

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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UNITED STATES OF AMERICA

- v. -

USAMA BIN LADEN,  
a/k/a "Usamah Bin-Muhammad  
Bin-Ladin,"  
a/k/a "Shaykh Usamah Bin-Ladin,"  
a/k/a "Abu Abdullah,"  
a/k/a "Mujahid Shaykh,"  
a/k/a "Hajj,"  
a/k/a "Abdul Hay,"  
a/k/a "al Qaqa,"  
a/k/a "the Director,"  
a/k/a "the Supervisor,"  
a/k/a "the Contractor,"

: NOLLE PROSEQUI  
: 98 Cr. 1023 (LAK)  
: 98 Cr. 539

Defendant.

JUDICIAL CLERK'S CHAMBERS

1. The filing of this nolle prosequi will dispose of cases 98 Cr. 1023 (LAK) and 98 Cr. 539 with respect to the defendant USAMA BIN LADEN, a/k/a "Usamah Bin-Muhammad Bin-Ladin," a/k/a "Shaykh Usamah Bin-Ladin," a/k/a "Abu Abdullah," a/k/a "Mujahid Shaykh," a/k/a "Hajj," a/k/a "Abdul Hay," a/k/a "al Qaqa," a/k/a "the Director," a/k/a "the Supervisor," a/k/a "the Contractor" ("USAMA BIN LADEN").

2. On June 8, 1998, Indictment 98 Cr. 539 was returned and filed. The Indictment charged USAMA BIN LADEN with conspiring to attack defense utilities of the United States, in

violation of Title 18, United States Code, Section 2155(b).<sup>1</sup>

3. On November 4, 1998 superseding Indictment (S2) 98-1023 was returned and filed. Superseding Indictment (S2) charged USAMA BIN LADEN, and others, with various crimes related to the August 7, 1998 attack on the United States Embassies in Nairobi, Kenya and Dar-es-Salaam, Tanzania, as well as al-Qaeda's worldwide conspiracy to kill Americans. In particular, the superseding Indictment charged USAMA BIN LADEN in 227 counts as follows:

a. Count One: Conspiracy to kill nationals of the United States in violation of Title 18, United States Code, Section 2332(b);

b. Count Two: Destruction of the United States Embassy in Nairobi, Kenya - and as a result of such conduct, directly and proximately causing the deaths of at least 213 persons - in violation of Title 18, United States Code, Sections 844(f)(1), (f)(3) and 2;

c. Count Three: Destruction of the United States Embassy in Dar-es-Salaam, Tanzania - and as a result of such conduct, directly and proximately causing the deaths of at least 11 persons - in violation of Title 18, United States Code, Sections 844(f)(1), (f)(3) and 2;

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<sup>1</sup> Indictment 98 Cr. 539 was initially filed under seal; on or about November 4, 1998, the Indictment was unsealed but was not assigned to a district judge.

d. Counts Four through 216: Murder in the course of the attack on the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 930(c) and 2; and

e. Counts 217 through 227: Murder in the course of the attack on the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 930(c) and 2.

4. On December 16, 1998, superseding Indictment (S3) 98-1023 was returned and filed; on January 6, 1999 superseding Indictment (S4) was returned and filed; and on May 19, 1999 superseding Indictment (S5) was returned and filed. Each of these superseding Indictments charged defendant USAMA BIN LADEN as set forth in Paragraph Three, above.

5. On June 16, 1999, superseding Indictment (S6) 98-1023 was returned and filed. Superseding Indictment (S6) charged USAMA BIN LADEN in 243 counts as follows:

a. Count One: Conspiracy to kill nationals of the United States, in violation of Title 18, United States Code, Section 2332(b);

b. Count Three: Conspiracy to murder United States civilians, officers and employees of the United States, and Internationally Protected Persons, in violation of Title 18, United States Code, Sections 1111, 1114, 1116 and 1117;

c. Count Four: Conspiracy to use weapons of mass destruction against nationals of the United States, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3);

d. Count Five: Conspiracy to damage and destroy property of the United States, in violation Title 18, United States Code, Sections 844(f)(1), (f)(3) and 844(n);

e. Count Six: Conspiracy to attack national defense utilities, in violation of Title 18, United States Code, Sections 2155(a) and (b);

f. Count Seven: Destruction of the United States Embassy in Nairobi, Kenya - and as a result of such conduct, directly and proximately causing the deaths of at least 213 persons - in violation of Title 18, United States Code, Sections 844(f)(1), (f)(3) and 2;

g. Count Eight: Destruction of the United States Embassy in Dar-es-Salaam, Tanzania - and as a result of such conduct, directly and proximately causing the deaths of at least 11 persons - in violation of Title 18, United States Code, Sections 844(f)(1), (f)(3) and 2;

h. Count Nine: Use and attempted use of a weapon of mass destruction against nationals of the United States located at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3);

i. Count Ten: Use and attempted use of a weapon of mass destruction against nationals of the United States located at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3);

j. Counts Eleven through 222: Murder in the course of the attack on the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 930(c), 1111 and 2;

k. Counts 223 through 233: Murder in the course of the attack on the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 930(c), 1111 and 2;

