RECORD NO. 12-4652

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MOHAMMAD SHIBIN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT NORFOLK

OPENING BRIEF OF APPELLANT MOHAMMAD SHIBIN

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STATEMENT OF JURISDICTION

The United States District Court for the Eastern District of Virginia, Norfolk Division, exercised jurisdiction over this criminal case pursuant to 18 U.S.C. § 3231. That court entered the judgment of conviction and sentence on August 14, 2012. The Appellant timely filed his notice of appeal on August 15, 2012. Therefore this Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. Did the district court err in denying the motions to dismiss Counts 1 and 7 of the superseding indictment, which charged the Appellant with Piracy under the Law of Nations in violation of 18 U.S.C. §§ 1651 and 2?

II. Did the district court err in denying the motions to dismiss all counts of the indictment for lack of jurisdiction?

III. Did the district court err in denying the motions to dismiss certain counts with respect to the *Marida Marguerite* as the doctrine of Universal Jurisdiction does not cover those offenses?

IV. Did the district court err in overruling defense counsel's objection to rebuttal testimony of a government witness regarding statements given through a translator when that translator was not present to testify?

STATEMENT OF THE CASE

Mr. Mohammad Saaili Shibin was charged with a total of fifteen (15) crimes, to include two counts of Piracy in violation of 18 U.S.C. §§ 1651 and 2, two counts of Conspiracy to Commit Hostage Taking in violation of 18 U.S.C. § 1203 (a), two counts of Hostage Taking in violation of 18 U.S.C. §§ 1203 (a) and 2, two counts of Conspiracy to Commit Violence Against Maritime Navigation in violation of 18 U.S.C. § 2280 (a)(1)(H), two counts of Violence Against Maritime Navigation in violation of 18 U.S.C. §§ 2280 (a)(1)(A) and 2, one count of Conspiracy to Commit Kidnapping in violation of 18 U.S.C. § 1201 (c), one count of Kidnapping in violation of 18 U.S.C. §§ 1201 (a)(2) and 2, and three counts of Use of a Firearm During a Crime of Violence in violation of 18 U.S.C. §§ 924 (c) and 2. (JA 31)

After a trial by jury, Mr. Shibin was convicted on all counts. (JA 1434) Mr. Shibin was sentenced to multiple life sentences plus 120 months. (JA 1436)

Prior to trial of these matters, Mr. Shibin filed a Motion to Dismiss All Charges For Lack of Jurisdiction (JA 50), and a separate Motion to Dismiss the piracy counts which alleged, in part, that the piracy indictments must be dismissed because the government had presented no facts to support an allegation that Mr. Shibin committed an act of piracy while he was actually on the high seas. (JA 68)

On April 16, 2012, the district court issued two written orders deferring a finding as to Mr. Shibin's motions to dismiss the piracy counts and denying the motions to dismiss for lack of jurisdiction as to the remaining thirteen counts. (JA 207, -09) At the close of the government's case, the defense moved for a judgment of acquittal as to one of the piracy counts and renewed the motions to dismiss as to all counts. (JA 1204, -09). The court denied all of these motions. (JA 1209) Prior to sentencing, Mr. Shibin filed a motion asking the court to reconsider its rulings as to his previously-filed motions to dismiss. (JA 1296) As a basis of this motion, Mr. Shibin cited *United States v. Ali*, Crim. No. 11-0106 (D. D.C. July 13, 2012), which had recently been decided by the Honorable Ellen Segal Huevelle of the United States District Court for the District of Columbia. (JA 1296). Mr. Shibin argued that the government had failed to present any evidence that he had committed any acts while on the high seas and therefore, pursuant to *Ali*, his convictions for piracy must be dismissed. (JA 1296) The court denied Mr. Shibin's motion for reconsideration. (JA 1406, -44)

Mr. Shibin timely filed his Notice of Appeal to this Court on August 15, 2012.

STATEMENT OF FACTS

After a trial by jury, the Appellant, Mr. Mohammad Saaili Shibin, was

convicted of all counts of a fifteen-count indictment that charged him with two counts of Piracy in violation of 18 U.S.C. §§ 1651 and 2, two counts of Conspiracy to Commit Hostage Taking in violation of 18 U.S.C. § 1203 (a), two counts of Hostage Taking in violation of 18 U.S.C. §§ 1203 (a) and 2, two counts of Conspiracy to Commit Violence Against Maritime Navigation in violation of 18 U.S.C. § 2280 (a)(1)(H), two counts of Violence Against Maritime Navigation in violation of 18 U.S.C. §§ 2280 (a)(1)(A) and 2, one count of Conspiracy to Commit Kidnapping in violation of 18 U.S.C. § 1201 (c), one count of Kidnapping in violation of 18 U.S.C. §§ 1201 (a)(2) and 2, and three counts of Use of a Firearm During a Crime of Violence in violation of 18 U.S.C. §§ 924 (c) and 2. (JA 31)

The charges stem from two separate hijacking incidents that occurred in international waters off the coast of Somalia. (JA 238, 786) The first incident occurred on May 8, 2010, when Somali pirates hijacked the German merchant ship *Marida Marguerite*. (JA 239-40, 1287) The second hijacking occurred on February 18, 2011, and involved the American sailing vessel the *Quest*. (JA 786-87)

Oleg Dereglazov, Chief Engineer of the *Marida Marguerite*, testified that Somali pirates hijacked the ship on May 8, 2010, as the vessel neared the Bay of

Oman. (JA 239-40) The pirates ordered that the ship change course and sail for Somalia. (JA 243-44) On May 11, 2010, the third day after the hijacking, the ship arrived in Somalia. (JA 249, 354, 357-58) At some point after arriving in Somalia, Mr. Dereglazov spoke with Mr. Shibin on the telephone. (JA 250) Mr. Shibin arrived at the ship about roughly a week after it arrived in Somalia. (JA 251, 483) The *Marida Marguerite* was under pirate control for the next eight months. (JA 255) During that time, Mr. Shibin negotiated a ransom with the owners of the ship. (JA 270, 426, 505-07, 515-16)

The evidence was undisputed that Mr. Shibin did not arrive on the *Marida Marguerite* until several days after the ship arrived in Somali waters. (JA 251, 382, 423, 483, 651) The government presented no evidence that would show that Mr. Shibin was in any way involved with the hijacking of the *Marida Marguerite* until after it entered Somali waters.

