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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:04-CR-211-BO(1)

FILED
NOV 18 2004
CLERK
U.S. DISTRICT COURT, EDNC
BY: DEP. CLK

UNITED STATES OF AMERICA

v.

DAVID A. PASSARO

MOTION TO COMPEL DISCOVERY
RELEVANT TO PUBLIC AUTHORITY
DEFENSE

(Filed In Camera and Under Seal with the
Court Security Officer)

DAVID A. PASSARO, defendant in the above-captioned case, hereby moves this Honorable Court for an order directing the government to immediately disclose all information relevant to the public authority defense, in accordance with Rule 16 of the Federal Rules of Criminal Procedure, and *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. Specifically, Mr. Passaro requests that this Court order the government to immediately provide:

(1) all memoranda issued by the Justice Department's Office of Legal Counsel that address the capture, detention, and interrogation of members of the Taliban, al Qaeda, or other terrorist organizations or combatants operating in Afghanistan, to include the Memorandum issued September 25, 2001 by Deputy Assistant Attorney General John C. Yoo, *The President's Constitutional Authority to Conduct Operations Against Terrorists and Nations Supporting Them*, and any memoranda which address captures, detentions and/or interrogations conducted by CIA employees or contracted personnel;

(2) all memoranda issued by the CIA's Office of General Counsel that address the capture,

Unsealed 4/12/05
Unclassified

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detention, and/or interrogation of members of the Taliban, al Qaeda, or other terrorist organizations or combatants operating in Afghanistan;

(3) complete contents of the rules of engagement for the CIA that address the capture, detention, and/or interrogation of members of the Taliban, al Qaeda, or other terrorist organizations or combatants operating in Afghanistan, to include guidelines for categorizing detainees, the use of force and/or canines, and any rules of engagement or guidelines that address the capture, detention, interrogation and/or use of force with persons categorized as “force protection targets;”

(4) all written documents, photographs, video, and sound recordings that contain the methods employed in Afghanistan by members of CIA, DOD, or OGA for the capture, detention, and/or interrogation of members of the Taliban, al Qaeda or other terrorist organizations, or other combatants operating in Afghanistan, including policies and guidelines developed in early 2003 for use by Special Operations forces;

(5) all orders, directives, and/or authorizations issued by President George W. Bush; ex-CIA Director George J. Tenet; the CIA Director of Operations; and the head of the CIA’s Counterterrorist Center, Office of Military Affairs, or any other CIA component, that address the capture, detention, and/or interrogation of members of the Taliban, al Qaeda or other terrorist organizations or combatants operating in Afghanistan; and

(6) all information regarding the CIA training Mr. Passaro received for his assignment to Afghanistan, and instructions regarding the use of force and/or interrogation of members of the Taliban, al Qaeda or other terrorist organizations or combatants operating in Afghanistan.

In support of this motion, Mr. Passaro incorporates by reference the Memorandum in Support of Motion to Compel Discovery and the Notice of Public Authority Defense, submitted

under seal November 12, 2004.

Respectfully requested this 18th day of November, 2004.

Thomas P. McNamara

THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to paragraph 20 of the Protective Order issued by the Court on July 29, 2004, a copy of the foregoing was submitted to Jennifer H. Campbell, one of the Court Security Officers identified in paragraph 4 of the Protective Order, by hand delivering a copy of same.

This the 18th day of November, 2004.

Thomas P. McNamara

THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099