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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

UNITED STATES OF AMERICA

Case No. 10-cr-475-KI

v.

MOHAMED OSMAN MOHAMUD,

Defendant.

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR ORDER
DIRECTING THE GOVERNMENT TO
CEASE AND DESIST FROM
INAPPROPRIATE PRETRIAL
COMMENT**

The United States of America, by and through Dwight C. Holton, United States Attorney for the District of Oregon, and Ethan D. Knight and Jeffrey S. Sweet, Assistant United States Attorneys, hereby responds to defendant Mohamed Osman Mohamud's Motion for Order Directing the Government to Cease and Desist from Making Inappropriate Pretrial Comment (Defendant's Motion). Defendant's Motion purports to be in response to public comments made by Attorney General Eric Holder on November 29, 2010, and December 10, 2010. Defendant

argues that these comments were inappropriate and unfairly prejudicial. The Attorney General's comments were entirely appropriate and resulted in no unfair prejudice to defendant. Further, an order as requested by defendant would serve no legitimate purpose. Accordingly, Defendant's Motion should be denied.

I. Background

On November 26, 2010, defendant was arrested and charged by criminal complaint with one count of Attempted Use of a Weapon of Mass Destruction. Defendant was arrested after he attempted to detonate what he believed to be a vehicle bomb at Portland's annual Christmas tree lighting ceremony at Portland's Pioneer Courthouse Square. The timing of defendant's arrest was dictated by a single factor: his selection of the November 26, 2010 tree lighting ceremony as a target for an attack. Because defendant was arrested immediately after he attempted to detonate the (inert) bomb on a Friday night, the government was required to file a complaint prior to his initial appearance on Monday, November 29.

Before his initial appearance, a grand jury indicted defendant with a single count of Attempted Use of a Weapon of Mass Destruction, thus eliminating the need for a preliminary hearing.¹ Despite the perfunctory nature of the initial appearance, counsel for defendant raised the issue of entrapment at this hearing. The defense also issued a "Media Statement" on November 29, 2010, which stated, *inter alia*, "The information released by the government raises significant concerns about the government['s] manufacturing crime – or entrapment. The

¹ Defendant appears to suggest there was something improper about the timing of the indictment. To the contrary, the government often chooses to proceed by indictment before a preliminary hearing is required.

affidavit reveals that government agents suggested key actions to this teenager, spent thousands of dollars on him, specified components, drove Mr. Mohamud around, and were instrumental in setting up Friday's events." (Media Statement issued by Federal Public Defender, November 29, 2010, at 1, attached as Exhibit D to Defendant's Motion.) Following these statements, media coverage of defendant's case continued, with an increasing emphasis on the entrapment defense raised by defendant's attorneys.

The Attorney General's first public statements about the case were made during a press conference held in Washington, D.C. on November 29, 2010, at approximately 1:00 p.m. EST. (See Exhibit 1.) The subject of the press conference was *Operation in Our Sites II*, an intellectual property rights enforcement action, not *United States v. Mohamed Mohamud* or anything related to this case. Following his prepared remarks and a number of other questions, the Attorney General was asked a few questions about this case. First, he was asked if the case was "a serious matter." He responded that it was, noting:

We were able to thwart somebody who clearly had the intention by his own words and by his actions to harm a great many people, to do real serious damage to property, to put at risk the lives of American citizens, including children. This was an individual who was given a number of opportunities to desist from his course of action, but who at every turn decided that he wanted to continue. And but for the interaction that he had with the FBI, he might have come in contact with somebody who in fact would have made his plans tragically real.

Next, as a final question to the press conference, the Attorney General was asked the following question:

Attorney General, on the Portland arrest, some critics say that this is another case of entrapment by the FBI in these matters. And I'm just wondering if you can address that and also discuss why these sting operations are so important at this time. . . . [T]his is, I think . . . about the fifth or sixth case – sting in the last year.

Attorney General Holder responded as follows:

This is an investigation I have been familiar with throughout the course – throughout its course. And I am confident there is no entrapment here and no entrapment claim will prove to be successful. There were, as I said, a number of opportunities that the subject in this matter, the defendant in this matter, was given to retreat, to take a different path. He chose at every step to continue.

Some of the things that were contained in the court filings that we made indicate, I think, his state of mind, where he was told that children, children, were potentially going to be harmed by what he planned to do in blowing up the Christmas tree. And you saw his response.

These investigations are extremely important. It is part of a forward-leaning way in which the Justice Department, the FBI, our law enforcement partners at the state and local level are trying to find people who are bound and determined to harm Americans and American interests around the world.

The Attorney General was responding to a reporter's question about the case and the issue of sting operations generally and did not express an opinion regarding defendant's guilt.²

The December 10, 2010 statement cited in Defendant's Motion was made during a speech the Attorney General gave in California that addressed relations between law enforcement and the Muslim community. (See Exhibit 2.) About halfway through his prepared remarks, the Attorney General made some comments about this case, and about the use of sting operations generally:

Some have expressed concerns about the recent charges brought against Mohamed Osman Mohamud in Portland, Oregon, for his alleged involvement in planning – and attempting to execute – a terror attack during a Christmas Tree-lighting celebration.

² Contrary to defendant's assertion (Def.'s Mot. 6), the Attorney General's statement regarding his familiarity with defendant's case does not suggest "special knowledge" of the case beyond that which is publicly available. Rather, it simply underscores the obvious fact that he was fully informed about the case.

Mr. Mohamud's arrest was the result of a successful undercover operation – a critical and frequently used law enforcement tool that has helped identify and defuse public safety threats such as those posed by potential terrorists, drug dealers and child pornographers for decades.

These types of operations have proven to be an essential law enforcement tool in uncovering and preventing potential terror attacks.

Since 2001, more than 400 individuals have been convicted of terrorism and terrorism-related offenses in federal courts. And in those terrorism cases where undercover sting operations have been used, there is a lengthy record of convictions.

...

I make no apologies for how the FBI agents handled their work in executing the operation that led to Mr. Mohamud's arrest. Their efforts helped to identify a person who repeatedly expressed a desire and intention to kill innocent Americans. As you may have read – and as the affidavit alleges – Mr. Mohamud chose the target location months in advance, provided FBI operatives with bomb components and detailed operational instructions, and repeatedly refused to change course when he was reminded that a large crowd – including children – would be in harm's way.

