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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOHAMMED AL-ADAH, ET AL .	DOCKET NUMBER: CA 05-280
Petitioner,	.
vs.	Washington, D.C.
	June 24, 2009
BARACK H. OBAMA, ET AL .	10:00 A.M.
Respondents,	EXTRACT
.	PETITIONER'S TESTIMONY

TRANSCRIPT OF MERITS HEARING - DAY 3
BEFORE THE HONORABLE GLADYS KESSLER
A UNITED STATES DISTRICT JUDGE

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1 PROCEEDINGS.

2 THE COURTROOM DEPUTY: All rise. This Honorable
3 Court is now in session. Judge Gladys Kessler presiding.
4 Please be seated and come to order.

5 THE COURT: Good morning, everyone.

6 I hope the temperature will get better in here.
7 It was certainly impressed upon GSA that yesterday was
8 uncomfortable.

9 This is Mohammed Al-Adahi versus Barack Obama, CA
10 05-280. I believe all counsel are present this morning.
11 Ms. Wilhelm is down in Guantánamo. We are videotaping this
12 testimony this morning.

13 We have individuals in the courtroom. The
14 courtroom, of course, is closed since this is all
15 classified, and I know that the CSOs are carefully ensuring
16 that anyone who comes in has the proper authorization to be
17 here.

18 I see from my monitor that Mr. Al-Adahi has been
19 brought into the room where he is testifying, and he is
20 being unshackled at this time. I do know from what was told
21 to me yesterday that he is shackled to the floor. I am
22 aware of that.

23 I think I indicated for the record that Ms.
24 Wilhelm is down there with him. I am not sure if the audio
25 is turned on yet at Guantánamo, but we are just getting

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1 organized.

2 I want to say this to Ms. Wilhelm. We indicated
3 that -- she indicated that she would have about 15 minutes
4 more testimony.

5 I think that we can go on at this time in terms of
6 the audio, counsel. Any objection to that? No. All right.

7 Mr. Cramer, can you turn the audio on now, or has
8 it been on all along?

9 MR. CRAMER: You might want to ask the people in
10 Guantánamo to say a few words.

11 THE COURT: Ask the people in Guantánamo, all
12 right.

13 Ms. Wilhelm, for the record would you identify
14 yourself, and then we will make sure that we have got the
15 sound right.

16 MS. WILHELM: Your Honor, Kristin Wilhelm for the
17 petitioner.

18 THE COURT: Ms. Wilhelm, can you hear us? Can you
19 hear us?

20 MS. WILHELM: I can hear you, but you must not be
21 able to hear me.

22 THE COURT: I can now. I think I missed a few
23 words, and maybe we should turn it up a bit. So just turn
24 hold on. It will not be long before we will be set.

25 MS. WILHELM: Thank you, Your Honor.

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1 THE COURT: That is much better now.

2 We have our interpreter present who was sworn
3 yesterday. Ms. Wilhelm is there, and Mr. Al-Adahi is
4 present.

5 You indicated when we broke yesterday afternoon,
6 Ms. Wilhelm, that you have got about 15 minutes more of
7 direct examination. I hope that is correct, only because we
8 are way behind schedule. But of course you elicit the
9 direct that is necessary.

10 So would you proceed, please?

11 MS. WILHELM: Yes, Your Honor. We communicated
12 with counsel for respondents last evening, and we notified
13 them that I have completed my direct examination and was
14 going to tender the witness to respondents.

15 THE COURT: I see. All right. I did not know
16 that. And so therefore then we are ready for cross
17 examination.

18 Mr. Bennett -- I have trouble with your name. I
19 am sorry. Please except my apologists.

20 MR. BENNETT: That is okay, Your Honor.

21 THE COURT: I have trouble with everybody's names
22 though, so there is nothing unusual about that.

23 Mr. Bennett, cross examination.

24 MR. BENNETT: Am I standing in the correct place
25 for the video? I am just not totally sure.

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1 THE COURT: I think so.

