UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,	)	
	)	
v.	)	
	)	
Dustin Laurent Heard,	)	**Crim. Dkt. No. 08-CR-360-RCL-4**
Paul Alvin Slough,	)	**Crim. Dkt. No. 08-CR-360-RCL-1**
Evan Sean Liberty,	)	**Crim. Dkt. No. 08-CR-360-RCL-3**
Defendants.	)	

DEFENDANTS' MOTION TO VACATE AND SET ASIDE THE JUDGMENTS OF CONVICTION AND SENTENCE PURSUANT TO 28 U.S.C. § 2255

Pursuant to 28 U.S.C. § 2255, the Rules Governing Section 2255 Proceedings for the United States District Courts, and Local Rule 9.2, Defendants respectfully seek a determination that the judgment of convictions and sentence the Court imposed upon them violates the Constitution and laws of the United States based upon prosecutorial misconduct and actual innocence.

Accordingly, the continued incarceration of Defendants by federal officials is unconstitutional, unjust, and unlawful such that the Court should issue an order directing their immediate release and provide any other relief that law and justice may require. 28 U.S.C. § 2243.

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THE PARTIES

Defendant Dustin Laurent Heard ("Heard"), a former combat United States Marine, is currently confined by federal officials pursuant to the Court's September 13, 2019, amended judgment of conviction and sentence at the United States Penitentiary Atlanta.

Defendant Paul Evan Slough ("Slough"), a former combat Soldier, is currently confined by federal officials pursuant to the Court's September 13, 2019, amended judgment of conviction and sentence at the Federal Correctional Institution at Bastrop, Texas.

Defendant Evan S. Liberty ("Liberty"), a decorated former United States Marine, is currently confined by federal officials pursuant to the Court's September 13, 2019, amended judgment of conviction and sentence at the Federal Correctional Institution at Schuylkill, Pennsylvania.

The United States is represented by the United States Attorney's Office for the District of Columbia ("USAODC").

JURISDICTION AND VENUE

Because movants are in custody under the amended judgment of conviction and sentence of this Court, the Court possesses jurisdiction to entertain their collateral claims pursuant to 28 U.S.C. § 2255, and venue is proper in this District. *Id*.

STATEMENT OF THE CASE

After eleven years of prosecution, the first ending in an outright dismissal due to "reckless" constitutional violations, eleven weeks of trial, numerous appeals, and already over six years of federal confinement, on September 16, 2019, Heard, Slough, and Liberty (collectively, "Movants"), three decorated veterans of the United States military, were sentenced to federal prison for conduct directly related to their work as security personnel for private government

contractor Blackwater USA ("Blackwater") during the height of the insurgency in Iraq. The case's long, tortured history has been marked by one constant – repeated case-defining prejudicial rulings on key evidentiary issues related to blatant prosecutorial misconduct that stripped these decorated veterans of a fair trial in keeping with constitutional standards. By repeatedly withholding critical evidence throughout and even after trial, relying on perjured testimony, and intentionally misrepresenting the facts of the case to the jury, the United States Department of Justice ultimately got its guilty verdicts - verdicts that resulted in incarcerations that are unconstitutional, unjust, and unlawful. This Court stands in the enviable position of protecting the constitutional rights of these men, who are not criminals, but patriots who volunteered repeatedly to walk into danger for our nation. They deserve better, our law demands better, and the Constitution requires that the fair shake our rule-of-law guarantees can no longer be ignored by Article II officials.

In 2008, the United States Department of Justice sought and obtained an indictment accusing Movants and Nicholas Slatten ("Slatten") with 33 counts of various federal offenses arising out of conduct directly related to their work as security personnel armed with semi-automatic rifles to discharge their dangerous wartime duties. Heard, Slough, Liberty, and Slatten were assigned to protect American diplomats in an urban warzone – dangerous work which required their team (known as Raven 23) to traverse narrow, crowded city streets, accompanying convoys, always on the lookout for potential threats, and oftentimes providing the last line of defense against violent terrorists intent on attacking U.S. diplomats.

During their deployments in Iraq as contractors for Blackwater, as well as over several tours as active-duty military, each of the movants had taken part in violent clashes with insurgents seeking to harm them or the people they were protecting. These were experienced military personnel who understood the dangers of the job and had an acute awareness of the potential threats

that were posed when they were tasked with ensuring safe passage for U.S. diplomats in Nisur Square after a terrorist attack near the protected "Green Zone" in Baghdad on September 16, 2007.

On that day, at the direction of the U.S. State Department, Raven 23 deployed to Nisur Square to secure a U.S. diplomat's safe passage back to the Green Zone following the nearby explosion of a car bomb. According to the witnesses interviewed immediately after the incident by the first U.S. Army Officer to respond to the scene, a car jumped out of the line of stopped vehicles and began driving toward the convoy. The car matched the color and description of a car that recent intelligence reports provided to Raven 23 warned may be carrying a bomb to explode in a secondary attack, a common insurgent tactic. The driver disregarded the team's repeated warnings to stop.

Perceiving a clear and present threat, with initial warnings ignored, the men assigned to Raven 23 used force to stop the vehicle. They were defending themselves. Immediately after engaging the oncoming vehicle, as the evidence confirms, Raven 23 took small arms fire from various directions around the square. With their convoy now under attack, they responded with equal force.

During the firefight, several Iraqis were killed, and others were injured. The ensuing investigation on the scene was directed by investigator Colonel Faris Saai Abdul Karim of the Iraqi National Police. Under State Department [and Blackwater] rules, each of the men of Raven 23 was required to submit to an interview and provide a "sworn statement" to State Department investigators, all of which were compelled statements that could not be used in any criminal proceeding. Each of the statements were materially consistent with one another – the members of Raven 23 perceived an imminent threat and responded in self-defense. It would be weeks before the Federal Bureau of Investigation arrived on the scene to investigate the incident; by the time the

FBI got there, much evidence had been altered, removed, discarded, and/or possibly tampered with.

From the outset of this case, the U.S. Government employed every prosecutorial device at its disposal to engineer a guilty verdict without regard to due process, the Constitution, or principles of fairness. To begin with, the case was prosecuted in this jurisdiction because the Government knew that Washington D.C. would be a more receptive venue for their allegations than any of the other suitable jurisdictions – New Hampshire, Tennessee, or Texas (where Movants are from). The prosecution was able to manufacture its hand-picked venue by arranging the "arrest" of a cooperating witness in D.C. -- former Blackwater team member Jeremy Ridgeway. Principles of due process and fairness reject this kind of forum shopping by the prosecution, but the Court rejected movants' arguments seeking to transfer the case on this basis.

This pattern of prosecutorial overreach continued throughout the initial prosecution, leading the Honorable Ricardo M. Urbina, now retired from this Court, to dismiss the original 2008 indictment in its entirety against all defendants as fatally flawed by multiple unconstitutional and unfairly prejudicial acts perpetrated by the Government. Judge Urbina found numerous "reckless" violations by the U.S. Department of Justice, including the improper use of the compelled witness statements and the intentional withholding of exculpatory evidence and testimony from the grand jury, among other things. In summary, Judge Urbina concluded that "the process aimed at bringing the accused to trial has compromised the constitutional rights of the accused." *United States v. Slough*, 677 F. Supp. 2d 112 (D.D.C. 2009).

Under heavy diplomatic and political pressure, though, the Department of Justice appealed the dismissal. The United States Court of Appeals for the District of Columbia Circuit vacated and remanded to this Court, finding that Judge Urbina should have analyzed the impact of the tainted

prosecutorial evidence as to each defendant. *United States v. Slough*, 641 F.3d 544, 548 (D.C. Cir. 2011). Upon remand, Judge Leon was randomly assigned. However, for unknown reasons, Judge Lamberth was assigned the case thirty minutes later. R. 253-254. He rejected the Defendants' challenges and allowed the case to proceed to trial.

Trial began on June 11, 2014, and lasted eleven weeks. Seven years after the incident and five weeks into trial, the Government—for the first time—produced photographs taken by a U.S. Army investigator immediately after the incident of AK-47 shell casings on the ground in locations where Raven 23 team members had stated insurgents had been firing. These shell casings were apparently removed from the scene by Iraqi investigators, who were standing by the shells in the photographs. The shells were never turned over to the FBI. This evidence strongly supported Movants' contention that their actions were taken in self-defense, and was not produced until after the defense team would have been able to use it during opening statements and cross examination of key prosecution witnesses who had testified that there had been no evidence of an insurgent attack on Raven 23 that day. (Doc. 591). The photographs were also entirely consistent with real-time radio logs from Raven 23 reporting incoming fire, and with the damage suffered by the vehicles in the convoy, one of which was disabled by insurgent gunfire. The Court rejected an application to cure this clear *Brady* violation through the requested explanatory jury instructions.

The jury was charged on September 2, 2014, and deliberated more than seven weeks. On October 22, 2014, the jury convicted Heard, Slough, and Liberty of voluntary manslaughter, attempted manslaughter, and using a firearm in the commission of a crime, in violation of 18 U.S.C. §§ 1112, 1113, and 924, respectively; the latter offense carrying a mandatory minimum of 30 years' imprisonment because Movants used government-issued automatic weapons, as the State Department required in a war zone. (Doc. 763).

Five days before sentencing, the prosecution submitted a victim impact statement from a key trial witness that fundamentally contradicted the witness's trial testimony and stood to gut the prosecution's theory of the case. The prosecution did not identify the statement as exculpatory evidence; it was buried deep in an 83-page package of similar statements. R.742-6. Defendants raised the statement in a letter to this Court and an emergency motion to continue sentencing to permit a new trial motion. R.744. The Court denied the continuance. R.746.

Sentencing was held on April 13, 2015, and the district court sentenced each of the Movants to a term of imprisonment for thirty years and one day. (Doc. 763).

On April 27, 2015, Movants submitted a new trial motion, based on the prosecution's having failed to timely disclose known *Brady/Giglio* impeachment evidence relating to a key prosecution witness who perjured himself or at least contradicted in significant ways his trial testimony, which the Court denied on November 10, 2015. R. 765; 820.

Movants timely appealed, asserting, among other things, that this Court lacked jurisdiction. Specifically, they urged that the Court lacked jurisdiction because at no time were Movants ever "employed by the Armed Forces outside the United States" under the Military Extraterritorial Jurisdiction Act, 18 U.S.C. §§ 3261, 3267 ("MEJA"). Instead, Movants were employed by a private company to provide professional security for the U.S. Department of State in a combat zone to protect and defend diplomats. The distinction in their status, and the lack of federal court jurisdiction over such private guards deployed overseas, is not only in the plain language of the statute, but also illustrated by congressional efforts (notably unsuccessful) to amend the statute to expressly include agencies of the federal government, such as the State Department, beyond the Armed Forces and their Departments.

Movants also appealed the denial of the new trial motion, asserting that venue was not proper in the District of Columbia, and the Court's denial of their as-applied Eighth Amendment challenge to the imposition of a 30-year mandatory minimum sentence for using automatic weapons that the State Department required them to carry to perform their job of protecting U.S. diplomats in a war zone.

The appellate court affirmed the convictions for Heard, Slough, and Liberty, but held that the length of the sentences was cruel and unusual under the Eighth Amendment. The Court vacated Slatten's conviction for this Court's failure to sever his trial from the other defendants, which prevented exculpatory evidence from being admitted. *United States v. Slatten*, 865 F.3d 767 (D.C. Cir. 2017); *rehearing en banc denied in United States v. Slatten*, 2017 U.S. App. LEXIS 22180 (D.C. Cir., Nov. 6, 2017); *certiorari denied in Slough v. United States*, 138 S. Ct. 1990, 201 L. Ed. 2d 270, 2018 U.S. LEXIS 2836 (U.S., May 14, 2018).