Because of law enforcement's outstanding work, Mr. Mohamud is no longer plotting attacks. He is now behind bars. And he will be brought to justice. But you have my word that the Justice Department will – just as vigorously – continue to pursue anyone who would target Muslims, or their houses of worship.

Those who characterize the FBI's activities in this case as "entrapment" simply do not have their facts straight - or do not have a full understanding of the law.

Seen in context, the Attorney General's comments were, again, made in response to concerns raised regarding undercover sting operations—in this case and in general. The Attorney General referred only to the defendant's "alleged involvement" in the plot and to allegations in the complaint and did not state an opinion regarding defendant's guilt. The Attorney General's remarks were responsive to claims of government entrapment in defendant's case and in other cases, and were made in the broader context of a speech addressing law enforcement relations with the Muslim community. As the country's chief law enforcement official, the Attorney

General has the responsibility, and the obligation, to address criticism of law enforcement actions, such as undercover sting operations, and to explain why such actions are appropriate and necessary.

Based on the statements described above, defendant now seeks an Order from this Court prohibiting the Attorney General from making “inappropriate pretrial comments.” Defendant’s argument is predicated on the assumption that the Attorney General’s comments were, in fact, somehow inappropriate. They were not. As the chief law enforcement official for the United States government, it is entirely appropriate for the Attorney General to address issues of public concern in pending federal cases.

II. The Attorney General’s Statements Were Appropriate.

Defendant claims that Attorney General Holder’s comments did not comply with restrictions placed on government lawyers by the Code of Federal Regulations. (Def.’s Mot. 4-5.) Defendant’s claim is wholly without merit.

Section 50.2 of Chapter 28 of the Code of Federal Regulations sets forth guidelines for Department of Justice personnel who speak to the news media about pending cases. The provisions of 28 C.F.R. § 50.2 are not binding or mandatory and, most importantly, are designed to accommodate the important public interest of explaining the actions of the Department of Justice and furthering the public understanding of law enforcement activities. As 28 C.F.R. § 50.2(a)(2) provides: “The task of striking a fair balance between the protection of individuals accused of crime . . . and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law[.]” In keeping with this broad purpose, 28 C.F.R.

§ 50.2(b)(9) sets forth circumstances under which information may be released to the media that would not have a prejudicial effect: “If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.”

The Attorney General’s comments are entirely consistent with 28 C.F.R. § 50.2. As seen in the context of his remarks as a whole, it is clear that the Attorney General’s remarks struck a proper balance between defendant’s due process rights and the need to inform the public on law enforcement actions. The need to inform the public was especially true with respect to sting operations, which although not new have garnered a lot of publicity in the context of this case and others like it.

III. Defendant Has Suffered No Unfair Prejudice.

Defendant claims that the Attorney General’s comments—and pretrial publicity in general—have resulted in unfair prejudice. (Def.’s Mot. 7). Defendant has failed to identify, however, how the Attorney General’s limited comments, or the media reporting of these comments, likely would influence the outcome of his trial or violate his due process rights.

Juror (or potential juror) exposure to news accounts of the crime does not presumptively deny a defendant of due process. *Skilling v. United States*, 130 S. Ct. 2896, 2914 (2010). Indeed, “[p]rominence does not necessarily produce prejudice, and juror *impartiality* . . . does not require *ignorance*.” *Id.* at 2914-15 (citation omitted). As the Ninth Circuit has stated, “We rarely find presumed prejudice because ‘saturation’ is ‘reserved for an extreme situation.’” *Casey v. Moore*, 386 F.3d 896, 906 (9th Cir. 2004) (quoting *Harris v. Pulley*, 885 F.2d 1354,

1361 (9th Cir. 1988)). While a defendant's right to a fair trial is without question, the government also is entitled to a fair trial in a criminal case, *United States v. Jones*, 608 F.2d 386, 390 (9th Cir. 1979); see *Levine v. U. S. Dist. Court for the Cent. Dist. of Cal.*, 764 F.2d 590, 596-97 (9th Cir. 1985) ("We must consider the fundamental interest of the government and the public in insuring the integrity of the judicial process.")

Defendant's reliance on *Sheppard v. Maxwell*, 384 U.S. 333 (1966) (Def.'s Mot. 4), is misplaced. In *Sheppard*, which has been limited by more recent Supreme Court cases such as *Skilling* and *Murphy v. Florida*, 421 U.S. 794 (1975) (see *Crater v. Galaza*, 491 F.3d 1119, 1134-35 (9th Cir. 2007)), the Supreme Court held that the defendant did not receive a fair trial due to "massive, pervasive and prejudicial publicity that attended his prosecution." *Sheppard*, 384 U.S. at 335. The *Sheppard* decision was based not only on prejudicial publicity but also on disruptive influences in the courtroom, including a press table erected inside the bar within a few feet of the jury box and counsel table. *Id.* at 354-55, 363. Indeed, the Court found that "bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom, hounding most of the participants in the trial, especially Sheppard." *Id.* at 355.

The facts in *Sheppard* illustrate the relatively innocuous nature of the Attorney General's comments. Attorney General Holder's limited comments were not made in Oregon and were made long before any trial in this matter (which is unlikely to commence before 2012). The remarks were made in the broader context of extensive media reporting and commentary regarding defendant's case. Indeed, the comments were a legitimate response to concerns expressed regarding undercover sting operations and the potential for entrapment and are not

such that they may reasonably be expected to influence the outcome of a trial. The Attorney General's comments were appropriate and did not violate the defendant's due process rights.³

Moreover, defendant has cited no precedent for the type of order he seeks, and we have found none. Defendant's real complaint is with the pretrial publicity, but this publicity is mainly the result of the crime with which he has been charged. *See Crater*, 491 F.3d at 1134 ("The state court aptly remarked that the coverage of Crater's case 'was [no] more sensational than the very nature of the crime itself would require.'").

Attorneys for the government will continue to adhere to the standards of professional responsibility when discussing the case and will continue to prosecute this case in this court, and not in the media.

