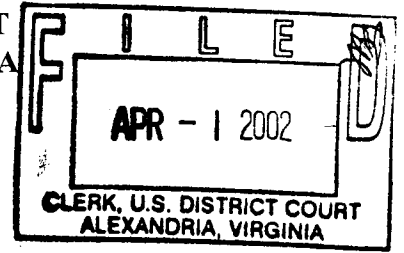


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 JOHN PHILLIP WALKER LINDH )

Criminal No. 02-37-A

**ORDER**

The matter came before the Court on defendant's motion to compel production of twenty-seven numbered requests for documents and materials pursuant to Rule 16, Fed. R. Crim. P. The government filed a memorandum in opposition to defendant's motion, objecting to many of defendant's requests, while at the same time representing that it has already produced a substantial volume of documents and materials responsive to various requests<sup>1</sup> and will continue to disclose to defendant additional responsive documents and materials as they are identified and become known and available to government counsel. Oral argument on defendant's motion and the government's response was held on April 1, 2002. In the course of this hearing, the Court, for good cause shown and for the reasons stated from the bench, resolved the parties' disputes with respect to various of defendant's requests. The Court's rulings as to each of defendant's requests are set forth here:

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<sup>1</sup> The government represents that it has already produced "well over a thousand pages" of discovery as of the time of the hearing, including twelve letters containing information on more than 100 items. See Government's Opposition to Defendant's Motion to Compel Production of Discovery.

*cl/s. epm* 43

**Request 1(a)**<sup>2</sup>

It is hereby **ORDERED** that defendant's motion to compel the identity, affiliation, and contact information of the individual identified as Confidential Source 1 ("CS-1") (request 1(a)) is **DENIED** at this time.<sup>3</sup>

It is further **ORDERED**, however, that counsel for the government is **DIRECTED** to convey promptly to CS-1 defendant's request to have defendant's counsel interview CS-1. In this respect, government counsel must take prompt steps to advise CS-1 of defendant's interview request and may also advise CS-1 that whether to grant an interview is within CS-1's sole discretion. But government counsel may not direct, advise, or counsel CS-1 to decline the request for the interview. *See United States v. Tipton*, 90 F.3d 861, 889 (4th Cir. 1996).

Should CS-1 agree to be interviewed by defendant's counsel, the government is further **DIRECTED** to take prompt steps to aid defendant's counsel in accomplishing the interview, including facilitating the logistics of the interview.

It is further **ORDERED** that should defendant wish to subpoena CS-1 to appear to testify at trial or at the suppression hearing on July 15, 2002, the parties are directed to adhere to the following schedule for submission of materials relating to the subpoena:

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<sup>2</sup> As to this request, the government submitted *ex parte* for the Court's *in camera* review certain materials that disclosed CS-1's identity and the various specific reasons for maintaining the secrecy of CS-1's identity information. The Court relied on these materials in its ruling relating to defendant's request for information concerning CS-1. *See United States v. Lindh*, Criminal No. 02-37-A (E.D. Va. March 29, 2002) (order).

<sup>3</sup> Should CS-1, or any other person whose identity is not ordered disclosed in this Order, ultimately testify at a hearing or at trial, the Court will then consider whether and to what extent any information concerning his or her identity should be disclosed to the public or to defendant or his counsel. *See, e.g., Smith v. Illinois*, 390 U.S. 129 (1968); *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993); *Siegfried v. Fair*, 982 F.2d 14, 17 (1st Cir. 1992).

- (i) any request for a subpoena must be filed by 5:00 p.m., Friday, April 19, 2002;
- (ii) should the government oppose the issuance and service of such a subpoena, the government must file its opposition motion by 5:00 p.m., Monday, April 29, 2002;
- (iii) defendant must file any reply to such an opposition by 5:00 p.m., Thursday, May 9, 2002;
- (iv) a hearing in the matter will be held at 2:00 p.m., Friday, May 31, 2002.<sup>4</sup>

***Request 1(b)***

It is further **ORDERED** that defendant's motion to compel the identity and contact information of individuals participating in the interrogations and/or interviews of defendant (request 1(b)) is **DENIED** at this time.<sup>5</sup>

It is further **ORDERED**, however, that the government produce materials responsive to request 1(b) that fall within Rule 16(a)(1)(A), Fed. R. Crim. P., and that all individuals who interrogated or interviewed defendant must be identified in some specific manner (e.g., Army-1, Navy-1) so that defendant may consider whether to request an interview with that person.