Upon remand to the Court for resentencing, on September 13, 2019, the Court issued an amended judgment, sentencing Heard to 151 months confinement, Liberty to 168 months confinement, and Slough to 180 months confinement, which they continue to serve. Heard is confined at the United States Penitentiary in Atlanta, Georgia. Liberty is confined at the United States Penitentiary in Schuylkill, Pennsylvania. Slough is confined at the United States Penitentiary in Bastrop, Texas. Heard and Liberty remain in medium security prisons, not in federal prison camps as the Court included in the amended judgment. (Doc. 859).

SUMMARY OF THE GROUNDS FOR SECTION 2255 RELIEF

The Court has the constitutional obligation pursuant to Article III of the U.S. Constitution to ensure that prosecutions of citizens by Article II officials are grounded in the law and proceed toward accomplishing legitimate governmental interests. At the same time, the Court is duty-

bound to ensure that constitutional protections of Americans haled before the Court are fully safeguarded at every step of a criminal trial.

From the beginning, prosecutorial misconduct has run stem to stern in this case. The impetus for the prosecution's zeal to "secure justice for the Iraqi people," as then Vice-President Joseph Biden publicly promised, overwhelmed prosecutorial discretion and resulted in a crabbed governmental mindset -- not to follow the evidence proving justification and self-defense -- but rather, to cobble together an inferential narrative to win at all costs and serve a foreign power, sacrificing protections provided to the Movants by the U.S. Constitution. The result was that the young veterans who went overseas to protect American diplomats in an active war zone were sacrificed for the sake of political expediency. This was a single-minded, politically-driven prosecution, not one motivated by the usual and noble goals of federal prosecutors; namely to protect the innocent, ensure the guilty are punished, all the while ensuring the integrity of the investigatory and judicial processes. As federal prosecutors are often reminded, they work for the Department of Justice, not the Department of Convictions.

Ironically, the very rule of law the United States sought to establish in Iraq was abandoned here at home. In newly-discovered email messages, and unclassified diplomatic cables the prosecution suppressed, the Administration of President Barack Obama, together with then-Vice President Joseph Biden, Secretary of State Hillary Clinton, and Attorney General Eric Holder, determined that the vital national interests of the United States, namely, political stability in Iraq (cynically meaning the re-election of those Iraqi politicians then in power), outweighed a fair-minded application of American constitutional protections. The price was the liberty of four American combat veterans: Heard, Slough, Liberty, and Slatten.

Undisclosed e-mails between Secretary of State Hillary Clinton and senior State Department officials– evidence "material to the preparation of the defense" – proved that Article II officials were not seeking justice, rather, diplomatic and political expediency to placate Iraqi officials and surrender American patriots to lengthy prison terms to appease a foreign power.

Robert Ford, the Deputy Chief of Mission (the "second-in-command" senior diplomat who reported to Ambassador Christopher Hill at the U.S. Embassy in Baghdad), noted that the Iraqi police investigated the use of force in Nisur Square on September 16, 2007, and that insurgents were known to wear Iraqi police uniforms. At the very same time that prosecutors were imploring the jury that no insurgents were present and no enemies fired AK-47 assault rifles at Raven 23's convoy in Nisur Square, they possessed reports that the chief Iraqi police officer -- Colonel Faris Karim, who led the investigation -- had actually been peddling information about U.S. troop movements to Iranian terror groups, that is, Iranian proxies masquerading as Iraqi insurgents. Those reports were not disclosed to the defense. Had the defense obtained the reports and called Colonel Faris Karim, armed with this evidence showing that he had aided enemies seeking to attack Americans, the prosecution's entire theory of the case would have crumbled.

Similarly, newly-discovered State Department cables revealing the diplomatic and political concerns senior officials had over Judge Urbina's dismissal of the criminal cases, and the pressures exerted to urge the DOJ to appeal in order to appease Iraqi politicians (who themselves were facing re-election) were never disclosed to the defense. These cables, also "material to the preparation of the defense," could have been relied upon in calling witnesses to testify that this case was not about the use of force in Nisur Square, but really about the United States unfairly forfeiting its own combat veterans to appease foreign leaders.

What is more, these suppressed emails and cables show the DOJ's vindictive motive to pursue an appeal, because these Movants deigned to exercise their rights to defend themselves before Judge Urbina. Once a realistic likelihood of vindictiveness is shown, a presumption of prosecutorial vindictiveness arises. *Alabama v. Smith*, 490 U.S. 794, 798, 501 (1989) (discussing a significant number of Supreme Court cases establishing and construing the prosecutorial vindictiveness doctrine). And further, in *Blackledge v. Perry*, 417 U.S. 21, 28, (1974), the Court noted that due process requires that defendants be free to exercise their rights to challenge their convictions without the fear of retaliation by prosecutors. The Constitution, the Justice Department's Principles of Federal Prosecution, and the ethical standards governing the conduct of prosecutors together prohibit a prosecutor from pursuing an investigation or prosecution that is – or appears to be – politically motivated, or that violations the accused's right to fundamental fairness in the administration of justice.

The prosecution also relied heavily on the testimony of Jeremy Ridgeway ("Ridgeway") and Matthew Murphy ("Murphy"), two fellow Blackwater guards for Raven 23 who were present at Nisur Square. In exchange for his testimony in both Movants' trial, as well as in Slatten's trial, Ridgeway was offered a deal that would allow him to avoid suffering the same fate of his colleagues.

With regard to Slatten's subsequent trial, in order for the Government to prove premeditation for a capital murder charge, the prosecution elicited testimony from both Murphy and Ridgeway about a Downed Aircraft Rescue Team ("DART") mission approximately one week before the Nisur Square incident. Both men testified, in relevant part, that Slatten provoked a firefight during the DART mission, firing without provocation, and causing Hellfire missiles to be

fired into two buildings that hid insurgents. Movant Heard was not even there as witness Murphy testified in cooperation with the prosecution.

The prosecution elicited Murphy's and Ridgeway's testimony despite having in their possession a lengthy U.S. State Department-created Powerpoint presentation showing that U.S. Army units in the same area that day had returned fire in response to small arms fire from the buildings surrounding the square. The insurgent attacks were so intense that U.S. forces called upon helicopters to fire Hellfire missiles at the buildings. More critically, the prosecution belatedly produced contemporaneous statements made by Murphy and Ridgeway in 2007 that the Army had arrived on the scene *before* the Blackwater unit, and the firefight had already begun. The report and the directly contradictory presentation stood to impeach two of the prosecution's central witnesses and reveal as contrived out of whole cloth the prosecution's fabrication that Slatten contrived the threat to justify a massacre.

A gap in drone footage discovered from the subsequent trial of Slatten is suspected to reveal the truth of what happened at the Square – that Movants, trained and experienced professionals acquitted themselves well and with valor, but without explanation, the United States does not have the drone footage helpful to the defense, only drone footage deemed by prosecutors helpful to their narrative.

Thus, the prosecutorial misconduct includes not only the knowing violation of constitutional rights in securing evidence which led to Judge Urbina's dismissal of the indictment, but also other suppression of material evidence favorable to the defense that continues to come to light even to this day.

Additionally, prosecutors routinely assess use of deadly force cases by agents of the United States applying *Graham v. Connor*, 490 U.S. 386 (1989) and its progeny. Since their actions in

self-defense were objectively reasonable pursuant to the *Graham v. Connor* standard of reasonableness, Movants should have been afforded qualified immunity, axiomatically, from criminal prosecution. The opinions of certain witnesses for the prosecution neither applied the appropriate legal standard of review nor expressed a meaningful understanding of the tactical dynamics of a deadly force encounter. The misinformed witnesses for the prosecution did what the Supreme Court of the United States repeatedly says a reviewer must not do:

> The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, ***rather than with the 20/20 vision of hindsight*** … the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

Id. at 397. The Court's focus should be on the circumstances at the moment force was used and on the fact that officers on the beat are not often afforded the luxury of armchair reflection. *Greenidge v. Ruffin*, 927 F.2d 789, 791-92 (4th Cir. 1991) (citing *Graham*, 490 U.S. 386).

For FBI agents and other law enforcement officers operating in the United States, the number of rounds fired in self-defense is rarely related to the reasonableness and hence lawfulness analysis. For example, in *Amato v. United States*, 549 F. Supp. 863, 868 (D.N.J. 1982), *aff'd* 729 F.2d 1445 (3d. Cir. 1984), the Court described the first shot fired by bank robbers as "equivalent to the splitting of an atom" as it was the catalyst for the chain reaction of the hail of gunfire that ensued. "[E]leven agents had used their weapons a total of thirty-nine times and had fired a total of 281 bullets and buckshot pellets." *Amato*, 548 F. Supp at 868. The Court held agents used reasonable force in response to bank robbers' actions, noting "[w]here an offender offers physical resistance to arrest, a law enforcement officer need not retreat, but may become the aggressor and

use such force as is necessary to overcome the resistance and to protect himself from serious injury." *Id*.

Amato is but one case of many that stand for the proposition that "the number of rounds fired is rarely indicia of the reasonableness of the force used." *See, e.g., Plumhoff v. Rickard*, 572 U.S. 765, 777-78 (2014) (officers fired 15 shots in 10 seconds to stop vehicular threat determined reasonable and lawful use of force); *Elliott v. Leavitt*, 99 F.3d 640, (4th Cir.1996) (officers fired 22 rounds in seconds at suspect sitting in squad car pointing a gun at them).

It is astonishing that the prosecutors – the same who justly defend the actions of FBI agents who fired 181 projectiles (striking one suspect sixty-five times) in a domestic bank robbery – would point to or rely on the number of rounds fired at Nisur Square in a combat zone as *indicia* of the unreasonableness, moreover criminal intent, of the Raven 23 members.

Also, the analysis of Movants' reasonableness does require them to be right in the clear vision of 20/20 hindsight. In fact, one Circuit Court of Appeals noted:

> ***It is not necessary that the danger which gave rise to the belief actually existed***; it is sufficient that the person resorting to self-defense at the time involved ***reasonably believed*** in the existence of such a danger, and such reasonable belief is sufficient even where it is mistaken.

Davis v. Freels, 583 F.2d 337, 341 (7th Cir. 1978) (emphasis added).

The prosecutorial misconduct and selective application of portions of the law and the facts pervading each phase of this trial contaminated the proceedings such that the law and justice require that the judgments of conviction and sentence be vacated, set aside, and the Movants be released to their loving families and awaiting communities. 28 U.S.C. § 2255.

STATEMENT OF FACTS

A. Background of each Movant.

While recognizing that the Court is familiar with the facts of the case, Movants offer factual background to reacquaint the Court and provide context for the grounds on which they rest this motion. In 2007, Movants were employed as private security contractors executing a U.S. Department of State contract to provide high-threat protection services to American diplomats working in Baghdad, Iraq. Their team's call sign was "Raven 23."

Prior to this civilian employment Heard, an Olney, Texas native served in uniform in Iraq and Afghanistan, where he earned the Combat Action Ribbon, and was honorably discharged in 2004. Married with two young daughters, Heard returned to Iraq to further serve his country, this time as a civilian Protective Security Specialist and Quick Reactionary Force Operator, with Blackwater USA. As a result, he was awarded multiple certificates of appreciation from high levels of the U.S. Government, including Secretary of State Condoleezza Rice and Ambassador William B. Taylor. In Ambassador Taylor's words,

> Throughout his endeavors, Mr. Heard consistently conducted himself with the highest levels of professionalism, integrity, and tactical capability, and also stated that through high-risk conditions, . . . he was instrumental in ensuring my safety while performing duties vital to the success of the Iraq mission.

Paul Slough is a decorated U.S. Army and National Guard veteran of Iraq and Bosnia. During his distinguished service to his county, Paul earned multiple accolades, including two Armed Forces Expeditionary Medals, the Combat Infantryman Badge, Global War on Terrorism Service Medal, and an Iraq Campaign Medal.

Paul joined the Army immediately after high school to serve his country. After this distinguished service, Paul left active duty military and joined the National Guard so that he could seek higher education. During school, while continuing to serve in the National Guard he met his

wife and they have a daughter. Paul joined Blackwater after leaving the National Guard to support his growing family and to continue to serve. Throughout his service career, Paul was considered a man of good judgment and integrity.