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³ The defense argues that the "media echo-chamber -- exemplified by the *Oregonian* editorial -- is the natural consequence of [the Attorney General's] statements, creating bias and prejudgment in the jury pool." (Def.'s Mot. 7.) If defendant indeed believes this to be the case, the authority exists for him to seek a change of venue; if such a motion is made, the government will respond appropriately.

IV. Conclusion

For the reasons stated above, the government respectfully requests that Defendant's Motion be denied.

Dated this 10th day of January 2011.

Respectfully submitted,

DWIGHT C. HOLTON
United States Attorney

/s/ *Ethan D. Knight*
ETHAN D. KNIGHT
JEFFREY S. SWEET
Assistant United States Attorneys

IN THE MATTER OF:)
)
PEN & PAD BRIEFING WITH)
ATTORNEY GENERAL ERIC)
HOLDER: INTELLECTUAL)
PROPERTY ENFORCEMENT ACTION)

Pages: 1 through 26
Place: Washington, D.C.
Date: November 29, 2010

UNITED STATES DEPARTMENT OF JUSTICE

IN THE MATTER OF:)
)
PEN & PAD BRIEFING WITH)
ATTORNEY GENERAL ERIC)
HOLDER: INTELLECTUAL)
PROPERTY ENFORCEMENT ACTION)

Seventh Floor Conference Room
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C.

Monday,
November 29, 2010

The parties met, pursuant to the notice, at
10:09 a.m.

BEFORE: ATTORNEY GENERAL ERIC HOLDER

SPEAKERS:

JOHN MORTON, Director
U.S. Department of Homeland Security
Immigration and Customs Enforcement

RONALD C. MACHEN, JR., Esquire
United States Attorney
District of Columbia

1 apparel, sunglasses and illegal copies of DVDs, music
2 and software.

3 Now, during the course of this operation
4 federal law enforcement agents made undercover
5 purchases from a variety of online retailers suspected
6 of selling counterfeit goods. For items confirmed as
7 counterfeit or infringing, seizure orders for the
8 domain names of the websites that sold these goods
9 were obtained from United States Magistrate Judges.

10 As of today, what is known as Cyber Monday
11 and billed as the busiest online shopping day of the
12 year, anyone attempting to access one of these
13 websites using its domain name will no longer be able
14 to make a purchase. Instead, these online shoppers
15 will find a banner notifying them that the website's
16 domain name has been seized by federal authorities.

17 With today's seizures, we are disrupting the
18 sale of thousands of counterfeit items. We are
19 cutting off funds to those looking to profit from the
20 sale of illegal goods and exploit the ingenuity of
21 others. And as the holiday shopping season gets
22 underway, we are also reminding consumers to exercise
23 caution when looking for deals and discounts online.
24 To put it simply, if a deal seems too good to be true,
25 it probably is.

1 The Justice Department's commitment to IP
2 enforcement has never been stronger. This work is a
3 top priority, and through the leadership of the
4 Department's Criminal Division and our United States
5 Attorney's Offices and with the help of ICE, the FBI
6 and many other agency and law enforcement partners, we
7 will continue our efforts to protect intellectual
8 property rights and to disrupt markets for counterfeit
9 or infringing goods.

10 For far too long the theft of innovative
11 ideas or the sale of counterfeit, defective and
12 dangerous goods has been perceived as business as
13 usual. Not anymore. IP crimes threaten economic
14 opportunities and financial stability. They destroy
15 jobs. They suppress innovation, and they can
16 jeopardize the health and safety of the men and women
17 we are sworn to protect.

18 Make no mistake. Intellectual property
19 crimes are not victimless and they are not risk free.
20 Today's domain name seizures build on a number of
21 critical steps that we have taken recently to ensure
22 the protection of intellectual property rights.
23 During Operating In Our Sites I over the summer,
24 authorities executed seizure warrants against the
25 domain names of several websites offering illegal

1 copies of first run movies.

2 This past February, I re-established the
3 Department's Intellectual Property Task Force, which
4 is strengthening our efforts to investigate and to
5 prosecute IP crimes. Just last month I traveled to
6 Hong Kong and to Beijing to meet with our law
7 enforcement counterparts from China and around the
8 world to ask them to do more to fight these crimes.

9 With the task force and other initiatives,
10 we have improved coordination with our partners in
11 federal law enforcement. In particular, I want to
12 note the great work being done through the National
13 Intellectual Property Rights Coordination Center,
14 which is led by our colleagues in ICE and brings
15 together investigators and analysts from a number of
16 federal agencies. Without these partnerships, today's
17 success would not have been possible.

18 I'm especially grateful for the contribution
19 of the Criminal Division's Computer Crime and
20 Intellectual Property Section, as well as our United
21 States Attorney's Offices in the District of Columbia,
22 the Southern District of New York, the Middle District
23 of Florida, the District of Colorado, the Southern
24 District of Texas, the Central District of California,
25 the Northern District of Ohio, the District of New

1 Jersey and the Western District of Washington.

2 Everyone who has contributed to today's
3 operation -- the many agents, investigators, attorneys
4 and support staff -- has worked long hours to protect
5 consumers and intellectual property rights. I thank
6 them all for their outstanding work.

7 And although today's progress is an
8 important step forward, we cannot be satisfied and we
9 must not become complacent. Our fight to combat
10 intellectual property crime continues. In the
11 critical days ahead, I encourage consumers to be
12 vigilant and to share tips and to share concerns with
13 us, and I urge all of our law enforcement partners to
14 keep up the great work.

15 Now, with your help I believe we can turn
16 the page on a problem that threatens consumer safety
17 and our nation's economic security. Thank you.

18 I would now like to turn it over to Director
19 John Morton.

20 MR. MORTON: Well, thank you, Mr. Attorney
21 General. I am indeed John Morton, the Director of
22 Immigration and Customs Enforcement. As the Attorney
23 General just said, today is Cyber Monday, one of the
24 busiest internet shopping days of the year. According
25 to the National Retail Federation, nearly 100 million

1 people shopped on this day last year, and we expect
2 similar numbers this year.

