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Redacted version

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

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

FILED
NOV 18 2004
CLERK
US DISTRICT COURT, EDNC
BY DEB CLK

UNITED STATES OF AMERICA

v.

DAVID A. PASSARO

SUPPLEMENTAL MOTION TO COMPEL
DISCOVERY

(u) DAVID A. PASSARO, defendant in the above-captioned case, respectfully submits to this Honorable Court this supplemental motion to compel discovery. This motion supplements the Motion to Compel Discovery submitted under seal November 12, 2004.

(u) Mr. Passaro maintains that the government has in its possession the documents requested in this motion and that these documents contain exculpatory evidence or could lead to the discovery of other exculpatory evidence. Accordingly, Mr. Passaro requests the Court to compel the immediate production of the following information:

(u) (1) The audio recordings and/or text documentation of the contents of satellite phone calls related to the events which prompted Wali's surrender; his subsequent intake, detention, and questioning; his death; and all investigations into these events. Counsel for Mr. Passaro has learned that CIA operatives and contractors, members of Special Operations forces and military intelligence units, and members of other governmental agencies (OGA) frequently used satellite phones to

communicate from this region of Afghanistan, and that the government maintains voice recordings of all satellite phone calls;

(U)(2) All email messages related to the events which prompted Wali's surrender; his subsequent intake, detention, and questioning; his death; and all investigations into these events.

Counsel for Mr. Passaro has learned that members of the military, CIA operatives, and OGA members frequently communicated via secure email connection;

(U)(3) All message traffic to or from any member of a Special Ops (Special Forces, Delta Force, Navy Seals, etc.) or Military Intelligence unit, or OGA, related to the events which prompted Wali's surrender; his subsequent intake, detention, and questioning; his death; and all investigations into these events. Counsel for Mr. Passaro has learned that members of these units 

and submitted daily situation reports which detailed the detention and questioning of all detainees.

Based on our review of the redacted messages the government submitted November 10, 2004, it appears that these messages – classified as "secret" and known as "low-side" traffic – originated from a member of the CIA. Message traffic to and from members of the units specified in this request were typically sent as "high-side" traffic and were sent independent from any CIA messages;

(U)(4) All recorded statements of personnel from the 82nd Airborne Division that relate to the events which prompted Wali's surrender; his subsequent intake, detention, and questioning; his death; and all investigations into these events. Counsel for Mr. Passaro has learned that a member of a Military Intelligence unit interviewed personnel from the 82nd Airborne Division who participated in Wali's detention unit and directed each to write individual statements about the relevant events; and

(U)(5) The contents of all reports generated by this member of the Military Intelligence unit

generated by these interviews and investigation.

(u) In support of this supplemental motion, Mr. Passaro incorporates by reference the Memorandum in Support of Motion to Compel Discovery, submitted under seal November 12, 2004.

Respectfully requested this 13th 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 13th day of November, 2004.

Thomas P. McNamara

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