Evan Liberty served with distinction in the United States Marine Corps, having earned numerous medals and awards throughout his service to this country. Evan grew up in Rochester, New Hampshire, and joined the military with a devotion to service immediately upon turning eighteen. Evan has received universal praise for his time in the military, including from the White House after providing security for then President George W. Bush. In one particularly notable statement of support, Colonel W.E. Rizzio Jr., Commanding Officer of the Marine Security Guard Battalion (State Department), stated: "As his Commanding Officer, I can positively state that I would trust him completely in any assignment. He has proven to be totally dependable and will perform superbly under extreme pressure. I would eagerly seek Sergeant Liberty's services in any capacity where the highest moral and personal character is required."

B. Conditions on the Ground in Baghdad in 2007.

In September 2007, Baghdad, like much of Iraq, was a violent, dangerous war zone. President Bush's "surge" had just gotten underway, with multiple Army divisions deployed to Baghdad and surrounding areas. 8/25/14 AM Tr. 92 (Mieszka Laczek-Johnson). Although the President's strategy ultimately pacified much of the country, the level of insurgent violence and terror initially increased, with over 1,700 Iraqi civilians and 126 U.S. military killed in May 2007 alone. *Id.*

Terrorist car bombs and secondary attacks were rampant, with insurgents disguising themselves as, among others, Iraqi police officers, and using women and children as decoys and human shields. *Id*. at 95-99. They frequently targeted vehicle convoys of U.S. military as well as

armed civilian contractors, which were especially vulnerable if their passage was blocked or stopped. *See* 7/16/14 AM Tr. 57-63, 66 (Mark Mealy).

In April 2007, a car bomb in Nisur Square had set off a massive explosion which killed five, wounded 12, and left a crater the size of a football field. 6/23/14 PM Tr. 11-14; 6/26/14 AM Tr. 27-28 (Sarhan Dheyab Abdul Monem); *see* DX3025, DX3026 (photos). In August and early September, suicide bombs had killed scores and wounded hundreds at a nearby mosque and another intersection close to Nisur Square. 8/12/14 AM Tr. 77 (Peter Decareau); see DX2397-003 (map showing insurgent attacks around Nisur Square in the 15 days before September 16, 2007); 8/25/14 PM Tr. 33-39 (Laczek-Johnson); 8/18/14 PM Tr. 96 (Michael Gosiewski); 6/26/14 AM Tr. 26 (Sabah Salah Abdulrahman).

In early September 2007, recent intelligence had warned of specific threats from three car bombs, including a white Kia sedan (the same type of vehicle involved in the September 16, 2007 incident giving rise to this prosecution), which were reportedly in the Nisur Square area seeking targets of opportunity. Raven 23 had itself been the target of several attacks, including one in February 2007, where a sniper shot and seriously wounded a Blackwater guard, and one on September 9, 2007, when Raven 23 came under heavy gunfire while trying to rescue two fellow Raven teams who were under insurgent attack and escort them back to the Green Zone.

On September 12, 2007, a fellow Raven team was ambushed by terrorists disguised as Iraqi police, who waved their convoy into a Baghdad intersection, where they were attacked, first by an armor-piercing weapon (which had been hidden in a fruit stand) and then by insurgents dressed as civilians but wielding AK-47 assault rifles.

C. Raven 23 Responds to Aid an American Diplomat After a Car Bomb Attack

Shortly before noon on September 16, 2007, a massive car bomb detonated outside a meeting attended by a U.S. diplomat guarded by Blackwater. GX9801 at 5. The explosion could be heard miles away, 7/22/14 AM Tr. 24 (Charles Pearson), and caused a large cloud of smoke over Baghdad. *See* GXE005. Raven 23 promptly exited the "Green Zone" to secure an escape route for the diplomat. 7/17/14 AM Tr. 89 (Juan Mendoza).

Raven 23 consisted of four armored trucks and nineteen men. In the third, or "command" vehicle, Liberty was the driver, Slatten the designated defensive marksman, and Slough the single turret gunner. DX0101-003. In the fourth vehicle, cooperating witness Ridgeway manned the front turret, and Heard manned the rear turret. DX0101-004.

D. Raven 23 Secures the Nisur Square Traffic Circle

Nisur Square was a traffic circle along the "most direct route" from the car bomb site to the Green Zone. 7/9/14 AM Tr. 79 (Abraham Bronn). After Raven 23 left the Green Zone, the Tactical Operations Center watch officer directed the convoy to "lock down" Nisur Square traffic to aid the diplomat's return. 7/17/14 AM Tr. 89 (Mendoza). Nisur Square was no exception to the dangers of wartime Baghdad. *See* DX2397-003 (map showing insurgent attacks around Nisur Square in the 15 days before September 16, 2007). As stated, in April 2007, a car bomb exploded in a tunnel under the circle, leaving an enormous crater. *See* DX3025, DX3026 (photos). On September 16, 2007, Nisur Square and its surrounding neighborhoods were considered "elevated risk areas." 8/25/14 PM Tr. 10-12 (Laczek-Johnson). Indeed, "there were several threats of vehicle born improvised explosive devices ("VBIEDs") in the weeks prior [to September 16, 2007] for the surrounding neighborhood around Nisur Square." *Id*. at 7.

E. An Apparent Car Bomb Threat Approaches the Convoy.

Raven 23 entered the circle and positioned itself along the southern side. Shortly thereafter, a white Kia sedan pulled out of a line of stopped cars entering the circle from the south, and drove directly toward the convoy. 8/5/14 PM Tr. 23 (Jeremy Krueger). Days before, Blackwater's intelligence analyst had warned that three suicide VBIEDs, including a white Kia sedan, were operating in the area in search of a "target of opportunity" like "a convoy or a marketplace." 8/25/14 PM Tr. 20-21 (Laczek-Johnson). This threat was still active on September 16, 2007. *Id*. at 57.

Despite all traffic in the circle being stopped, the Kia was moving fast. 7/31/14 PM Tr. 88 (Ridgeway) (Kia "was moving at a faster rate of speed than I would have liked."). Numerous Iraqi eyewitnesses told U.S. Army Captain Peter Decareau immediately after the incident that the Kia "punche[d] forward towards the convoy similar to a VBIED. And that's when the vehicle was engaged." 8/12/14 PM Tr. 47 (Decareau). By "breaking from the pack" of stopped traffic, the Kia exhibited a key indicator of a potential VBIED. 6/30/14 AM Tr. 88 (Matthew Murphy).

Many witnesses for the prosecution viewed the Kia as an actual threat. *See, e.g*., 8/5/14 PM Tr. 22-23 (Krueger); 8/6/14 AM Tr. 86 (Rhodes); 7/14/14 PM Tr. 79 (Frost); 7/7/14 PM Tr. 38-39 (Charles Gehrsitz); 8/11/14 PM Tr. 40 (Edward Randall); 8/18/14 PM Tr. 91 (Gosiewski). Others acknowledged the Kia could have been perceived as a threat. *See* 7/1/14 PM Tr. 80 (Murphy); 7/15/14 PM Tr. 100 (Mealy).

Raven 23 members tried to stop the Kia by signaling its driver and taking other steps. *See*, *e.g*., 7/16/14 AM Tr. 42-43 (Mealy); 6/18/14 PM Tr. 45 (Mohammed Kinani); 7/2/14 AM Tr. 89 (Ali Khalif Salman Al-Hamidi). After the Kia failed to stop, Slough fired at it. When Eddie

Randall, driver of the fourth vehicle, first saw the Kia, it had bullet holes in its hood but not its windshield. 8/11/14 AM Tr. 58.

Ridgeway heard shots, turned, and saw Slough firing at the oncoming Kia. 7/31/14 PM Tr. 83-85. He did not see rounds hitting the windshield. 8/4/14 PM Tr. 64. Within "a second or two," Ridgeway fired three to five rounds "through the driver's side of the windshield," 7/31/14 PM Tr. 85, aiming for the driver's head. 8/4/14 PM Tr. 56; *see also id*. at 59-61. Ridgeway testified that Heard also fired at the Kia. 7/30/14 PM Tr. 90-91; *see also* 7/15/14 PM Tr. 99, 104 (Mealy). Donald Ball, the rear turret gunner in the first vehicle, also fired at the Kia. 7/15/14 PM Tr. 101, 104 (Mealy).

Several Raven 23 members then saw an Iraqi policeman (or possibly an insurgent dressed as one) appear to push the vehicle toward the convoy. 6/30/14 PM Tr. 124, 127-28 (Murphy); 8/6/14 AM Tr. 87 (Rhodes); 8/11/14 AM Tr. 56 (Randall). Raven 23 members feared this individual was moving the VBIED closer to the convoy. 8/11/14 PM Tr. 40-42 (Randall); 8/6/14 AM Tr. 87 (Rhodes) ("The closer the blast, the more damage it does").

With the Kia continuing to approach, Slough fired controlled bursts into the vehicle's engine block. 7/1/14 PM Tr. 136 (Murphy); 8/5/14 PM Tr. 28-29 (Krueger). Slough did not fire at the Iraqi policeman. 7/1/14 PM Tr. 137 (Murphy). Around the same time, shift leader Jimmy Watson ordered Liberty to open the command vehicle's door, and fired over Liberty's lap at the still-approaching Kia. 7/28/14 PM Tr. 40-41, 43-44 (Watson). Liberty did not fire at the Kia. *Id*. at 50.19

With the vehicle "still coming," Watson and Slough fired M-203 grenades to stop it. 7/28/14 PM Tr. 41-42 (Watson); *see also id*. at 45-46. Military witnesses testified an M-203 was

a viable option to disable an approaching threatening vehicle. 7/10/14 AM Tr. 96 (Marine Gunner Shelby Lasater); 8/13/14 PM Tr. 17- 18 (Col. David Boslego).

Watson believed one of his rounds hit the Kia driver's door, bringing it to a stop. 7/28/14 PM Tr. 41-42 (Watson). Slough's grenade hit underneath the Kia's front axle. *See* GX8803 (photo showing damage on undercarriage).

The contractors, including the men of Raven 23, were trained that if it became necessary to engage a car bomb threat, to shoot all vehicle occupants, because any passenger might have a secondary detonation device. 7/15/14 AM Tr. 20-23 (Frost).

F. The Convoy Takes Incoming Gunfire from the South.

Around the same time, Raven 23 took incoming gunfire from south of the circle. Matthew Murphy and Jeremy Krueger heard AK-47 gunfire coming from the south. 7/1/14 AM Tr. 18-20 (Murphy); 8/5/14 PM Tr. 34 (Krueger). Eddie Randall saw the paint splatter of bullets striking the southern-facing side of the command vehicle directly in front of him. 8/11/14 AM Tr. 78-79. Kevin Rhodes saw radiator fluid pouring out of the command vehicle after the very first sound of gunfire. 8/6/14 AM Tr. 81-82.

To be sure, the evidence has shown that the attacks came not only from insurgents disguised as civilians, but those who had infiltrated the Iraqi law enforcement ranks as well. Tommy Vargas, tactical commander of the fourth vehicle, reported on internal radio that individuals in Iraqi police uniforms were firing at the convoy from an "IP shack" south of Nisur Square, which turned out to be a bus stop. 8/11/14 PM Tr. 49-50 (Randall). Watson radioed that Raven 23 was under fire. 7/28/14 PM Tr. 28-29 (Watson). The Tactical Operations Center's watch officer contemporaneously recorded in the watch log that multiple insurgents and Iraqi police were shooting at Raven 23. GX9801 at 6-7 (watch log).

A Blackwater helicopter gunner heard real-time radio reports that Raven 23 was "receiving a fairly heavy volume of small arms fire from the south." 7/7/14 PM Tr. 28 (Gehrsitz). A few weeks after the incident, Heard told Murphy that he returned fire during the incident at an Iraqi policeman who was shooting at the convoy. 7/1/14 PM Tr. 107-08 (Murphy). Murphy "believe[d] Dustin plain and simple," and thought Heard's return fire was appropriate. *Id*. at 109. Heard suffered a first degree burn injury through his Nomex suit during the incident. 8/6/14 AM Tr. 106-07 (Rhodes).