3 Most of this commerce is legitimate. Real
4 goods. Real vendors. Real presents for the Christmas
5 tree. Parts of this commerce are also a fraud. Fake
6 goods. Fake vendors. Shoddy presents unlikely to
7 bring any holiday cheer. Counterfeiters are prowling
8 the back alleys of the internet, masquerading, duping
9 and stealing. They are masquerading as legitimate
10 retailers, duping shoppers and stealing from real
11 businesses and their workers.

12 Today we turn the tables on these internet
13 thieves by seizing the domain names of 77 websites
14 engaged in the illegal sale of counterfeit goods
15 produced and shipped primarily from and in China. We
16 have also seized an additional five domain names
17 belonging to sites involved in the illegal
18 infringement of copyrighted music, movies, television
19 shows and software. All 82 domain names are now in
20 the possession of the government and bear a DOJ ICE
21 seizure banner.

22 Consumer protection was the driving force
23 behind these seizures. Many of the sites selling
24 counterfeit goods were outright frauds designed to
25 dupe the online shopper into believing that the site

1 was authorized and that the goods being sold were
2 real.

3 Let me describe a few of these sites to you
4 to give you a flavor. Screen shots of these websites
5 are in the materials that have been distributed to you
6 this morning. realtimberland.com purported to sell
7 genuine Timberland products and apparel. There was
8 nothing real or Timberland about this site. Rather,
9 it was an illegal internet retailer of counterfeit
10 Timberland products.

11 The Louis Vuitton Outlet website claimed to
12 be selling handmade Louis Vuitton products that were,
13 and I quote "100 percent real and genuine." There was
14 nothing real, genuine or Louis Vuitton about this
15 website. It had no connection to Louis Vuitton and
16 sold counterfeits made in China.

17 The Coach store at coachoutletfactory.com
18 purported to be a genuine retailer of Coach leather
19 products. This site had nothing to do with Coach, a
20 company headquartered in Manhattan that, by the way,
21 employs 10,000 Americans. The goods available on this
22 website were out and out counterfeits, examples of
23 which we have displayed here in the back today.

24 These internet sites were scams, pure and
25 simple. Advertising the genuine. Selling the

1 fraudulent. Now, some of you might ask why should we
2 care? Here's why. Counterfeiting and copyright theft
3 hurts America -- our workers, our businesses, the
4 safety of our people. They directly undermine our
5 innovation. They directly undermine our economy.

6 Think about it. Who benefits from these
7 websites and the sale of their counterfeit products?
8 Criminals. That's who. This is transnational crime
9 involving fake websites, false advertising and illegal
10 foreign factories.

11 Are the criminals behind these websites
12 hiring American workers? Paying federal and state
13 taxes? Providing pensions and health care? Investing
14 in new products? No. They make money stealing other
15 people's work and innovation without any care for the
16 consequences.

17 Counterfeiting also threatens America's
18 health and safety. Counterfeiters, for example,
19 produce fake medicine, engine parts, toothpaste,
20 computer circuitboards and airbags. Friends, no good
21 comes of counterfeit heart medicine or counterfeit
22 toothpaste.

23 Today's 82 seizures represent the second
24 phase of ICE's Operation In Our Sites, a long-term
25 effort to combat intellectual property theft over the

1 internet. Working with our partners at Customs and
2 Border Protection, the FBI, the U.S. Postal Inspection
3 Service and the Department of Justice's Computer Crime
4 and Intellectual Property Section, our agents made
5 undercover purchases from the websites.

6 And the merchandise was verified as either
7 counterfeit or copyrighted by the rights holders, all
8 the way from fake Oakley glasses, Rolex watches, UGG
9 boots, to phony iPods, Titleist golf clubs and even a
10 Disney 100 Years of Magic DVD box set, a set never
11 produced or released by the Walt Disney Corporation, a
12 corporation that has not been in business for 100
13 years.

14 Have we rid the internet of these websites?
15 No. There are others. There will be more. Will many
16 of these sites reappear under a different domain name?
17 Yes, they will. But I can tell you this. We are not
18 going away. If we can seize websites, we will. If we
19 can find the operators, we will. If we can arrest and
20 prosecute counterfeiters and copyright violators, we
21 will. This is a long fight, but we at ICE and DOJ are
22 committed to it period.

23 Make no mistake about it. We are in the
24 throes of a heated and pitched battle. This isn't a
25 game. It's not a side show. American business,

1 American labor, American innovation are under assault
2 from copyrighters and counterfeiters on a grand scale.
3 We either wage this fight here and now or we give in
4 to the steady loss of American ingenuity and know-how.

5 In the first round of Operation In Our Sites
6 last June, ICE and DOJ seized the domain names of
7 eight websites engaged in illegal downloads of movies,
8 television shows and software. Of the illegal
9 entertainment sites we seized that first round, most
10 stayed down, but two reappeared. One of those two was
11 tvshack.net, which reappeared as tvshack.cc a day
12 later.

13 I'm pleased to announce that we have now
14 seized tvshack.cc, and in conjunction with the
15 Southern District of New York and the City of London
16 police we have executed a search warrant on a
17 residence in the U.K. related to the website earlier
18 this morning. We are not going away.

19 I want to give particular thanks to Attorney
20 General Holder for the emphasis he has personally
21 placed on intellectual property enforcement. The
22 Attorney General has made IP enforcement a priority
23 for the Department of Justice and made large scale
24 operations like this one possible.

25 ICE's intellectual property enforcement

1 efforts are at an all-time high, over 1,000 cases last
2 fiscal year, and we are conducting our work in new and
3 innovative ways. None of this would be possible,
4 however, if we didn't have the Attorney General and
5 the Department of Justice's full and unqualified
6 support, which we have.

7 I also want to make clear that this
8 particular operation has been a true partnership
9 between ICE and DOJ, and I want to note the tremendous
10 support that ICE has received from our following
11 partners:

12 First, from Lenny Brewer, the Assistant
13 Attorney General for the Criminal Division, and his
14 teams at the Computer Crimes and Intellectual Property
15 Section and the Asset Forfeiture and Money Laundering
16 Section leading the way.

