

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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| UNITED STATES OF AMERICA | ) |                          |
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|                          | ) |                          |
| v.                       | ) | No. 14 CR 564            |
|                          | ) | Judge John J. Tharp, Jr. |
| MOHAMMED HAMZAH KHAN     | ) |                          |
|                          | ) |                          |

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF  
HIS MOTION TO SUPPRESS STATEMENTS MADE TO LAW  
ENFORCEMENT AGENTS ON OCTOBER 4 and 5, 2014**

Defendant **MOHAMMED HAMZAH KHAN**, by his attorneys, **THOMAS ANTHONY DURKIN, CHRISTOPHER T. GROHMAN, ROBIN V. WATERS,** and **JOSHUA G. HERMAN**, respectfully submits this Memorandum of Law in Support of his Motion to Suppress Statements Made to Law Enforcement Agents on October 4 and 5, 2015.

**I. Background**

Since at least March 2014, after the arrest of another individual allegedly attempting to travel to Syria, federal agents have been investigating the activities of Khan and his younger sister (hereinafter, “Sibling A”). *See* Def. Exh. A. (Government’s search warrant affidavit for Khan’s residence).<sup>1</sup> As detailed in this search warrant affidavit, the government believed that, based on various online chats that the government alleges that Khan and Sibling A had with Individual One, Khan was going to travel overseas to engage in “violent jihad.” *Id.* Moreover, agents suspected that Khan, either personally or through Individual One, had contact with an alleged ISIL recruiter. *Id.*; *see also* R. 1 (criminal complaint). For months, as part of their investigation, the government conducted a variety of investigative techniques, including but not

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<sup>1</sup> At the government’s request, Exhibit A will be submitted to the Court under seal.

limited to surveillance of Khan and his family, monitoring of Khan's online accounts and chats, and review of publically filed identification documents. *Id.* In addition, as detailed in this search warrant affidavit, law enforcement paid a confidential source to impersonate Individual One and engage in additional online communications with Khan and Sibling A. *Id.* According to the search warrant and complaint, prior to October 4, 2014, law enforcement believed that on October 4, 2014, Khan and Sibling A intended to board a 4:00 p.m. Austrian Airlines flight to Vienna with a final destination of Istanbul, Turkey. The government alleged that it believes that Khan intended to cross into Syria, join ISIL, and offer his services as an armed military combatant. *Id.* and R.1.

On October 4, 2014, Khan, along with Siblings A and B, arrived at O'Hare International Airport, after sneaking out of their parents' Bolingbrook, Illinois home. All three individuals were in possession of round-trip Austrian Airline tickets with a final destination of Istanbul, Turkey. At approximately 2:28 p.m., after all three individuals successfully passed through security and were waiting for their plane in the International Terminal<sup>2</sup> (Terminal 5), Khan was detained by two agents of the Customs and Border Protection Agency. *See* Def. Exh. B (FBI Report #103). According to the FBI report, this detention purportedly was part of "routine outbound inspection procedures." *Id.* During this detention procedure, CBPO officers questioned Khan on various topics, including why he was traveling to Turkey, whether he had family in Turkey, where he planned to stay in Turkey, and when he planned to return. *See id.* and R. 1 at pg. 8. An FBI agent watched this initial interview. *Id.* According to law

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<sup>2</sup> While the FBI report does not explicitly state that an FBI agent was present, the report is written in the first person, states that it based on "in person" information, and states that Khan spoke softly. As such, the logical conclusion was that an FBI agent was able to hear the questions and answers exchanged between Khan and the CBPO officers.

enforcement, after this routine detention procedure, CBPO officers asked if Khan wanted to “voluntarily” talk with the FBI. *Id.*

At approximately 2:45 p.m., FBI agents led Khan out of Terminal 5 and onto the airport tarmac. *See* Def. Exh. C (FBI report #107). At this point, Khan was placed in handcuffs and into the back of an FBI vehicle. Approximately three to four FBI agents then transported Khan to Terminal 1, where FBI has its facilities and interview rooms. *Id.* Upon arriving at the FBI facility, Khan’s handcuffs were removed and he was placed in an interview room equipped with video recording equipment. *Id.* Khan was placed on the far end of the interview room. The door to the interview room was left open, but, at all times, two to three agents and a table were between Khan and the exit. *Id.* During this interview, Khan was interrogated about a variety of topics, including Khan’s reason for traveling overseas, his relationship with ISIL, his knowledge of whether ISIL was a terrorist organization, his internet accounts and phone numbers, chats he had with various individuals on kik messenger, and other topics discussed in the search warrant and criminal complaint. *Id.* This interview lasted approximately three hours. *See* Def. Exh. D (FBI report #10).

At approximately 5:45 p.m., at the conclusion of the interview, several agents transported Khan to a restaurant located back in Terminal 5, where they arrived at approximately 6:22 p.m. *Id.* By this point in time, Khan’s flight had left (over two hours prior) and he had been separated from his siblings for several hours. Agents bought food for Khan, and several agents sat with him while he consumes it. *Id.* During this time period, agents talked with Khan about a variety of topics, including why Khan may have suspected he was being tracked by law enforcement, other recent arrests by the FBI, and ISIL. *Id.* During this conversation, which lasted over two hours, agents told Khan that his siblings were waiting for Khan’s father to arrive to drive them

home. *Id.* Despite the fact agents purportedly framed this (as detailed further below) ten hour encounter with law enforcement as “voluntary,” agents never told Khan — who had just turned 19 years old at the time — that he was free to leave to return home nor did they tell him that he, as the only adult, could take his siblings home with him. *Id.* Instead, they told him that they intended to release him to his father.

At approximately 8:35 p.m., after three hours being questions by FBI agents at their interview room, and two hours talking with them at the restaurant, agents moved Khan from the restaurant back to the CBPO area. *Id.* In the CPD area, agents showed Khan a copy of a letter taken from his home pursuant to the search warrant, which was executed while Khan was being detained at the airport. *Id.* Agents asked Khan detailed questions about the contents of the letter. *Id.*

At approximately 10:20 p.m., according to law enforcement, Khan told agents that he wanted to make clarifications about the contents of the letter. *See* Def. Exh. E (FBI report #377). Agents then handcuffed Khan, placed him in an FBI vehicle, and transported him back to Terminal 1. *Id.* At approximately 10:27 p.m., agents took Khan to the same interview room where he spent much of the afternoon, which was equipped with audio and video recording equipment. *Id.* Multiple agents then proceeded to question Khan in further detail about the letter found at his house and other topics. *Id.* This interview concluded at approximately 11:20 p.m. *Id.*

Early the next morning, at approximately 12:26 a.m., two different FBI agents entered the interview room. *See* Def. Exh. F (FBI report #62). At this point in time, Khan had been in the continuous presence of law enforcement for approximately ten hours, facing various rounds of questions. Agents read Khan his *Miranda* rights, and he signed a written waiver. *Id.* For the

next hour and six minutes, until approximately 1:32 a.m., agents continued to question Khan, covering topics that had already been discussed in multiple previous interviews that day, including what he intended to do when he traveled to Turkey, who he planned to contact when he arrived there, and why he may have wanted to join ISIL.