2 MR. BENNETT: Okay. It sounds like we are ready
3 to go.

4 **MOHAMMED AL-ADAHI, THE PETITIONER, PREVIOUSLY SWORN**
5 **TESTIFIED THROUGH HIS INTERPRETER**

6 **CROSS EXAMINATION**

7 BY MR. BENNETT:

8 Q. Good morning, Mr. Al-Adahi. My name is Hunter Bennett.
9 I represent the United States. I have just a few questions
10 for you today, so hopefully we will be able to move through
11 this fairly quickly.

12 Mr. Al-Adahi, prior to escorting your sister to
13 Afghanistan in 2001 you lived with your wife, daughter and
14 son in Yemen, is that correct?

15 A. Yes.

16 Q. Did anyone else live with you?

17 A. My mother, my sibling and my brother. I have a large
18 family. But I have a separate house than the family house.

19 Q. When you said your mother, your sibling and your
20 brother, by your sibling were you referring to your sister,
21 Amani?

22 A. Yes. Amani and another sister.

23 Q. Could you tell us that sister's name please, sir?

24 A. Nura.

25 Q. Nura. And your mother is Amani's mother as well, is

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1 that correct, sir?

2 A. Yes.

3 Q. Did your father live with you as well, sir?

4 A. My father passed away for a long time.

5 Q. I am sorry to hear that, sir.

6 Now you escorted your sister, Amani, to Afghanistan
7 so that she could marry her husband, Riyadh, is that
8 correct?

9 THE COURT: Slow down, please.

10 THE DEFENDANT TESTIFIED THROUGH HIS INTERPRETER:

11 Not to marry Riyadh, but she had already been married in
12 Yemen by a power of attorney in Yemen.

13 BY MR. BENNETT:

14 Q. But you escorted her to Afghanistan to attend the
15 celebration of her wedding, is that correct, sir?

16 A. To attend the wedding party, yes, but in the beginning
17 you said to marry them, and there is a difference between
18 the two.

19 Q. I think I understand the distinction, sir.

20 To be clear, what took place in Yemen was the legal
21 consummation of the marriage, but what took place in
22 Afghanistan was the celebration of the marriage, is that
23 correct?

24 A. Yes. I don't think anything about that is in the
25 interest of the case.

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1 Q. Now Mr. Al-Adahi, your sister's wedding to Riyadh,
2 that was a happy occasion for your family, is that correct?

3 A. Of course.

4 Q. They were excited about Amani marrying Riyadh?

5 A. (No response.)

6 Q. Correct?

7 A. What do you want?

8 Q. I would just like to confirm that his family was
9 excited that his sister, Amani, was marrying Riyadh?

10 A. All of the family approved.

11 Q. Where did this wedding celebration take place, sir?

12 A. In Ta'iz.

13 Q. The wedding celebration in Afghanistan, where did that
14 take place? Who owned the property where the celebration
15 took place?

16 A. From what I heard this building belonged to Osama bin
17 Laden.

18 Q. So your understanding is that Osama bin Laden owned the
19 building in which the marriage of your sister -- in which
20 the celebration of the marriage of your sister, Amani, to
21 Riyadh took place, is that correct?

22 A. In the Arab culture, when poor people get married, when
23 they don't -- cannot find a place large enough to
24 accommodate a large number of people, anybody will open his
25 house to allow people to participate, to use his house.

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1 Q. To be clear though, whenever poor people in Arab
2 countries get married, they don't all have their weddings at
3 Osama bin Laden's house, is that correct?

4 A. Anyone -- a businessmen who has a large house, he also
5 can have the celebration in a mosque or in a club.

6 Q. Okay, but your sister's wedding celebration to Riyadh
7 was at Osama bin Laden's house, correct?

8 A. The celebration of the wedding which occurred in Osama
9 bin Laden's house was only for men.

10 Q. So there were no women at all at the celebration, is
11 that correct?

12 A. The celebration in Osama bin Laden's house was only for
13 men. Islam prevent women and men to be together, so they
14 have their own place for celebration, and there is no need
15 for this line of questioning.