With respect to all persons in this category, it is further **ORDERED** that the parties adhere to the following schedule:

- (i) should defendant wish to interview any person in this category, defendant must inform the government of his desire to seek an interview by 5:00 p.m., Friday, April 5, 2002;

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<sup>4</sup> In the event that CS-1 agrees to be interviewed, but an interview cannot practically be accomplished prior to a reasonable time before April 19, 2002, defendant may request the Court to adjust this schedule.

<sup>5</sup> *See supra* note 3.

- (ii) the government must inform those individuals of the request<sup>6</sup> and file a response setting forth the individuals' answers by 5:00 p.m., Thursday, April 25, 2002;
- (iii) should any of the individuals agree to an interview, the government must take prompt steps to aid defendant's counsel in accomplishing the interview, including facilitating the logistics of the interview;
- (iv) should defendant wish to subpoena any of those individuals, he must do so by 5:00 p.m., Monday, April 29, 2002;
- (v) should the government oppose the issuance and service of such a subpoena, the government must file its opposition motion by 5:00 p.m., Thursday, May 9, 2002;
- (vi) defendant must file any reply to such an opposition by 5:00 p.m., Monday, May 20, 2002;
- (vii) a hearing in the matter will be held at 2:00 p.m., Friday, May 31, 2002.<sup>7</sup>

***Request 1(c)***

It is further **ORDERED** that defendant's motion to compel the identity and contact information of those whose names have been redacted from January 8-14, 2002 reports (request 1(c)) is **DENIED** at this time.<sup>8</sup>

It is further **ORDERED**, however, that the government produce materials responsive to request 1(c) that fall within Rule 16(a)(1)(A), Fed. R. Crim. P., and that all individuals who interrogated or interviewed defendant must be identified in some specific manner (e.g., Army-1, Navy-1) so that defendant may consider whether to request an interview with that person.

With respect to persons in this category, it is further **ORDERED** that the parties adhere to the following schedule:

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<sup>6</sup> The government may not direct, advise, or counsel any of these individuals to decline the request for the interview. *See United States v. Tipton*, 90 F.3d 861, 889 (4th Cir. 1996).

<sup>7</sup> In the event the timing of any government disclosure precludes the parties from complying with this schedule, the parties are directed to confer and agree, if possible, on a reasonable revised schedule to submit to the Court. Unresolved disputes in this regard must be brought promptly to the Court's attention by appropriate pleading.

<sup>8</sup> *See supra* note 3.

- (i) should defendant wish to interview any person in this category, defendant must inform the government of his desire to seek an interview by 5:00 p.m., Friday, April 5, 2002;
- (ii) the government must inform those individuals of the request<sup>9</sup> and file a response setting forth the individuals' answers by 5:00 p.m., Thursday, April 25, 2002;
- (iii) should any of the individuals agree to an interview, the government must take prompt steps to aid defendant's counsel in accomplishing the interview, including facilitating the logistics of the interview;
- (iv) should defendant wish to subpoena any of those individuals, he must do so by 5:00 p.m., Monday, April 29, 2002;
- (v) should the government oppose the issuance and service of such a subpoena, the government must file its opposition motion by 5:00 p.m., Thursday, May 9, 2002;
- (vi) defendant must file any reply to such an opposition by 5:00 p.m., Monday, May 20, 2002;
- (vii) a hearing in the matter will be held at 2:00 p.m., Friday, May 31, 2002.<sup>10</sup>

***Request 1(d)***

It is further **ORDERED** that defendant's motion to compel the identity and contact information of authors of documents containing defendant's statements (request 1(d)) is **DENIED** at this time<sup>11</sup> with respect to the identity and affiliation of these individuals.

It is further **ORDERED**, however, that the government produce materials responsive to request 1(d) that fall within Rule 16(a)(1)(A), Fed. R. Crim. P., and that all individuals who interrogated or interviewed defendant must be identified in some specific manner (e.g., Army-1, Navy-1) so that defendant may consider whether to request an interview with that person.

With respect to persons in this category, it is further **ORDERED** that the parties adhere to the following schedule:

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<sup>9</sup> *See supra* note 6.