At approximately 1:58 a.m., agents arrested Khan and took him from the FBI facility at the airport to the main FBI facility located in Chicago. At approximately 3:41 a.m., agents took Khan from this facility to jail, where he remained until October 6, 2015, when he received his initial appearance. R. 2. Both the complaint and the subsequent indictment, which was issued on January 8, 2015 charged Khan with attempting to provide material support or resources to a foreign terrorist organization, pursuant to Title 18, United States Code, Section 2339B(a)(1). R. 1 and 37.

## **II. Analysis**

### **A. Argument Overview**

As discussed further below, Khan moves to suppress his statements made to law enforcement on several different grounds. In general, Khan's statements to law enforcement can be grouped into two categories. First, the statements he made to various agents during the multiple interviews that occurred between 2:28 p.m. on October 4, 2015 and 12:26 a.m. the following morning ("Pre-*Miranda* Statements"). Second, the statements he made to law enforcement during an hour-long interview after he was given his *Miranda* rights at 12:26 a.m. ("Post-*Miranda* Statements").

As discussed further below, the Pre-*Miranda* statements should be suppressed because the statements were made while Khan was in law enforcement custody and subject to interrogation, such that law enforcement was required to provide Khan with the *Miranda*

warning before eliciting an admissible statement. The post-*Miranda* statements should be suppressed both because: (1) the interview violated the rule set out in *Corley v. United States*, 556 U.S. 303 (2009), which held that even voluntary confessions made during a period of “unreasonable delay” between detention and presentment before a magistrate (the Court used six hours as its metric) are inadmissible; (2) the Post-*Miranda* statements were fruit of the poisonous tree” of the illegally obtained Pre-*Miranda* statement, pursuant to the Supreme Court’s holding in *Missouri v. Seibert*, 542 U.S. 600 (2004).

**i. The Applicable Law Regarding Pre-*Miranda* Interrogation**

If a defendant makes a statement while in custody and subject to interrogation, law enforcement agents are required to provide him with his *Miranda* rights prior to him making such a statement if they want the statement to be admissible in court. *Miranda v. Arizona*, 384 U.S. 436 (1966); *see also Stansbury v. California*, 511 U.S. 318 (1994). In determining whether a person is in custody, a court’s first step is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt that he was not at liberty to terminate the interrogation and leave. *Howes v. Fields*, 132 S.Ct. 1181 (2012); *United States v. Borostowski*, 775 F.3d 851 (7<sup>th</sup> Cir. 2012); *see also Stansbury*, 511 U.S. at 322–23 (the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned).

When evaluating whether a defendant is in “custody,” for the purpose of *Miranda*, courts should examine factors including the location of the questioning, its duration, statements made during the interrogation, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of questioning. *Borostowski*, 775 F.3d at 855 citing *United States v. Ambrose*, 668 F.3d 943, 956 (7<sup>th</sup> Cir. 2014) (in determining whether a person is

in custody, a court should consider, among other things, whether the encounter occurred in a public place, whether the suspect consented to speak with officers, whether the officers informed the suspect that he was not under arrest, whether the interviewee was moved to another area, whether there was a threatening presence of several officers and a display of weapons or physical force, whether the officers deprived the suspect of documents needed to depart and whether the officers' tone was such that their requests were likely to be obeyed).

“Interrogation” in this context simply means asking a defendant questions or using other tactics designed to elicit an incriminating statement. *Brewer v. Williams*, 430 U.S. 387 (1977) (law enforcement banter designed to appeal to defendant’s religious nature was designed to illicit an incriminating statement such that statement was properly suppressed).

**ii. *Corley v. United States***

In *Corley v. United States*, 556 U.S. 303 (2009), the Supreme Court had reason to reconsider the rule promulgated in *Mallory v. United States*, 354 U.S. 449 (1957), which held that at a confession given seven hours after an individual had been arrested for a federal crime could not be used if there had been “unnecessary delay” in presenting the suspect to a magistrate to learn of the charge (essentially an unnecessary delay between the subject’s detention and the time he gave a confession), in light of 18 U.S.C. § 3501; 18 U.S.C. § 3501 held that confessions given within six hours of detention are presumptively admissible.

In *Corley*, the Supreme Court held that any “unreasonable delay” between a suspect’s detention and his confession, even one given post-*Miranda*, rendered the confession inadmissible, regardless of 18 U.S.C. § 3501. The Court *de facto* held that post-*Miranda* confessions that concluded within six hours of a suspect’s detention are presumed admissible, but confessions outside of this time period are presumptively inadmissible because of

unnecessary delay. Such a conclusion makes sense, as the longer a suspect idles in an interrogation room, the more likely he is to make a false confession. *See, e.g.,* False Confessions: Causes, Consequences, and Implications Richard A. Leo, PhD, JD, Am Acad Psychiatry Law 37:3:332-343 (September 2009). In fact, even as the *Corley* dissent rightly recognized, the upshot of the *Corley* decision is that “now *Miranda* ensures that arrestees receive such advice [of their rights] at an even earlier point, within moments after being taken into custody.” The upshot of *Corley* is that failure to advise a suspect of his rights in a timely fashion renders even post-*Miranda* confessions inadmissible.

### iii. *Missouri v. Seibert*

In *Oregon v. Elstad*, 470 U.S. 298 (1985), the Supreme Court first addressed the question of whether a post-*Miranda* statement was admissible if it was generated after an illegally obtained pre-*Miranda* statement – i.e., whether the second statement should be suppressed because it was “fruit of the poisonous tree.” The Court found that the second statement was admissible “absent deliberately coercive or improper tactics in obtaining the initial statement . . .” *Id.* at 307. This decision had the effect of causing law enforcement to engage in two-step interrogations designed to circumvent *Miranda*, known as “question first, *Mirandize* later.” *Missouri v. Seibert*, 542 U.S. 600 (2004). As such, in *Seibert*, the Supreme Court had the occasion to revisit *Elstad* and once again rule on the admissibility of post-*Miranda* confessions obtained after unlawfully obtained pre-*Miranda* statements, this time, taking into consideration law enforcement’s new two-step approach.