16 Q. Did the women have a separate celebration of the
17 marriage of your sister, Amani, to Riyadh in Afghanistan?

18 A. What I said before. It is understood.

19 Q. Sir, please answer my question.

20 Was there a separate celebration of your sister,
21 Amani's, marriage to Riyadh in Afghanistan that took place
22 at the same time as the celebration of the men at Osama bin
23 Laden's house?

24 A. Yes.

25 Q. And your mother did not attend that celebration, did

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1 she?

2 A. My mother is in Yemen. I only traveled -- me and my
3 sister alone.

4 Q. And your wife did not attend the celebration of the
5 marriage that took place in Afghanistan either, did she?

6 A. I only traveled -- me and my sister to Afghanistan.
7 How could my wife and my kids go to Afghanistan?

8 Q. Mr. Al-Adahi, yesterday you talked a bit about jihad,
9 and you explained to us that jihad --

10 THE COURT: Mr. Bennett, slow down, please, for
11 the translator.

12 MR. BENNETT: I am sorry.

13 BY MR. BENNETT:

14 Q. Mr. Al-Adahi, yesterday you talked a bit about jihad,
15 and you explained to us that jihad is a legitimate part of
16 Islam, correct?

17 A. The Islam is mentioned in Islam, but some establishment
18 and some organization -- the way to implement it is
19 different between some organizations and some
20 establishments.

21 Q. You explained --

22 THE INTERPRETER: Islam mentioned jihad.

23 MR. BENNETT: Is that what Ms. Wilhelm just said
24 to you, or is that what Mr. Al-Adahi just said to you?

25 MS. WILHELM: Your Honor, he stated that Islam is

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1 Islam, which is what the translator said, and I was just
2 seeking a clarification from the translator, because the
3 question was, could you describe jihad? And I was trying to
4 ask the translator, did he mean to say, jihad is a part of
5 Islam in his translation? And that was the clarification I
6 sought.

7 THE COURT: I heard the translator say the two
8 words together, so I understand why you were trying to
9 clarify.

10 Why don't you ask your next question, or I am not
11 sure if you got an answer to the last question.

12 MR. BENNETT: I think I may be able to clarify
13 with my next question.

14 BY MR. BENNETT:

15 Q. Mr. Al-Adahi, yesterday when you were testifying you
16 said:

17 "Anybody who fights people
18 in a country that they want
19 to invade other countries,
20 that is jihad, according to
21 religion, not to desire."

22 Is that correct, sir?

23 A. Yes. A fatwa has to be issued from the scholar working
24 in the same country or other country. As you call it, war
25 against another country, we call it jihad. Your Congress

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1 will decide, but our scholar will decide. With approval of
2 the president it is legitimate.

3 Q. Now the United States Army is currently occupying Iraq,
4 sir. So that would justify a jihad against United States,
5 correct?

6 THE INTERPRETER: Your Honor --

7 THE COURT: Yes.

8 MS. WILHELM: Your Honor, I believe the translator
9 was not able to understand the question to be able to
10 translate it to Mr. Al-Adahi.

11 THE COURT: All right. I will have --

12 THE INTERPRETER: I would request, Your Honor, I
13 would appreciate if you instruct the prosecutor to wait
14 for me until I finish, because I cannot talk and listen to
15 the prosecutor at the same time. I would appreciate very
16 much if he give me the chance -- when I talk I would
17 appreciate if he would wait for me until I finish the
18 translation.

19 THE COURT: Certainly. And again, Mr. Bennett,
20 you need to slow down a little bit.

21 MR. BENNETT: I am sorry, Your Honor. This is a
22 new experience for me.

23 MR. CHANDLER: It may be completely inadvertent,
24 and I am sure there is, but there is a time delay. We do
25 not get the time delay. They do. If you watch you will see

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1 there is a bit of a delay. So we need to spread out the
2 timing.