This evidence of incoming gunfire from the south was corroborated by bullet holes in a black taxi located between the convoy and the bus stop. During the shooting, the taxi's left side faced the convoy, and its right side faced south. 6/26/14 PM Tr. 19 (Hayder Ahmed Rubie Hussain Al-Khafaji). Photographs and a video showed three bullet holes in the taxi's right rear quarter panel, and another in the rear passenger window—all on the side facing away from the convoy. *See* DX2496; GX2312; DX2531; GXE292I.

A white Daewoo sedan was also hit from the south. The Daewoo's driver turned around after shooting started, drove away from the convoy toward the bus stop, and was hit with gunfire, including three shots to the front of his south-facing vehicle. 7/30/14 AM Tr. 24-27 (Hassan Jabar Salman). Though he believed the rounds came from helicopters overhead, *id*., evidence showed no helicopter fired, *e.g*., 7/7/14 PM Tr. 18 (Gehrsitz), and the prosecution conceded that Iraqis who thought gunfire came from helicopters were likely mistaken. 8/27/14 AM Tr. 75- 76.

Other photographs and a video showed strikes from bullets fired from the south toward the convoy. *See* GX8417; DX3884. Numerous witnesses perceived a two-way firefight. A helicopter pilot believed the gunfire "sounded like a typical fire fight." 8/11/14 PM Tr. 127 (Franklin Paul). A helicopter gunner "absolutely" perceived that Raven 23 was in a firefight. 8/18/14 PM Tr. 92

(Gosiewski). Another helicopter gunner, a former Navy SEAL, saw several blue-shirted police officers in Nisur Square take their shirts off after the incident, drop their guns, and walk away. 7/24/14 AM Tr. 14-15 (Timothy Spisak). This testimony was consistent with Vargas's reports of individuals in Iraqi police uniforms shooting at the convoy and intelligence that insurgents had access to Iraqi police uniforms. *See* 8/25/14 AM Tr. 99 (Laczek-Johnson) (such uniforms were sold at roadside stands).

Brett Fishback, a former Green Beret weapons specialist in a security detail just north of Nisur Square (unaffiliated with Blackwater), heard a burst of AK-47 fire followed by a "two-way gunfight." 8/25/14 AM Tr. 21-22. "[W]ithin seconds," he testified, "approximately 20 rounds landed in our area" that were "coming from the south to the north." *Id*. at 24-25. He picked one up and recognized it as AK-47 ammunition. *Id*.

After the incoming gunfire started, Slough briefly returned fire. Slough was generally oriented to the south, 8/5/14 PM Tr. 43 (Krueger), where the bus stop was located (GX495B), and fired "for only a second or two." 7/31/14 PM Tr. 122- 23 (Ridgeway). Slough's fire to the south was brief enough that others did not even see him fire. See 7/28/14 PM Tr. 80 (Watson, inside Slough's vehicle, did not recall Slough shooting south beyond the Kia); 8/11/14 PM Tr. 58 (Randall, the fourth vehicle's driver with a direct sightline to Slough, did not see Slough shoot south beyond the Kia).

After Watson ordered Liberty to open his door a second time, he saw Liberty fire out the door toward the southeast tree line, where Watson believed incoming fire was originating. *See* 7/28/14 PM Tr. 55-56, 59-60; GX498-D2. No alleged victim was in that area. No other witness saw Liberty fire his weapon. No witness, other than cooperating witness Ridgeway, testified that Heard fired anywhere other than at the Kia. Ridgeway, on the other hand, fired indiscriminately

and profusely. Randall, located in Ridgeway's vehicle, saw Ridgeway engage in "sustained fire" of a "hundred plus" rounds to the south, virtually "the whole time" the convoy was in the circle. 8/11/14 PM Tr. 59, 61. Murphy saw Ridgeway shoot two men near the Kia, and then start "picking out targets" as he "continued shooting down the road" to the south. *See* 7/1/14 AM Tr. 11-14. Ridgeway admitted he engaged in un-aimed "suppressive fire" or "area fire" with his machine gun. 8/4/14 PM Tr. 52. He acknowledged shooting to the south toward the bus stop and a distant Iraqi Army bunker. He saw his shots hit a black Suburban and "assumed" he also hit other vehicles. *Id*. at 51. Ridgeway did not testify that any of this fire was planned or coordinated with anyone else. *See generally id*. at 47-54.

G. Incoming Fire Disables the Command Vehicle.

When the gunfight began, an incoming round aimed at the convoy that was securing Nisur Square disabled the command vehicle by penetrating its radiator. Immediately after hearing the first shots fired, medic Kevin Rhodes saw "copious amounts of radiator fluid coming out from underneath the command vehicle." 8/6/14 AM Tr. 80-81. Rhodes believed incoming fire took out the radiator. *Id*. at 81. Raven 23 radioed that its command vehicle was down and it was executing a "tow-out," *i.e.*, that the vehicle was unable to move but could be towed by another vehicle to get away from the hostile fire. GX9801 at 6 (watch log; downed vehicle reported two minutes after incoming gunfire). Other members of the security team left the second vehicle, hooked a strap to the command vehicle, and towed it out of the circle. E.g., 7/14/14 PM Tr. 91-96 (Frost).

H. Jeremey Ridgeway Fires as the Convoy Exits the Circle.

During the tow, while the convoy attempted to drive away from Nisur Square, Ridgeway fired to the west and northwest. The second and third vehicles were 20 feet apart, separated only by the tow strap. One of the second vehicle's turret gunners, Murphy, heard machine gun fire

coming from a single person behind him and saw bullets hitting to the northwest. 7/1/14 AM Tr. 31-34. The other, Frost, saw Ridgeway fire 20-30 automatic rounds at a tanker truck in the same vicinity. 7/15/14 AM Tr. 70-74. Watson, inside the third vehicle, heard gunfire only from the "very rear vehicle"—Ridgeway's vehicle—as the convoy left the circle. 7/28/14 PM Tr. 88. No Raven 23 member saw or heard Slough fire to the west or northwest. Frost was facing Slough from 25 feet away, and did not see Slough fire in those directions. 7/15/14 AM Tr. 69. Rhodes, inside the second vehicle, was watching the third vehicle, and did not see or hear Slough fire any shots as the convoy exited the circle. 8/6/14 AM Tr. 99.23

Right after seeing Ridgeway fire at the tanker truck, Frost heard Heard, the rear turret gunner in the fourth vehicle, call out over the radio that the convoy was still "taking fire from the rear," *i.e.*, the south. 7/15/14 AM Tr. 74-75, 113-15. When someone said to shoot back, Heard replied, "***I can't shoot back because I can't see where it's coming from***." *Id*. at 76. (emphases added). Instead, ***Heard deployed smoke grenades to conceal the convoy's exit***. *Id*. at 113 (emphases added).

I. Jeremy Ridgeway Fires to the Far North of the Circle.

Later during the exit, Ridgeway shot three vehicles and their drivers near a median roughly 300 meters north of the circle. *See* DX2229 (photo showing median). Ridgeway pled guilty to shooting the driver of a white Celebrity in this area. DX2298 (Ridgeway Count Two). No Defendant was charged with that driver's injuries.

Ridgeway also shot at a red Hyundai and a white Opel nearby. From his turret facing the third and fourth vehicles, Frost had "absolutely no doubt" that Ridgeway alone fired at those cars. 7/15/14 AM Tr. 84. Krueger, inside the second vehicle, also saw Ridgeway fire multiple rounds through the driver's side door of the red vehicle. 8/5/14 PM Tr. 57-58. Randall, driving Ridgeway's

vehicle, heard Ridgeway firing both his rifle and machine gun north of the circle. 8/11/14 PM Tr. 60.

Krueger and Frost saw the driver of the red Hyundai exit with a wound to his left abdomen after Ridgeway shot the car. 8/5/14 PM Tr. 58 (Krueger); 7/15/14 AM Tr. 81-82 (Frost). That driver testified he exited his vehicle with a gunshot injury to his left abdomen. 7/2/14 PM Tr. 68-69 (Bara Sadoon Al-Ani). The red Hyundai and white Opel had bullet holes in their driver's-side doors. *See* GX526H; GX531Q.

J. Damage to the Command Vehicle.

On return, the command vehicle was towed to a maintenance facility. Mechanic T.J. Hill observed multiple "round impact shots" on the driver's side that looked "very fresh." 8/8/14 Dep. Tr. 46-48, 51-52; *see* DX2456-DX2460 (photos). The marks had not been there when Hill rode in the vehicle days earlier. 8/8/14 Dep. Tr. 53.

Nine prosecution witnesses, all combat veterans, testified the marks on the command vehicle were bullet strikes. Randall also saw a fresh "bullet strike" on the left (south-facing) side of the fourth vehicle that "wasn't there" before Nisur Square. 8/11/14 PM Tr. 65-66. During his inspection, Hill also saw radiator fluid in a "very odd place" under the hood. 8/8/14 Dep. Tr. 55-56. When he filled the radiator, fluid started "shooting" in a solid stream out of a five-millimeter hole in the radiator. *Id*. at 56- 58.

Hill also observed a "round strike" on the front differential, which had "lines in it, like something left some residue behind." 8/8/14 Dep. Tr. 77-78. Hill used a rod to see if there was a viable ricochet trajectory from the differential strike to the radiator hole, and it "lined up." *Id*. at 84.

Government investigators confirmed the differential strike (*see* GX8522-24, GX8527) and trajectory to the radiator hole (*see* GX8541, 7/23/14 AM Tr. 60 (Thomas O'Connor)), suggesting an incoming bullet ricocheted into the radiator. That trajectory was consistent with a round fired from a grassy area southwest of the circle, where State Department investigators found eight AK-47 shell casings days after the incident. *See* GX7996 at 19-20 (Item 10, casings in grass area).

K. Evidence Collected Near Nisur Square.

There was no forensic crime scene investigation in Nisur Square. One of the first responders, U.S. Army Captain Peter Decareau, photographed eight AK-47 shell casings directly behind the bus stop south of Nisur Square—the "shack" Vargas described from which individuals were firing at the convoy. *See* DX2413; DX2414 (photos of casings).

No physical evidence was collected by any U.S. Government personnel on scene. Dozens of Iraqi police and Iraqi army personnel swarmed Nisur Square immediately after the incident. *See, e.g.,* DX2489; GX3575.

An Iraqi traffic policeman testified the Iraqi National Police collected four pillowcase-sized bagsful of shell casings without documenting or photographing their locations. 6/23/14 AM Tr. 44-45; 6/23/14 PM Tr. 69-70 (Sarhan Monem).

Four days after the incident, State Department investigators collected evidence from around Nisur Square, including three AK-47 casings near the bus stop, 7/24/14 PM Tr. 91-92 (David Farrington), an AK-47 casing further south, *id*. at 96, and eight AK-47 casings from a grassy area southwest of the circle. *Id*. at 96-100; *see also* GX7996 (photos of areas where casings were collected).

The eight AK-47 casings behind the bus stop, photographed by Captain Decareau immediately after the incident, were no longer there. 7/24/14 PM Tr. 101-105 (Farrington). The

Iraqi National Police never gave those AK-47 casings or any other evidence to the State Department. *Id*. at 105.

During their search, State Department agents expressed concern that Iraqi personnel were picking up evidence before it could be collected. 7/24/14 PM Tr. 83 (Farrington).

The FBI did not search Nisur Square until a month after the incident. 8/16/14 PM Tr. 24 (O'Connor). During that search, the FBI collected numerous cartridge casings consistent with AK-47 machine guns and Dragunov sniper rifles (typical insurgent weapons). 7/23/14 PM Tr. 20-36 (O'Connor); *see* GX8006-A. The Iraqi National Police gave the FBI a few items of physical evidence, including a handful of U.S. casings, but no AK-47 casings or the bags of shell casings that the Iraqi National Police collected the day of the incident. *See* 8/6/14 PM Tr. 34, 74-76 (O'Connor). The FBI obtained certain cars that had been shot and collected bullet and metal fragments from them.