In *Seibert*, officers used a two-step interrogation technique, where they questioned a suspect for 30 minutes without giving her the *Miranda* warnings, successfully earning themselves a confession. *Id.* at 605-06. Officers, after a 20 minute break, then *Mirandized* the

defendant, had her sign a written waiver, and obtained the same confession. *Id.* The Supreme Court held that the post-*Miranda* statements were inadmissible, noting that a suspect would hardly think she had a genuine right to remain silent after having already made incriminating statements to the police. *Id.* at 614. The four justice plurality of the Court laid out a five-factor test to consider when determining whether post-*Miranda* statements were tainted by pre-*Miranda* questioning: (1) the completeness and detail of the pre-*Miranda* questions and answers; (2) the overlapping content of the two statements; (3) the timing and setting of the first and second interviews (in this case, it will be the first, second, third, fourth, fifth, and sixth interviews); (4) the continuity of police personnel; and (5) the degree to which the officers treated the second round as continuous with the first. *Id.* at 615. Critically, this test is defendant-focused and does not attempt to determine the intent of interrogator. *Id.* at 621.

The concurring opinion of Justice Kennedy proposed a test that focused on the intent of the questioning officers. *Id.* at 621. Under this test, a post-*Miranda* confession is inadmissible when the police deliberately withhold *Miranda* warnings until after a confession has been secured, unless curative measures, such as a substantial break in time between the interviews, are taken to ensure that the suspect understood the import and effect of a *Miranda* warning. *Id.* at 622. The Seventh Circuit has, thus far, declined to choose between the plurality's standard and Justice Kennedy's concurring one. Compare *United States v. Heron*, 564 F.3d 879 (7<sup>th</sup> Cir. 2009) (appearing to endorse the plurality test and the expense of the intent-based text) to *United States v. Stewart*, 536 F.3d 714 (7<sup>th</sup> Cir. 2008) (examining both tests).

### **III. Argument**

#### **A. All of Khan's Pre-*Miranda* Statements Should Be Suppressed Because He Was in Custody and Subject to Interrogation by Law Enforcement Agents**

From 2:28 p.m. on October 4, 2014 until the time the government claims that Khan was arrested, namely at 1:32 a.m. the following morning, a time span of over eleven hours, Khan was in the constant presence of multiple law enforcement agents at all times. Khan spent most, if not the vast majority, of this 11 hour period answering law enforcements questions, which were directly related to FBI's investigation into Khan's alleged plan to travel to Syria and become a military combatant for ISIL. He was questioned consistently by a varied cast of law enforcement agents, all pursuing a common goal of obtaining information related to the criminal investigation into Khan and his siblings. First, he was questioned by CBPO in their area; second he was questioned by the FBI in their secure area; third he was questioned by FBI, over a period, on and off, of about five hours, in a restaurant; fourth, he was questioned by FBI in the CBPO area; fifth, he was transported back to FBI's secure area and questioned again; sixth, and finally, after ten exhausting hours under law enforcement pressure, Khan was finally *Mirandized* and subjected to yet another hour of questioning.

The FBI reports attached hereto are rife with reference to the "voluntary" nature of Khan's statements, repeated references to Khan's "consent" to the endless questioning, and one even mentions a "routine inspection procedure." As the Seventh Circuit has emphasized, saying something is voluntary does not make it so. "Custody for *Miranda* purposes is a state of mind. When police create a situation in which a suspect reasonably does not believe that he is free to escape their clutches, he is in custody and, regardless of their intentions entitled to the *Miranda* warnings." *United States v. Slaight*, 620 F.3d 816, 820 (7<sup>th</sup> Cir. 2010). As discussed further below, as the Seventh Circuit found in both *Slaight* and *Borostowski*, law enforcement's repeated references to the voluntariness of the interview and the fact that defendant was not under arrest, the other factors involved clearly showed that law enforcement

skirted the spirit of *Miranda*, transforming these interviews into custodial interrogations. As in *Slaight* and *Borostowski*, despite law enforcement's protestations to the contrary, Khan was in custody and subject to the interrogation from the get-go; as such, as the Court did in *Slaight* and *Borostowski*, this Court should suppress Khan's pre-*Miranda* statements.

### **1. Interrogation**

To take the less complicated question first, Khan was subject to nearly constant interrogation from 2:28 p.m., when he was first questioned by CBPO officers, until 1:32 a.m. the next morning, when he was finally transported from the airport to FBI headquarters and eventually jail. Starting with the CBPO officers and continuing with FBI agents, Khan was peppered with questions about the purpose of his trip overseas, the nature of his connections to the Middle East, his knowledge and relationship to ISIL, his internet chats with other individuals planning to travel overseas, and what he intended to do after potentially initiating contact with ISIL members. As such, Khan was subject to interrogation from the minute he was approached by law enforcement at O'Hare airport.

### **2. Custody**

Khan was in custody from the moment he was detained by CBPO officers at O'Hare. The FBI characterizes Khan's initial 2:28 p.m. detention by CBPO officers as part of CBPO's "routine outbound inspection procedures." Def. Exh. B. However, the facts in FBI's own report belie this contention and show that this detention was the beginning of a deliberate custodial interrogation orchestrated by the FBI. First, the inspection occurred after Khan and his siblings had successfully passed through security and while they were waiting for their plane. Second, Khan was not selected at random for this procedure; he was selected by CBPO at the behest of the FBI; FBI had already been investigating Khan for months and suspected him of traveling

overseas to join ISIL. Third, although the FBI agent did not directly participate in the interview, it is apparent from the report that the FBI was at least within listening distance. Fourth, along the same lines, it is clear that the questions asked by the CBPO were designed solely to further the FBI's investigation. It is clear that the FBI was seeking additional evidence that Khan was traveling to Turkey with the end-goal of making contact with ISIL and eventually traveling to Syria to become a combatant. CBPO's questions targeted these areas. The officers asked why he was going to Turkey, if he had family there, why he was traveling by himself, who paid for the trip, the nature of his siblings' involvement in the trip, and other questions designed to further FBI's investigation. *See* Def. Exh. B. Sixth, at the conclusion of the interview, CBPO asked if Khan would speak to the FBI, further showing that CBPO was not conducting a "routine" anything; the officers were questioning Khan as agents of the FBI.

As part of this interview process, Khan was clearly detained – he was not allowed to leave the CBPO area, he was not told the process or questions were voluntary, and he was not given his *Miranda* warnings. As such, this was the start of his custodial interrogation, and everything forward should be suppressed.

