IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	Criminal No. 09-CR-206
	)	
v.	)	
	)	
DINORAH COBOS,	)	
RAYMOND AZAR,	)	
SIMA SALAZAR GROUP	)	
d/b/a SSG OFFSHORE PLC,	)	
d/b/a SSG,	)	
d/b/a SALAZAR CO.,	)	
d/b/a SALAZARCO,	)	
d/b/a SIMA INTERNATIONAL,	)	
d/b/a PRO-SIMA,	)	
d/b/a PRO-SIMA INTERNATIONAL,	)	
	)	
Defendants.	)	

RESPONSE OF THE UNITED STATES TO DEFENDANT RAYMOND AZAR'S MOTION TO SUPPRESS STATEMENTS

Torture of any kind is legally and morally reprehensible, and evidence obtained thereby has no place in the American system of justice. The United States categorically rejects defendant's claims of abusive treatment during his expulsion from Afghanistan. As set forth herein, during his expulsion from Afghanistan, defendant Raymond Azar was treated professionally; offered food, water, and use of the bathroom; provided with comfortable chairs to sit in and a bed, with a mattress, pillow, and a blanket, to sleep in. The restraints to which defendant was subjected were employed solely for the purpose of ensuring his safety and that of the federal agents who participated in his transport to the United States to face federal criminal charges authorized by a magistrate judge in this District. Defendant was never subjected to

restraint intended to increase the likelihood of eliciting a confession.

The United States, by and through its undersigned attorneys, hereby responds to defendant Raymond Azar's Motion To Suppress. (Dkt. 55). In this case, with permission from the Government of Afghanistan, FBI agents expelled defendant from that country based on a valid arrest warrant issued in this District. In the custody of the FBI, defendant was questioned on three separate occasions. On each occasion, defendant was advised of his *Miranda* rights and each time, knowingly, voluntarily, and intelligently waived them. The ensuing statements were voluntary, and thus defendant's Motion To Suppress should be denied.

I FACTS OF DEFENDANT'S DETENTION, ARREST, AND TRANSPORT

By the attached affidavits of FBI Special Agents Trey Halterman, Exh. A, Nicolas Zambeck, Exh. B, and Perry J. Goerish, Exh. C, testimony, documents, or otherwise as the Court shall permit, the United States is prepared to establish the following relevant facts:

On April 3, 2009, Magistrate Judge F. John Anderson issued an arrest warrant for Azar and co-defendant Dinorah Cobos, upon finding probable cause to believe defendants had conspired with others to bribe a United States Army Corps of Engineers ("USACE") official with the intent to influence that official in the payment of $15 million in Requests for Equitable Adjustment ("REAs") submitted by defendants' company, SSG. Upon securing the arrest warrants, the United States sought and received permission from the Government of Afghanistan to have the defendants expelled from that country into the custody of the FBI.

Azar and Cobos were subsequently invited to a meeting with USACE officials at Camp Eggers, Kabul, Afghanistan. On April 7, as scheduled, Azar, Cobos, and their co-worker and co-owner of SSG, Nizar Azar, arrived at a small café on Camp Eggers. At approximately 3:00 p.m.,

upon defendants' entering the designated meeting site, FBI agents took them into custody. Each agent was armed with a sidearm. The agents wore jackets clearly indicating "FBI," verbally identified themselves as FBI agents to each defendant, and showed the defendants their official credentials to verify their identities. At that time, defendants were verbally apprised multiple times that they were being expelled from Afghanistan.

Defendants were separated and escorted out of the café. Once outside, defendants were patted down for weapons or contraband and their personal possessions were collected. Defendants were handcuffed in front, and Azar was bound at the ankles as well. Among Azar's possessions, agents found a bottle of what appeared to be medicine. Azar was specifically asked about his health and well-being, and Azar disclaimed any medical problems or any current need for medication. Between approximately 3:15 and 3:20 p.m., defendants were loaded into separate SUVs destined for Bagram Airfield ("BAF"), located approximately 90 minutes from Camp Eggers. For their protection en route to BAF, each defendant was fitted with body armor and a Kevlar helmet and positioned in the middle of the back seat, between two FBI agents. The FBI agents also wore body armor, and each FBI agent manned an M4 carbine rifle, as is standard, in case the convoy took enemy fire from Taliban insurgents.