Because the cars had all been moved from Nisur Square, 7/23/14 PM Tr. 65-66 (O'Connor), the FBI's attempted trajectory analysis could not link any bullet hole or trajectory to any particular source, 7/14/14 AM Tr. 34-35 (Douglas Murphy).

L. Lack of Forensics.

The prosecution could not offer any forensic evidence demonstrating that any Defendant shot any particular victim. Similarly, FBI forensic examiner Brandon Giroux could not match any bullet or fragment to any specific weapon. *See* 8/7/14 PM Tr. 22; GX9051; GX9054- GX9061, GX9064-GX9066. From the shell casings the FBI obtained from the Iraqis, Giroux matched five to Slough's M-240 machine gun, four to Ridgeway's rifle, one to Heard's rifle, and one to Slough's rifle. GX9052; GX9053. Giroux matched one of two grenade casings to Slough's weapon, and could not match the other. *See* 8/7/14 AM Tr. 45; GX9053; GX8002 (seized weapon inventory).

Of the 34 casings collected by the FBI, Giroux matched two to a machine gun from the fourth vehicle. 8/7/14 AM Tr. 62-63; GX9050; GX8002. He determined that fifteen casings were consistent with an AK-47 rifle, and four casings were consistent with a Russian Dragunov sniper rifle. GX9050. These casings could not have been fired by any of the Raven 23 firearms. 8/7/14 PM Tr. 26-27. Giroux could not match the remaining casings to any weapon. GX9050; *see also* 8/7/14 AM Tr. 47-56. Though no forensic evidence linked any Raven 23 member to a particular shot, the Government claimed in its rebuttal closing argument that forensics proved Slough killed the child victim at issue in Count Four. 8/28/14 PM Tr. 83. Giroux testified that a bullet core fragment recovered from the rear seat of the blue Suzuki where the child was sitting was consistent with an M993 cartridge, a "blacktipped" armor-piercing round that can be fired by an M-240 machine gun. 8/7/14 AM Tr. 77-78. Giroux could not match this core fragment to any specific firearm. 8/7/14 PM Tr. 39. The government told the jury that Slough was the only individual firing an M-240 who was positioned to fire this shot. 8/28/14 PM Tr. 83 (rebuttal).

Contrary to its argument, the government possessed evidence not elicited at trial proving Slough did not fire the round recovered from the Suzuki.

Giroux's forensic reports showed each of the five casings matched to Slough's M-240 had a NATO-affiliated headstamp not associated with an M993 round. R.765 at 21 & n.9 (citing R.765-11, at 35, 81). Moreover, the two casings Giroux matched to a machine gun used by the fourth vehicle had a headstamp associated with a Swedish company that manufactured M993 ammunition. R.765-11, at 54. Thus, Slough fired different ammunition from his machine gun than the core fragment found in the Suzuki.

This Court denied without explanation Slough's request for a curative instruction based on this false or misleading argument, made for the first time in rebuttal when Slough had no opportunity to respond. 9/2/14 AM Tr. 10-16.

M. The Prosecution's Case.

The prosecution's case boiled down to these inferences: the incident began when Slatten, without warning or provocation, shot the Kia's driver in the head, killing him instantly. The prosecution further claimed that the ensuing shooting was a one-sided massacre, with Raven 23 taking no incoming gunfire and facing no threats. No credible evidence supported these claims. Indeed, the volume of evidence largely contradicted the Government's theory of the case – the white Kia sped towards the convoy and ignored repeated warnings to stop, upon firing on the clear and immediate threat, the convoy began taking on small arms fire from various positions around the square, justifying and necessitating further response in self-defense.

N. Jeremy Ridgeway Changed His Testimony Under Pressure.

Ridgeway testified under a cooperation agreement that he perceived no incoming gunfire or threats. 7/31/14 AM Tr. 40, 62-63. This testimony contradicted the version of events Ridgeway had maintained for years, before the government pressured him into changing his story. The day after the incident, Ridgeway told his father he and his colleagues did "nothing wrong" in Nisur Square. 7/31/14 AM Tr. 83-85; DX4100R. The next day, Ridgeway submitted a sworn statement to State Department investigators in which he described returning fire at various threats, including a white sedan driving at the convoy and muzzle flashes. 7/31/14 AM Tr. 79-82; DX220. In the summer of 2008, Ridgeway learned he was a target of the investigation, and the charges could include a firearms offense with a 30-year mandatory minimum. 7/31/14 AM Tr. 89-92. This caused Ridgeway "great concern" and led him to seek a resolution. *Id.* at 91-93.

Ridgeway's attorney wrote to the prosecutors that Ridgeway "conducted himself honorably, courageously, and responsibly at every point during the [i]ncident," and "did nothing wrong." DX1025. The same letter stated that seconds after firing defensively at the Kia—a suicide VBIED threat— "members of Raven 23 began receiving machine gun fire from multiple directions, which threatened the entire convoy and posed an especially lethal risk to the seven turret gunners," and thereafter "[a] deadly two-way firefight ensued." *Id*.

During an ensuing proffer session, Ridgeway said he followed the rules and returned fire at real threats, including the approaching Kia and muzzle flashes 7/31/14 PM Tr. 7-8. He said the muzzle flashes came from a person firing a machine gun at the convoy from a prone position. 8/4/14 AM Tr. 50-51. The prosecution rejected his exculpatory proffer, and insisted Ridgeway plead guilty or face the 30-year mandatory minimum and other charges. 7/31/14 PM Tr. 10. Ridgeway pled guilty in November 2008 to one count of voluntary manslaughter for killing the Kia's passenger, and one count of attempted manslaughter for shooting the Celebrity's driver. *See* GX497-I; GX9936-B.

In exchange, the government did not charge the 30-year firearms offense or any other offense, capped Ridgeway's exposure at ten years for manslaughter and seven years for attempted manslaughter, stipulated to a 78-month Guidelines high end, and agreed to move for downward departure if Ridgeway provided substantial assistance. 7/31/14 PM Tr. 17-21; GX497I.

Ridgeway's negotiated factual proffer stated his use of deadly force was not objectively reasonable, but said nothing about Ridgeway's subjective beliefs. DX2293. In post-plea cooperation meetings, Ridgeway continued to describe the incoming gunfire. 7/30/14 AM Tr. 60; 7/31/14 PM Tr. 37.

Eventually, prosecutors told Ridgeway they did not believe him, and "pressured" him. 7/31/14 PM Tr. 44. This pressure "play[ed] a role" in Ridgeway's decision to do a "180" and supposedly "come clean" by saying he had seen no incoming gunfire or muzzle flashes. *Id*. at 41, 44-45. At trial, Ridgeway agreed this was a "major change in [his] story" that was "more incriminating" for Defendants. *Id*. at 47. Ridgeway faced "no consequences ... whatsoever for lying to the FBI and the prosecutors after [he] pled guilty." *Id*. at 46.

The prosecution did not hold him in breach of his agreement, prosecute him for false statements, obstructing justice, the 30-year firearms charge, or any other offense in Nisur Square, or increase his sentencing exposure, though they had the power to do all those things. *Id*. at 45-46. Even after he changed his story, Ridgeway gave conflicting information about incoming gunfire. Shortly after the incident, Ridgeway applied for and obtained financial benefits as a result of post-traumatic stress disorder caused by the Nisur Square incident, which he described as an "intense firefight, engaged several active threats under fire." 8/4/14 AM Tr. 54-57 (Ridgeway); DX4109R.

In a 2010 civil deposition not attended by the prosecutors, Ridgeway testified that this description of the incident as a "firefight" was truthful. 8/4/14 AM Tr. 60-66. Ridgeway was also discredited in other ways, including his general discharge from the Army for a "pattern of misconduct," 7/31/14 AM Tr. 65-66, and his admitted lies in his job application, where he grossly exaggerated his military service, and falsely concealed his treatment for posttraumatic stress disorder. *Id*. at 69-72, 76-77.

In closing argument, the prosecution attempted to distance itself from Ridgeway by describing him as a mere "corroborative witness" and inviting the jury to "scuttle" his testimony altogether. 8/27/14 AM Tr. 40; 8/28/14 PM Tr. 97.

O. Raven 23 Members Murphy, Mealy, and Frost could not See Threats to the South.

The prosecution also relied on three turret gunners in the first and second vehicles—Mark Mealy, Matthew Murphy and Adam Frost—who testified they did not see anyone shooting at the convoy. They, however, had different vantage points than Defendants, and were unable to see the threats. The four-truck convoy was arrayed along the southern portion of Nisur Square, spanning two roads to the south—one exiting and one entering the circle. *See* GX8006. These roads were separated by a tree-lined median with heavy vegetation, a large billboard, and a police kiosk at the traffic circle. *See* DX3992, DX3997, DX2043 (photos).

Vehicles one and two were at the intersection of the outgoing road and the circle; vehicles three and four were in front of the incoming road. *See* GX493B (Murphy's illustration). Most of the shooting was from vehicles three and four, and was directed principally at the Kia on the incoming road and the bus stop located roughly 150 meters behind it to the south. GX7996 at 6.

The billboard and vegetation in the median obstructed the views from vehicles one and two (where Mealy, Frost and Murphy were) to the incoming road to the south. *See, e.g.*, 8/5/14 PM Tr. 38 (Krueger); 8/18/14 PM Tr. 36 (D. Hill); DX3992, DX3997 (photos). Likewise, individuals in cars to the south could only see one or two of the trucks in the circle, and trees in the median blocked their view of the others. *See, e.g.*, 6/19/14 AM Tr. 36 (Kinani).

Prosecution witnesses acknowledged that in a fast-moving, threat-filled event like a firefight, individuals situated close together can perceive events very differently. Frost described the "adrenaline dump" that occurs during a gunfight, which can interfere with hearing, cause tunnel vision (i.e., prompt one to focus on certain events or facts, at the exclusion of others), and lead to time distortion. 7/15/14 PM Tr. 8-9. Frost and team medic Kevin Rhodes testified that people within feet of each other may not see the same things. 7/15/14 PM Tr. 9 (Frost); 8/6/14 AM Tr. 77

(Rhodes). Rhodes agreed that "someone could pop out, pose a threat, be taken out or neutralized and disappear from sight." *Id*. at 78-79. As an example, Mealy, lead turret gunner in the first vehicle, saw his rear turret gunner, Donald Ball, fire at the Kia. 7/15/14 PM Tr. 101, 104. Murphy and Frost, stationed yards away atop the second vehicle, never saw or heard Ball fire. 7/1/14 PM Tr. 139 (Murphy); 7/15/14 AM Tr. 56-57 (Frost). Nor did Dustin Hill, who was located inside Ball's vehicle. 8/18/14 AM Tr. 95 (Hill).

The prosecution also relied on Iraqi witnesses' failure to perceive gunfire directed at the convoy. But virtually all of those witnesses took cover, and were not in a position to see threats. Iraqi witnesses were also clearly mistaken about sources of gunfire, as several described helicopters shooting overhead, when in fact none of the helicopter gunners fired their weapons.

P. The Lead Iraqi Police Investigator in Nisur Square Is a Terrorist Spy.

The number two official at the U.S. Embassy in Baghdad, Robert Ford, testified that the Iraqi National Police conducted the criminal investigation into Nisur Square. Ordinarily, the lead investigator testifies for the prosecution about the collection and handling of evidence, the chain of custody and the conclusions reached. The prosecution actually flew that Iraq investigator, Colonel Faris Karim to the United States to testify in the first trial in 2014 -- and then sent him back to Baghdad without calling him to the stand. It was not until Nick Slatten's second trial that his defense counsel (again) propounded discovery seeking information in the prosecution's possession, custody, or control about the Iraqi police who participated in the Nisur Square investigation who may have any actual or suspected connection with terrorists or insurgents.

