not allow the defendants to
13 introduce calls not played by the United States at all.

14 E. BUSINESS RECORDS

15 Business records, including memoranda, reports, bank
16 records and data compilations in any form, made and kept in
17 the regular course of business are admissible pursuant to
18 Rule 803(6) of the Federal Rules of Evidence. Rule 803(6)
19 permits the admission of hearsay from business records,
20 provided that the following elements are satisfied: (1)
21 must be kept in the regular course of business; (2) must be
22 made by a person with knowledge of the event being recorded;
23 and (3) must be made at or near the time. United States v.
24 Arias-Villanueva, 998 F.2d 1491, 1503 (9th Cir. 1993). Rule
25 803(6) requires only that the business record be kept in the
26 course of business, and does not require that the business
27 rely on the document in any specific way. United States v.
28 Catabran, 836 F.2d 453, 457 (9th Cir. 1988).

1 Moreover, even if the document was created by another
2 entity, the business that received it can lay the entire
3 foundation for its admission if the producing entity (1)
4 incorporated the document into its records, (2) relied on
5 it, and (3) can supply the other foundational elements.
6 United States v. Childs, 5 F.3d 1328, 1332-34 (9th Cir.
7 1993) (certificates of title and purchase orders admitted
8 as records of automobile dealership even though not prepared
9 by them).

10 The witness laying the foundation for the business
11 record need not have been the declarant or the recorder of
12 the records being offered. United States v. Bland, 961 F.2d
13 123, 127 (9th Cir. 1992). Further, it is not necessary to
14 identify, locate, or call as a witness the person who
15 actually made or kept the records. United States v. Basey,
16 613 F.2d 198, 201 n.1 (9th Cir. 1979). The witness need
17 only understand the record-keeping system. Childs, 5 F.3d
18 at 1334. Additionally, the United States is not required
19 to establish when and by whom the records were prepared.
20 Arias-Villanueva, 998 F.2d at 1503. As a general rule,
21 inaccuracies or incompleteness in business records go only
22 to the relative weight of the evidence and do not affect its
23 admissibility under Rule 803(6). United States v. Catabran,
24 836 F.2d 453, 458 (9th Cir. 1988).

25 Here, the United States will introduce various business
26 records, including bank records, telephone records, college
27 records, and money remittance records from the Shidaal
28 Express.

1 F. SUMMARY CHARTS

2 1. Summaries of Voluminous Evidence

3 The United States intends to offer summaries of
4 voluminous evidence during the presentation of its case-in-
5 chief at trial. These summaries are admissible under Fed.
6 R. Evid. 1006. The proponent must establish that the
7 underlying records were made available to the opposing party
8 for inspection. Paddack v. Dave Christensen, Inc., 745 F.2d
9 1254, 1259 (9th Cir. 1984). Here, the United States made
10 the records available to the defense.

11 The Ninth Circuit has repeatedly approved the use of
12 Rule 1006 summaries, particularly where, as here, the
13 summaries will aid in organizing voluminous information in
14 an understandable form. See, e.g., Goldberg v. United
15 States, 789 F.2d 1341, 1343 (9th Cir. 1986) (testimony
16 concerning summaries of voluminous tax records permitted);
17 Keith v. Volpe, 858 F.2d 467, 479-80 (9th Cir. 1988)
18 (summaries necessary to clearly present relevant facts in
19 government agency files).

20 Rule 1006 does not require that it be literally
21 impossible for the trier of fact to examine the underlying
22 records before a summary may be admitted. See United States
23 v. Shirley, 884 F.2d 1130, 1133 (9th Cir. 1989).

24 Here, the United States will introduce a summary chart
25 based on Shidaal Express remittance records.

26 //

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28 //

1 2. Pedagogical Charts and Summaries

2 Summaries and charts also may be used at trial as
3 pedagogical devices. Fed.R.Evid. 611(a). Rule 611(a)
4 permits the use of charts and summaries of testimony and
5 documents already admitted into evidence as testimonial
6 aids. United States v. Olano, 62 F.3d 1180, 1203 (9th Cir.
7 1995); United States v. Baker, 10 F.3d 1385 (9th Cir. 1993);
8 United States v. Gardner, 611 F.2d 770 (9th Cir. 1980). The
9 court has discretion to admit the pedagogical summaries into
10 evidence and to submit them to the jury during deliberations
11 when accompanied by a limiting instruction. United States
12 v. Olano, 62 F.3d 1180, 1203 (9th Cir. 1995); United States
13 v. Soulard, 730 F.2d 1292, 1300 (9th Cir. 1994); United
14 States v. Baker, 10 F.3d 1385 (9th Cir. 1993). The Ninth
15 Circuit has found no abuse of discretion where summary
16 charts were admitted in evidence. United States v. Gardner
17 611 F.2d 770, 776 (9th Cir. 1980); United States v. Johnson,
18 460 F.2d 20, 22 (9th Cir. 1972) (per curiam).

19 The United States will use various pedagogical
20 summaries and charts at trial, including, for example, a
21 time line of relevant events in Somalia's history (during
22 Matthew Bryden's testimony), a chart listing telephone
23 numbers and users, and a chart listing relevant al-Shabaab
24 and TFG figures.

25 G. CERTIFIED DOMESTIC BUSINESS RECORDS

26 The United States may offer certain bank, telephone and
27 college records via Rule 902(11) declarations. See Fed. R.
28

1 Evid. 902(11). The United States has provided the
2 declarations to the defense.

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4 Respectfully submitted,

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