The custodial nature of the questioning only escalated from that point, when Khan was handcuffed, transported across the airport to a different terminal, put in a secure FBI interrogation room, and questioned for three hours by multiple FBI agents.

The FBI reports put a law enforcement friendly spin on the facts. Khan was asked to "volunteer" to conduct this interview. He was told that the cuffs were only put on because of the secure nature of the airfield. The door was left open in the interrogation room. As mentioned above, saying an interview is voluntary and telling a suspect he is not under arrest is not a magical panacea for making a custodial interview admissible. Quite the opposite is the case, as

was noted by the Seventh Circuit in *United States v. Slaight*, 620 F.3d 816 (7<sup>th</sup> Cir. 2010). In *Slaight*, officers served a search warrant on defendant's home, looking for evidence of his possession of child pornography. In the course of serving this warrant, officers asked *Slaight* to "volunteer" to come to the police station, where he was questioned in a tiny interview room, although he was told that he was free to leave at any time. *Slaight* ultimately confessed. The district judge admitted the confession and the Seventh Circuit reversed, noting:

"We do not question the judge's finding that the officer sitting in the chair next to the door of the interview room was not actually blocking it, as *Slaight* argues, and that the officers were polite and repeatedly told *Slaight* that he was free to terminate the interrogation and leave. But being polite to a suspect questioned in a police station and telling him repeatedly that he's free to end the questioning and leave do not create a safe harbor for police who would prefer to give *Miranda* warnings after the suspect has confessed rather than before. *United States v. Craighead*, 539 F.3d 1073, 1080 (9<sup>th</sup> Cir.2008); *United States v. Colonna*, 511 F.3d 431, 435 (4<sup>th</sup> Cir.2007); *United States v. Bravo*, 295 F.3d 1002, 1011 (9<sup>th</sup> Cir.2002)."

*Slaight* at 821.

Judge Posner, writing for the Seventh Circuit, continued,

"Police [often] recast what would otherwise be a custodial interrogation as a non-custodial interview by telling the suspect that he is not under arrest and that he is free to leave—sometimes even after detectives have transported the suspect to the stationhouse with the express purpose of questioning him inside the interrogation room and eliciting incriminating information." Richard A. Leo, "Questioning the Relevance of *Miranda* in the Twenty-First Century," 99 *Mich. L.Rev.* 1000, 1017 (2001). (That is this case.) . . . Professor Weisselberg points out that *Miranda* is underinclusive because it ignores pre-arrest interactions between police and a suspect that may influence the suspect's willingness to talk. *Id.* at 1545. "[I]nterrogation is part of a seamless sequence of events, and there are strategic considerations that govern every step in that sequence, beginning with initial contacts with suspects." (citation omitted).

*Id.* at 817.

Nearly all of the factors the Court is required to look at – location of the questioning, its duration, statements made during the interrogation, the presence or absence of physical restraints

during the questioning, and the release of the interviewee at the end of questioning. *Borostowski*, 775 F.3d at 855 – heavily favor finding that the interview was custodial. While framing the process as voluntary, officers cuffed Khan and took him to an interrogation room equipped with audio and visual recording equipment for the purpose of eliciting an incriminating statement that was recorded. Although the door was open, multiple agents and a table were between Khan and then door. Although agents told Khan that the interview was voluntary, they didn’t tell him during the interview that he was free to leave, nor did they give him the option of contacting his family. The interview lasted three hours, and, as noted above, questioning continued in various forms at various locations for the next seven hours. At the end of the interview, Khan was not released, but arrested and taken to jail. The conclusion that the interview was custodial is inescapable. *See also Borostowski*, 775 F.3d 851, 853 (7<sup>th</sup> Cir. 2014) (finding that a reasonable person in defendant’s situation would not have felt free to end encounter with law enforcement officers and leave, and thus defendant was “in custody” for purposes of *Miranda*; although encounter occurred in defendant's home, defendant had been told that he was not under arrest or in custody, and tone of questioning had not been hostile or combative, encounter was not voluntary, there was strong police presence, handcuffs had been used for a while, defendant otherwise had been restrained by de facto two-man guard, interrogation was extended in length, and he had been confined to small crowded room).

After CBPO’s questioning and FBI’s first three hour interrogation, the interviewing continued. After three hours of questioning Khan, and over two hours after his flight had already left, agents took Khan back to the international terminal food court (this time through a method that magically did not require handcuffs), where a varying set of agents sat with Khan and talked to him, often asking questions regarding ISIL, for the next five hours. Eventually he was moved

back to the CBPO area and questioned specifically about items found in his house during the execution of a search warrant. At no time was Khan ever told that he was free to leave and as a consequence, he was not. Khan, then a legal adult if barely, whose flight had already left, was perfectly capable of returning home all by himself. All officers needed to do was take him outside and tell him to catch a cab home. *See Slaight* at 821 (“The police repeatedly told Slaight that he was free to leave, although they didn’t offer to drive him home; his home was close by but we don’t know how close by—whether it was within walking distance and if not whether he had money for a cab.”). Instead, agents kept Khan at the food court for five hours, for a total of almost seven hours of custody, while other officers searched his home. The interviewing continued after this, first at the CBPO office and then back in FBI’s interrogation room. It was almost ten hours of constant law enforcement contact before Khan was read his *Miranda* rights.

As the Court in *Slaight* noted, telling a suspect he is free to leave and the suspect actually being free to leave are two very different things. In *Slaight*, the Court placed great weight on the fact that law enforcement felt they had enough probable cause to charge the defendant prior to interrogating him. *Slaight* at 822 (“And the more than likelihood that he would be formally placed under arrest if he tried to leave because the government already had so much evidence against him. These facts are incontrovertible and show that the average person in Slaight’s position would have thought himself in custody. Any other conclusion would leave *Miranda* in tatters.”). The same is true in Khan’s case. Agents appear to have fully believed, based on the information in both the complaint and search warrant, that they had enough probable cause to charge Khan prior to him entering the airport. Thus, instead of properly arresting and *Mirandizing* Khan, as they eventually intended to do, FBI agents chose to conduct a series of rouse interviews of him, starting with the “routine” CBPO detention and questioning. He was

detained 1.5 hours before his flight. His detention continued 8.5 hours after his flight left. Only then did he receive his *Miranda* warnings. This is a clear violation of not only the spirit of *Miranda* but the letter of that decision. All statements Khan made prior to receiving his *Miranda* warnings must be suppressed. A contrary result would destroy the effect and import of *Miranda* as it now stands.