17 From the United States Attorney's Offices,
18 who obtain the seizure orders necessary for the
19 seizure of these domain names. The Attorney General
20 listed all of the United States Attorney's Offices
21 that participated. I want to highlight two. One to
22 my left, Ron Machen, who is the U.S. Attorney for the
23 District of Columbia, and also Preet Bharara in the
24 Southern District of New York. The Southern District
25 of New York has been a leader in both Operation In Our

1 Sites I and II.

2 I also want to acknowledge the assistance
3 we've had from the FBI, CBP and the United States
4 Postal Inspection Service, personnel at the IPR Center
5 and, finally, I want to give my deep appreciation and
6 thanks to our agents at Homeland Security
7 Investigations within ICE. None of this would have
8 been possible without their assistance and work.
9 Thank you.

10 MR. MACHEN: Good morning, everybody. My
11 name is Ron Machen. I'm the U.S. Attorney for the
12 District of Columbia. I want to thank Attorney
13 General Holder and Director Morton for their
14 outstanding leadership in protecting the innovation
15 and ingenuity of the American people from
16 counterfeiters and copyright pirates.

17 As the holiday shopping season gets
18 underway, hundreds of millions of Americans will go
19 online to buy gifts for their family and their
20 friends. Shopping online is incredibly convenient,
21 but the results of this operation demonstrate that
22 American consumers must think twice before they buy
23 knockoff goods or bootleg DVDs online.

24 The counterfeit goods and pirated DVDs
25 available for sale on the internet are often of poor

1 quality, material and craftsmanship. When people
2 purchase these items, they are supporting and
3 perpetuating this illegal activity.

4 Americans should stay clear of counterfeits
5 because they threaten the livelihoods of American
6 businesses and workers. The criminals who sell cheap
7 imitations of legitimate products are estimated to
8 cost our economy billions of dollars every year in
9 revenues and taxes, and that translates into lost jobs
10 for ordinary working people and lost taxes that could
11 be used to support our schools, our hospitals and our
12 police.

13 This operation is a testament to the
14 aggressive, coordinated efforts we are taking to fight
15 those who promote counterfeiting and piracy. As part
16 of the operation announced today, we at the U.S.
17 Attorney's Office for the District of Columbia were
18 responsible for seizing 17 of the domain names. This
19 accounted for roughly 20 percent of the total number
20 of sites taken down by this operation.

21 Over the last two months, ICE special
22 agents, working with our prosecutors here in the
23 District of Columbia, were able to go online and
24 purchase phony versions of almost anything you might
25 put on your holiday shopping list -- jerseys of

1 professional ballplayers, Disney movies, golf clubs,
2 designer handbags, watches and Air Jordan sneakers.

3 The seizures of the domain names of websites
4 that facilitate these transactions are an important
5 step in combating the illegal sale and distribution of
6 others' ideas and products over the internet, which
7 deprive legitimate vendors of their rightful earnings.

8 I look forward to working with our law
9 enforcement partners here and abroad to continue this
10 battle to protect consumers and jobs. Thank you.

11 MALE VOICE: Were any people arrested in
12 this?

13 MR. MORTON: No. The majority of these
14 websites were in China. Most of the products being
15 produced were produced in China and being shipped to
16 the United States.

17 MALE VOICE: Mr. Morton, you mentioned the
18 fact that some of these sites come back to life. I'm
19 wondering if you could go into a little more detail.

20 What just prevents them from going off
21 tomorrow or later today to create a new site, sell the
22 same material for the link, et cetera?

23 MR. MORTON: A few points. First of all,
24 some of these sites will reappear.

25 Three points to remember. We are taking

1 these sites out in the middle of the shopping season,
2 so even though they can reappear they're going to have
3 to reappear under a different domain name so it's
4 going to take quite some time to generate the traffic
5 that they had before we seized the site.

6 In addition, as we've shown, we're not going
7 away. All of these sites now know that we know what
8 they're doing. We are engaged in important consumer
9 protection. People know that these sites are
10 fraudulent sites. They're scams. They shouldn't go
11 to them.

12 We may be in the business of seizing more
13 domain names in the future. In many instances the
14 investigation continues.

15 ATTORNEY GENERAL HOLDER: One other thing I
16 would add to this is there's an educational component
17 to this announcement today as well, and that is the
18 consumers should be wary of websites that promise
19 things at prices that are truly unbelievable.

20 As I said in my remarks, if you think the
21 deal is too good to be true, it probably is. I would
22 hope that people would take heed of what we have done
23 here today and think about that as they go online to
24 make purchases during the holiday season.

25 FEMALE VOICE: Attorney General, if I could

1 just switch gears for a second and talk about the
2 WikiLeaks?

3 Why hasn't the Justice Department yet been
4 able to make a case for prosecution against the
5 founder of WikiLeaks or the release or possession of
6 classified information, given the very strong
7 statements from the Administration that the release of
8 the material has caused damage to national security?

9 ATTORNEY GENERAL HOLDER: Along with other
10 members of the Administration, I condemn the action
11 that WikiLeaks has taken. It puts at risk our
12 national security, but in a more concrete way it puts
13 at risk individuals who are serving this country in a
14 variety of capacities, either as diplomats, as
15 intelligence assets. It puts at risk the
16 relationships that we have with important allies
17 around the world.

18 We have an active, ongoing criminal
19 investigation with regard to this matter. We are not
20 in the position as yet to announce the result of that
21 investigation, but the investigation is ongoing.

22 MALE VOICE: Mr. Attorney General, does
23 WikiLeaks deserve to be treated as a news
24 organization? Does it deserve the protection that
25 normally is afforded to news gathering organizations?

1 ATTORNEY GENERAL HOLDER: All I would say is
2 that I condemn the action that it has taken, and I
3 think one can compare the way in which various news
4 organizations that have been involved in this have
5 acted, as opposed to the way in which WikiLeaks has.
6 I'll let other people decide whether it should be or
7 not.

8 I will indicate and want to emphasize that
9 there is an active, ongoing criminal investigation
10 that we are conducting with the Department of Defense.