In response four months later, prosecutors filed a summary (pursuant to the Classified Information Procedures Act) with the Court that named Colonel Karim as a possible insurgent collaborator. According to the summary, Colonel Karim provided U.S. intelligence agents posing

as a *Badr Corp* and *Jaysh al Mahdi* insurgents with a "steady stream" of information about U.S. troop movements. The prosecution cautioned that this "Karim" -- known to U.S. intelligence operatives -- may not be the same individual. But his physical description and resume were nearly the same if not exact matches as the Col. Karim directing witnesses and police officers in Nisur Square on Sept. 16, 2007.

But instead of turning over this watershed information, the prosecution wrote summaries of the 13-year-old intelligence reports. In *United States v. Nicholas A. Slatten*, Criminal No. 14-107 (RCL), the defense implored the Court to order the prosecution to disclose exculpatory and mitigating evidence in its possession about the Iraqi police with motivations to tamper with evidence to favor insurgents and disfavor Americans:

> Mr. Slatten intends to present this evidence to prove the truth of the matter asserted: the lead Iraqi investigator in fact was biased in favor of Iranian based insurgent groups and against Americans. If Mr. Slatten had the names of the informants, he could seek to present their live testimony at trial to prove the truth of the information in the summaries. Mr. Slatten cannot effectively prove Colonel Karim's bias without the names of the government informants.

(Case No. 14-107 (RCL)).

The Court denied Mr. Slatten's motion to compel this information. Thus, the prosecution withheld the identity and affiliations of the lead Iraqi police officer who investigated Nisur Square – that he was known by the prosecution to be a terrorist, spy, and thus, an enemy combatant with a motive to act against Americans and for insurgents. What is more, the prosecution knew that Colonel Karim had publicly boasted that if he told the Iraqi witnesses to "go left," they "went left." And if he told them to "go right," they "went right," which suggests much more than the prospect of the unethical pressure placed on a witness, but that he was actually in control of those witnesses' testimony.

Q. The Prosecution Withheld Impeachment Evidence Relating to Jeremey Ridgeway and Matthew Murphy.

Ridgeway testified on direct examination about the DART Incident, explaining that some weeks prior to the Nisur Square incident, his team had been "ordered to go to the airport and board a helicopter because another one of our helicopters had been shot down" (11/27/18 PM Tr. 2643-44). Ridgeway testified that "we were going to secure the helicopter and retrieve passengers," but then elaborated that he was "not sure what we were doing" because he could not remember. (Id. at 2644.) Ridgeway recalled that Slatten participated in the operation that day, and that the Blackwater team traveled to the recovery site in another helicopter. (*Id*.)

Upon arriving at the downed helicopter recovery site, the Blackwater team "formed a perimeter around the helicopter, or that area . . . [f]or security." (11/27/18 PM Tr. 2644.) Ridgeway was positioned next to Slatten, and the two of them spoke. (*Id*. at 2644-45.) Slatten said to Ridgeway that "if he was the shooter that shot down the helicopter – I think it was those words – that he would have – he would be from that building." (*Id*. at 2645.) Ridgeway testified that Slatten "even pointed out the window" where he believed the shooter would have been located, but Ridgeway explained that he was not "100 percent sure" about that recollection. (*Id*.)

Slatten said to Ridgeway that he was "going to fire on the building, and when he does, that [Ridgeway] should fire along with him." (*Id*.) Slatten "did fire," and several members of the Blackwater team, including Ridgeway, fired after he (Slatten) opened fire. (11/27/18 PM Tr. 2645.)

Afterwards, Slatten said to the team that he had seen "someone taking aim at us through the window," and that is why he had fired. (*Id*. at 2645-46). Ridgeway testified that the military was present and also opened fire after Slatten fired, using armored vehicles and air assets. (*Id*. at 2646.) The building was, "for the most part . . . destroyed." (*Id*.)

Ridgeway testified that the building at which Slatten had fired was located several hundred meters away, and that Slatten's weapon had a high-powered magnification scope that was not present on Ridgeway's weapon. (11/28/18 AM Tr. 2762.) Ridgeway agreed that "immediately after Slatten fired his weapon, other gunfire erupted" and that the Blackwater team "began taking incoming fire from insurgents from that same building or around that building . . ." Ridgeway testified that the Blackwater security team ("you guys") was not receiving fire prior to Slatten's taking his first shot. (11/28/18 AM Tr. 2788.)

Murphy also testified on direct examination about the incident, explaining that a small Blackwater transport helicopter returning to Baghdad from the south "went down" during the week prior to the September 16, 2007, Nisur Square shooting. (11/07/18 PM Tr. 995-996.) When he testified, Murphy did not know whether the helicopter was "hit by ground fire . . . [or] if it had a mechanical failure . . .," but he knew that it "had to land." (*Id.* at 996.) Murphy flew to the site of the downed helicopter with a Blackwater team to provide security so that sensitive items from the downed helicopter could be recovered. (*Id.* at 996-998.)

In addition to Murphy, the Blackwater security team included Heard, "Dave Bynum, who was temporarily filling in as a team leader that day," and several other personnel. *(Id.* at 997.) Murphy testified that there was already "an Army unit there, two vehicles there when we arrived." (11/07/18 PM Tr. 998.) The Blackwater security personnel "spread out in like a circle" and the defendant was in Murphy's "immediate vicinity[,]close enough to hear what [the defendant] was saying without straining." (*Id.* at 998-999.) Murphy described the location of the downed helicopter as "a very vulnerable spot. We were out in an open area surrounded by buildings." (*Id.* at 999.) Murphy recalled that Slatten was armed with his SR-25 sniper rifle. (*Id.*) Murphy testified that he saw and heard Slatten fire his sniper rifle that day. (11/07/18 PM Tr. 999, 1022, 1025.)

When the prosecutor inquired "how that occurred," Murphy explained that Slatten "went from just kind of being on security like everybody to kind of hunkering down behind the rifle, getting in position to shoot, and he fired at least once. I think he fired like twice to begin with." (*Id*.)

According to Murphy, Slatten then stated that "he shot at a guy in a window with a rifle, raising up with a rifle." (*Id*.) Murphy later clarified the language that the defendant had used: "He said there was a guy in the window raising up with a rifle in his hands." (*Id*. at 1000.) The prosecutor inquired about Murphy's observations of the moments prior to the defendant taking these initial shots:

> Q: Prior to Mr. Slatten, the defendant, shooting, had you heard any gunshots?
> A: No.
> Q: Incoming gunshots?
> A: No.
> Q: Did anyone else with either Raven 23 or the Army fire prior to the defendant?
> A: No.

(11/07/18 PM Tr. 1000.)

Murphy testified that he "could see the building [Slatten fired upon], but not – [he] couldn't pick anything out" because of "the distance." (11/07/18 PM Tr. 999-1000.) After Slatten's shots, Murphy observed that "[b]asically, everybody fired at that same building." (*Id*. at 1000.) Murphy fired his weapon at the building as well, believing there was "a deadly threat in that building, and we were extremely vulnerable." (*Id*. at 1000-1001.) The basis of Murphy's belief in a deadly threat was "[b]ecause Slatten said there was." (Id. at 1001.)

Murphy then saw the Army officer "from that small unit . . . sp[eak] directly to Slatten." (11/07/18 PMR Tr. 1001.) Murphy could hear the conversation, and he testified that Slatten "directed the Army officer's attention to the building where he said he had seen the person with

the rifle." (*Id.*) The Army officer then communicated with a helicopter overhead, and the helicopter "fired a Hellfire [air-to-surface] missile into a building." (*Id.* at 1002.) Slatten then said to the Army officer something along the lines of, "Not that building, the other one," and after additional radio communication, an air-to-surface missile was fired by a helicopter "into the other building." (*Id.* at 1002-1003.) The two buildings struck by the missiles were "directly adjacent to each other." (*Id*. at 1003.)

Murphy testified that back in the International Zone, "other guys on the team who hadn't gone" to the downed helicopter site had brought pizza. (11/07/18 PM Tr. 1004.) While eating the pizza, Slatten said, "A guy was raising up . . . like he had a rifle in his hands." (*Id.*) (emphasis added). From Murphy's view, "there's a big difference between a guy in a window with a rifle overlooking you and a guy in a window without a rifle overlooking you." (*Id.*)

R. The Prosecution Withheld an Exonerating State Department Presentation.

The constitutional problems, though, were that while eliciting this evidence that Slatten "created" a gunfight during the DART incident, which was consistent with his "creating" the Nisur Square incident, the prosecution had in its possession a U.S. State Department presentation prepared by the Regional Security Office at the U.S. Embassy in Baghdad that the Army concluded that its personnel were taking small arms and indirect fire when Movants Slatten, Ridgeway, and Murphy arrived.

On August 12, 2019, Mr. Slatten's sister, Jessica Slatten, received an unsolicited e-mail from an individual named Darren Hanner. (Case No. 14-107, Doc. 1320, Ex. E). Apparently, Mr. Hanner worked for Blackwater in Baghdad in September 2007. Attached to Mr. Hanner's e-mail was a PowerPoint presentation entitled "412 Incident 10 Sep 07." (*Id*., Ex. F). The presentation appears to have been prepared by the Regional Security Office (RSO) of the Bureau of Diplomatic

Security at the U.S. Embassy in Baghdad; it contains the seal of that office in the upper left-hand corner.

The presentation contains a timeline of the DART incident; photographs of the downed helicopter; maps of the incident site; and statements by participants in the incident and by people stationed in the Tactical Operations Center (TOC)—including Army SSG Joseph M. Huston and Ops Chief Kurt Scheuermann—who were speaking in real time to Army participants on the ground and to the Army officer in charge at the Multi National Corps' Joint Operations Center, someone named Major Schwartz or Schwartzman. The statements make clear that the Army arrived on the scene before the Blackwater DART squad. As relevant here, the Army reported the following information to SSG Huston and Mr. Scheuermann:

> * The Army officer in charge at the Joint Operations Center, Major Schwartz or Schwartzman, reported that "the area was too 'hot' and [he] didn't want his people sitting out there that long." (*Id*. Ex. F at 26).
>
> * Major Schwartz/Schwartzman reported that "his troops on the ground were 'taking IDF [indirect fire]' and wanted to know what [the State Department's] plan of action was." *Id*. at 27.
>
> * The TOC reported that the State Department was "flying mechanics out to recover as much of the aircraft as possible." *Id*.
>
> * Major Schwartz/Schwartzman repeatedly called the TOC to ask whether the Army could blow up the helicopter because "it was getting dangerous for his men to be on the scene much longer." *Id*. at 30.
>
> * Major Schwartz/Schwartzman later called and advised, after the Blackwater team had arrived, "that ***his troops and the RSO assets on the ground were taking small arms fire (SAF) from a nearby building and attack aircraft were engaging***." *Id*. at 27 (emphases added); *see also id*. at 30 ("MAJ Schwartzman called . . . and said his people were taking fire. I was asked by the RSO TOC Watch Officer if it was Small Arms or Indirect Fire, so I asked MAJ Schwartzman, and he said, 'I don't give a shit what kind of fire it is.'").

The presentation also shows, using a map of the crash site, the direction from which the "[g]round assets [were] engaged by Anti-Iraq Forces (AIF) from the southwest." *Id*. at 19. It reports that "[b]oth US MIL and RSO assets ***return[ed] fire***. AH-64 fire[d] missiles, rockets, and cannon into building occupied by AIF." *Id*. (emphasis added).

The presentation also contains a statement by the pilot of the other helicopter involved in the incident, Anthony Acosta. According to the statement, he heard "Chalk 2" announce "65 is going down," he "immediately turn[ed] to [his] rear to look for Chalk 2," and he saw the helicopter "lying on its side." *Id*. at 8. Photographs of the downed helicopter in the presentation confirm that description. *See id*. at 22-24.

S. The Prosecution Withheld Prior Inconsistent Statements from Murphy and Ridgeway Made Immediately After the DART Mission.