The second hijacking occurred on February 18, 2011, when Somali pirates seized the American sailing vessel *Quest*. (JA 786-88) On board were four American citizens. (JA 787) The U.S. Navy intercepted the *Quest* and engaged in discussions with the pirates on board. (JA 796-99) During the course of these discussions, one of the pirates informed U.S. officials that once they were allowed to reach Somali waters, Mr. Shibin would take over and negotiate directly with the

U.S. government. (JA 797, 805-09) The pirates also provided U.S. officials with Mr. Shibin's telephone number. (JA 808)

On the morning of February 22, 2011, as the U.S. Navy approached the *Quest*, the pirates fired a rocket propelled grenade at U.S. forces. (JA 1007) As the Navy continued to close in, the pirates killed all four of the American hostages. (JA 1008) At all times during these incidents the *Quest* remained in international waters.

On April 4, 2011, U.S. officials learned that Mr. Shibin had been arrested by Host Nation Defense Forces and that he was being held in Bossasso, Puntland. (JA 1013, 15) Federal agents questioned Mr. Shibin on at least three occasions while in custody of the Host Nation Defense Forces. (JA 1034) Mr. Shibin admitted his involvement in negotiating the ransom for the *Marida Marguerite*. (JA 1037) When questioned about the hijacking of the *Quest*, Mr. Shibin denied any involvement but he admitted to doing internet searches on his phone regarding the *Quest* and its American crew. (JA 1045-46) Mr. Shibin was subsequently turned over to the custody of the Bossasso Police Department, who in turn, handed Mr. Shibin over to federal authorities. (JA 1051)

Mr. Shibin was further questioned after he was taken into custody by federal agents. FBI Special Agent Kevin Coughlin testified about statements that Mr.

Shibin made during the course of these post-arrest interviews. (JA 1082) With respect to the *Quest*, Agent Coughlin stated that Mr. Shibin told him that he had received a telephone call from a man named Mohamud Haji Khayr inquiring as to whether Mr. Shibin would be interested in acting as the negotiator and translator for the *Quest* hijacking. (JA 1095) Mr. Haji Khayr told Mr. Shibin that a man named Juguuf (a/k/a Muhamud Salad Ali) and some others had hijacked the *Quest*. (JA 1096) Mr. Shibin admitted that he had known Juguuf for a couple of years and that the two had previously worked together at an oil company. (J.A. 1094) Mr. Shibin told Agent Coughlin, however, that he did not know that Juguuf was involved in piracy or that he had gone to sea to hijack a vessel. (JA 1094)

According to Agent Coughlin, Mr. Shibin told Mr. Haji Khayr that he would have to think about his offer and that after their conversation, Mr. Shibin began doing Google searches in order to ascertain the value of the *Quest* and to determine who owned the vessel. (JA 1096) Mr. Shibin told Agent Coughlin that he called Mr. Khyar two days later and told him that he was not interested in being the negotiator. (JA 1097) It is undisputed that Mr. Shibin never set foot on the *Quest*.

Mr. Muhamud Salad Ali (Juguuf) testified as a witness on behalf of the defense. (JA 1243-54) He testified that he was one of the individuals who had gone to sea and captured the *Quest*. (JA 1245) He also testified that he had given

Mr. Shibin's name and telephone number to another man named Ibrahim Agaweyne who was one of the men who communicated with the U.S. Navy via bridge-to-bridge communication. (JA 1247-48) According to Mr. Salad Ali, the pirates gave the U.S. Navy Mr. Shibin's name and telephone number because they hoped he could communicate with Navy on their behalf so there would not be any problems and to make the Navy understand that they were only interested in getting money. (JA 1249) Mr. Salad Ali also testified that he had never asked Mr. Shibin to be a negotiator and that Mr. Shibin was never present during any of the meetings to plan the hijacking. (JA 1249-52)

On cross-examination Mr. Salad Ali repeatedly denied ever asking Mr. Shibin to act as the pirates' negotiator. (JA 1256, 57, 58, 59, 60, 61, 62) He also denied ever speaking with Mr. Shibin about piracy or about his plans to go to sea and hijack a ship, and denied ever stating that he told Mr. Shibin that he would call him once he captured a ship. (JA 1256, 58, 59)

In rebuttal, and over the defense's objection, the government recalled Agent Coughlin, who had interviewed Mr. Salad Ali through an interpreter on three separate occasions. (JA 1269-74) Agent Coughlin, who does not speak Somali, testified that on February 26, 2011, he interviewed Mr. Salad Ali with the assistance of a translator whom he described as "an FBI Somali linguist." (JA

1270) During the interview, Agent Coughlin and another agent asked questions through the translator, who would then repeat the question to Mr. Salad Ali in Somali and then translate his answers into English. (JA 1270) Agent Coughlin then wrote down summaries of the translated responses. (JA 1270) The two subsequent interviews were conducted in the same manner, one on May 24, 2011, and one on June 7, 2011. According to Agent Coughlin, Mr. Salad Ali stated during the course of these interviews, that he had informed Mr. Shibin of his plans to hijack a ship and that once they succeeded in doing so, he would call Mr. Shibin to act as the negotiator. (JA 1271, 72, 74) Agent Coughlin also testified that Mr. Salad Ali stated that he had asked Mr. Shibin to act as a negotiator and that Mr. Salad Ali believed that Mr. Shibin had agreed to do so. (JA 1272, 73-74)

As detailed above, Mr. Shibin filed multiple pre-trial motions to dismiss the charges (JA 50, 68, 97), as well as a post-trial motion to reconsider the court's denial of those motions. (JA 1296) In addition, at the close of the government's case, defense counsel moved for a judgment of acquittal as to Count One of the Superseding Indictment. (JA 1204) The court denied all of these motions. The instant appeal followed.

SUMMARY OF ARGUMENT

I. The district court erred in denying the motions to dismiss the Piracy counts. Pursuant to text of the piracy statue itself, 18 U.S.C. § 1651, the legislative history surrounding this area of law, and international law, Mr. Shibin could only be convicted of aiding and abetting piracy if the government proved that he was on the high seas, and while on the high seas, facilitated acts of piracy. In the instant case the court erred as a matter of law when it denied defense's motion to dismiss for the evidence being insufficient, because the government presented no evidence that Mr. Shibin had committed any act, or even ever been, on the high seas, as required by law.