l. Count 234: Murder of persons at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 7(3), 1111, and 2;

m. Count 235: Murder of persons at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 7(3), 1111, and 2;

n. Count 236: Murder and attempted murder of officers and employees of the United States Government at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 1111, 1114 and 2;

o. Count 237: Murder and attempted murder of

officers and employees of the United States Government at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 1111, 1114 and 2;

p. Count 238: Murder and attempted murder of internationally protected persons at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 1111, 1116 and 2;

q. Count 239: Attempted murder of internationally protected persons at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 1111, 1116 and 2;

r. Count 240: Maiming of persons at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 114 and 2;

s. Count 241: Maiming of persons at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 114 and 2;

t. Count 242: Use and carrying of an explosive device during the commission of a felony, in violation of Title 18, United States Code, Sections 844(h)(1), 844(h)(2) and 2;

u. Count 243: Use and carrying of a dangerous device during the bombing of the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 924(c) and 2; and

v. Count 244: Use and carrying of a dangerous device during the bombing of the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 924(c) and 2.

6. On May 8, 2000, Superseding Indictment (S7) 98-1023 was returned and filed. Superseding Indictment (S7) charged USAMA BIN LADEN in 285 counts as follows:

a. Count One: Conspiracy to kill nationals of the United States, in violation of Title 18, United States Code, Section 2332(b);

b. Count Three: Conspiracy to murder officers and employees of the United States and Internationally Protected Persons, in violation of Title 18, United States Code, Sections 1114, 1116 and 1117;

c. Count Four: Conspiracy to use weapons of mass destruction against nationals of the United States, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3);

d. Count Five: Conspiracy to damage and destroy property of the United States, in violation Title 18, United States Code, Section 844(n);

e. Count Six: Conspiracy to attack national defense utilities, in violation of Title 18, United States Code, Sections 2155(a) and (b);

f. Count Seven: Bombing of the United States Embassy in Nairobi, Kenya - and as a result of such conduct, directly and proximately causing the deaths of at least 213 persons - in violation of Title 18, United States Code, Sections 844(f)(1), (f)(3) and 2;

g. Count Eight: Bombing of the United States Embassy in Dar-es-Salaam, Tanzania - and as a result of such conduct, directly and proximately causing the deaths of at least 11 persons - in violation of Title 18, United States Code, Sections 844(f)(1), (f)(3) and 2;

h. Count Nine: Use and attempted use of a weapon of mass destruction against nationals of the United States located at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3);

i. Count Ten: Use and attempted use of a weapon of mass destruction against nationals of the United States located at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3);

j. Counts Eleven through 223: Murder in the course of the attack on the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 930(c), 1111 and 2;



k. Counts 224 through 234: Murder in the course of the attack on the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 930(c), 1111 and 2;

l. Counts 235 through 275: Murder of employees of the United States at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 1111, 1114 and 2;

m. Count 276: Attempted murder of employees of the United States at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 1111, 1114 and 2;

n. Counts 277 and 278: Murder of employees of the United States at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 1111, 1114 and 2;

o. Count 279: Attempted murder of employees of the United States at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 1111, 1114 and 2;

p. Counts 280 and 281: Murder of internationally protected persons at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 1111, 1116 and 2;

q. Count 282: Attempted murder of internationally protected persons at the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 1111, 1116 and 2;

r. Count 283: Attempted murder of internationally protected persons at the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 1111, 1116 and 2;

s. Count 284: Use and carrying of an explosive device during the commission of a felony, in violation of Title 18, United States Code, Sections 844(h)(1), 844(h)(2) and 2;

t. Count 285: Use and carrying of a dangerous device during the bombing of the United States Embassy in Nairobi, Kenya, in violation of Title 18, United States Code, Sections 924(c) and 2; and

u. Count 286: Use and carrying of a dangerous device during the bombing of the United States Embassy in Dar-es-Salaam, Tanzania, in violation of Title 18, United States Code, Sections 924(c) and 2.

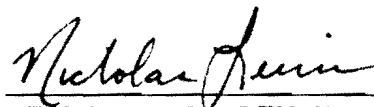
7. On December 20, 2000, superseding Indictment (S9) 98-1023 was returned and filed; and on March 12, 2001, superseding Indictment (S10) was returned and filed. Each of these superseding Indictments charged defendant USAMA BIN LADEN as set forth in Paragraph Six, above.

8. On or about May 1, 2011, while this case was still pending, defendant USAMA BIN LADEN was killed in Abbottabad, Pakistan, in the course of an operation conducted by the United States.<sup>2</sup>

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<sup>2</sup> Attached hereto, as Exhibit A, is a declaration, dated June 16, 2011. The June 16, 2011 declaration sets forth some of the facts underlying the conclusion of the Central Intelligence Agency that USAMA BIN LADEN was killed during the course of that May 1, 2011 raid. In addition to the facts set forth in the accompanying declaration, al Qaeda has itself publicly acknowledged the death of BIN LADEN. Among other pronouncements, a recently released video depicts senior al Qaeda leader and co-defendant Ayman al Zawahiri acknowledging BIN LADEN's death.