Shortly into the ride, Azar began asking questions in English of the agents in the SUV. Agent Halterman stopped Azar and at that point read him in English his *Miranda* rights from FBI Form FD-395 ("*Miranda* Form"). Exh. D. After each statement on the *Miranda* Form, Agent Halterman asked Azar if he understood it, and Azar responded in English that he did. After reading Azar all the rights on the *Miranda* Form, Agent Halterman asked Azar if he would like to see and read the *Miranda* Form himself. Azar replied that he would and Agent Halterman gave

Azar the *Miranda* Form. Azar read and signed it, acknowledging that he understood his rights and that he waived them. As denoted on the *Miranda* Form, Azar signed the statement at 3:26 p.m., approximately 5-10 minutes after the convoy's departure from Camp Eggers.

Agent Halterman and Azar then engaged in an approximately 45-minute conversation in English. According to Agent Halterman, Azar understood the questions asked and responded completely and articulately in English. Agent Halterman perceived no miscommunication between them as they spoke. Using a rapport-building interview technique, Agent Halterman asked Azar about his role at SSG and in authorizing bribes to USACE officials. At no point did any agent raise his voice during the interview or threaten Azar with physical violence of any sort; nor did any agent show Azar a picture of his family, threaten him that he would not see his family again, or promise that he could return to Lebanon if he talked. The interview concluded at approximately 4:10 p.m. The SUV arrived at the front gate of BAF at 4:48 p.m. Exhs. E-F.

Upon their arrival at BAF, Azar was taken to the office used by federal agents from the International Contract Corruption Task Force ("ICCTF"). The office is comfortable and heated. Azar was seated at an empty desk in an empty back office. After approximately 20 minutes, an agent retrieved for Azar a more comfortable padded office chair. The door to the office was open, and an agent sat outside the door. Azar was escorted, as needed, to the bathroom. After approximately one hour, Special Agent Brian Rasmussen asked Azar what he would like to eat for dinner and whether he had any special dietary needs. Azar responded that he was not hungry and did not wish to eat dinner. Agent Rasmussen, nevertheless, brought Azar a plate of chicken fingers, fries, cookies, nectarines, plums, chips and a soda from the military dining facility. Agent Rasmussen brought defendant Cobos a similar plate of food. Cobos Motion To Dismiss at 6.

After dinner, at approximately 9:30 p.m., Azar was taken to the bathroom and then to a jail to sleep, which like the ICCTF office, was heated. Azar's cell had in it a bed, mattress, blanket and pillow. Azar's handcuffs and anklecuffs were removed. The lights in his cell were turned off, and the lights in the hallway were dimmed. The light at the guard's desk, at the front of the jail, remained on for safety and to allow the guards to work through the night.[1] Throughout April 7, 2009, during his detention and transport from Camp Eggers to BAF, Azar spoke exclusively in English and never complained that he did not understand what was transpiring.

At approximately 7:00 a.m. on the morning of April 8, agents brought Azar (and Cobos) breakfast of eggs, fruit, and juice. After breakfast, Agent Rasmussen escorted Azar to the bathroom, where he was permitted to wash his hands, arms, and face, and generally clean up. Azar was then walked approximately thirty yards back to the ICCTF office, where he was interviewed by Special Agents Perry Goerish, Trey Halterman and Jason Loeffler. At the outset of the interview, Agent Goerish again read Azar his *Miranda* rights from an FBI Form FD-395. Agent Goerish asked Azar if he remembered the form from his conversation the previous day with Agent Halterman, and Azar stated he remembered and understood his rights. Agent Goerish read Azar each right aloud, and Azar confirmed he understood each right. Azar signed a rights waiver at approximately 7:33 a.m. and agreed to be interviewed by Agent Goerish. Exh. G.