3 MR. BENNETT: Okay.

4 THE COURT: And that is why the translator is
5 probably having that trouble.

6 MR. BENNETT: I am sorry, Your Honor. As I said,
7 this is a brand-new experience.

8 THE COURT: Go ahead, please.

9 BY MR. BENNETT:

10 Q. The United States Army is currently occupying Iraq.
11 That would justify a jihad against the United States,
12 correct?

13 A. First of all, the war of America against Iraq, I don't
14 know anything about it. This kind of questions should be
15 submitted to the people involved in this issue. You asked
16 me about something I did not attend, and I don't know
17 anything about. But if you ask me about the war in Yemen in
18 '94, it was legitimate war.

19 The country with the scholars -- you do not think that
20 my understanding of jihad is killing innocent or the weak.
21 I meant a country with a constitution and laws, and we have
22 a Congress. When the Congress decides something, he is
23 deciding for the people.

24 Q. You mentioned yesterday, sir, that your brother-in-law
25 -- that your brother-in-law, Riyadh, fought in Afghanistan

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1 against the Soviets, correct?

2 A. I believe that. He did not tell me that.

3 Q. Do you know other people who fought in Afghanistan
4 against the Soviets?

5 A. When I was asked yesterday on the definition of
6 mujahidin, I said I heard that there were men that fought
7 against the Soviet Union, and they fought against the
8 alliance after the departure of the Soviets. And the war
9 was legitimate, and the international and American --
10 everything was legitimate to America up until September
11 incidents.

12 Q. To go back, the fight against Russia or against the
13 Soviets was legitimate because the Soviet military was
14 stationed in Afghanistan, correct?

15 A. These people -- this question should be answered by the
16 scholar who said that jihad is legitimate.

17 Q. But you also said, sir, that jihad was legitimate when
18 you testified yesterday, correct?

19 A. It is not me who is going to decide that jihad is
20 legitimate by the country. It is not for me to decide. The
21 scholar will decide. I did not participate in the Russian
22 war or any other war.

23 I prepared myself in the war in 1994 in Yemen. The
24 Yemeni people were ready for war. The whole international
25 community saw and heard. The victory was blessed by all of

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1 the European countries, and America, and our country.

2 If you meant the legitimate jihad, that is the jihad.
3 But who kidnap terrorists, or makes explosion in houses, or
4 whoever make explosion in houses and suffer, and embassy,
5 that is not jihad.

6 A lot of scholars, they issued fatwa not to do with
7 this kind of attacks. I did not participate. I did not
8 plan for any terrorist act.

9 Q. But scholars have also issued fatwa saying that
10 bombing innocent people is okay and is legitimate jihad,
11 correct?

12 A. I did not hear that.

13 Q. You have never heard that, sir?

14 THE INTERPRETER: I beg your pardon?

15 BY MR. BENNETT:

16 Q. You have never heard that, sir?

17 A. No.

18 Q. You are unaware of any scholar at any time issuing a
19 fatwa saying that it's okay to kill civilians as part of
20 jihad?

21 A. All my life is tied up with my work and my family. I
22 was not tied up with any groups or any organizations. Some
23 scholar may have issued fatwa with that regard. The Muslim,
24 they don't have to follow this order. Whoever believe, he
25 will bear the consequences.

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1 I am not talking now about the scholar's fatwa. Talk
2 to me about my case. Seven and a half years here. What did
3 I do? What did I commit?

4 Q. Sir, when you said a few moments ago in response to my
5 question that you had never heard of a fatwa being issued
6 saying that killing civilians was an innocent part of jihad,
7 that was not correct?

8 MR. CHANDLER: I would object to this question.

9 THE COURT: Excuse me everybody. There is an
10 objection. Let me hear it.

11 MR. CHANDLER: If you would permit two lawyers,
12 one at Guantánamo and one here to do it -- Your Honor, I
13 think it is appropriate for him to explore this intellectual
14 exercise to some extent. We are far a field now. This is
15 without foundation, and I would object to this. Let's get
16 on with it.