II. The district court erred in denying the motions to dismiss all counts for lack of jurisdiction. Mr. Shibin was forcibly seized and removed from his nation by agents of the United States government and was provided no opportunity to challenge either his detention or his removal. The government's argument that the *Ker-Frisbie* doctrine forecloses any challenge by Mr. Shibin to the court's jurisdiction based on the circumstances of his detention is incorrect. Contrary to other reported cases dealing with the kidnapping of criminal suspects by U.S. agents, in Mr. Shibin's case there is no extradition treaty in place between the United States and Somalia. As such, Mr. Shibin's detention and removal were a

clear violation of Somali sovereignty and international law and therefore, he was not properly found in or brought to the jurisdiction of the court.

III. Because the doctrine of universal jurisdiction cannot be used to provide the court with jurisdiction over those crimes involving the *Marida Marguerite*, Mr. Shibin's convictions for those acts must be dismissed.

IV. The district court erred in overruling defense counsel's objection to Agent Coughlin's rebuttal testimony. Agent Coughlin had no personal knowledge of what the Somali-speaking witness said during the interview, as Agent Coughlin did not speak the language and the entire interview was conducted through an interpreter. Under the facts of this case, the interpreter cannot be considered a mere language conduit. First, the interpreter was clearly acting as an agent of the government. Second, there are no facts in the record that establish the interpreter's skill level or language fluency, and therefore, there is no basis upon which to judge the accuracy of the translation. Third, the witness' subsequent conduct was in direct conflict with his purported prior statements. Fourth, neither the witness nor Agent Coughlin were in a position to correct a mistranslation because neither one could speak the other's language. Finally, admission of this testimony violated the Confrontation Clause as it was clearly testimonial and Mr. Shibin had the right to challenge its reliability by subjecting the interpreter to cross-examination.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING THE MOTIONS TO DISMISS THE PIRACY COUNTS

A. Standard of Review

"Matters of statutory construction present questions of law, which [are] generally review[ed] *de novo*." *Hosh v. Lucero*, 680 F.3d 375, 378 (4th Cir. 2012) *citing Midi v. Holder*, 566 F.3d 132, 136 (4th Cir. 2009).

B. Argument

Title 18, Section 1651 of the United States Code provides that: "whoever, *on the high seas*, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life." According to statutory text, legislative history, and international law, Mr. Shibin could only be convicted of aiding and abetting piracy if the government proved that he was on the high seas, and while on the high seas, facilitated piratical acts. In the instant case, the court erred as a matter of law when it denied defense's motion to dismiss for the evidence being insufficient, because the government presented no evidence that Mr. Shibin had committed any act, or even ever been, on the high seas, as required by law.

The law of nations definition of piracy incorporates 18 U.S.C. Section 2's definition of aiding and abetting liability. The United Nations Convention on the

Law of the Sea (UNCLOS) provides that "any act of inciting or of intentionally facilitating an act of piracy is itself piracy." UNCLOS art. 101 (c). Under domestic law, 18 U.S.C. § 2 makes those who aid, abet, counsel, command, induce, procure, or willfully cause the commission of a federal crime punishable as a principle. 18 U.S.C. § 2. These definitions of aiding and abetting are functionally equivalent. *See Abuelhawa v. United States*, 556 U.S. 816, 821 (2009). Accordingly, if the indictments charging piracy allege that Shibin *on the high seas*[1] committed the crime of piracy as defined by the law of nations, and did aid, abet, counsel, command, induce, and cause others to commit the piracy, then this would be consistent with international law such that the indictment may stand and a trial may proceed in order for the government to attempt to prove that fact beyond a reasonable doubt.

However, even where this is alleged in the indictment, the government may not use Section 2 to expand the scope of what constitutes piracy as a universal jurisdiction crime. In *U.S. v. Ali*, the United States District Court for the District of Columbia specifically held that an individual cannot be convicted of aiding and abetting piracy under 18 U.S.C. §§ 1651 and 2, if he was not on the high seas at the time. *United States, v. Ali*, Crim. No. 11-0106 (D. D.C. July 13, 2012). First

1 The "high seas" lie seaward of the 12 mile "territorial waters" boundary from a nation's shore. *United States v. Hasan*, 747 F. Supp. 2d 599, 625 (E.D. Va. 2010).

holding the indictment sufficient because "the indictment fairly alleges that [Ali's] allegedly piratical acts occurred on the high seas," *Ali*, at 17, the Court then explained that the text of the general piracy statute makes clear that it only applies to high seas conduct, and that the legislative history of Section 2 shows that Congress did not intend for that provision to expand U.S. prescriptive jurisdiction over general piracy to non-high seas conduct. *Ali*, at 20. Section 1651 specifically states "whoever, *on the high seas*, commits the crime of piracy as defined by the law of nations . . . ." (emphasis added).

Both the general piracy statute, 18 U.S.C § 1651, and the aiding and abetting statute, U.S.C. § 2, have as their origin the Crimes Act of 1790. In *United States v. Palmer*, 16 U.S. (3 Wheat.) 610 (1818), the Supreme Court concluded that the piracy provisions of the Crimes Act of 1790 did not reach conduct committed by foreigners aboard foreign vessels traversing the high seas. *Palmer*, 16 U.S. (3 Wheat.) at 633-34. By doing so the Supreme Court found that the Act of 1790 failed to define piracy as a universal jurisdiction crime. *See United States v. Dire*, 680 F.3d 436, 455 (2012) (discussing the history of the Act of 1790 and subsequent developments).2 The Court specifically analyzed Section 2's

2 It is important to note that in *Dire*, the Fourth Circuit rejected the appellant's claims that the crime of piracy is strictly limited to robbery on the high seas and adopted a more expansive definition pursuant to modern international law. *Dire*,

predecessor, which, like Section 1651's predecessor, purported to apply to "any person":

> It will scarcely be denied that the words "any person," when applied to aiding or advising a fact, are as extensive as the same words when applied to the commission of that fact. Can it be believed that the legislature intended to punish with death the subject of a foreign prince, who, within the dominions of that prince, should advise a person, about to sail in the ship of his sovereign, to commit robbery or murder?