**B. *Corley v. United States* Compels Suppression of Khan's Post-Miranda Statement**

Once the Court suppresses Khan's non-*Mirandized* statements, the next question is whether it must also suppress his one-hour long post-*Miranda* statement. As discussed above, after approximately four different sets of questioning at multiple different locations over the course of approximately eight hours, at 10:20 p.m., agents transported Khan back to the secure FBI video recording interview room for yet another "voluntary" interview. Khan, of course, according to agents, was still "not under arrest,"<sup>3</sup> despite being there for eight hours and his plane having taken off almost seven hours prior. After interviewing him for an hour and letting him stew for another hour, at 12:20 a.m., apparently liking what they learned from the last interview, agents returned to the interview room, *Mirandized* Khan, and re-elicited information from him that they had already gathered throughout the course of the day.

As discussed above, the rule set forth in *Corley v. United States*, 556 U.S. 303 (2009), mandates the exclusion of any confession obtained after an "unreasonable delay" in taking a defendant who is in custody to a magistrate. Essentially, only confessions obtained within the six-hour safe harbor prescribed in 18 U.S.C. § 3501 should remain admissible. Khan was in custody for almost ten hours prior to the initiation of his post-*Miranda* interview. This was an

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<sup>3</sup> In fact, agents told Khan that not only was he not under arrest, but that they did not intend to arrest him at all, which, clearly, turned out not to be true. Even after his father arrived, agents continued to question Khan for several hours and then eventually placed him under arrest.

unreasonable delay in releasing him or presenting him to a magistrate. Any reasonable person, no less a reasonable 19 year-old with no prior law enforcement contact, could not really have believed he had the genuine right to remain silent after answering questions for ten hours. *Corley* compels the suppression of Khan's post-*Miranda* statement.

**C. *Missouri v. Seibert* Compels the Suppression of Khan's Post-Miranda Statement**

As discussed above, *Missouri v. Seibert*, 542 U.S. 600 (2004), governs whether post-*Miranda* statements should be suppressed as "fruit of the poisonous tree" if the Court deems that they resulted after the defendant gave an impermissibly obtained un-*Mirandized* statement. Whether the Court uses the plurality's objective standard or Justice Kennedy's concurring intent-based standard, the result is the same; Khan's post-*Miranda* statement was poisoned by the unlawful custodial interrogation that occurred for ten hours prior, and therefore it must be suppressed.

The plurality's test, in an opinion by Justice Souter, examines (1) the completeness and detail of the pre-*Miranda* questions and answers; (2) the overlapping content of the two statements; (3) the timing and setting of the first and second interviews (in this case, it will be the first, second, third, fourth, fifth, sixth, seventh, and eighth interviews); (4) the continuity of police personnel; and (5) the degree to which the officers treated the second round as continuous with the first. *Id.* at 615. Nearly all of these factors point in favor of suppressing Khan's statement. First, the completeness and the detail of Khan's pre-*Miranda* statements are self-evident. He answered three hour's worth of the FBI's questions on video tape. He was then moved to a different area and questioned on and off for seven more hours. He was with CBPO and FBI agents non-stop for 10 hours. Second, the questions and answers in his pre and post *Miranda* interviews were nearly identical. FBI agents questioned him about his intent in

traveling to Syria. They questioned him about his knowledge of ISIL, his communications with another individual allegedly attempting to travel to Syria to join ISIL, his contacts with an alleged ISIL recruiter, what he wanted to do after he joined ISIL, his siblings' involvement, etc. The post-*Miranda* questions were vastly similar, if not identical, to the questions that Khan answered for the first ten hours of his questioning. Third, the time and setting of the interviews were the same. The majority of the pre-*Miranda* interrogation occurred in the FBI's video monitored interrogation room at O'Hare Airport and his post-*Miranda* confession occurred in the same room approximately one hour after agents finished their ten-hours with Khan. Fourth, while new agents did the post-*Miranda* interview of Khan, they were still part of the same operative team as prior agents. They either knew the content of Khan's prior statements or were told what questions to ask. There is no evidence that this was a "taint" team of agents that had no prior knowledge of the case. The decision to swap out the agents was likely the result of legal advice from someone knowledgeable of *Seibert*'s teaching, a fact in and of itself showing that law enforcement was worried about the admissibility of the non-*Mirandized* statements. Fifth, agents treated the interview as one long continued discourse with Khan. He was initially questioned at 2:28 p.m. in the afternoon. He was subjected to three hours in a room with FBI agents, five hours with them at a food court, another few hours back at the CBPO holding facility, and then another hour back at the interview room. Only then did the agent-swap occur and were the Miranda rights given. No reasonable person could be expected to truly understand the import of the *Miranda* rights after they have already given detailed statements to the FBI over a ten-hour period. The plurality holding in *Seibert* compels suppression.

Likewise, Justice Kennedy's intent-based approach in *Seibert*'s concurring opinion also favors suppression of Khan's statement. Law enforcement waited ten hours to *Mirandize* Khan.

They falsely told him they were going to release him, while they had the opportunity to release him by simply telling him he could leave. Instead, they guarded him while he ate happy meal for five hours while his house was searched. Then they asked him more questions about the results of the search without his *Miranda* warnings. Then they used all those statement he made throughout the day to induce him to make one final post-*Miranda* statement. These statements cannot pass Fifth Amendment scrutiny.

#### **IV. Conclusion**

For the reasons discussed above, Khan's ten-hours' worth of pre-*Miranda* statements, starting with his detention by the CBPO at the behest of the FBI, were made under interrogation and while he was in custody; thus, they must be suppressed. Because Khan's post-*Miranda* statements were made outside the six-hour reasonable delay period, they too must be suppressed. In the alternative, the post-*Miranda* statements should be suppressed because they are fruit of the poisonous tree of the previous statements. For these reasons, Khan asks that all his statements made to law enforcement on October 4 and 5, 2015 be suppressed and held inadmissible for use at trial.