Upon discovering the undisclosed powerpoint presentation, Slatten's trial team inquired about whether the Government had the presentation in its possession or any other related material that had previously gone undisclosed. During this further inquiry by the prosecution, the Government discovered sworn statements that Murphy and Ridgeway gave on the day after the DART incident in 2007 that directly contradict their trial testimony. Both Murphy and Ridgeway gave the same account in 2007 - that the Army had been engaged in a firefight before Slatten fired any shots and that the Army, not Slatten, informed Blackwater that the buildings contained armed combatants. Indeed, according to Murphy and Ridgeway in 2007, Slatten fired his weapon only after observing someone in a window pointing a scoped rifle at the team and that the Army, not Slatten, initiated the airstrikes. These contemporaneous accounts were diametric from their trial testimony – that Slatten fired his weapon first at targets he alone identified before directing the Army to call in airstrikes to level the two buildings. 11/7/18 PM Tr. 1000:6-1004:19.

The Government's failure to produce these prior inconsistent statements to the defense team is inexplicable, particularly because Murphy's and Ridgeway's testimony was so crucial to the entire theory of premeditation to support Slatten's first-degree murder charge. They also point to a much broader credibility problem for Murphy and Ridgeway, who were also key witnesses in the prosecution of Defendants. The Government robbed Movants of the ability to use these inconsistencies to test the credibility of Murphy and Ridgeway, adding to the layers of misconduct that prevented Movants from having a fair trial.

T. The Prosecution Withheld Evidence of Vindictive Prosecution and Appeal.

Upon dismissing the first indictment in this case based upon a series of unconstitutional tactics in which the prosecution engaged, Judge Urbina wrote:

> Before the beginning of jury deliberations, a judge instructs the jury that it must perform its duty to deliberate "without prejudice, fear, sympathy or favoritism." A judge has a concomitant obligation. When a judge, upon close examination of the procedures that bring a criminal matter before the court, concludes that the process aimed at bringing the accused to trial has compromised the constitutional rights of the accused, it behooves the court to grant relief in the fashion prescribed by law. Such is the case here.

Slough, 677 F. Supp. 2d at 158 (internal citation omitted).

Iraqi politicians, in the middle of an election, reacted to the dismissal with threats to the U.S. State Department of upsetting the already fragile relationship between the United States and Iraq, including to hold a "referendum on the U.S./Iraq Security Agreement." Later leaked State Department cables revealed enormous pressure by these politicians to appeal the dismissal and to continue to pursue convictions, despite Judge Urbina's indictment of this unconstitutional prosecution. As Robert Ford stated in one cable: "we need to address in some fashion Iraqis' perception that justice has not been served . . . indicating what steps the U.S. Justice Department intends to take to appeal the decision." *Id.* The U.S. State Department communicated these

concerns directly with Attorney General Eric Holder himself, as described by Ambassador Christopher Hill. The Iraqi diplomatic and political pressures continued, as described by Ford: "[t]he Iraqi government may feel compelled (for political reasons in an election season) to resort to more bellicose rhetoric and perhaps additional action if the Department of Justice chooses not to appeal Judge Urbina's decision." Throughout these interactions, then Secretary of State Hilary Clinton and her staff appeared to weigh in directly on the dismissal and create additional pressure around pursuing an appeal.

Shortly after Judge Urbina's dismissal, after these deliberations within and among the State Department, the Department of Justice, and the Iraqi Government, the Vice-President of the United States, Joseph R. Biden, Jr., then appeared with the President of Iraq and publicly announced that he was disappointed in the Court's dismissal and promised that the United States would seek justice for the Iraqi people.

> Let me take this opportunity to express my personal regret for the violence in "Kisoor" (means Nisoor) involving Blackwater employees in 2007. The United States is determined, determined to hold accountable anyone who commits crimes against the Iraqi people. While we fully respect the independence and integrity of the US judicial system, we were disappointed by the judge's decision to dismiss the indictment which was based on the way in which some evidence had been acquired. A dismissal, I want to make clear, is not an acquittal and today I am announcing that the United States government will appeal this decision. Our justice department will file that appeal from the judge's decision next week.

Vice-President Biden's comments seemingly came out of nowhere, as it was the first time any representative of the U.S. Government had expressed an intention to move forward with the case, despite the overwhelming dismissal from Judge Urbina. Unknown at the time were these lengthy discussions about the case that occurred among American diplomats from the State Department, Iraqi politicians, and the Department of Justice, including, even Attorney General

Holder. The U.S. Government had apparently succumbed to the pressures of the Iraqi politicians.

GROUND ONE - PROSECUTORIAL MISCONDUCT

Prosecutorial misconduct is "action or inaction by a prosecutor in violation of some legal norm or standard, *e.g*., a constitutional provision, a statute, a Manual rule, or an applicable professional ethics canon." The standard was set by the Supreme Court in *Berger v. United States*, 295 U.S. 78, 84 (1935), where the Court described prosecutorial misconduct as behavior by the prosecuting attorney that "overstep[s] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense."

The Court stated that the prosecutor "may prosecute with earnestness and vigor . . . . But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Id*. at 88.

The Supreme Court has recognized the "special role played by the American prosecutor" in the search for truth. *Strickler v. Greene*, 527 U.S. 263, 281 (1999). Prosecutors have a continuing interest in preserving the fair and effective administration of criminal trials. Accordingly, the American Bar Association states that a prosecutor's duty is "to seek justice within the bounds of the law, not merely to convict." A.B.A. Standards for Criminal Justice: *Prosecution and Defense Function*, Standard 3-1.2(c) (4th ed. 2015).

Fundamental to fulfilling this duty is making timely disclosure of all evidence favorable to the defense. As the Supreme Court recognized in *Brady*, 373 U.S. at 87, the failure to disclose favorable evidence "violates due process. . . irrespective of the good faith or bad faith of the prosecution." *See also United States v. Nixon,* 418 U.S. 683, 709 (1974) ("[t]he very integrity of

the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.").

This affirmative duty is above and beyond the "pure adversary model," *Bagley*, 473 U.S. at 675 n.6, it is also grounded in the recognition of the prosecutor's "special role in the search for truth in a criminal trial." *Banks v. Dretke*, 540 U.S. 668, 696 (2004). Accordingly, in *United States v. Agurs*, 427 U.S. 97, 110 (1976), the Supreme Court held that a prosecutor is required to disclose certain favorable evidence "even without a specific request" from the defense. The Court reasoned that "obviously exculpatory" evidence must be disclosed as a matter of "elementary fairness," and that prosecutors must be faithful to their duty that "justice shall be done." *Id*. at 107, 110, 111.

Prosecutors are subject to heightened ethical obligations due in part to their special position. *Berger*, 295 U.S. at 88 ("The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose interest, therefore, in a criminal prosecution is not that is shall win a case, but that justice shall be done.").

As representatives of the United States, prosecutors cannot lose sight that their duty is more than to be exclusively adversarial or ardent advocates. *Bagley,* 473 U.S. at 675 n.6. It is not the prosecutor's responsibility to win at all costs but rather to "ensure that a miscarriage of justice does not occur." *Id.* at 675; *see also United States v. North*, 920 F.2d 940, 945-46 (D.C. Cir. 1990) ("The decision as to whether the national interests justifies ... institutional cost in the enforcement of the criminal laws is, of course, a political one .... Once made, however, that cost cannot be paid in the coin of a defendant's constitutional rights. That is simply not the way our system works. The political needs of the majority, or Congress, or the President never, never, never, should trump an individual's explicit constitutional protections."). Basic to this duty and obligation is

"disclos[ing] evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial." *Id.*

Exculpatory and impeachment evidence is material to a finding of guilt—and thus the Constitution requires disclosure—when there is a reasonable probability that effective use of the evidence will result in an acquittal. *Id.* at 676. Recognizing that it is sometimes difficult to assess the materiality of evidence before trial, prosecutors generally must take a broad view of materiality and err on the side of disclosing exculpatory and impeaching evidence. *See Kyles,* 514 U.S. at 439. Collectively, the undisclosed evidence is material under *Brady* if "there is 'any reasonable likelihood' it could have 'affected the judgment of the jury.'" *Wearry v. Cain*, 136 S. Ct. 1002, 1006 (2016) (quoting *Giglio v. United States*, 405 U.S. 150, 154 (1972), and *Napue v. Illinois*, 360 U.S. 264, 271 (1959)). A prosecutor does *not* have to have actual knowledge of the evidence to commit a *Brady* violation. *Giglio*, 405 U.S. at 150. "The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles,* 514 U.S. at 437.

The Justice Manual, until recently known as the United States Attorney's Manual, sets forth Justice Department policy and counsels, in part:

> It is the obligation of federal prosecutors, in preparing for trial, to seek all exculpatory and impeachment information from all the members of the prosecution team. Members of the prosecution team include federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant.
>
> * * * * *
>
> A prosecutor must disclose information that is inconsistent with any element of any crime charged against the defendant or that establishes a recognized affirmative defense, regardless of whether the prosecutor believes such information will make the difference

> between conviction and acquittal of the defendant for a charged crime.
>
> * * * * *
>
> A prosecutor must disclose information that either casts a substantial doubt upon the accuracy of any evidence—including but not limited to witness testimony—the prosecutor intends to rely on to prove an element of any crime charged, or might have a significant bearing on the admissibility of prosecution evidence.

Justice Manual, U.S. Department of Justice, 9-5.002 Criminal Discovery (internal citations omitted).

Due process requires that disclosure of exculpatory and impeachment evidence material to guilt or innocence be made in sufficient time to permit the defendant to make effective use of that information at trial. *See*, *e.g. Weatherford v. Bursey*, 429 U.S. 545, 559 (1997).

Movants were deprived of the rights guaranteed them by the Due Process Clause in that the prosecution failed to disclose the exculpatory evidence described below.

The very foundation of the American criminal justice system is "due process of law," which requires law enforcement officers and prosecutors to safeguard "fundamental fairness" in the administration of justice – that is, the presumption of innocence and a fair process by which an individual is investigated, charged, and tried. If an investigation or prosecution does not – or cannot – provide due process for its subjects, the Department's lawyers are duty-bound to stop it in its tracks. Among the myriad ways the government can violate due process are through "vindictive" uses of its law enforcement powers and through public comments on the purported guilt of a subject that impair the presumption of innocence and right to a fair trial.

A vindictive investigation or prosecution is a due process violation "of the most basic sort." *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). The Supreme Court has held that prosecutors cannot pursue cases out of "vindictiveness," meaning that they cannot use their law

enforcement powers to punish someone solely out of animus or solely from an exercise of a protected legal right. *United States v. Goodwin*, 457 U.S. 368, (1982). Vindictiveness can be shown through direct evidence, "such as a statement by the prosecutor evidencing the vindictive motive." It can also be shown when: "(1) the prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a 'stalking horse,' and (2) [the defendant] would not have been prosecuted except for the animus." *United States v. Koh*, 199 F.3d 632, 640 (2d Cir. 1999).

An investigation in which government personnel, including the Vice President of the United States, say or do things that compromise a defendant's presumption of innocence in the eyes of the jury denies this fundamental right. Because courts must carefully guard against dilution of the principle that guilt must be established by probative evidence presented to the jury in the courtroom, courts can set aside indictments and verdicts on due process grounds when the government improperly comments or creates publicity in a manner that prejudices the accused's presumption of innocence. *United States v. Young*, 470 U.S. 1 (1985).

The U.S. Department of Justice's *Principles of Federal Prosecution* are found on the premise that the Department's prosecution power should be exercised in service of the "fair, evenhanded administration of the federal criminal laws." The federal government's Standards of Ethical Conduct for Employees of the Executive Branch also require all employees to "act impartially and not give preferential treatment to any private organization or individual" and to "endeavor to avoid creating the appearance that they are violating the law or ethical standards."

A. Actual Knowledge That Chief Iraqi Investigator in Nisur Square Is a Terrorist.

Since 2007, the prosecution has maintained that there were "no insurgents" in Nisur Square on September 16, 2007. In its opening statement at the first trial, the prosecution repeatedly made

this assertion. *See, e.g*., 6/17/14 PM Tr. at 59:19 ("There were no threats."); *id*. at 66:5 ("That day there were no threats out there."); *id*. at 13:12-14 ("Every man, woman and child out there that day that either died or suffered an injury posed no threat to these men whatsoever.").