17 MR. BENNETT: May I be heard, Your Honor?

18 THE COURT: I will give you a couple of more
19 questions. I do not think it is particularly helpful for
20 the ultimate factual issues I have to decide.

21 MR. BENNETT: I understand, Your Honor. I was
22 attempting to explore more that he had changed his previous
23 answer.

24 THE COURT: I understand that. You may complete
25 that line of questioning.

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1 BY MR. BENNETT:

2 Q. Sir, to be clear, when I asked you a few moments ago --
3 or when you told me a few moments ago that you had never
4 heard of any scholar issuing a fatwa saying that it was okay
5 to kill civilians as part of jihad, that answer was not
6 correct?

7 A. There is a difference between hearing something and
8 supporting something. It can come through newspaper, and
9 this newspaper could be credible and could be unbelievable.
10 You do not corner me. You want to say whether you support
11 these acts or you don't support these acts. I do not
12 support these acts.

13 Q. To be clear, you had heard it?

14 THE INTERPRETER: To be clear what?

15 MR. BENNETT: You had heard it?

16 THE COURT: There is no objection, but that
17 question is not clear. You have to repeat the premise,
18 please.

19 MR. BENNETT: Your Honor, I think we've already
20 established what the response is to this line of
21 questioning, so I am going to move on to the next question.

22 THE COURT: All right.

23 BY MR. BENNETT:

24 Q. Sir, in your opinion is Osama bin Laden's jihad against
25 the United States justified?

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1 A. I don't know everything that Osama bin Laden does. I
2 read here in some newspaper that we get once a month about
3 jihad. I am not responsible for what they say or did. I am
4 not responsible.

5 Q. Do you believe that the September 11th attacks were
6 justified, sir?

7 A. I do not agree killing innocents. I don't support
8 killing innocents. I did not know of this plan before. You
9 ought to save your question when I told you I do not agree
10 killing innocents.

11 Q. When you say that you don't agree with killing
12 innocents, do you consider United States soldiers
13 innocents?

14 A. The American soldier innocent? I did not attend that,
15 and I don't know what the problem is. I have no intention
16 of fighting the Americans. I never participated in any
17 fight as I said before. You want me to issue a legitimate
18 fatwa to all of the Muslims? I am not a scholar.

19 Q. Sir, if someone were to issue a fatwa, a scholar whom
20 you respected, saying that it was okay to take up jihad
21 against the United States, would you follow that fatwa?

22 MR. CHANDLER: Objection, hypothetical, vague. It
23 does not provide enough circumstances to be a precise
24 question or answer in any way.

25 THE COURT: The objection is overruled. The

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1 question was certainly not vague. It was very precise, and
2 the question may stand.

3 Does the interpreter need it repeated?

4 THE INTERPRETER: Yes, Your Honor, please.

5 MR. BENNETT: Your Honor, could we have the court
6 reporter read it back?

7 THE COURT: Yes, she can.

8 The court reporter will read it back. It may take
9 just a second.

10 THE INTERPRETER: And slowly please, Your Honor.

11 **(Whereupon, the court reporter read back from her**
12 **notes.)**

13 THE COURT: Excuse me, Ms. Tyner, just read very
14 slowly for him.

15 THE INTERPRETER: Thank you, Your Honor.

16 **(Whereupon, the court reporter read back from her**
17 **notes.)**

18 THE INTERPRETER: I did not get the whole thing,
19 Your Honor. She has to go slowly, repeating and give me a
20 chance to interpret.

21 **(Whereupon, the court reporter read back from her**
22 **notes.)**

23 THE DEFENDANT TESTIFIED THROUGH HIS INTERPRETER:
24 I don't want to fight anybody in this war.

25 THE COURT: Mr. Bennett, next line of questioning,

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1 please.