Respectfully submitted,

/s/ THOMAS ANTHONY DURKIN  
**THOMAS ANTHONY DURKIN,**

/s/ CHRISTOPHER T. GROHMAN  
**CHRISTOPHER T. GROHMAN,**

/s/ROBIN V. WATERS  
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/s/ JOSHUA G. HERMAN  
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**CERTIFICATE OF SERVICE**

Thomas Anthony Durkin, Attorney at Law, hereby certifies that the foregoing Defendant's Memorandum of Law in Support of His Motion to Suppress Statements Made to Law Enforcement Agents on October 4 and 5, 2015, was served on April 17, 2015, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Thomas Anthony Durkin  
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**EXHIBIT**  
**A**  
**(Filed Under Seal)**

# **EXHIBIT B**



## FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/09/2014

MOHAMMED HAMZAH KHAN (KHAN), date of birth (DOB) [REDACTED] residence 518 East Briarcliff Road, Bolingbrook, Illinois (IL), was interviewed as part of routine outbound inspection procedures by two Customs and Border Protection (CBP) officers in the vicinity of International Departure Gates M14-M15 located in Terminal 5 at O'Hare International Airport, Chicago, IL. After CBP officers introduced themselves and the nature of the interview, KHAN provided the following information to the CBP officers:

KHAN stated to CBP officers that KHAN, along with his brother and sister, was traveling for a holiday. KHAN said that he would first travel to Vienna for a layover and that his ultimate destination was Istanbul, Turkey.

KHAN stated to CBP officers that he did not have any family in Istanbul and that he planned to stay at a hotel in Istanbul, Turkey for two or three days with a return flight on Thursday. KHAN said his sister is currently 17 years old and that KHAN's sister would soon be turning 18 years old.

KHAN stated to CBP officers that his parents were not traveling with him and that his parents did not pay for his travel. KHAN said that HAMZAH paid for the trip using a credit card. KHAN stated that he was carrying cash with him and showed the CBP officers multiple United States dollar (USD) bills. KHAN added that KHAN was employed at MENARDS in Bolingbrook, IL and that KHAN lived with his parents.

KHAN stated to CBP officers that KHAN drove from Bolingbrook, IL to O'Hare International Airport. KHAN added that the trip total was approximately \$3,000 USD.

KHAN stated to CBP officers that his cellular telephone number is 847-343-1524.

Upon completion of the CBP outbound inspection, CBP officers informed

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Investigation on 10/04/2014 at Chicago, Illinois, United States (In Person)File # 415M-CG-4847032 Date drafted 10/04/2014by Michael Tsahiridis

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FD-302a (Rev. 05-08-10)

415M-CG-4847032

Continuation of FD-302 of CBP routine outbound inspection interview  
of MOHAMMED HAMZAH KHAN, On 10/04/2014, Page 2 of 2

KHAN that they did not have any more questions. CBP officers asked KHAN whether KHAN would be willing to voluntarily speak to the FBI. KHAN stated that KHAN was willing to talk to the FBI. CBP officers then introduced FBI Special Agent Michael Tsahiridis.

[Note: Due to KHAN speaking softly at different times during the CBP interview, writer could not hear everything that KHAN stated.]

# **EXHIBIT**

## **C**



## FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/09/2014

MOHAMMED HAMZAH KHAN (KHAN), date of birth (DOB) [REDACTED], residence 518 East Briarcliff Road, Bolingbrook, Illinois, was interviewed by Federal Bureau of Investigation (FBI) Special Agent (SA) Michael Tsahiridis and Task Force Officer (TFO) Pete Best.

At approximately 2:45PM, on 10/04/2014, upon completion of the Customs and Border Protection (CBP) outbound inspection, CBP officers informed KHAN they did not have any more questions. CBP officers asked KHAN whether KHAN would be willing to voluntarily speak to the FBI. KHAN stated he was willing to talk to the FBI. CBP officers then introduced SA Tsahiridis.

SA Tsahiridis identified himself and asked KHAN whether he would be willing to voluntarily speak to SA Tsahiridis about his travel abroad.

KHAN agreed to do so. SA Tsahiridis then introduced TFO Best to KHAN. SA Tsahiridis asked KHAN if he would mind speaking with agents at the FBI office located in Terminal 1 of O'Hare International Airport (FBI airport office). SA Tsahiridis explained to KHAN the logistics of going to Terminal 1, which included, traveling in an agent's vehicle which was located on the secured airfield tarmac.

After the explanation and KHAN's agreement, SA Douglas R. Hyde (Hyde) introduced himself to KHAN. SA Hyde, who was assigned to the FBI airport office and had access to the secure airfield tarmac, escorted the agents and KHAN to SA Hyde's vehicle to drive everyone to the FBI airport office.

SA Hyde advised KHAN that because Hyde's vehicle was located at a secure location in the airfield, KHAN would need to be handcuffed during the secure portion of the airfield and then the handcuffs would immediately be removed. SA Tsahiridis and SA Hyde advised KHAN that KHAN was not under arrest. SA Tsahiridis advised KHAN that his agreement was strictly voluntary. KHAN understood and agreed.

Immediately before SA Hyde unlocked the exit door to the open airfield, SA Hyde informed KHAN that because the stairs seemed wet due to the rainy

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Investigation on 10/04/2014 at Chicago, Illinois, United States (In Person)

File # 415M-CG-4847032 Date drafted 10/04/2014

by Michael Tsahiridis, BEST PETE, Robert L. Sell IV, SA Douglas R. Hyde

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415M-CG-4847032

Continuation of FD-302 of FBI interview of MOHAMMED HAMZAH KHAN, On 10/04/2014, Page 2 of 3

weather, KHAN would not be handcuffed so as to not slip and fall from the stairs, which were outside. KHAN stated that he understood.

After using the stairs outside, KHAN and the agents walked to the agent's vehicle. SA Tsahiridis advised KHAN that he would be handcuffed only during the drive to Terminal 1 and then the handcuffs would be removed. KHAN stated that he understood. SA Tsahiridis handcuffed KHAN and helped KHAN into the vehicle. SA Hyde drove the vehicle with SA Robert Sell on the front passenger side. TFO Best and SA Tsahiridis were in the rear seats of the vehicle with KHAN.

During the drive from Terminal 5 to Terminal 1, KHAN and SA Tsahiridis had jovial conversation about the television shows The Walking Dead and CSI. The mentioned drive took approximately five minutes.

As soon as the vehicle arrived at the Terminal 1 area and was parked, agents exited the vehicle and SA Tsahiridis immediately removed the handcuffs from KHAN. SA Tsahiridis reminded KHAN that he was not under arrest and that KHAN was asked for a voluntary interview. KHAN understood and agreed to talk to agents. KHAN followed the agent to the FBI airport office.

KHAN, SA Tsahiridis, and TFO Best entered the interview room at approximately 2:57PM, on 10/04/2014. The interview door was left completely open. KHAN sat across the agents facing toward the open door.

The below is an interview summary. It is not intended to be a verbatim account and does not memorialize all statements made during the interview. Communications by the parties in the interview room were electronically recorded. The recording captures the actual words spoken.