11 FEMALE VOICE: With respect to the alleged
12 bombing situation in Portland, is this a serious
13 matter?

14 ATTORNEY GENERAL HOLDER: I'm sorry. Is it
15 a?

16 FEMALE VOICE: A serious matter. The
17 bombing situation in Portland.

18 ATTORNEY GENERAL HOLDER: It's a very
19 serious matter. We were able to thwart somebody who
20 clearly had the intention by his own words and by his
21 actions to harm a great many people, to do real
22 serious damage to property, to put at risk the lives
23 of American citizens, including children.

24 This was an individual who was given a
25 number of opportunities to desist from his course of

1 action, but who at every turn decided that he wanted
2 to continue, and but for the interaction that he had
3 with the FBI he might have come in contact with
4 somebody who in fact would have made his plans
5 tragically real.

6 MALE VOICE: Mr. Attorney General? Two
7 questions on the same topic. There was a fire at the
8 mosque that the suspect attended. Is that something
9 that DOJ is looking at in terms of a possible hate
10 crime?

11 And then on a separate matter, you said
12 recently that the decision in the 9-11 case was coming
13 "soon". Since then we've had the decision in the
14 Gilani case. I'm wondering if that changes your
15 assessment that the decision in the 9-11 case is
16 coming soon?

17 ATTORNEY GENERAL HOLDER: With regard to the
18 first thing, the FBI has issued a statement indicating
19 that there was a reward for information with to the
20 attack on the mosque.

21 It is something that we are looking at,
22 something that we are investigating and something that
23 if related to this matter or in some way is related to
24 an attack on Islam, on the mosque, is something that I
25 personally decry. It is not something that is

1 consistent with who we are as Americans.

2 With regard to your second question, the
3 Gilani case has had no impact on our process that is
4 ongoing with regard to where the KSM trial will be
5 held. That is something that continues in an
6 interagency effort.

7 MALE VOICE: So there will be a decision
8 soon?

9 ATTORNEY GENERAL HOLDER: The process is one
10 that is ongoing, and it is on the same timeline that
11 it was before.

12 MALE VOICE: I want to ask about another
13 investigation, the insider trading investigation going
14 on on Wall Street right now.

15 Can you tell us where that stands, how far
16 along you are in that, and are you targeting hedge
17 fund and soft dollars in that investigation?

18 ATTORNEY GENERAL HOLDER: Well, there is an
19 investigation that is ongoing. I don't really want to
20 get into the details of that.

21 We are working I think very -- it's a very
22 serious investigation. It is one that is being headed
23 by our U.S. Attorney in the Southern District of New
24 York, but because it's an ongoing investigation I
25 don't really want to get into the details of it.

1 MALE VOICE: Attorney General, do you think
2 the United States should have an Official Secrets Act?
3 Should it be a crime to receive classified
4 information if you're not a government employee and to
5 disseminate it?

6 ATTORNEY GENERAL HOLDER: I look at the law
7 as it exists and understand that, as I said, I think
8 there's a real basis. There's a predicate for us to
9 believe that crimes have been committed here and we
10 are in the process of investigating those crimes.

11 I also think that members of the press,
12 people who come into possession of this information, I
13 hope would act in a responsible manner. I think that
14 has clearly not happened here, and there are
15 consequences, real consequences as I said, as a result
16 of the actions that were taken here.

17 MALE VOICE: When you say it's not happened
18 here, do you mean *New York Times*, *Guardian*, *Der*
19 *Spiegel* have not acted responsibly, or are you talking
20 about WikiLeaks?

21 ATTORNEY GENERAL HOLDER: I'm not saying
22 that at all. In fact, I think that with regard to one
23 of the dissensions that I draw between some of the
24 people or organizations in this and others are that
25 some have acted I think in a responsible way.

1 MALE VOICE: One last question. Julian
2 Assange is not a U.S. citizen, not subject to most of
3 the laws that apply on U.S. soil. He's not here.

4 Isn't the sabre rattling that we've seen on
5 each cycle of WikiLeaks dumps that oh, we have an
6 investigation going. We're going to get him. Just
7 wait. Isn't that just empty and misleading because of
8 the fact he's in Australia and he's not here? So what
9 exactly are we talking about?

10 ATTORNEY GENERAL HOLDER: Let me be clear.
11 Let me be very clear. It's not sabre rattling. This
12 is, as I said, an active, ongoing investigation.

13 To the extent that we can find anybody who
14 was involved in the breaking of American law and who
15 has put at risk the assets and the people that I have
16 described, they will be held responsible. They will
17 be held accountable.

18 To the extent there are gaps in our laws, we
19 will move to close those gaps, which is not to say --
20 which is not to say -- that anybody at this point,
21 because of their citizenship or their residence, is
22 not a target for a subject of an investigation that's
23 ongoing.

24 MALE VOICE: I wonder if on two separate
25 issues if you can clarify whether the investigation

1 regarding WikiLeaks is focused on the person or
2 persons who have provided the material to WikiLeaks or
3 WikiLeaks itself for the dissemination.

4 And then separately on the hedge fund issue,
5 can you say whether you expect more arrests in the
6 coming days or weeks?

7 ATTORNEY GENERAL HOLDER: I think with
8 regard to both of those questions I would say they're
9 both ongoing and I'm not sure I should comment any
10 more.

11 With regard to who the targets are, who the
12 subjects are, there are active investigations in both
13 arenas, both areas.

14 MALE VOICE: Last question.

15 MALE VOICE: Attorney General, on the
16 Portland arrest some critics say that this is another
17 case of entrapment by the FBI in these matters.

18 I'm just wondering if you can address that
19 and also discuss why these sting operations are so
20 important at this time. This is I think the fifth or
21 sixth case -- sting -- in the last year.

22 ATTORNEY GENERAL HOLDER: Yes. This is an
23 investigation that I have been familiar with
24 throughout the course, throughout its course, and I am
25 confident that there is no entrapment here. No

1 entrapment claim will be found to be successful.

2 There were, as I said, a number of
3 opportunities that the subject in this matter, the
4 defendant in this matter, was given to retreat, to
5 take a different path. He chose at every step to
6 continue.

7 Some of the things that were contained in
8 the Court filings that we made indicate I think his
9 state of mind where he was told that children --
10 children -- were potentially going to be harmed by
11 what he planned to do in blowing up the Christmas
12 tree. You saw his response.