Palmer, 16 U.S. (3 Wheat.) at 633.

Congress responded to the *Palmer* decision with the Act of 1819, making clear that "it wished to proscribe not only piratical acts that had a nexus to the United States, but also piracy as an international offense subject to universal jurisdiction." *Dire*, 680 F.3d at 455. However, it is essential to note that the revisions Congress made in response to *Palmer* were limited to the offense of general piracy – Congress choose to leave Section 2's predecessor untouched by the act of 1819. By doing so Congress expressed its clear intent not to disturb *Palmer*'s holding that Section 10 of the Crimes Act of 1790, which punished aiding and abetting piracy at sea, was a municipal statute. The fact that Congress chose not to revise Section 2's predecessor so as to make it a general piracy statute, despite having an obvious opportunity to do so in the act of 1819, makes clear that

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however, did not reach the question presented in *Ali*, and which is the focus of Mr. Shibin's challenge in the present case. That is, whether § 1651 reaches acts that did not occur on the high seas, regardless of the definition of piracy.

Section 2 *not* be used to broaden the scope of the general piracy prohibition.

Accordingly, nothing in either Sections 2 or 1651 indicates any intent by Congress to exercise its prescriptive jurisdiction indifferent to international law's constraints. In fact not only does the legislative history detailed above reveal the opposite, but more importantly, Section 1651's text itself is declarative of international law – authorizing the U.S. government to prosecute the universal jurisdiction crime of piracy to the extent allowed by "the law of nations," and no further. "To interpret these provisions as proscribing non-high seas conduct, in potential violation of international law, would contradict Section 1651's plain meaning, and ignore the legislative history of both Sections 1651 and 2. *Ali*, at 20.

Finally, the Court in *Ali*, found that construing the general piracy statute to reach conduct that occurred within a state's territorial jurisdiction would arguably violate international law. *Ali*, at 19-20. The *Ali* court looked at UNCLOS article 86, which states that "the provisions of this Part," including Article 101, "apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in international waters of a State." *Ali*, at 19. "Commentators confirm that the '"UNCLOS's definition of piracy includes only those acts that occur on the high seas or outside the territory of any state."' *Ali*, at 19, n.20 *quoting* Yvonne M. Dutton, *Maritime Piracy and the Impunity Gap: Insufficient*

National Laws or a Lack of Political Will?, 86 Tul. L. Rev. 1111, 1124 (2012). In fact, it has been held that "universal jurisdiction is accepted in cases of piracy *because piracy is carried out on the high seas*, outside all State territory." *Ali*, at 19-20 *quoting Yousef*, 327 F.3d at 104 (emphasis added). The Court in *Hasan* stated that ". . . [t]o commit the international crime of general piracy today, an individual must act beyond the twelve-mile territorial sea boundary." *Hasan*, 747 F. Supp. 2d at 625.

In fact, the language of UNCLOS is derived from the 1958 Geneva Convention on the High Seas (High Seas Convention), 13 U.S.T. 2312 (1958), and the 1932 Harvard Research in International Law Draft Convention on Piracy (Harvard Convention), and clearly supports the notion that piracy is strictly limited to high sea conduct.

The definition of piracy in UNCLOS, Part VII: The High Seas, Article 101(c) is a near-verbatim copy of that drafted by the International Law Commission (ILC) for the High Seas Convention. The ILC in turn based this definition on the Harvard Convention, 26 Am. J. Int'l L. 743, 749 (1932). Yearbook of the ILC 1956 Vol. II, 282; *see also Hasan*, 747 F.Supp.2d 599, 619 (E.D. Va. 2010).

Like UNCLOS, the Harvard Convention defined "[a]ny act of instigation or

of intentional facilitation" as piracy. It then stated in its commentary: "By this clause, instigations and facilitations of piratical acts, previously described in the Article are included in the definition of piracy. Obviously, convenience is served by this drafting device. The act of instigation or facilitation is not subjected to the common jurisdiction *unless it takes place outside territorial jurisdiction*." *Harvard Convention*, 822 (emphasis added).

In the course of its discussion of piracy, the ILC formally adopted all of the principles underlying the Harvard Convention. Hence, after clearly defining each of paragraphs 1-3 as acts of "piracy," the commentary by the ILC stated that it "was able to endorse the findings" by the Harvard group, and stated that "[p]iracy can be committed only on the high seas or in a place situated outside the territorial jurisdiction of any State, and cannot be committed within the territory of a State or in its territorial sea." 1956 Yearbook of the ILC 1956 Vol. II, at 282. Since the High Seas Convention was incorporated into UNCLOS, and, like UNCLOS, represents the current international law of piracy, that law clearly does not reach into the territory of sovereign states—even for facilitation.

At trial it was incumbent upon the government to prove beyond a reasonable doubt that Shibin intentionally facilitated acts of piracy while he was on the high seas. In what could be categorized as almost indifference to this essential

requirement, the government failed to present *any evidence* that Shibin had at *any point* committed *any act* upon the high seas whatsoever. The government's failure to do so mandated that the trial court grant defense's motion to dismiss.

While the government was able to survive pre-trial dismissal through properly worded allegations that are in reality wholly unsupported by the facts, their failure at trial to present evidence of an essential element to an offense is legally inexcusable. Once the prosecution had rested having presented *no* evidence of conduct occurring on the high seas, it was reversible error for the court to deny Mr. Shibin's motions to dismiss the piracy counts. The evidence presented was insufficient as a matter of law.

II. THE DISTRICT COURT ERRED IN DENYING THE APPELLANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION AS THE APPELLANT WAS NOT PROPERLY BROUGHT INTO OR FOUND IN THE UNITED STATES

A. Standard of Review

Appellate courts review *de* novo a "district court's denial of a motion to dismiss an indictment where the denial depends solely on questions of law." *United States v. Caley*, 355 F. App'x 760, 761 (4th Cir. 2009) (reviewing the district court's denial of defendant's motion to dismiss his indictment for lack of jurisdiction) *quoting United States v. Hatcher*, 560 F.3d 222, 224 (4th Cir. 2009).