During this interview, Agent Goerish described the evidence assembled during the investigation and Azar stated that the FBI had him on tape and signing the wire transfers. Agent Goerish then asked Azar detailed questions regarding how wire transfers were sent from SSG as

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[1] According to the Army at BAF, the overnight low on April 7, 2009, was 50 degrees Fahrenheit, not the approximately 33 degrees Fahrenheit claimed by Azar.

well as about Cobos's authority at SSG. Exh. H. Agent Goerish asked each of the questions in English and Azar responded in English. None of the agents present perceived any communication breakdown during the interview or felt that Azar failed to comprehend the questions posed to him. The agents understood Azar's responses. The interview was ended after approximately 90 minutes because the airplane was ready to depart BAF.

Once the interview at ICCTF concluded, an FBI medic conducted a 15-minute physical examination to ensure that Azar was healthy enough for airplane transport, was not carrying any contraband and to document his physical condition. During his physical, Azar specifically responded, when asked, that he had suffered no mistreatment. After this examination, Azar was placed in the custody of the FBI Hostage Rescue Team ("HRT") for the airplane transport to the United States. As directed by HRT Team Leader, Nicolas Zambeck, Azar and Cobos were fitted with wrist and ankle restraints, canvas blindfolds and earphones as called for by accepted operating procedures for international prisoner transport. These measures were in place to ensure the safety of the agents and the defendants. As Agent Zambeck describes, in the close confines of this airplane, defendants were seated less than five feet apart and each was less than thirty feet from the cockpit bay. The restraints, blindfold, and earphones diminish the likelihood prisoners will unilaterally attempt to attack an agent or steal his weapon or make a dash for a weapons depot, the emergency exit, or the cockpit. They also restrict the defendants' ability to communicate with one another and thus to coordinate an attack.

Azar then walked ten feet from the ICCTF office into a waiting SUV and was driven to the airplane where he boarded with the agents. On board, Azar was seated in a large, first-class-type padded leather seat on a swivel. Approximately three hours after take-off from Bagram,

while the airplane was being refueled, Azar was asked if he needed anything. He requested and was provided a bottle of water and a blanket, but he declined the use of the bathroom. Less than an hour later, Agent Goerish offered Azar food, which he refused. Cobos was given a sandwich and an apple. Azar was provided the opportunity to stand and stretch, as necessary. Exh. I.

Between take-off and landing, Agent Zambeck permitted modifications of the security measures, including loosening the handcuffs and adjusting the blindfolds or earphones, in order to ensure the relative comfort of defendants. During the flight, Azar was interviewed by Agent Goerish and Assistant Special Agent in Charge, Jean Andersen. Azar's blindfold and earphones were removed. Prior to beginning the interview, Agent Goerish presented Azar with the *Miranda* Forms he had signed twice previously and asked if Azar remembered and understood those rights. Azar responded that he remembered and understood. Agent Goerish reiterated those rights, and Azar waived those rights and consented again to be interviewed. Exh. J.

During this interview, Agent Goerish asked Azar to tell the truth about his knowledge of the bribe money paid to the USACE official in return for payment on the REAs. Agent Goerish urged Azar to cooperate with the investigation by telling the truth, so that his ultimate punishment might be reduced and he might return home sooner rather than later. Never during the interview was Azar threatened with physical violence, nor was he ever shown a picture of his family or told that he would never see his family again unless he confessed. He was also never made any promises about returning to Lebanon. During the interview, Azar was provided with water and he paused three separate times to drink. *Id.* at 2.