KHAN was informed by agents the interview was voluntary. KHAN stated KHAN, along with KHAN's siblings MOHAMMED ZAIN KHAN AND SAFFIYAH KHAN, was traveling to Istanbul.

KHAN admitted to using e-mail accounts abukhuzaymah22@gmail.com, hamzah.khan6@gmail.com, and h.con95@gmail.com.

KHAN stated KHAN used Twitter account lionofthed3s3rt.

KHAN stated hamzah.khan6@gmail.com was linked to KHAN's Facebook account.

KHAN stated KHAN used telephone number 847-343-1524.

KHAN admitted KHAN used KIK account a\_hamzah Abu Khuzaimah and m\_khan.

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Continuation of FD-302 of FBI interview of MOHAMMED HAMZAH KHAN, On 10/04/2014, Page 3 of 3

KHAN admitted KHAN was in contact via KIK with an individual that used the name Abu Qaqa. KHAN stated Abu Qaqa invited KHAN to join Abu Qaqa.

KHAN was aware Abu Qaqa was a member of the Islamic State of Iraq and Syria (ISIS). KHAN's plan was to travel to Turkey with KHAN's brother and sister and then get in contact with Abu Qaqa via WhatsApp. KHAN's ultimate destination was Syria.

KHAN was presented with a copy of communications between two individuals. KHAN acknowledged that KHAN was one of the two individuals and initialed every page of the communications KHAN was part of.

# **EXHIBIT D**



## FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/20/2014

On October 4, 2014, at approximately 5:45 pm, following conclusion of non-custodial interview which occurred in an FBI interview room located in Terminal 1, Mohammed Hamzah KHAN was accompanied by TFO Pete Best and SA Mike Tsahiridis to the McDonalds restaurant located in Terminal 5 at O'Hare International Airport. A public Airport Transit System (ATS) train was utilized to transport KHAN, TFO Best and SA Tsahiridis from Terminal 1 to Terminal 5. Upon arrival at McDonalds, KHAN was asked what he would like to eat at which time KHAN replied just an apple pie and coke. After receiving food and drink, KHAN, TFO Best and SA Tsahiridis relocated to a public table across from the McDonalds restaurant. The table was located in a corner area near multiple other tables utilized by McDonalds's patrons. TFO Best was seated along one wall of the corner. SA Tsahiridis sat along the other wall of the corner. KHAN was seated on the open side of the table.

At approximately 6:22 p.m., SA Robert Sell joined KHAN, TFO Best and SA Tsahiridis at same public table situated near the McDonalds restaurant. SA Sell asked KHAN if he would like some food from McDonalds. KHAN replied he had already been fed by TFO Best. SA Sell explained to KHAN that his siblings would have to be released to the custody of a legal guardian. SA Sell informed KHAN he was awaiting word on KHAN's father's arrival to the airport. SA Tsahiridis left the table and group at that time and returned to Terminal 1. While continuing to sit at the table, KHAN, TFO Best, and SA Sell engaged in general conversation which included multiple topics such as dating, meeting famous people, college education, favorite sports (teams), career aspirations, religion, and ISIS.

KHAN asked both SA Sell and TFO Best how many girlfriends both had in high school, while stating he had several, including one serious relationship which lasted two years. KHAN related the relationship ended amicably, with both deciding to just go their own separate ways.

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Investigation on 10/04/2014 at Chicago, Illinois, United States (In Person)File # 415M-CG-4847032, 415M-CG-4847032-CRIMINAL Date drafted 10/04/2014by BEST PETE, Michael Tsahiridis, Robert L. Sell IV

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Continuation of FD-302 of Interaction with Mohammed Hamzah Khan, On 10/04/2014, Page 2 of 3

KHAN related the most famous person he ever met was Kim Kardashian. This occurred while KHAN was in attendance at an unknown social event in Chicago last summer and KHAN recalled taking a selfie with Kardashian.

KHAN is currently taking a semester off at Benedictine University. KHAN'S previous course of study was engineering; however, KHAN plans on switching his major to computer science when returning to school.

KHAN is a big supporter of the Chicago Bulls and Chicago Bears. According to KHAN, he played both football and basketball at the high school level. KHAN played wide receiver in relation to football and switched between power forward and point guard when playing basketball.

KHAN spoke of how he suspected he may have been under surveillance by the government. KHAN's suspicions arose a few weeks prior when he heard clicking noises on his telephone and believed his phone was being tapped. In addition, KHAN had an uneasy feeling when he and his siblings arrived at the airport. He attributed the feeling to what he believed was an increased police presence on the exterior and interior of the airport terminal.

KHAN also spoke about how (Abdella Ahmad) Tounisi and another individual in Dallas were taken into custody in separate instances after passing through an airport security line while walking to their respective gates. KHAN indicated he was rather nervous after passing through the airport screening area and entering onto the concourse. KHAN said he somewhat expected to be stopped by authorities and was not surprised when he and his siblings were approached by Custom and Border Protection (CBP) Agents.

At approximately 8:35 p.m., SA Sell asked KHAN if he would like to move from the table to the CBP lobby area. SA Sell explained to KHAN that SA Sell received notification that KHAN's father may be arriving at the airport within the hour and his father was directed to go to the CBP lobby. Furthermore, SA Sell explained KHAN, TFO Best and SA Sell may not see KHAN's father's arrival as they did not have a clear line of sight to the CBP lobby. KHAN was amenable to the move and freely walked to the lobby.

While waiting in the CBP lobby, SA Sell asked KHAN if he would like to use the bathroom or if he wanted something to drink from McDonalds. KHAN politely refused the offer. SA Sell exited the lobby and returned approximately ten minutes later with a cup of coffee for TFO Best, a drink for SA Sell, and a bag of three cookies. SA Sell offered KHAN a cookie. Once again, KHAN politely refused the cookie.

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Continuation of FD-302 of Interaction with Mohammed Hamzah Khan, On 10/04/2014, Page 3 of 3

At approximately 9:15 p.m., SA Sell showed KHAN three images on his Bureau issued Samsung cellular telephone. The images were of the handwritten letter from KHAN to his parents that was discovered at KHAN's residence during the execution of a Federal Search warrant. While reviewing the letter, KHAN acknowledged he wrote the letter and signed the letter with his first name. Afterwards, SA Sell read excerpts from the letter to KHAN to include the following:

First, I am considered an adult and will be obliged to pay taxes to the government. This in turn would be used automatically to kill my Muslim brothers and sisters. Even if I were to live here and think that none of my money would go there, it in fact does since most of the government's tax revenue goes to 'national defense'. I simply cannot sit here and let my brothers and sisters get killed with my OWN HARD EARNED MONEY.