B. Argument

Prior to trial, the Appellant moved to dismiss the indictments pursuant to Fed. Rule of Crim. Proc. 12(b)(3) alleging that the government lacked jurisdiction over the Appellant because the government had unlawfully brought him to the United States (JA 50, 184) The government argued, pursuant to the *Ker-Frisbie* doctrine, that the Appellant had no legal basis to challenge the means by which he was brought to trial, (JA 125). The Court denied Appellant's motion. (JA 209, 1207, 1444)

The *Ker-Frisbie* doctrine stems from the Supreme Court's decisions in *Frisbie v. Collins*, 342 U.S. 519 (1952) and *Ker v. Illinois*, 119 U.S.436 (1886), and essentially states that "the power of the court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a forcible abduction." *Frisbie*, 342 U.S. at 522.

The Fourth Circuit dealt with a similar issue in *Kasi v. Angelone*, 300 F.3d 487 (4th Cir. 2002). In *Kasi*, the court rejected the defendant's contention that the state trial court lack jurisdiction to try him on the grounds that he had been kidnapped by FBI agents in Pakistan and brought to the United States in violation of an extradition treaty between the two countries. *Kasi*, 300 F.3d at 497. The *Kasi* court relied on *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), in

which the Supreme Court similarly rejected the defendant's claim that his trial was improper because DEA agents abducted him from Mexico in violation of an existing extradition treaty. *Kasi*, 300 F.3d at 494-95 *citing Alvarez-Machain*, 504 U.S. at 669.

Both the *Kasi* and *Alvarez-Machain* courts held that, because the express terms of the extradition treaties did not specifically prohibit these forcible abductions, the terms of the treaties were not violated and jurisdiction was proper. *Kasi*, 300 F.3d at 495 *citing Alvarez-Machain*, 504 U.S. at 670.

Neither the Supreme Court, nor the Fourth Circuit, however, has ever held that the doctrine applies when there is no such treaty and agents of the federal government seize a foreign citizen from that citizen's home country and transport him against his will to the United States to stand trial; and this Court should not now sanction such conduct.

Mr. Shibin was initially detained in Somalia by what were referred to as Host Nation Defense Forces and held at a compound in Bossasso, Puntland, which was described as a semi-autonomic area of Somalia. (JA 1013, 15) The record is silent as to what, or who, the Host Nation Defense Forces were and whether they had any affiliation with any national government. It is clear, however, that they were acting in cooperation with federal agents when they detained Mr. Shibin. (JA

1014) Federal agents questioned Mr. Shibin on at least three occasions while in custody of the Host Nation Defense Forces. (JA 1034) He was subsequently turned over to the custody of the Bossasso Police Department, who in turn, handed Mr. Shibin over to federal authorities. (JA 1051)

At no time was Mr. Shibin afforded any opportunity or procedure by which to challenge his detention or his transfer to the custody of federal authorities. Essentially, agents of the federal government kidnapped Mr. Shibin and brought him to the United States against his will.

The government maintains because there is no extradition treaty between the United States and Somalia, Mr. Shibin cannot challenge the means by which he was brought to the United States for trial. (JA 126). Nations throughout the world, however, should be free from encroachment by foreign governments and should have the right to protect their citizens from foreign governments. One way that a foreign government can exercise its right to protect their citizens is by refusing to become parties to extradition treaties. Somalia has chosen not to enter into an extradition treaty with the United States. This refusal should not be viewed as a silent endorsement of a foreign governmental action that crosses territorial lines without consent, especially when it is regarding the subject matter extradition treaties were created to address. Citizens should be free from seizure by foreign

governments while in their home countries.

Extradition treaties are tools used to encourage international camaraderie, to allow recognition of criminal acts done by its citizen's by one government, and to provide the procedure to follow when that government wants to allow the foreign government to prosecute. With the purpose of treaties in mind, the lack of treaty between any two nations should not be construed to mean one nation's acquiescence to another government's exercise of power over its citizens. The lack of treaty with Somalia is not permission given by the Somali government to the United States to enter its country and seize its citizens for arrest, transport, and prosecution. It is a statement to our government saying that they require use of their own judicial system before they will condone the use of ours against their citizens. It is a statement saying to our government that Somalia, as a country, prefers its own laws to be applied to its citizens before any other government would have the ability to apply its laws. The United States sent government law enforcement agents to Somalia to arrest Mr. Shibin. There was no request for the removal of Shibin, a Somali citizen, made to the Somali government. This is a clear breach of international conduct.

Both official agreements and silence on the part of foreign governments need to be respected, not just when it suits us or when we believe our laws apply.

The same applies to this situation. Because the lack of a treaty is not permission or silent acquiescence to foreign governmental seizure of their citizens, the United States must respect Somalia's decision not to enter into an extradition treaty with us and go through official Somali channels to obtain custody of Mr. Shibin—if Somalia would allow it. Further, Mr. Shibin was not using the lack of treaty or his presence within Somalia as reason for seeking asylum. Mr. Shibin is a Somali citizen—he was not running from U.S. law enforcement, nor was he in a country in an attempt to purposefully avoid prosecution. He was at home.

The blatant disregard for foreign state sovereignty and the lack of use of formal channels by our government in the seizure of Mr. Shibin negates the "brought to" or "later found in" provisions and requirements in the U. S. Code sections he is being charged with. Without those requirements being satisfied, there is no jurisdiction to assert over him.

III. THE DISTRICT COURT ERRED IN DENYING THE APPELLANT'S MOTION TO DISMISS WITH RESPECT TO CERTAIN COUNTS INVOLVING THE *MARIDA MARGUERITE* AS THE COURT DID NOT HAVE JURISDICTION OVER THESE MATTERS

A. Standard of Review

Appellate courts review *de* novo a "district court's denial of a motion to dismiss an indictment where the denial depends solely on questions of law." *United States v. Caley*, 355 F. App'x 760, 761 (4th Cir. 2009) (reviewing the

district court's denial of defendant's motion to dismiss his indictment for lack of jurisdiction) *quoting United States v. Hatcher,* 560 F.3d 222, 224 (4th Cir. 2009).

B. Argument

Prior to trial, the Appellant moved to dismiss the indictments alleging that the universal jurisdiction doctrine did not provide the court with jurisdiction over the Appellant. (JA 50) The district court denied that motion. (JA 209) Mr. Shibin now asserts that, with respect to the non-piracy counts involving the *Marida Marguerite*, the district court erred in denying his motion.