<sup>10</sup> *See supra* note 7.

<sup>11</sup> *See supra* note 3.

- (i) should defendant wish to interview any person in this category, defendant must inform the government of his desire to seek an interview by 5:00 p.m., Friday, April 5, 2002;
- (ii) the government must inform those individuals of the request<sup>12</sup> and file a response setting forth the individuals' answers by 5:00 p.m., Thursday, April 25, 2002;
- (iii) should any of the individuals agree to an interview, the government must take prompt steps to aid defendant's counsel in accomplishing the interview, including facilitating the logistics of the interview;
- (iv) should defendant wish to subpoena any of those individuals, he must do so by 5:00 p.m., Monday, April 29, 2002;
- (v) should the government oppose the issuance and service of such a subpoena, the government must file its opposition motion by 5:00 p.m., Thursday, May 9, 2002;
- (vi) defendant must file any reply to such an opposition by 5:00 p.m., Monday, May 20, 2002;
- (vii) a hearing in the matter will be held at 2:00 p.m., Friday, May 31, 2002.<sup>13</sup>

***Request 1(e)***

It is further **ORDERED** that defendant's motion to compel the identity and contact information of guards, medics, doctors, and others with direct contact with defendant from December 1, 2001 to January 24, 2002 (request 1(e)) is **DENIED** at this time<sup>14</sup> with respect to the identity and affiliation of these individuals.

It is further **ORDERED**, however, that the government produce materials responsive to request 1(e) that fall within Rule 16(a)(1)(A), Fed. R. Crim. P., and that all individuals who interrogated or interviewed defendant must be identified in some specific manner (e.g., Army-1, Navy-1) so that defendant may consider whether to request an interview with that person.

With respect to persons in this category, it is further **ORDERED** that the parties adhere

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<sup>12</sup> See *supra* note 6.

<sup>13</sup> See *supra* note 7.

<sup>14</sup> See *supra* note 3.

to the following schedule:

- (i) should defendant wish to interview any person in this category, defendant must inform the government of his desire to seek an interview by 5:00 p.m., Friday, April 5, 2002;
- (ii) the government must inform those individuals of the request<sup>15</sup> and file a response setting forth the individuals' answers by 5:00 p.m., Thursday, April 25, 2002;
- (iii) should any of the individuals agree to an interview, the government must take prompt steps to aid defendant's counsel in accomplishing the interview, including facilitating the logistics of the interview;
- (iv) should defendant wish to subpoena any of those individuals, he must do so by 5:00 p.m., Monday, April 29, 2002;
- (v) should the government oppose the issuance and service of such a subpoena, the government must file its opposition motion by 5:00 p.m., Thursday, May 9, 2002;
- (vi) defendant must file any reply to such an opposition by 5:00 p.m., Monday, May 20, 2002;
- (vii) a hearing in the matter will be held at 2:00 p.m., Friday, May 31, 2002.<sup>16</sup>

***Request 1(f)***

It is further **ORDERED** that defendant's motion to compel the identity of military detainees (request 1(f)) is **DENIED** at this time<sup>17</sup> with respect to the identity and affiliation of these individuals.

It is further **ORDERED**, however, that the government produce materials responsive to request 1(f) that fall within Rule 16(a)(1)(A), Fed. R. Crim. P., and that all individuals who interrogated or interviewed defendant must be identified in some specific manner (e.g., Army-1, Navy-1) so that defendant may consider whether to request an interview with that person.

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<sup>15</sup> See *supra* note 6.

<sup>16</sup> See *supra* note 7.

<sup>17</sup> See *supra* note 3.

With respect to persons in this category, it is further **ORDERED** that the parties adhere to the following schedule:

- (i) should defendant wish to interview any person in this category, defendant must inform the government of his desire to seek an interview by 5:00 p.m., Friday, April 5, 2002;
- (ii) the government must inform those individuals of the request<sup>18</sup> and file a response setting forth the individuals' answers by 5:00 p.m., Thursday, April 25, 2002;
- (iii) should any of the individuals agree to an interview, the government must take prompt steps to aid defendant's counsel in accomplishing the interview, including facilitating the logistics of the interview;
- (iv) should defendant wish to subpoena any of those individuals, he must do so by 5:00 p.m., Monday, April 29, 2002;
- (v) should the government oppose the issuance and service of such a subpoena, the government must file its opposition motion by 5:00 p.m., Thursday, May 9, 2002;
- (vi) defendant must file any reply to such an opposition by 5:00 p.m., Monday, May 20, 2002;
- (vii) a hearing in the matter will be held at 2:00 p.m., Friday, May 31, 2002.<sup>19</sup>