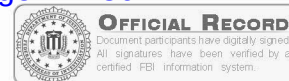
Secondly, an Islamic State has been established and it is thus obligatory upon every able bodied male and female to migrate there.

Lastly, the most dear people on the face of the earth are my parents. I wouldn't want anything terrible to befall them. I love my parents, but I cannot be a selfish person. I extend an invitation, to my family, to join me in the Islamic State.

KHAN acknowledged he was referring to ISIS when he mentioned the Islamic State within the context of the letter. KHAN also acknowledged he was referring to members of ISIS when he mentioned brothers and sisters in the letter. KHAN is aware ISIS is a foreign terrorist network based on multiple media reports which he has either seen or read about in the media.

After making the aforementioned acknowledgements, KHAN, TFO Best, and SA Sell continued with a leisure conversation until the arrival of KHAN's father at approximately 10:15 p.m.

# **EXHIBIT E**



## FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/14/2014

At approximately 10:20 p.m., while seated in an unlocked, public lobby area of a Customs Border Protection (CBP) office located in Terminal 5, MOHAMMED HAMZAH KHAN was asked by TFO Pete Best if he could voluntarily provide clarifications to several answers he previously provided during the non-custodial interview. KHAN politely agreed at which time KHAN was asked if he objected to returning to the FBI interview room located in Terminal 1. KHAN voiced no objections. KHAN was accompanied by SSA David Mertz, TFO Radoslaw Swiatek, as well as TFO Best in a 2012 Dodge Durango sports utility vehicle. In the process of relocating to interview room, KHAN was informed he would be handcuffed upon entering vehicle and the handcuffs would immediately be removed upon exiting vehicle and arriving at Terminal 1. Prior to entering vehicle and securing KHAN in handcuffs, KHAN was informed in the presence of SSA Mertz and TFO Swiatek he was not under arrest and free to go at any time. KHAN verbally acknowledged he understood and reiterated he had no objections to returning to Terminal 1. TFO Best then handcuffed KHAN and helped KHAN into the vehicle. SSA Mertz drove the vehicle with TFO Best seated in the front passenger seat. TFO Swiatek was seated in a rear seat of the vehicle next to KHAN. The drive to Terminal 1 lasted approximately five minutes.

KHAN, SSA Mertz, TFO Swiatek and TFO Best arrived at Terminal 1 at approximately 10:27 p.m and proceeded directly to FBI interview room. While seated in the interview room, conversation continued with KHAN for approximately thirty-five minutes. Present for the conversation and seated with KHAN in the interview room were TFO Best and TFO Swiatek. Topics discussed included Indian history and Indian wedding traditions. Additionally, KHAN informed TFO Swiatek and TFO Best he has two younger sisters, besides Saffiyah, residing at home. Only ages (14 and 3) were provided by KHAN, not the names of the younger siblings. KHAN stated he fears his mother much more than his father, but that both will be very disappointed in his actions.

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Investigation on 10/04/2014 at Chicago, Illinois, United States (In Person)File # 415M-CG-4847032 Date drafted 10/04/2014by BEST PETE, David F. Mertz, Radoslaw A. Swiatek

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FD-302a (Rev. 05-08-10)

415M-CG-4847032

Continuation of FD-302 of Return to Terminal 1 with Mohammed Hamzah  
Khan, On 10/04/2014, Page 2 of 2

At approximately 11:15 p.m., TFO Best and TFO Swiatek left the interview room after thanking KHAN for his time.

# **EXHIBIT F**



UNCLASSIFIED//FOUO

## FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/05/2014

On 5 October 2014, MOHAMMED HAMZAH KHAN, date of birth (DOB) [REDACTED] was interviewed at the Federal Bureau of Investigation (FBI) O'Hare International Airport (O'Hare) Resident Agency (RA). After being advised of the identity of the interviewing Agents and the nature of the interview, KHAN was shown an FBI FD-395, Advice of Rights form. KHAN was read the "Your Rights" portion out loud by interviewing Agents, and was asked to acknowledge his understanding of each right. KHAN was then read the "Consent" portion out loud by interviewing Agents, and was asked to acknowledge his understanding. KHAN agreed, both verbally and by signing the FD-395, to speak with interviewing Agents.

The actual communications between interviewing Agents and KHAN were electronically recorded, and documented on a CD-ROM. The CD-ROM will be included as evidence in the captioned investigation. The recording of the interview is intended to document the actual words spoken. Interviewing Agents have reviewed the audio and visual recording of the interview and have not identified any audio or visual deficiencies requiring clarifying documentation.

The below log was maintained during the course of the interview of KHAN, all times are approximate:

INTERVIEW LOG

12:26:40 - Interviewing Agents enter interview room. KHAN is offered food, water, and restroom break. KHAN declines. (DG; TW)

12:27:45 - Interviewing Agents advised KHAN of his Miranda rights, via a FBI FD-395, Advice of Rights form. KHAN was read the "Your Rights" portion out loud by interviewing Agents, and was asked to acknowledge his understanding of each right. KHAN was then read the "Consent" portion out

UNCLASSIFIED//FOUO

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Investigation on 10/05/2014 at Chicago, Illinois, United States (In Person)

File # 415M-CG-4847032 Date drafted 10/05/2014

by Dustin T. Gourley, Timothy J. Walther

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Continuation of FD-302 of Interview Log of MOHAMMED HAMZAH KHAN, On 10/05/2014, Page 2 of 2

loud by interviewing Agents, and was asked to acknowledge his understanding. (DG; TW)

12:29:37 - KHAN agreed, both verbally and by signing the FD-395, to speak with interviewing Agents without a lawyer present. (DG; TW)

01:06:36 - KHAN is offered food, water, restroom break, and a prayer break. KHAN declines. Interviewing Agents exit the interview room. (DG; TW)

01:18:46 - Interviewing Agents re-enter interview room. (DG; TW)

01:32:10 - Interview is concluded. Interviewing Agents exit the interview room. (DG; TW)

UNCLASSIFIED//FOUO

MAINFILE\_001-000063

**FD-395**  
Revised  
11-05-2002

FEDERAL BUREAU OF INVESTIGATION  
**ADVICE OF RIGHTS**

**LOCATION**

Place:

CHICAGO, IL

Date:

10/5/14

Time:

12:29 AM

**YOUR RIGHTS**

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions.

You have the right to have a lawyer with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time.

**CONSENT**

I have read this statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present.

Signed:

*Ramona*

**WITNESS**

Witness:

*[Signature]*

Witness:

*[Signature]*

Time:

12:29 AM