Universal jurisdiction is an international doctrine that allows any state to prosecute offenses of universal concern even if the State has no links of territory with the offense or of nationality with the offender or victim. *United States v. Yousef*, 327 F.3d 56, 103 (2nd Cir. 2003). However, this expanded form of jurisdiction is only allowed over a limited set of crimes—the list of which cannot be expanded judicially. *Yousef*, 327 F.3d at103. The Court in *Yousef* stated, "[t]he strictly limited set of crimes subject to universal jurisdiction cannot be expanded by drawing an analogy between some new crime...and universal jurisdiction's traditional subjects. Nor . . . can universal jurisdiction be created by reliance on treatises or other scholarly works consisting of aspirational propositions that are not themselves good evidence of customary international law,

much less primary sources of customary international law." *Yousef*, 327 F.3d at 104.

Although piracy is the traditional crime that falls under universal jurisdiction, as stated above, those convictions must fail for other jurisdictional reasons. It is also clear that those counts related to the *Quest* involve crimes against United States citizens and therefore, universal jurisdiction is not an issue in those charges either. Again though, those convictions fail for other reasons.

With regard to the Violence against Maritime Navigation and Hostage Taking charges, the Fifth Circuit Court of Appeals confronted the issue of universal jurisdiction in *United States v. Shi*, 525 F.3d 709 (5th Cir. 2008). In *Shi*, the court held that crime of Violence against Maritime Navigation as essentially the same crime as piracy and therefore allows the leap that universal jurisdiction applies to the crime of Violence against Maritime Navigation the same way it would piracy. This analysis is incorrect and disregards the principle set forth in *Yousef*, that universal "jurisdiction is only allowed over a limited set of crimes- the list of which cannot be expanded judicially." *Yousef*, 3237 F.3d at 103.

The Court in *Shi* stated "the acts with which Shi is charged constitute acts of piracy. . . . Prosecuting piracy was the original rationale for creating universal jurisdiction." *Shi*, 525 F.3d at 723. The court goes on to discuss how piracy is a

universally condemned crime and Shi had all the notice Due Process requires to be prosecuted in the United States. *Shi*, 525 F.3d at 724. However, "[t]reating the crime as piracy was both incorrect and unnecessary to the decision [in *Shi*]." Eugene Kontorovich, *International Decision*: *United States v. Shi*, 103 Am. J. Int'l L. 734, 736 (2009). Violence against maritime navigation is a separate offense with separate requirements. Equating the two merely because they both occur on the high seas and have a force element is not reason enough to try to expand an international concept to include a crime it was never intended to include. Even if the category should be expanded to include violence against maritime navigation, judicial decisions alone cannot expand the concept of universal jurisdiction and conventions are not grounds for establishing new universal offenses. *Yousef*, 327 F.3d at 103.

With respect to the firearms charges, Congress's constitutional authority to apply a federal law outside U.S. borders is only allowed if it clearly expresses the intent to do so within the statute. *Shi*, 525 F.3d at 721 (internal citations omitted). The language of §924(c) does not contain intentional language such as "offenders later found in the United States" or language referring to crimes or actions outside the U.S. borders. It merely refers to violent crimes. This is not a clear Congressional expression of extraterritorial intent and therefore there is no

constitutional basis for the authority to apply this federal law to these cases.

Finally, with regard to the conspiracy charges, the court can only exercise jurisdiction over a conspiracy if it has jurisdiction over the underlying offense and thus, the same arguments apply.

Because the doctrine of universal jurisdiction cannot be used to provide the court with jurisdiction over those crimes involving the *Marida Marguerite*, Mr. Shibin's convictions for those acts must be dismissed.

IV. THE DISTRICT COURT ERRED IN OVERRULING THE APPELLANT'S OBJECTION AND PERMITTING A GOVERNMENT WITNESS TO TESTIFY IN REBUTTAL AS TO OUT-OF-COURT STATEMENTS MADE THROUGH AN INTERPRETER

A. Standard of Review

Decisions regarding the admissibility of evidence are reviewed under the abuse of discretion standard. *United States v. Vidacak*, 553 F.3d 344, 348 (4th Cir. 2009) *citing United States v. Forrest*, 429 F.3d 73, 79 (4th Cir. 2005). "'Under the abuse of discretion standard, this Court may not substitute its judgment for that of the district court; rather, [it] must determine whether the [district] court's exercise of discretion, considering the law and the facts, was arbitrary or capricious."' *Vidacak*, 553 F.3d at 348 *quoting United States v. Mason*, 52 F.3d 1286, 1289 (4th Cir. 1995) (alterations in original).

B. Argument

In *United States v. Vidacak*, the Fourth Circuit discussed the interplay between the rules governing hearsay and out-of-court statements given through an interpreter. 553 F.3d at 351-53. The general rule is that such statements do not create an additional level of hearsay (double hearsay) because in these situations, an interpreter is "merely a language conduit and not a declarant under the hearsay rule." *Vidacak*, 553 U.S. at 352 (internal quotations omitted). The *Vidacak* opinion, however, also notes that courts have recognized an exception to this general rule. *Vidacak*, 553 U.S. at 352 *citing United States v. Martinez-Gaytan*, 213 F.3d 890 (5th Cir. 2000).

As noted in *Vidacak*, the Fifth Circuit, in *Martinez-Gaytan*, held that '"where the particular facts of a case cast significant doubt upon the accuracy of a translated confession, the translator or a witness who heard and understood the translated confession must be available for testimony and cross-examination."' *Vidacak*, 553 U.S. at 352 *quoting Martinez-Gaytan*, 213 F.3d at 891. The *Martinez-Gaytan* court set forth four factors that courts have looked to in order to determine whether this exception applies. These are: "1) which party supplied the interpreter; 2) whether the interpreter had a motive to mislead or distort; 3) the interpreter's qualifications and language skills; and 4) whether actions taken

subsequent to the conversation were consistent with the statements translated." *Martinez-Gaytan*, 213 F.3d at 892.