13 These investigations are extremely
14 important. It is part of a forward leaning way in
15 which the Justice Department, the FBI, our law
16 enforcement partners at the state and local level, are
17 trying to find people who are bound and determined to
18 harm Americans and American interests around the
19 world.

20 If one looks at what we have seen over the
21 past year in Detroit, in New York, in Times Squares,
22 the Zazi case, there are people, individuals and small
23 groups of people, who are intent on doing physical
24 harm to American citizens.

25 We are bound and determined to try to find

1 those people and to try to stop them in whichever way
2 that we can, and this is just an example of that
3 forward leaning effort.

4 MALE VOICE: Thank you.

5 (Whereupon, at 10:38 a.m., the briefing in
6 the above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: --
CASE TITLE: Pen & Pad Briefing
HEARING DATE: November 29, 2010
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Department of Justice.

Date: November 29, 2010

Micah Gillett
Official Reporter
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JUSTICE NEWS

Attorney General Eric Holder Speaks at the Muslim Advocates' Annual Dinner

San Francisco, California ~ Friday, December 10, 2010

Thank you, Farhana Khera. It is a pleasure to be here.

I want to recognize, and salute, the work that everyone here – as leaders, supporters, and partners of Muslim Advocates – is doing to help fulfill our nation's promise of equal justice and opportunity.

On behalf of our nation's Justice Department, I am grateful to count you as partners in our work to promote tolerance, to ensure public safety, and to protect civil rights. Your engagement – and your commitment to the principles and goals that we share – has been critical, especially throughout this year.

In September, Farhana participated in a meeting I held with national leaders from Christian, Jewish, Muslim, and Sikh communities. We met to discuss shared concerns about rising levels of religious intolerance – and, in particular, incidents and reports of intimidation and violence against American Muslims and their religious institutions.

Farhana helped lead that important, and productive, conversation. This evening, it is a privilege to continue that discussion – and to help advance the crucial dialogue that is underway between those in Muslim and Arab-American communities and law enforcement. Strengthening this dialogue – and expanding it – is important to me, to our nation's Justice Department, and to the Obama administration.

Speaking in Cairo, less than six months after taking office, President Obama described the values and hopes that unify all of us as Americans.

"America," he said, "holds within her the truth that regardless of race, religion, or station in life, all of us share common aspirations - to live in peace and security; to get an education and to work with dignity; to love our families, our communities, and our God."

But, he added, "so long as our relationship is defined by our differences, we will empower those who sow hatred rather than peace, and who promote conflict rather than the cooperation that can help all of our people achieve justice and prosperity. This cycle of suspicion and discord must end."

President Obama may have been addressing another region of the world, but his words are as much a guide for America's diverse communities as they are for others around the globe.

Since becoming Attorney General last February, I have heard from Arab Americans and Muslims who say they feel uneasy about their relationship with the United States government.

Some feel that they have not been afforded the full rights of citizenship. Others are worried about the safety of their families, communities, and places of worship. And, too often, Muslims and Arab Americans have told me that they feel as though they are treated by their fellow citizens, by their government, and especially by those of us in law enforcement as though it were, quote, "us versus them."

That is unacceptable. And it is inconsistent with what America is all about. Muslims and Arab Americans have helped to build and strengthen our nation. They have served as police officers, teachers, civic leaders and soldiers – strengthening their local communities and safeguarding their country. And the cooperation of Muslim and Arab-American communities has been absolutely essential in identifying, and preventing, terrorist threats. We must never lose sight of this. And, as we work to create a brighter and more prosperous future, we must not fail to heed the lessons of our past.

Ours is a nation of immigrants. I am the son of immigrants. And the American people have proven, time and again, that our progress is rooted in partnership - and that this country's greatest successes begin with a willingness to reach across lines of division and exclusion. If we are going to realize our nation's promise – and if we want to heal persistent wounds and overcome new threats - then we must work together.

Regardless of color or creed, we are all Americans. And, to the extent that relationships between Muslim and non-Muslim Americans are defined by differences, those who sow hatred rather than peace will – no doubt – prevail. But we cannot – and we must not – allow that to happen.

There can be no "us" or "them" among Americans. And I believe that law enforcement has an obligation to ensure that members of every religious community enjoy the ability to worship and to practice their faith in peace, free from intimidation, violence or suspicion. That is the right of all Americans. And it must be a reality for every citizen.

In this nation, our many faiths, origins, and appearances must bind us together – not break us apart. Our justice system must be used to empower, not to exclude or target. And security and liberty must be guideposts – not opposing forces – in ensuring safety and opportunity for all.

At every level of the Justice Department, we are committed to the impartial and aggressive enforcement of our nation's laws. I recognize that actions speak louder than assurances. And I know that the communities we serve must see – and more fully understand – that we are defending civil rights with the same vigor that we are protecting public safety.

Tonight, I am grateful for the opportunity to discuss some of the ways that the Justice Department is working to advance both of these priorities – and to strengthen cooperation between law enforcement and Muslim and Arab-American communities.

Over the last 22 months, the Justice Department – and our U.S. Attorneys' Offices – have reinvigorated our civil rights enforcement activities.

First and foremost, we have restored the Department's Civil Rights Division to its rightful place as our country's preeminent civil rights enforcement agency. The Department's commitment to civil rights has never been stronger. And the prosecution of violence motivated by religious intolerance has been – and will continue to be – a priority.

We also are working to ensure fair housing and lending, land use rights, and educational opportunities – and to make certain that Americans are not forced to choose between their faith and their jobs.

In October, the Department filed an amicus brief supporting the construction of a mosque in Murfreesboro, Tennessee – and argued that Islam is a religion entitled to protection under the First Amendment. The Department has brought suit against the New York City MTA over its refusal to permit Muslims and Sikhs who work as bus and subway drivers to wear religious head coverings on the job. And we recently reached settlements in Delaware and Texas resolving discrimination complaints against Muslim students.

We have also strengthened efforts to prevent and combat hate crimes – and to protect American Muslims from acts of violence and discrimination.

More than ever before, all 94 U.S. Attorneys Offices are partnering with the Department's Civil Rights Division to act as force multipliers in helping to deliver our nation's most vital protections to their communities. Just this past Tuesday, nearly a third of the nation's United States Attorneys gathered in Washington for an unprecedented meeting to work on this issue – and to identify additional ways to strengthen outreach to Muslim and Arab-American communities.