2 BY MR. BENNETT:

3 Q. Sir, you mentioned yesterday that a few days after the
4 wedding celebration that was held at Osama bin Laden's house
5 that you met with Osama bin Laden once again, is that
6 correct?

7 A. Yes.

8 Q. And you explained that every stranger who comes to
9 Kandahar that Osama bin Laden wants to meet him, correct?

10 MR. CHANDLER: Your Honor, that misstates his
11 testimony.

12 THE COURT: Excuse me, everybody. That objection
13 is sustained.

14 MR. BENNETT: I believe I have it right here, Your
15 Honor.

16 THE COURT: Go ahead. Let me hear it if you have
17 it. That is not my recollection, but of course the
18 transcript governs.

19 MR. BENNETT: Your Honor, it is found on page 20
20 of the transcript. Line 13.

21 THE COURT: You are correct.

22 MR. CHANDLER: Would you start at line 11?

23 THE COURT: I am sorry, Mr. Chandler, what?

24 MR. CHANDLER: Would you start at line 11 which
25 puts the question -- that piece of it into context. He is

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1 talking about Arabs.

2 THE COURT: Wait a minute.

3 MR. BENNETT: I think that that is very much open
4 to question, which is what I intend to find out.

5 THE COURT: What page are we on again?

6 MR. BENNETT: We are on page 20, Your Honor.

7 THE COURT: Just a minute, everybody.

8 Certainly my recollection was consistent with Mr.
9 Chandler's, but the sentence that is most important here is
10 at line 13:

11 "Any stranger comes to Kandahar

12 Osama bin Laden --"

13 I am sorry --

14 "-- he wants to meet him and he
15 wants to ask him questions."

16 The petitioner is allowed redirect of the -- let
17 me put it this way. Petitioner's counsel is allowed
18 redirect to clarify that, but the question as asked the
19 objection is overruled, because certainly the transcript
20 supports the asking of the question.

21 So please repeat it slowly.

22 BY MR. BENNETT:

23 Q. Mr. Al-Adahi, you testified yesterday that any stranger
24 who comes to Kandahar, Osama bin Laden, he wants to meet
25 him.

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1 A. That is what some Arab told me. I swore to tell the
2 truth. This information I submitted in 2008 when I received
3 little of humanitarian treatment. If it was dangerous for
4 me, I would not have gave you this information.

5 It was a normal meeting, a very normal meeting.
6 Osama bin Laden was in control of Kandahar. He is
7 considered as the governor of the city. If you are a
8 stranger and you go to that place and the man called you,
9 you can submit.

10 Q. So if I went to Kandahar Osama bin Laden would like to
11 meet with me, sir?

12 MR. CHANDLER: Objection, Your Honor.

13 THE COURT: The objection is overruled. The
14 witness must answer that question.

15 THE DEFENDANT TESTIFIED THROUGH HIS INTERPRETER:
16 I don't know. That is what happened with me, and that is
17 what they told me.

18 BY MR. BENNETT:

19 Q. To be clear though, when you met with Mr. bin Laden a
20 few days after the wedding celebration which he hosted for
21 your sister's wedding, you had already met Mr. bin Laden,
22 correct?

23 A. The meeting was just mere greetings, because it was a
24 party and lots of people. This is so and so greeting. This
25 is so and so greeting. Peace be with you.

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1 Q. But you had met him, correct?

2 MR. CHANDLER: Objection, Your Honor, asked and
3 answered.

4 THE COURT: Sustained.

5 THE DEFENDANT TESTIFIED THROUGH HIS INTERPRETER:
6 Yes.

7 THE COURT: Excuse me. The objection is
8 sustained. The record is clear.

9 BY MR. BENNETT:

10 Q. Sir, you said yesterday that you went to Al Farouq for
11 religious instruction, correct?

12 A. And also weapons teaching.

13 Q. You were teaching weapons?

14 A. Training, yes.

15 Q. You were training others in the use of weapons in Al
16 Farouq?

17 A. Never.

18 Q. Have you ever served in the military, sir?

19 A. In Yemen for two years.

20 Q. When was that, sir?

21 A. It may be in '84, around '84.

22 Q. Did you use any weapons while you were with the Yemeni
23 military, sir?

24 MS. WILHELM: Can you repeat the question?

25 BY MR. BENNETT:

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1 Q. Did you use any weapons when you were with the Yemeni
2 military?