In *Martinez-Gaytan*, the defendant was stopped by federal agents as he tried to enter the United States from Mexico, and a search of his car uncovered 75 pounds of marijuana hidden in the gas tank. *Martinez-Gaytan*, 213 F.3d at 891. The federal agent who conducted the subsequent interrogation did not speak Spanish and defendant did not speak English. *Martinez-Gaytan*, 213 F.3d at 891. The agent therefore asked one of the inspectors who was present to act as an interpreter during the interrogation. *Martinez-Gaytan*, 213 F.3d at 891. The defendant then allegedly confessed to knowing that the vehicle contained marijuana, that he was to drive it to the United States and drop it off at a pre-determined location, and that he was to be paid $800.00 for his services. *Martinez-Gaytan*, 213 F.3d at 891.

At a subsequent suppression hearing, the defense objected on hearsay and Confrontation Clause grounds to the agent's testimony concerning the defendant's statements given in Spanish on the grounds that the inspector who translated during the interview was not present to testify. *Martinez-Gaytan*, 213 F.3d at 891. The magistrate judge overruled the defendant's objections and denied his motion to suppress, and that decision was upheld by the district court. *Martinez-Gaytan*, 213

F.3d at 891-92.

The Fifth Circuit Court of Appeals reversed. The court, applying the four factors, held that the "first, third, and fourth . . . factors all caution against treating [the inspector] as a language conduit ." *Martinez-Gaytan*, 213 F.3d at 893. The court noted that it was the government that supplied the interpreter (factor 1) and that, because the inspector was not present at the hearing, and there was no other information presented to the court about him, the magistrate and the district court had no way to determine his fluency in Spanish (factor 3). *Martinez-Gaytan*, 213 F.3d at 892-93. The court further noted that after the interview, the defendant refused to sign a purported summary of his confession written in English (factor 4)3. The court held that, absent in-court testimony by the inspector that would "help the court assess his reliability as a translator and give the [defendant] the opportunity to attack the quality of the translation," the lower court's decision was clear error. *Martinez-Gaytan*, 213 F.3d at 893.

The Fourth Circuit applied the *Martinez-Gaytan* factors in the *Vidacak* case and found that the exception to the general rule did not apply. 553 F.3d 344. *Vidacak*, however, presents markedly different circumstances from those in *Martinez-Gaytan* and from those in the case at bar. In *Vidacak*, the defendant was

3 The court presumed, without further discussion, that the inspector had no motivation to mislead or distort the translation (factor 2).

convicted of making false statements on immigration applications concerning his prior military service. *Vidacak*, 553 F.3d at 346. The defendant, a Bosnian national, applied for refugee status with the assistance of a refugee aid organization called the International Organization of Migration (IOM). *Vidacak*, 553 F.3d at 346. As part of the application process, the defendant was interviewed by U.S. Immigration Officer Susan Tierney with the assistance of a Serbian translator who was an employee of the IOM. *Vidacak*, 553 F.3d at 346. During the interview, the defendant denied, both orally, and in his written applications, that he had served in the military. *Vidacak*, 553 F.3d at 346-47. After his arrest, the defendant confessed that he had in fact served in the military and that he had lied on his immigration applications and in his interview. *Vidacak*, 553 F.3d at 347.

Prior to trial, the defendant moved *in limine* to exclude those oral and written statements given through the translator unless the translator was available for cross-examination at trial. *Vidacak*, 553 F.3d at 347. The district court denied the motion and permitted Officer Tierney to testify at trial as to the defendant's statements. *Vidacak*, 553 F.3d at 347-48, 351-52. Importantly, Officer Tierney also testified as to the interpreter's honesty and ability as a translator. *Vidacak*, 553 F.3d at 348. She stated that the translator '"seemed extremely honest" and "was one of the best interpreter's that [she] had come across."' *Vidacak*, 553 F.3d

at 352 (alteration in original).

The Forth Circuit affirmed the district court and rejected the defendant's contention that Officer Tierney's testimony was inadmissible double hearsay since she was merely relating the out-of-court statements of the interpreter and not those of the defendant. *Vidacak*, 553 F.3d at 352. In applying the *Martinez-Gaytan* factors, the Court noted that the interpreter had been supplied by the government, but by the IOM, which is an independent organization, funded by the United Nations, and which acts to assist refugees (factor 1). *Vidacak*, 553 F.3d at 352. The Court also noted that there was no evidence that the translator had any motive to mislead or distort the translation or that she harbored any bias toward the defendant (factor 2). *Vidacak*, 553 F.3d at 352. The Court further found that, based on officer Tierney's testimony, the translator was "highly skilled and reliable" (factor 3). *Vidacak*, 553 F.3d at 352. Finally, the court found that the defendant's post-arrest confession was consistent with his prior statements given through the interpreter (factor 4). *Vidacak*, 553 F.3d at 357. Accordingly, the Court held that the interpreter was nothing more than a language conduit. *Vidacak*, 553 F.3d at 357.

In the instant case, application of the *Martinez-Gayten* factors overwhelmingly favor the Appellant's position that Agent Coughlin's rebuttal

testimony as to Muhamud Salad Ali's (Juguuf's) out-of -court statements given through an interpreter were inadmissible double hearsay. As to the first factor, the government clearly supplied the interpreter's used to interrogate Mr. Salad Ali. Agent Coughlin testified that the interpreter used during the first interview was "an FBI Somali linguist." (JA 1270) Although it is unclear from the record exactly what that means, the interpreter was obviously acting as an agent or employee of the government. There is no mention of who the interpreters were during the second and third interviews, but it is clear from the context, timing, and subject matter that these interviews occurred at the behest of the FBI and were done, at least in part, for the purpose of building a case against Mr. Shibin. Therefore, the interpreter was again obviously acting an agent of the government.

Concerning the second factor, there is admittedly no evidence in the record that would tend to show that the interpreter(s) was biased or had a motive to mislead or distort the translations. The fact is, however, the defense simply had no opportunity to address this since the interpreters were not present for cross examination.

As for the third factor, there is no evidence whatsoever that these translations are reliable. There is no testimony at all, nor is there any other evidence in the record concerning the qualifications or the English and Somali

fluency of the interpreters. As in *Martinez-Gaytan*, there was simply no basis upon which the trial court could determine the interpreters' skills and qualifications.

Finally, Mr. Salad Ali's actions were certainly not consistent with his alleged statements. His testimony under oath at Mr. Shibin's trial, both on direct and cross-examination, was in direct conflict to what he purportedly told Agent Coughlin through the translators. In sum, the first, third, and fourth *Martinez-Gaytan* factors all cut against treating the translators in this case as mere language conduits. As such, Agent Coughlin's rebuttal testimony was inadmissible double hearsay and the trial court erred when in permitted him to testify as at Mr. Salad Ali's statements given through the interpreters.

