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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CASE NO. 2:10-cr-20005

Plaintiff,

HONORABLE NANCY G. EDMUNDS

-vs-

D-1 UMAR FAROUK ABDULMUTALLAB,

Defendant.

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SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION OF THE  
UNITED STATES TO ADMIT EVIDENCEINTRODUCTION

The government has filed its Motion to Admit Evidence (docket entry 89), in which it seeks to admit into evidence, among other things, three minutes and forty two seconds of the Al Qaeda produced video, *America and the Final Trap* and portions of the Al Qaeda in the Arabian Peninsula publication *Inspire*, as coconspirator statements pursuant to Fed. R. Evid. 801(d)(2)(E). In its brief in support of the motion, the government noted that the only possible argument against admission of the statements is that they were not in furtherance of the conspiracy because, by the time *America And the Final Trap* was released, defendant had been arrested and his role in the conspiracy arguably ended. The government argued against that position, citing *United States v. Marques*, 600 F.2d 742, 750 (9th Cir. 1979), for the proposition that “The acts and declarations of coconspirators, done or made in furtherance of the conspiracy, are admissible against a conspirator whose participation has terminated because of arrest.”

ADDITIONAL AUTHORITY

The government wishes to bring to the Court's attention, in further support of that proposition, *United States v. Ascarrunz*, 838 F.2d 759 (5th Cir. 1988), both because it is from a different court, and because it gives a fuller explanation of the legal principle at issue. In *Ascarrunz*, the defendant, a pilot, was caught up in an undercover operation. After having flown several coconspirators to a meeting with the undercover agent, the defendant stayed with the airplane while the others went to conduct a drug transaction. 838 F.2d at 761. After the others had left, agents arrested the defendant. During their car ride to the place where the drug transaction was to take place, and after Ascarrunz's arrest, the undercover agent asked one of the conspirators about Ascarrunz. *Id.* The other conspirator answered that Ascarrunz could be trusted, and that the cost of his flying services would be deducted from other money Ascarrunz owed for previous cocaine purchases. *Id.*

On appeal, Ascarrunz argued that the statement the other conspirator had made about him was not in furtherance of the conspiracy. "Ascarrunz reasons that the conspiracy, at least as to him, ended with his arrest." *Id.*

The Fifth Circuit rejected the argument. "It is true that statements made by an arrested coconspirator cannot be used against his fellow coconspirators. As the Ninth Circuit has recognized, however, 'the converse is not true; statements made by an *unarrested* co-conspirator who is still operating in furtherance of the ongoing conspiracy may be introduced against the arrested conspirator.'" *Id.* at 762 (citations omitted, emphasis in original).

Applying those principles to the present case, although Defendant Abdulmutallab had been arrested when his Al Qaeda coconspirators Qasim Al-Rimi and Osama Bin Laden made their statements about him in *America and the Final Trap*, they had not been arrested. Thus, their

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statements about defendant Abdulmutallab are admissible against him, notwithstanding his arrest, precisely as the conspirator's statements about Ascarrunz were admissible against Ascarrunz, notwithstanding that he had been arrested at the time the conspirator made the statements.

### CONCLUSION

For the reasons stated herein and in its original brief in support of the motion, the segment of *America and the Final Trap* and *Inspire* should be admitted into evidence.

Respectfully submitted,

BARBARA L. McQUADE  
United States Attorney,  
Eastern District of Michigan

s/ Jonathan Tukel  
Assistant U.S. Attorney  
Chief, National Security Unit  
211 West Fort Street, Suite 2001  
Detroit, Michigan 48226  
Phone: (313) 226-9749  
Email: Jonathan.Tukel@usdoj.gov

s/ Cathleen M. Corken  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, Michigan 48226  
Phone: (313) 226-0206  
Email: Cathleen.Corken@usdoj.gov

s/ Michael C. Martin  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, Michigan 48226  
Phone: (313) 226-9670  
Email: Michael.C.Martin@usdoj.gov

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to Anthony Chambers. I further certify that I have caused a copy of this filing to be delivered and mailed to the defendant, Umar Farouk Abdulmutallab, Register No. 44107-039, Federal Detention Center, East Arkona Road Milan, Michigan.

s/ Lindsay Black  
Legal Assistant  
U.S. Attorney's Office