### ***Requests 1(a)-(f)***

The extent to which the government has been excused from disclosing information in these requests is subject to the government's over-arching obligation to produce promptly any exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

### ***Request 2***

It is further **ORDERED** that a ruling on defendant's motion to compel the government to provide defendant's counsel with access to witnesses in government custody at Guantanamo Bay

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<sup>18</sup> See *supra* note 6.

<sup>19</sup> See *supra* note 7.



or elsewhere is **DEFERRED** at the government's request until Tuesday, April 23, 2002, at which time the government will advise defendant whether the government's interviews of any such persons resulted in any materials or information subject to discovery pursuant to Rule 16(a)(1), Fed. R. Crim P., or *Brady v. Maryland*, 373 U.S. 83 (1963).

It is further **ORDERED** that, in the event defendant seeks interviews or requests subpoenas with respect to any detainees, the procedure and schedule applicable for Requests 1(b)-(f) will govern.

### ***Request 3***

It is further **ORDERED** that, notwithstanding the settled rule in this circuit and elsewhere that Rule 16, Fed. R. Crim. P., does not require the government to produce its list of trial witnesses,<sup>20</sup> defendant's motion to compel production of the government's trial witness list (request 3) is **GRANTED** and the government is **DIRECTED** to provide defendant its trial witness list by 5:00 p.m., Wednesday, August 7, 2002.

### ***Request 4***

The government represents that it has provided all available information regarding the QIJ uprising (request 4). Therefore, defendant's motion to compel is **DENIED** as **MOOT**.

It is further **ORDERED**, however, that the government is **DIRECTED** to continue on a prompt basis to provide defendant with all documents and materials discoverable under Rule 16,

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<sup>20</sup> See *United States v. Jordan*, 466 F.2d 99, 101 (4th Cir. 1972); see also *United States v. Metropolitan Enters.*, 728 F.2d 444, 451 (10th Cir. 1984); *United States v. Collins*, 652 F.2d 735, 738 (8th Cir. 1981), *cert. denied*, 455 U.S. 906 (1982).

Fed. R. Crim. P.,<sup>21</sup> and responsive to this request as they become known and available to the government's counsel.

It is further **ORDERED** that the government is **DIRECTED** (i) to advise the Court and defense counsel promptly whether the government seeks to withhold from disclosure, and the general bases for such nondisclosure, any documents or materials responsive to request 4 that become known and available to the government in the future and (ii) to submit to the Court *ex parte* for *in camera* review the documents or materials withheld and a memorandum setting forth the legal and factual bases for the nondisclosure.

#### ***Request 5***

It is further **ORDERED** that defendant's motion to compel production of logs regarding interviews with defendant (request 5) is **DENIED** as **MOOT**, as the government has represented that it has produced, or is in the process of producing, all documents and materials responsive to this request.

#### ***Request 6***

It is further **ORDERED** that defendant's motion to compel production of records referencing questions asked or to be asked of defendant during any interrogation or interviews between December 1, 2001 and January 14, 2002, (request 6) is **DENIED** to the extent that this request calls for documents and materials beyond those required to be produced pursuant to

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<sup>21</sup> This category of materials includes documents and information covered by Rule 16(a)(1)(C), Fed. R. Crim. P., but excludes documents that fall within Rule 16(a)(2), Fed. R. Crim. P.

Rules 16(a)(1)(A) and 16(a)(1)(C), Fed. R. Crim. P.

***Request 7***

It is further **ORDERED** that defendant's motion to compel production of background material used during interviews of defendant (request 7) is **DENIED** in part and **GRANTED** in part. It is **GRANTED** with respect to materials that were shown to defendant in connection with any interview or interrogation of him. It is **DENIED** in all other respects.

***Request 8***

It is further **ORDERED** that defendant's motion to compel production regarding the treatment of Taliban and al-Qaeda prisoners under General Dostum (request 8) is **DENIED**, as calling for the production of material that is irrelevant and not within the scope of Rule 16(a)(1)(C), Fed. R. Crim. P.