The U.S. District Court for the Southern District of New York, in a case involving strikingly similar facts to those presented in the instant case, recently held that such testimony was inadmissible. *United States v. Ghailani*, 761 F.Supp.2d 114 (S.D. N.Y. 2011). In *Ghailani*, unlike in the present case, it was the defense who was the proponent of the evidence. *Ghailani*, 761 F.Supp.2d at 117. There, the defendant was on trial for his alleged involvement in the 1998 bombings of the U.S. Embassies in Tanzania and Kenya. *Ghailani*, 761 F.Supp.2d at116. The government presented testimony from numerous Swahili-speaking witnesses who testified through an interpreter. *Ghailani*, 761 F.Supp.2d at 116. The defense

unsuccessfully tried to cross-examine a number of those witnesses regarding allegedly inconsistent statements they had previously provided to the FBI. *Ghailani*, 761 F.Supp.2d at 116. The witnesses all denied previously making statements that were inconsistent with their trial testimony. *Ghailani*, 761 F.Supp.2d at 116. In rebuttal, the defense sought to call the FBI agents who originally took the statements. *Ghailani*, 761 F.Supp.2d at 116.

Since none of the FBI agents who conducted the interviews spoke Swahili, Kenyan and Tanzanian police officers were used as translators. *Ghailani*, 761 F.Supp.2d at 119. The court held that the FBI agents were not competent to testify to the witnesses' out of-court statements because "they had no personal knowledge of what the witnesses had said during the investigatory interviews." *Ghailani*, 761 F.Supp.2d at 117. The court recognized that, generally, interpreters are "no more than a language conduit," but held that they could not properly be considered so under the facts of this case. *Ghailani*, 761 F.Supp.2d at 119, -21. The court focused on the fact that there was substantial doubt as to accuracy of the translations as there was no evidence at all regarding the language skills of the interpreters. *Ghailani*, 761 F.Supp.2d at 121. The court also found it significant that neither the witnesses nor the FBI agents were in a position to correct a mistranslation at the time of the interviews since neither one knew the other's

language. *Ghailani*, 761 F.Supp.2d at 121.

Although *Ghailani* is not binding authority in the Fourth Circuit, and that court did not strictly follow the *Martinez-Gaytan* test adopted by this Circuit in *Vidacak*, its reasoning is certainly persuasive. *Ghailani* and the instant case present essentially the same set of facts. Here, as in that case, the FBI agent had no personal knowledge of what the witness actually said as everything was done through interpreters. Further, there is simply no evidence in the record that would establish the interpreter's skill level or the accuracy of the translated statements. Also, like in *Ghailani*, neither Agent Coughlin nor Mr. Salad Ali were in a position to correct a mistranslation or misunderstanding concerning the interview since neither knows the other's language. Based on the rationale set forth in *Ghailani*, the trial court erred in permitting Agent Coughlin to testify as to Mr. Salad Ali's out-of-court statements.

Finally, even if the application of evidence law and hearsay principles would not prohibit Agent Coughlin's testimony, the Confrontation Clause certainly does. This is precisely the issue that was before the Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004). There, the Court unequivocally stated that the Sixth Amendment right to confrontation applies to out-of-court statements regardless of whether the rules of evidence would allow their admission.

Crawford, 541 U.S. at 50-51.

There is no question that Mr. Salad Ali's out-of-court statements in response to Agent Coughlin's questions were testimonial and therefore, fall under the protections of the confrontation clause. *Crawford*, 541 U.S. at 53. The issue here, however, is whether the statements of the interpreter are also subject to the same protections. As discussed above, Agent Coughlin did not have any actual knowledge of what Mr. Salad Ali said as he does not speak Somali. All Agent Coughlin could testify to, or be cross-examined on, was what the interpreter told him in English. There was no way for Mr. Shibin to cross-examine him as to what Mr. Salad Ali said in Somali, and this violated his right to confront the witness against him. In this case, it was Agent Coughlin who was the "language conduit" and the interpreter who was the declarant and should have been present and subject to cross examination.

Crawford also addresses the issue of reliability. Assuming, *arguendo*, that the translations were reliable, the *Crawford* Court soundly rejected the notion that "evidence, untested by the adversary process" is admissible "based on a mere judicial determination of reliability." *Crawford*, 541 U.S. at 62. "To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but

that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Crawford*, 541 U.S. at 62.

The absence of the interpreter at trial prevented Mr. Shibin from being able to challenge by cross-examination, the reliability of the out-of-court statements that the government offered against him. For instance, he could not question the interpreter's skill or experience or ability to communicate with Mr. Salad Ali. Nor could he question the interpreter's knowledge of the English or Somali languages, or the interpreter's knowledge of the various Somali dialects. For these reasons, the district court erred when it overruled defense counsel's objection to this testimony.

CONCLUSION

For the foregoing reasons, this Court should reverse the decisions of the district court denying Mr. Shibin's motions to dismiss, his motion for a judgment of acquittal, and his motion to reconsider his motions to dismiss. Accordingly, this Court should reverse Mr. Shibin's convictions on all counts and dismiss the indictments.

Respectfully submitted this 13th day of December, 2012.

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REQUEST FOR ORAL ARGUMENT

Counsel for the Appellant asserts that the issues raised in this brief may be more fully developed through oral argument, and respectfully requests the same.

CERTIFICATE OF COMPLIANCE

1. This brief has been prepared using Microsoft Word 2003 software, Times New Roman font, 14 point proportional type size.

2. EXCLUSIVE of the corporate disclosure statement; table of contents; table of authorities; statement with respect to oral argument; any addendum containing statutes, rules, or regulations, and the certificate of service, this brief contains 8,886 words.

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions. If the Court so requests, I will provide an electronic version of the brief and/or a copy of the word or line print-out.

s/ James O. Broccoletti
James O. Broccoletti

CERTIFICATE OF SERVICE

I certify that on December 13, 2012, the foregoing document was filed with the Clerk of the Court via hand delivery and electronically using the CM/ECF System which will send notice of such filing to the following registered user:

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