3 A. Only the Kalashnikov.

4 Q. The only weapon you used with the Yemeni military was
5 the Kalashnikov?

6 A. Yes. Because I was a soldier only in the security, and
7 this is national service.

8 MR. BENNETT: Thank you, sir. I have no further
9 questions.

10 THE COURT: Ms. Wilhelm, redirect, please.

11 MS. WILHELM: Your Honor, I have no further
12 questions.

13 THE COURT: All right. That concludes Mr. Al-
14 Adahi's testimony. We are going to sign off now. Let me
15 just check with counsel if there is anything further that
16 needs to be said in terms of the witness and counsel and the
17 interpreter in Guantánamo?

18 MR. CHANDLER: No, Your Honor.

19 THE COURT: No, all right. Thank you very much
20 everyone, and I appreciate the accommodations that were made
21 at Guantánamo so that I could hear Mr. Al-Adahi's testimony
22 directly.

23 We are going to close the transmission at this
24 point.

25 **(Whereupon, the connection to Guantánamo was broken.)**

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1 THE COURT: Let's relocate back to my courtroom
2 which is more comfortable and where we will be for the rest
3 of the day.

4 I know there is a lot of stuff to move. Every
5 clock in these two courthouses is different. I have --
6 let's do it that way. My watch is seven of eleven. I think
7 even though there is a lot to move you all ought to be able
8 to do it by 11:15 certainly, and then we will go until the
9 lunch break.

10 MR. CHANDLER: Your Honor, may I ask the court a
11 question?

12 THE COURT: Yes.

13 MR. CHANDLER: To be answered, I guess, in the
14 next courtroom.

15 I see that the government has filed another ex
16 parte filing with the court last night. I am not accustomed
17 to trying cases where the other side is continually
18 communicating with the court ex parte.

19 I would just like the court's reassurance that
20 whatever it is is an appropriate ex parte communication and
21 not about the merits of the case.

22 THE COURT: Well, let me be clear. I think there
23 was only one ex parte filing, right?

24 MR. CHANDLER: I may be mistaken. I thought there
25 was another, and of course there was an ex parte

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1 conversation which I consented to, but I'm talking about the
2 one last night, Your Honor.

3 THE COURT: All right. And to be honest with
4 everyone, while I know the subject matter, I have not had a
5 chance to read it. I will at lunch, and after that I will
6 respond to your concern.

7 MR. CHANDLER: Thank you, Your Honor.

8 THE COURT: But I do know the subject matter, but
9 until I read it there is no point talking about it.

10 MR. CHANDLER: Thank you, Your Honor. I just
11 wanted to raise it so the court would have the opportunity
12 to respond.

13 MR. AHERN: I can actually inform counsel the
14 subject of it generally. It is a motion for an exception
15 from disclosure under the CMO.

16 MR. CHANDLER: I am sorry?

17 MR. AHERN: It is a motion for an exception from
18 disclosure under section 1-F of the CMO.

19 THE COURT: In other words, something that was
20 ordered to be disclosed, which I believe the government has,
21 the government is asking to be excused from its obligation
22 for disclosure.

23 Does that summarize it?

24 MR. AHERN: Without confirming that something is
25 potentially responsive to a court's order.

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THE COURT: All right, everybody, 11:15 please.

(Recess.)

(Whereupon, the hearing continued and was reported by the court reporter but not included in the transcript herein.)

(Whereupon, the proceedings were adjourned.)

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CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript of the proceedings in the above-captioned case.



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