9. In light of the foregoing, I recommend that an order of nolle prosequi be filed as to defendant USAMA BIN LADEN.



NICHOLAS J. LEWIN  
Assistant United States Attorney  
(212) 637-2337

Dated: New York, New York  
June 16, 2011

Upon the foregoing recommendation, I hereby direct, with leave of the Court, that an order of nolle prosequi be filed as to defendant USAMA BIN LADEN.



PREET BHARARA  
United States Attorney  
Southern District of New York

Dated: New York, New York  
June 16, 2011

SO ORDERED:



HONORABLE LEWIS A. KAPLAN  
United States District Judge  
Southern District of New York

Dated: New York, New York  
June 17, 2011

Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	<u>DECLARATION</u>
- v. -	:	98 Cr. 1023 (LAK)
	:	98 Cr. 539
USAMA BIN LADEN,	:	
a/k/a "Usamah Bin-Muhammad	:	
Bin-Ladin,"	:	
a/k/a "Shaykh Usamah Bin-Ladin,"	:	
a/k/a "Abu Abdullah,"	:	
a/k/a "Mujahid Shaykh,"	:	
a/k/a "Hajj,"	:	
a/k/a "Abdul Hay,"	:	
a/k/a "al Qaqa,"	:	
a/k/a "the Director,"	:	
a/k/a "the Supervisor,"	:	
a/k/a "the Contractor,"	:	

Defendant.

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GEORGE Z. TOSCAS hereby declares, under penalty of perjury and pursuant to Title 28, United States Code, Section 1746, as follows:

1. I am the Deputy Assistant Attorney General for Counterterrorism and Counterespionage in the National Security Division of the United States Department of Justice. I have served in the Department of Justice since October 1993, and have exercised the functions of my current position since March 2009. As the Deputy Assistant Attorney General, I am responsible for, among other things, the headquarters-level management, supervision, and coordination of all federal counterterrorism investigations, prosecutions, and policy matters, including

liaison with the U.S. intelligence community.

2. I am familiar with the information contained in this Declaration based on my review of documents and other materials, and conversations and other communications that I have had with officials of the Central Intelligence Agency ("CIA") and the Department of Defense ("DoD").

3. I submit this Declaration in connection with the Government's request for an order of nolle prosequi as to defendant USAMA BIN LADEN, a/k/a "Usamah Bin-Muhammad Bin-Ladin," a/k/a "Shaykh Usamah Bin-Ladin," a/k/a "Abu Abdullah," a/k/a "Mujahid Shaykh," a/k/a "Hajj," a/k/a "Abdul Hay," a/k/a "al Qaqa," a/k/a "the Director," a/k/a "the Supervisor," a/k/a "the Contractor" ("USAMA BIN LADEN" or "BIN LADEN").

4. I set forth herein facts relevant to the conclusion of the CIA that USAMA BIN LADEN was killed during a raid conducted on a compound in Abbottabad, Pakistan on May 1, 2011 ("Abbottabad Raid").<sup>1</sup>

5. Shortly after the Abbottabad Raid, U.S. forces collected DNA samples from the body of the deceased individual assessed to be BIN LADEN. Those DNA samples were then transported from Abbottabad, Pakistan to U.S. military facilities in Afghanistan, where they were immediately provided to DoD and

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<sup>1</sup> The raid occurred on May 2, 2011, in Pakistan. Due to the difference in time zones, it was May 1, 2011, in the United States.

CIA personnel for processing and comparison. CIA and DoD conducted DNA tests, during which the sample from the Abbottabad Raid was compared with a comprehensive DNA profile derived from DNA collected from multiple members of BIN LADEN's family. These tests confirmed that the sample from the Abbottabad Raid genetically matched the derived comprehensive DNA profile for USAMA BIN LADEN. The possibility of a mistaken identification is approximately one in 11.8 quadrillion.

6. In addition, facial recognition analysis was conducted. Facial recognition technology compares unique facial features, such as bone structure, age spots, hair growth patterns, and the size and shape of the eyes, ears, and nose, as well as the relative positioning of facial features. The CIA compared historic photographs of BIN LADEN with photos of the deceased individual assessed to be BIN LADEN and concluded with high confidence that the deceased individual was BIN LADEN.

7. In the immediate aftermath of the Abbottabad Raid, one of BIN LADEN's wives, who was co-located with him on the 3rd floor in the main compound during the Abbottabad Raid, confirmed to U.S. forces that BIN LADEN lived there. She further confirmed that the deceased individual assessed to be BIN LADEN was, in fact, BIN LADEN.

8. A significant quantity of al-Qa'ida-related material was recovered during the Abbottabad Raid. This material



included, for example, correspondence between USAMA BIN LADEN and other senior al-Qa'ida leaders that concerns a range of al-Qa'ida issues, as well as at least one previously unreleased video depicting BIN LADEN, which video appears to have been filmed in the compound that was the target of the Abbottabad Raid.

Dated: Washington, D.C.  
June 16, 2011



~~GEORGE Z. TOSCAS~~  
GEORGE Z. TOSCAS  
Deputy Assistant Attorney General  
National Security Division  
United States Department of Justice