***Request 9***

It is further **ORDERED** that defendant's motion to compel production of detainee interview documents relating to defendant (request 9) is **GRANTED** in part and **DENIED** in part. It is **GRANTED** with respect to all documents and materials falling within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), or with respect to witnesses who will testify. This category of exculpatory documents and materials includes any that indicate or reflect that defendant was not involved in the planning of or participation in the QIJ prison uprising or in the death of Johnny Michael Spann. This request is **DENIED** in all other respects.

***Request 10***

It is further **ORDERED** that defendant's motion to compel production of documents or records referencing individuals in the basement of the QIJ prison with defendant between November 23 and December 1, 2001 (request 10) is **DENIED**, as excessively broad in seeking materials beyond the reach of Rule 16, Fed. R. Crim. P., as well as materials protected from disclosure by Rule 16(a)(2), Fed. R. Crim. P.

It is, however, further **ORDERED** that in the event the government, in the course of its ongoing investigation, discovers or learns of any information relating to individuals in the basement of the QIJ prison that is exculpatory to defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the government must promptly disclose such information to defendant, including the identity of the person or persons from whom such exculpatory information was learned. Should defendant wish to interview or subpoena any such person, the procedures and schedule applicable to Requests 1(b)-(f) shall govern.

***Request 11***

It is further **ORDERED** that defendant's motion to compel production of documents or records referencing individuals identified as having allegedly fought with defendant in or around the district of Takhar or Kunduz, Afghanistan between September 6 and November 18, 2001, (request 11) is **DENIED** as excessively broad in seeking materials beyond the reach of Rule 16, Fed. R. Crim. P., as well as materials protected from disclosure by Rule 16(a)(2), Fed. R. Crim. P.

It is, however, further **ORDERED** that in the event the government, in the course of its

ongoing investigation, discovers or learns of any information that is exculpatory to defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the government must promptly disclose such information to defendant, including the identity of the person or persons disclosing such information. Should defendant wish to interview or subpoena any such person, the procedures and schedule applicable to Requests 1(b)-(f) shall govern.

### ***Request 12***

It is further **ORDERED** that defendant's motion to compel production of records or documents discussing or referring to military and covert air or ground operations that occurred in or near the Takhar district or Kunduz, Afghanistan between September 6 and November 20, 2001 (request 12) is **DENIED**, except that should the government decide to present evidence in its case-in-chief establishing the presence of U.S. personnel in the Takhar and Kunduz area during the relevant time period, the government is **DIRECTED** to disclose to defendant the nature of this evidence in accordance with Rule 16(a)(1)(C), Fed. R. Crim P.

It is, however, further **ORDERED** (as the government correctly concedes is appropriate) that in the event the government intends to present evidence of defendant's own efforts or intent to kill specific individuals or groups of U.S. nationals, the government is **DIRECTED** to disclose promptly to defendant any Rule 16, Fed. R. Crim. P., material relating to such efforts or intent.<sup>22</sup>

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<sup>22</sup> In the course of the hearing, government counsel, in response to the Court's questions, stated that it had no evidence at this time that defendant personally participated in the intentional killing of Johnny Michael Spann. Should the government obtain such evidence, it must promptly make the appropriate disclosures to defendant. Of course, should the government discover information showing defendant played no role in the death of Johnny Michael Spann, this

### ***Request 13***

It is further **ORDERED** that defendant's motion to compel production of materials or documents regarding the alliance between the United States and Northern Alliance forces led by General Dostum in hostilities involving the Taliban in or near Mazar-e-Sharif, the QIJ compound, Kunduz, or the Takhar district of Afghanistan between September 6 and December 1, 2001 (request 13) is **DENIED**, as calling for the production of material that is irrelevant and not within the scope of Rule 16(a)(1)(C), Fed. R. Crim. P.

### ***Request 14***

It is further **ORDERED** that defendant's motion to compel production of material that describes, characterizes, or identifies the HUM and al Farooq training camps (request 14) is **DENIED**, except that the government is **DIRECTED** to disclose any such information that falls within *Brady v. Maryland*, 373 U.S. 83 (1963).