Azar spoke to Agent Goerish and ASAC Andersen only in English and he never indicated that he did not understand the conversation. Azar coherently answered Agent Goerish's detailed

questions in English, at one point, reading and discussing emails in English. At the end of the interview, when offered the opportunity to write and sign a statement reflecting the substance of the interview, Azar declined to do so, stating that his father told him only to sign something if it was a baptism document, a document his lawyer asked him to sign, or in front of a judge. *Id.*

After the interview, Azar was given a banana, a bag of Cheetos, and a trail mix bar to eat. He was also provided a Wet One to clean his face and fingers. *Id.* Azar was then returned aft to his seat for the remainder of the flight. Upon landing in Manassas, Virginia, the blindfold and earphones were removed, and agents from FBI's Washington Field Office who were waiting for the arrival of the airplane assumed custody of the defendants.

II ARGUMENT

In the custody of the FBI, defendant was questioned on three separate occasions about his involvement in the bribery of a U.S. public official in return for official acts related to Army Corps of Engineers contracts held by his company, SSG, in Afghanistan. On each occasion, defendant was advised of his *Miranda* rights and each time, knowingly, voluntarily, and intelligently waived them and agreed to speak with the agents. Defendant's ensuing statements were voluntary, and thus his Motion To Suppress should be denied.

A. AZAR'S WAIVER OF HIS *MIRANDA* RIGHTS WAS KNOWING, INTELLIGENT, AND VOLUNTARY ON EACH OCCASION

If a subject is questioned while in custody, the police are required to inform him of his constitutional rights. *Miranda v. Arizona*, 384 U.S. 436 (1966); *see also Dickerson v. United States*, 530 U.S. 428, 444 (2000) (reaffirming *Miranda* as a constitutional rule, not subject to alteration by statute). The Constitution requires no precise formulation of these warnings, so

long as they "reasonably convey to [a suspect] his rights." *United States v. Frankson*, 83 F.3d 79 (4th Cir. 1996) (quoting *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989)). A subject may waive his rights, however, if the waiver is voluntary, knowing, and intelligent. Such a waiver must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). While the subject must understand the warnings themselves, it is not requisite that he understand or appreciate the tactical or strategic consequences of waiving his *Miranda* rights. *Moran*, 475 U.S. at 422 ("[W]e have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights."). The validity of a waiver should be measured by the totality of the circumstances, *Moran*, 475 U.S. at 421, and the United States shoulders the burden to prove a valid waiver by a preponderance of the evidence, *Colorado v. Connelly*, 479 U.S. 157, 168 (1986).

The critical inquiry in assessing a valid *Miranda* waiver is whether "the government's agents have overborne the subject's will or have left his capacity for self-determination critically impaired." *United States v. Pelton*, 835 F.2d 1067, 1071-72 (4th Cir. 1987). Factors to consider include the background, experience, and conduct of both the police and the defendant. An inability to understand English may render a waiver of rights defective, *United States v. Short*, 790 F.2d 464, 469 (6th Cir. 1986), but a mere language barrier does not thwart an effective waiver. *United States v. Guay*, 108 F.3d 545, 549 (4th Cir. 1997) (upholding rights waiver where defendants, while not proficient in English, demonstrated some ability to speak the language and indicated that they understood their rights when read to them). Certainly a rights waiver will not be invalidated if a defendant is merely hiding knowledge of English or using the fact that he is

not a native speaker as an excuse to invalidate a proper waiver. *United States v. Chaidez*, 906 F.2d 377, 380 (8th Cir. 1990) (holding where defendant had some command of English, despite testimony to the contrary, waiver was deemed knowing and voluntary); *see also United States v. Moreno*, 122 F. Supp. 2d 679, 681 (E.D. Va. 2000) (holding waiver valid where interview was in English and defendant provided "responsive, meaningful answers" to questions).