Since September 11th, 2001, the Justice Department has investigated hundreds of incidents involving violence, threats, vandalism, and arson against Muslims and Arab Americans. In the last fiscal year, the Department indicted more hate crime defendants than any year since 1996, and convicted more hate crime defendants than any year since 2000.

When it comes to combating these heinous crimes, our message is simple: If you engage in violence fueled by bigotry – no matter the object or nature of your hate – we will bring you to justice.

As we continue utilizing the new tools afforded by the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, the work of organizations like Muslim Advocates will be critical. Often, you learn of incidents before law enforcement. And I encourage you to report these incidents to the Justice Department. I assure you: each and every report of a potential hate crime is taken seriously - and, as our record of recent activity makes clear, we will investigate and prosecute violations of federal law whenever we can.

Last year, two Tennessee men were sentenced to more than 14 years in prison after pleading guilty to spray painting swastikas and the words "white power" on a mosque - and then starting a fire that destroyed the mosque. And last month, an Illinois man was sentenced to one year in prison after he pleaded guilty to sending a threatening e-mail to a mosque.

But our work extends beyond prosecutions. Community outreach is a critical component of the Justice Department's hate crimes prevention strategy. The Civil Rights Division holds regular meetings that bring together Muslim, Arab, Sikh, and South Asian community leaders with various federal agencies and Department leaders. These conversations are not always easy. But they are essential. Last year, I established an Arab-American and Muslim Engagement Advisory Group to help identify more effective ways for the Justice Department to foster greater communication and collaboration - as well as a new level of respect and understanding - between law enforcement and Muslim and Arab-American communities.

These relationships are critical to ensuring both public safety and civil rights. And, in many communities, I'm pleased that our engagement efforts are producing results.

For instance, just last week in San Diego, law enforcement officers met with Somali residents to discuss the arrests of four members of their community, to address potential tensions, and to share information.

But in other parts of the country, we know that we have more work to do to strengthen the relationship between law enforcement and those in Muslim and Arab-American communities.

Some have expressed concerns about the recent charges brought against Mohamed Osman Mohamud in Portland, Oregon, for his alleged involvement in planning – and attempting to execute – a terror attack during a Christmas Tree-lighting celebration.

Mr. Mohamud's arrest was the result of a successful undercover operation – a critical and frequently used law enforcement tool that has helped identify and defuse public safety threats such as those posed by potential terrorists, drug dealers and child pornographers for decades.

These types of operations have proven to be an essential law enforcement tool in uncovering and preventing potential terror attacks.

Since 2001, more than 400 individuals have been convicted of terrorism and terrorism-related violations in federal courts. And in those terrorism cases where undercover sting operations have been used, there is a lengthy record of convictions.

Our nation's law enforcement professionals have consistently demonstrated not just their effectiveness, but also their commitment to the highest standards of professional conduct, integrity, and fairness.

I make no apologies for the how the FBI agents handled their work in executing the operation that led to Mr. Mohamud's arrest. Their efforts helped to identify a person who repeatedly expressed his desire and intention to kill innocent Americans. As you may have read – and as the affidavit alleges – Mr. Mohamud chose the target location months in advance; provided FBI operatives with bomb components and detailed operational instructions; and repeatedly refused to change course when he was reminded that a large crowd – including children – would be in harm's way.

Because of law enforcement's outstanding work, Mr. Mohamud is no longer plotting attacks. He is now behind bars. And he will be brought to justice. But you also

have my word that the Justice Department will – just as vigorously – continue to pursue anyone who would target Muslims, or their houses of worship.

Those who characterize the FBI's activities in this case as “entrapment” simply do not have their facts straight - or do not have a full understanding of the law.

Our nation's law enforcement officials deserve our gratitude – and respect. Without their work – and their willingness to place public safety above personal security – government simply could not meet its most critical responsibility of protecting American lives.

Meeting this responsibility has never been more difficult. Our nation faces a determined and sophisticated enemy. As I've said repeatedly, I am committed to using every available tool to protect the American people. But I will not sacrifice or compromise our civil liberties. And I will not support activities that jeopardize our nation's ability to serve as a beacon of hope for all the world – and as a model of strict adherence to the rule of law. Neither will I allow Muslim and Arab-American communities – or any community of Americans – to be persecuted because of their faith or national origin.

There is no question or doubt that threats to our national security are real. Together, we have mourned the loss of our fellow Americans in New York City, Virginia, and Pennsylvania; in Fort Hood, Texas; and in Mumbai, Yemen, and Uganda. Each of these attacks was a reprehensible act of cowardice, inspired by a radical and corrupt ideology – one that systematically denies human rights, devalues women and girls, and perverts the peaceful traditions and teachings of Islam.

But as you and I know, the vulgar actions of a misguided few do not reflect the values of an entire faith or people. And while violence, and the loss of innocent lives, can be cause for anger and grief – we must not let it result in widespread bias and bigotry – or in acts of vengeance.

It is our responsibility to discourage and condemn such acts – and to help change misguided perceptions. This work begins by meeting fear with reason; by meeting ignorance with information; and by meeting suspicious gazes with an outstretched hand.

I realize that this is easier said than done. This requires great courage – and uncommon grace.

And yet, your organization – and so many hopeful and committed individuals – are finding ways to bridge divides. The public education efforts that you have launched – and the steps that you are taking to unite law enforcement and Muslim communities – are critical. You are paving new paths for cooperation. You are leading the way toward peace and healing. You are making a difference.

You must keep at it. Too much is at stake. Too much is at risk.

With your continued support, continued guidance, and continued partnership – I am confident that, together, we can confront and overcome threats to our fellow citizens, and to all innocent people. I am also certain that we can ensure that all components of our government can be as sensitive and respectful as they are effective. There is not a tension in that last declaration.

Together, I am sure that we can help to build a future that honors America's enduring creed - E pluribus unum. “Out of many, one.”

Thank you, again, for inviting me to join you this evening. I look forward to our continued collaboration in the pursuit of a more perfect union and a more peaceful existence for all Americans.