It is further **ORDERED** that in the event the government intends to present evidence concerning these camps in its case-in-chief, the government is **DIRECTED** to disclose to defendant the nature of this evidence in accordance with Rule 16(a)(1)(C), Fed. R. Crim. P.

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information must be promptly disclosed to defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

While the government stated that it currently has no evidence that defendant had killed or intended to kill any specific U.S. national, government counsel made clear the government's position that to prove the offense charged in Count I, it is not necessary to prove that defendant intended to kill or killed specific individuals who were U.S. nationals; rather, it is the government's view, expressed at the hearing, that, with respect to Count I, it is enough to establish that defendant knowingly joined a conspiracy that had as one of its goals the intentional killing of U.S. nationals generally in Afghanistan, Pakistan, the United States, and elsewhere.

***Request 15***

It is further **ORDERED** that defendant's motion to compel production of evidence of defendant's association with HUM (request 15) is **GRANTED** in part and **DENIED** in part. It is **GRANTED** for all material within Rule 16(a)(1)(C), Fed. R. Crim. P., and is **DENIED** in all other respects, including material that falls within Rule 16(a)(2), Fed. R. Crim. P.

***Request 16***

It is further **ORDERED** that defendant's motion to compel production of evidence of defendant's association with al-Qaeda (request 16) is **GRANTED** in part and **DENIED** in part. It is **GRANTED** for all material within Rule 16(a)(1)(C), Fed. R. Crim. P., and is **DENIED** in all other respects, including material that falls within Rule 16(a)(2), Fed. R. Crim. P.

***Request 17***

It is further **ORDERED** that defendant's motion to compel production of any and all written records or documents that specifically discuss, identify, or distinguish any unique characteristics and/or descriptors attributed to members of HUM between May and June 2001 (request 17) is **DENIED**, as the request (1) fails to identify with reasonable specificity the documents subject to disclosure and (2) is excessively broad and calls for the production of documents not subject to disclosure under Rule 16(a)(1)(C), Fed. R. Crim. P.

It is further **ORDERED** that, should the government elect to present evidence in its case-in-chief as to the nature of this organization or its members, including whether this organization or its members participated in terrorist or military training, then the government is **DIRECTED**

to disclose promptly to defendant the nature of this evidence in accordance with Rule 16(a)(1)(C), Fed. R. Crim. P.

***Request 18***

It is further **ORDERED** that defendant's motion to compel production of any and all written records or documents that specifically discuss, identify, or distinguish any unique characteristics and/or descriptors attributed to the HUM organization between May and June 2001 (request 18) is **DENIED**, as the request (1) fails to identify with reasonable specificity the documents subject to disclosure and (2) is excessively broad and calls for the production of documents not subject to disclosure under Rule 16(a)(1)(C), Fed. R. Crim. P.

It is further **ORDERED** that, should the government elect to present evidence in its case-in-chief as to the nature of this organization or its members, including whether this organization or its members participated in terrorist or military training, then the government is **DIRECTED** to disclose promptly to defendant the nature of this evidence in accordance with Rule 16(a)(1)(C), Fed. R. Crim. P.

***Request 19***

It is further **ORDERED** that defendant's motion to compel production of any and all written records or documents that specifically discuss, identify, or distinguish any unique characteristics and/or descriptors attributed to members of al-Qaeda between June and December 2001 (request 19) is **DENIED**, as the request (1) fails to identify with reasonable specificity the documents subject to disclosure and (2) is excessively broad and calls for the production of



documents not subject to disclosure under Rule 16(a)(1)(C), Fed. R. Crim. P.

It is further **ORDERED** that, should the government elect to present evidence in its case-in-chief as to the nature of this organization or its members, including whether this organization or its members participated in terrorist or military training, then the government is **DIRECTED** to disclose promptly to defendant the nature of this evidence in accordance with Rule 16(a)(1)(C), Fed. R. Crim. P.

***Request 20***

It is further **ORDERED** that defendant's motion to compel production of any and all written records or documents that specifically discuss, identify, or distinguish any unique characteristics and/or descriptors attributed to the al-Qaeda organization between May and June 2001 (request 20) is **DENIED**, as the request (1) fails to identify with reasonable specificity the documents subject to disclosure and (2) is excessively broad and calls for the production of documents not subject to disclosure under Rule 16(a)(1)(C), Fed. R. Crim. P.