In *Guay*, for example, the Fourth Circuit held that a *Miranda* waiver was not defective even though the defendants were not proficient in English, where they demonstrated some ability to speak the language and indicated that they understood their rights when read to them. 108 F.3d at 549–50. The Fourth Circuit has held in several other cases that poor English ability does not invalidate a *Miranda* waiver. *See, e.g.*, *United States v. Hoang*, 153 Fed. App'x 16, 165–66 (4th Cir. 2005) (rejecting defendant's claim that *Miranda* waiver was invalid because of poor English skills, where police testified they had no difficulty conversing with defendant and where defendant acknowledged understanding each right as it was read); *United States v. Querubin*, 150 F. App'x 233, 235 (4th Cir. 2005) (holding defendant's limited English-speaking ability did not invalidate waiver, where police read *Miranda* rights in English, defendant responded in English that he understood rights, and defendant answered questions in English in detail).

In this case, Azar, like the defendants in *Guay*, indicated that he understood his rights, not once, but on three occasions. Prior to his initial interview,[2] each right was read to him individually and after the recitation of each right, Azar acknowledged that he understood it. Not

[2] Azar's assertion that he was not read his *Miranda* rights by Agent Halterman until over an hour of interrogation is simply not supported by the facts. Azar's *Miranda* waiver is dated at 3:26 p.m., approximately five to ten minutes after he was placed into the SUV destined for Camp Eggers and only 26 minutes after he was initially approached in the café.

only were the rights read to him aloud, but Azar took from Agent Halterman the *Miranda* Form and re-read the rights himself. Only after hearing, acknowledging his understanding of, and reading these rights, did Azar sign the *Miranda* Form and agree to be interviewed. Twice more, once at BAF and once on the airplane, Azar was read his rights, acknowledged his understanding thereof, and agreed to be interviewed. Like the defendants in *Guay* and *Moreno*, Azar answered detailed questions about his position within SSG, his relationship with Cobos, and his involvement in money paid to a USACE official. Not one of the agents involved in these interviews ever perceived a communication breakdown, nor did Azar at any time assert that he did not understand the questions posed to him or that he needed an interpreter.

That Azar understood English proficiently was expected by the agents conducting the interviews based on their previous investigation into this matter. The agents knew Azar was a successful Lebanese businessman, who had conducted business with the U.S. military in Iraq, Afghanistan, and throughout the Middle East. Azar's company, SSG, had secured over $50 million in contracts with the U.S. military in Afghanistan alone, and Azar had been tasked to oversee that business in an effort to reverse recent problems plaguing those contracts. Azar necessarily conducted all of his business with the U.S. military in English. Exh. K. Azar communicated in English with Cobos, including about the subject of the pending charges, Exh. L, and with various subcontractors working for SSG, Exh. M. Even communication among the Lebanese co-owners of SSG was occasionally done in English. Exh. N. Indeed without a proficient command of English, Azar, a native Arabic speaker, would not have been sent to Afghanistan – a country in which Dari and Pashto predominate – to oversee SSG's business, in which capacity he had to deal with the U.S. military and Afghan subcontractors. These facts bear

no similarity to *United States v. Monreal*, to which defendant looks for support. In that case, the court noted, "[d]efendant is unique from most of the defendants in the prevailing case law," because he spoke *no* English at all. 602 F. Supp. 2d 719, 723 (E.D. Va. 2008).

Particularly where, as here, a defendant was read the *Miranda* rights' advisement by federal agents, acknowledged that he understood those rights, then himself re-read, re-acknowledged, and signed the rights advisements, and did so on three occasions, the waiver was clearly knowingly, voluntarily and intelligently made. *Colorado v. Spring*, 479 U.S. 564 (1987) (finding a voluntary waiver where defendant was twice informed of his rights, indicated his understanding of those rights, and signed a waiver); *Campaneria v. Reed*, 891 F.2d 1014, 1020 (2d Cir. 1989) (holding waiver valid in case of non-native English speaker who indicated during three separate interviews that he understood and waived rights); *United States v. Hilario-Hilario*, 529 F.3d 65 (1st Cir. 2008) (holding waiver valid where defendant was mirandized prior to two separate interviews and indicated his understanding); *United States v. Contreras*, 372 F.3d 974 (8th Cir. 2004) (finding valid *Miranda* waiver by non-native English speaker where bulk of interrogation was conducted in English and defendant communicated effectively in English).

Under the totality of these circumstances, it is clear Azar made a knowing, voluntary, and intelligent waiver of his *Miranda* rights on each of three occasions.

B. AFTER WAIVING HIS *MIRANDA* RIGHTS ON REPEATED OCCASIONS, AZAR GAVE VOLUNTARY STATEMENTS

The requirement that police give *Miranda* warnings does not dispense with the inquiry whether the confession was given voluntarily. *Dickerson,* 530 U.S. at 444. But "cases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled'

despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare." *Id.* at 443 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984)). For a statement to be involuntary, it must be extracted by threats or violence or the exertion of improper influence such that the subject's will has been overborne and his capacity for self-determination has been critically impaired. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973); *United States v. Cristobal*, 293 F.3d 134, 140 (4th Cir. 2002). In evaluating whether a defendant's will has been overborne, courts must assess the totality of the circumstances, taking into account characteristics of the accused and details of the investigation. *Schneckloth*, 412 U.S. at 226. The factors to consider include: the youth of the accused, his lack of education or low intelligence, the lack of any advice to the accused about his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep. *United States v. Abu Ali*, 528 F.3d 210, 232 (4th Cir. 2008). Truthful statements about the subject's predicament, his possible period of incarceration on the charged offenses, his ability to cooperate to help his predicament, or the possibility of additional charges are not the type of coercion that threatens to render a statement involuntary. *United States v. Braxton*, 112 F.3d 777, 782 (4th Cir. 1997) (admonishing suspect to tell truth during interview and advising of possible outcomes not coercive conduct). The United States carries the burden of showing that a defendant's statement was voluntary by a preponderance of the evidence. *United States v. Dodier*, 630 F.2d 232, 236 (4th Cir. 1980).

In this case, Azar is an educated, well-spoken international business man, from a wealthy Lebanese family. He co-owns a multi-million dollar business, SSG, which has conducted tens of millions of dollars of business with the U.S. military in Iraq and Afghanistan. Also in this case,

Azar was read his *Miranda* rights before each interview. Each time, Azar waived those rights and voluntarily, knowingly, and intelligently agreed to speak with the agents.

This scenario stands in stark contrast to that of Ahmed Abu Ali, who was held in Saudi prison and questioned without being apprised of his constitutional rights. *United States v. Abu Ali*, 395 F. Supp. 2d 338, 343 (E.D. Va. 2005). In that case, the defendant, an American citizen, was arrested in Saudi Arabia by the Saudi police for suspected terrorist activities and was interrogated repeatedly over a period of at least two weeks. The Court found that the "inherently coercive conditions" to which Abu Ali was subjected in Saudi prison were not sufficient to demonstrate that his confession was involuntary, despite the fact that "he was kept in a solitary cell" with the "lights kept on at all times" and interrogated repeatedly for many days, with sessions lasting as long as "nearly seven hours," and despite the fact that the interrogator who had elicited his confession had "once tied a person to a tree for five minutes in connection with such questioning." *Id.* at 346-47. The Fourth Circuit affirmed, noting that although Abu Ali's interrogation "lasted many days, that he began to confess in great detail on just the second day of interrogation indicates that his will was not overborne." *Abu Ali*, 528 F.3d at 234.