It is further **ORDERED** that, should the government elect to present evidence in its case-in-chief as to the nature of this organization or its members, including whether this organization or its members participated in terrorist or military training, then the government is **DIRECTED** to disclose promptly to defendant the nature of this evidence in accordance with Rule 16(a)(1)(C), Fed. R. Crim. P.

***Request 21***

It is further **ORDERED** that defendant's motion to compel production of handwritten,

typed, or dictated notes, draft summaries, draft reports, or other written records or documents containing defendant's statements that were ultimately incorporated into final reports (request 21) is **DENIED**, as rough notes and drafts containing information ultimately incorporated into final reports are not subject to disclosure. *See United States v. Coe*, 220 F.3d 573, 583 (7th Cir. 2000) (holding that the government satisfies Rule 16, Fed. R. Crim. P., if it turns over "a written report containing all of the information found in an agent's original notes but does not deliver the notes themselves to the defendant"); *United States v. Muhammad*, 120 F.3d 688, 699 (7th Cir. 1997) (same); *see also United States v. Hinton*, 719 F.2d 711, 722 (4th Cir. 1983) (holding that under the Jencks Act, 18 U.S.C. § 3500, investigative notes of a government agent, made in the course of interviewing witnesses, which were later incorporated into the agent's formal report, need not be produced).

It is, however, further **ORDERED** that the government is **DIRECTED** to take prompt steps to ensure preservation of any currently existing documents responsive to this request and to file a pleading on or before 5:00 p.m., Friday, April 19, 2002 setting forth the steps the government has taken in this regard.

### ***Request 22***

It is further **ORDERED** that defendant's motion to compel production of defendant's statements ostensibly relied on by government officials in making certain comments reported in the press (request 22) is **GRANTED**.<sup>23</sup>

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<sup>23</sup> It is, of course, possible that the press reports may have been mistaken in some way, including that the reported comments were not in fact made, were reported inaccurately, or were not based on any statement made by defendant.

***Request 23***

It is further **ORDERED** that defendant's motion to compel production of evidence of the government's alleged decision to delay delivering letters to defendant indicating that his father had obtained counsel for defendant (request 23) is **TAKEN UNDER ADVISEMENT**.

***Request 24***

It is further **ORDERED** that defendant's motion to compel production of materials regarding conversations about charges or counsel (request 24) is **DENIED** as **MOOT**, the government having represented that it has produced and will continue to produce documents responsive to this request that occurred between December 1 and December 10, 2001 and fall within Rules 16(a)(1)(A) and 16(a)(1)(C), Fed. R. Crim. P., but do not fall within Rule 16(a)(2), Fed. R. Crim. P.

***Request 25***

It is further **ORDERED** that defendant's motion to compel production of any and all written records or documents (including diagrams and maps), papers, photographs, or other tangible objects that discuss or reference the treatment and/or incarceration of defendant while in government custody between December 1, 2001 and January 24, 2002 (request 25) is **DENIED** as **MOOT**, as the government represents that it has already produced all materials responsive to this request for the relevant period, December 1 to December 14, 2001.

It is, however, further **ORDERED** that the government promptly disclose to defendant any additional documents or materials responsive to this request (excepting materials within Rule

16(a)(2), Fed. R. Crim. P.) that subsequently become known and available to government counsel.

***Request 26***

It is further **ORDERED** that defendant's motion to compel production of materials of the physical condition, medical treatment, and mental and emotional condition of defendant (request 26) is **DENIED** as **MOOT**, the government having agreed that it will promptly produce all such records that do not fall within Rule 16(a)(2), Fed. R. Crim. P.

***Request 27***

It is further **ORDERED** that defendant's motion to compel production of photographs and audio/videotape material (request 27) is **DENIED** as **MOOT**, as the government represents that it has produced all material responsive to this request.

The Clerk is directed to send a copy of this Order to all counsel of record.

/S/

April 1, 2002<sup>24</sup>  
Alexandria, Virginia

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T.S. Ellis, III  
United States District Judge

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<sup>24</sup> Because this Order memorializes and elaborates on the rulings issued from the bench in this matter on April 1, 2002, the Order bears that date as the effective date. It should be noted, however, that the Order was signed and entered on April 10, 2002.