Unlike Abu Ali, Azar does not claim that he was physically threatened or harmed.[3] To the contrary, Azar was provided meals, a comfortable chair in the ICCTF office, bathroom breaks, bottled water, and other accommodations. Azar was not, as he claims, deprived of the

[3] Defendant cites *United States v. Brown*, 557 F.2d 541, 548 (6th Cir. 1977), where the court held a confession involuntary on the basis that it was induced by the defendant's "overwhelming fear that he would be beaten by police" after he had suffered injuries from a severe beating by the arresting officers. That case does not apply here. There is no allegation that Azar was physically harmed in any way, and in fact, he specifically disclaimed any mistreatment during his physical examination prior to airplane transport.

opportunity to sleep; instead he was given a bed, a pillow, and a blanket in a jail cell by himself, with the lights dimmed. *United States v. Wylie*, No. 3:05cr353, 2006 U.S. Dist. LEXIS 36227 (W.D.N.C. May 19, 2006) (holding that defendant had not slept in several days not sufficient to warrant suppression of statement where officers did not intentionally deprive defendant of sleep).

On the airplane, Azar was fitted with a blindfold and earphones in order to ensure agent safety, but during his questioning, these measures were removed, and Azar again spoke freely with the agents, after being re-apprised of his *Miranda* rights and waiving them for a third time. Throughout Azar's detention and transport, the FBI undertook the least restrictive security measure deemed necessary under the circumstances, and when the need for a particular security measure abated, it was removed. Unlike in *Abu Ali*, Azar was not subjected to any tactic for the purpose of an interrogation; each measure was implemented for safety and for no other reason. Indeed, the conditions of Azar's arrest and transport were not nearly as overwhelming as those in *United States v. Seni*, 662 F.2d 277, 281-82 (4th Cir. 1981), where the defendant voluntarily confessed while shackled at gunpoint, and certainly the totality of the circumstances here were not remotely similar to those in the Saudi prison in which Abu Ali was questioned.

Moreover, Azar was not questioned unrelentingly or for prolonged periods. He was questioned three separate times over two days, in each instance for less than 90 minutes, and on each occasion re-apprised of his rights before the interview began. On each occasion the agents conducted the interview using a rapport-building technique, not one of angry confrontation. During these interviews, consistent with *United States v. Mashburn*, 406 F.3d 303, 309 (4th Cir. 2005), and *United States v. Williams*, 479 F.2d 1138, 1139-40 (4th Cir. 1973), the agents variously explained the charges against Azar, the seriousness of Azar's situation and their

predictive belief that if he told the truth and cooperated that he might minimize his exposure and thus return to Lebanon sooner than if he did not cooperate. The Fourth Circuit has held it permissible for law enforcement officials to make truthful representations to a defendant or discuss cooperation with him, and that such conduct does not render the resulting confession involuntary. *United States v. Shears*, 762 F.2d 397, 401 (4th Cir. 1985). Contrary to defendant's assertions, no promises or guarantees of any nature were ever made to him. *United States v. Pelton*, 835 F.2d 1067, 1072-73 (4th Cir. 1987) (holding general encouragement to cooperate as being far different from specific promises of leniency); *Braxton*, 112 F.3d at 783 (holding statements by officers that suspect could face five years in jail unless he cooperated not an implied promise requiring suppression of statement).

Finally, Azar's own actions demonstrate conclusively that his faculty of self-determination remained intact throughout the last interview. At the end of the interview, Agent Goerish offered to Azar the opportunity to write and sign a statement. Azar, however, said he would not write or sign any document prepared in this manner because it was not a baptism document, a document his lawyer told him to sign, or a document to be signed before a judge. Far from his will being overborne, Azar exercised independent decisionmaking over what occurred, and underscoring the voluntariness of the circumstances, Agent Goerish complied. Under the totality of these circumstances, after validly waiving his *Miranda* rights, Azar's statements on three occasions to the FBI agents were wholly voluntary.

CONCLUSION

For the foregoing reasons, defendant's Motion To Suppress should be denied.

DATED this 21st day of July, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2009, I will electronically file the foregoing Response of the United States To Defendant Raymond Azar's Motion To Suppress Statements with the Clerk of the Court using the CM/EDF system, which will then send a notification of such filing (NEF) to:

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