The prosecution made similarly broad declarations at closing. *See, e.g*., 8/27/14 AM Tr. at 26:21-22 ("None of [the victims] were insurgents, none."); *id*. at 39:6-8 ("But you know there were no armed insurgents. You certainly know that none of those victims was an insurgent."); *id*. at 51:4-6 ("None, of all of those people, all of those faces, all of those names on that board that I went through this morning, none of them was an insurgent."); *id*. at 77:18-20 ("Because there were no threats out there, there were no insurgents out there that day.").

Eleven years after the September 16, 2007, Nisur Square gunfight, in *United States v. Nicholas A. Slatten*, Criminal No. 14-107 (RCL), the defense sent a February 2, 2018, request for discovery to the prosecution. The defense requested, *inter alia*:

> 13. All information (including files of intelligence agencies) regarding whether any of the alleged decedents and injured individuals have any suspected connection or affiliation with any insurgent or terrorist group.
>
> 14. All information (including files of intelligence agencies) regarding whether any of the Iraqi Police at Nisur Square on September 16, 2007 or any of the Iraqi Police who participated in the Nisur Square investigation have any suspected connection or affiliation with any insurgent or terrorist group.

(Case No. 14-107 (RCL) Doc. 829, Ex. A at 3).

The prosecution responded to Mr. Slatten's discovery request over three months later, on May 25, 2018, and stated that it had "made the appropriate inquiries to locate potentially responsive materials." *Id*., Ex. B at 2. It then stated:

> We are not going to confirm or deny whether responsive information exists. Nevertheless, we write to advise you that we do not anticipate producing any materials in response to your February 2, 2018,

> requests Nos. 13 and 14. We have reached this conclusion after carefully considering our disclosure obligations, including under Fed. R. Crim. P. 16(a)(1)(E) (requiring, upon the defendant's request, the government to disclose documents, among other things, that are within the government's custody or control and that are "material to preparing the defense . . . ."), *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1971), and their progeny. *Id*. (footnotes omitted).

That same day, the prosecution filed a notice of a sealed, *ex parte* filing entitled "Government's Motion for Protective Order Pursuant to Section Four of the Classified Information Procedures Act." (Doc. No. 771). Following *ex parte* hearings with the Court, on June 14, 2018, the prosecution disclosed the following two summaries to the defense:

SUMMARY #l

> The United States Government has information that in 2004, an Iranian Intelligence agent ("agent") was hopeful that he/she could cultivate ties with an applicant to the Iraqi National Intelligence Service. The applicant was referred to as "Lieutenant Colonel Karim" ("Karim"). It is unknown whether this "Karim" is the same individual as Colonel Faris Saai Abdul Karim. "Karim" is described as being 48 years old, married, Sh'ite, tall, dark in complexion with greying hair, and a heavy smoker who quit drinking in approximately 2002. "Karim" joined the Iraqi Intelligence Service in 1980, working in the Military Industries Securities directorate until 2003, when the Iraqi Army disbanded. The agent had long-standing ties with "Karim" through personal family contacts. The agent served under cover as a member of the Badr Corp. "Karim" knew the agent as a Badr Corp member, and in this context, provided the agent with a steady stream of "information." No additional information is known regarding the nature of the relationship or the type of information provided. In March 2004, "Karim" applied to the Iraqi National Intelligence Service. "Karim" promised the agent he would remain loyal to him and continue their relationship. The agent received money to provide to "Karim," but the reporting does not indicate whether "Karim" ever received any money.

SUMMARY #2

> The United States Government has information that in February 2008, an associate of a figure in the Iran-based Jaysh al-Mahdi (JAM) ("associate"), attempted to verify the planning of a raid by

> United States and Iraqi forces via a "Colonel Karim" ("Karim"), presumably a member of the Iraqi Security Forces. It is unknown whether this "Karim" is the same individual as Colonel Faris Saai Abdul Karim. The reporting is internally inconsistent about whether the associate actually received information about the raid from "Karim," or whether, when asked to verify, "Karim" had no knowledge of the raid. The associate explained to "Karim" that even though he ("Karim") was a "brother" and the associate wanted no problems with him, such a raid would result in trouble for the responsible party.

On June 19, the defense moved to compel production of revised summaries or, in the alternative, to dismiss the indictment. (Doc. No. 827). In that motion, Mr. Slatten explained that Colonel Karim was present in Nisur Square on September 16, 2007, and oversaw the investigation of the incident. *See id*. at 2-4.

The prosecution's demonstrably false claim that there were "no insurgents" in Nisur Square implicates bedrock concerns at the heart of Constitution's due process guarantee. It is improper "for a prosecutor to make an assertion to the jury of a fact, either by way of argument or by an assumption in a question, unless there is evidence of that fact." 3 Charles Alan Wright *et al*., Federal Practice & Procedure Criminal § 588 (4th ed. 2018). Moreover, the prosecution has a "duty to assure the accuracy of its representations," which requires that, "when the government learns that part of its case may be inaccurate, it must investigate" and, if necessary, correct the record. *United States v. Freeman*, 650 F.3d 673, 680 (7th Cir. 2001); *see also United States v. Universita*, 298 F.2d 365, 367 (2d Cir. 1962) (The prosecution "has a special duty not to mislead; the government should, of course, never make affirmative statements contrary to what it knows to be the truth."); *Shih Wei Su v. Filion*, 335 F. 3d 119, 126 (2d Cir. 2003) ("The prosecutor is an officer of the court whose duty is to present a forceful *and truthful* case to the jury, not to win at any cost.") (citation omitted).

The prosecution "cannot simply ignore" evidence that may contradict its case. *Id*. Misleading or inaccurate arguments by the government will lead to the denial of due process when they affect the "jury's ability to judge the evidence fairly." *United States v. Thomas*, 114 F.3d 228, 246 (D.C. Cir. 1997) (internal quotation marks omitted); *see United States v. Bigeleisen*, 625 F.2d 203, 208 (8th Cir. 1980) (reversing conviction because there was a "reasonable likelihood that the false testimony and misleading closing argument could have affected the judgment of the jury").

The prohibition on misleading argument derives from the fundamental principle that distortion of the fact-finding process by the prosecution will taint a conviction. *See, e.g., Banks v. Dretke*, 540 U.S. 668, 691 (2004) (willful or inadvertent suppression of exculpatory or impeachment evidence); *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (knowing failure to correct false testimony); *Berger*, 295 U.S. at 85-86 ("improper insinuations and assertions calculated to mislead the jury"); *United States v. Azubike*, 504 F.3d 30, 38 (1st Cir. 2007) (inadvertent factual misstatements in closing); *United States v. Lord*, 711 F.2d 887, 891-92 (9th Cir. 1983) (intimidation of defense witnesses suggesting "distortion of the judicial fact-finding process").

Taken together, these cases stand for the proposition that prosecutors may not exploit the structural advantages they possess as representatives of the sovereign to secure a conviction. Rather, they must recognize "the special role played by the American prosecutor in the search for truth in criminal trials," whose interest "'is not that [he] shall win a case, but that justice shall be done.'" *Strickler v. Greene*, 527 U.S. 263, 281 (1999) (quoting *Berger*, 295 U.S. at 88).

Here, the prosecution failed to produce evidence in its possession that the lead investigator, whose results and conclusions were heavily relied upon, was an Iraqi national with connections to multiple anti-American terrorist organizations from (or backed by) Iran. This is the man who was described as instrumental in the coordination of Iraqi witnesses, who asked prosecution witness

Mohammed Kinani how much money Kinani would want from Blackwater not to testify, and told Kinani other Iraqi witnesses would do what Faris told them to do: "if he told the witnesses to 'go left' they would 'go left,' and if he told them to 'go right' they would 'go right.'" A.778-79; A.784. He was also in charge of the investigation when at least four bags full of shells were removed from the scene. Thus, given Karim's evident connection to these violent militant groups, his bias tainted the entire investigation – the fact that this connection was not revealed at all in Defendants' trial destroyed any chance for them to have a fair trial.

B. Evidence of Vindictive Prosecution in Emails and Cables.

On December 31, 2009, Judge Urbina issued his decision to dismiss the case against Movants for violations of their constitutional protections against governmental overreaching. Two days later, on January 2, 2010, Secretary of State Hillary Clinton emailed Harold Koh, then Legal Advisor for the State Department, and asked:

> Second, what can we do about Judge Urbina's ruling' [REDACTED IN ORIGINAL] For example, what is the likelihood of success on appeal? Can the US file a civil action against the company? Pay compensation to the victims? What other options do we have?

In response the same, Mr. Koh wrote:

> Re Blackwater. I have already put these very questions to our team, and they are working up a memo on the subject. Significantly, the press accounts are all saying that State Department lawyers appropriately warned the DOJ prosecutors, but that the DOJ lawyers chose to take a different route.
>
> I will keep pressing and give you an oral report at Monday's 8:45, and we can get the promised memo to you soon thereafter.

Later exchanges between members of the State Department demonstrate an urgency to appease Iraqi government leaders incensed by Judge Urbina's dismissal and the damage it could do to them politically if they did not "take a tougher line than they might otherwise desire."

Fearing reprisals from these Iraqi politicians, which included threats of a "referendum" on the U.S./Iraq Security Agreement, the State Department communicated concerns about the impact the decision was having on them diplomatically and politically to Attorney General Holder directly. These discussions included an exchange of messages conveyed by the State Department between Holder and Iraqi Prime Minister Maliki. Even State Department legal advisors were applying pressure on the Department of Justice to appeal the decision, despite the overwhelming 90-page rebuke from Judge Urbina.

The undisclosed cables and email exchanges demonstrate an improper diplomatic and political motivation for the continued prosecution of the Movants, not a legal one formed independently by the decision-making agency, the Department of Justice. Thus, it would not have come as a surprise to those that were witness to these exchanges that then Vice President Joe Biden announced that the Government had decided to appeal the decision, standing at a press conference in Baghdad, next to Iraqi President Jalal Talabani. The prosecution of Heard, Slough, and Liberty was driven by political and diplomatic revenge, adopted by the U.S. Government on behalf of Iraqi politicians who needed cover for their own political fortunes and objectives.

Vindictive prosecution violates the Due Process Clause of the Fourteenth Amendment. *Bordenkircher v. Hayes*, 434 U.S. 357, 362 (1978) (citing *North Carolina v. Pearce*, 395 U.S. 711,725 (1969)). This is perhaps the worst kind of prosecutorial vindictiveness, violating the due process rights of three decorated U.S. military veterans to placate the politically motivated revenge of Iraqi politicians. The cables and email exchanges between State Department officials show that the singular motivation to pursue the appeal was diplomatic appeasement, not justice.

C. The Undisclosed State Department Presentation That US Forces Returned Fire During the DART Mission.

The prosecution relied on the testimony or Murphy and Ridgeway extensively at trial, a large portion of which formed the basis for their entire theory of the case – that Defendants' actions in Nisur Square were unjustified and unprovoked. The undisclosed evidence regarding Murphy's and Ridgeway's prior inconsistent statements would have provided powerful material with which to impeach their testimony. Specifically, regarding the DART incident, both depicted Mr. Slatten as firing first, though immediately after the incident confirming the opposite. Had this information been disclosed, as it should have been under *Brady*, the defense could have effectively depicted their recollections as, at best, incorrect or, at worst in the case of Mr. Murphy, intentionally misleading. And, given Mr. Murphy's central role in the prosecution's case in general, any hit to his credibility could have seriously affected Movants' case.

D. Key Iraqi Eyewitness Recanted or Changed His Trial Testimony.

A key witness's sentencing statement showing he perjured himself at trial was withheld by the prosecution until sentencing, then buried in an 83-page disclosure without calling its impeachment value to the attention of the defense as *Brady* and *Giglio* material.

The witness, Sarhan Dheyab Abdul Monem, testified at trial that the Kia's driver was killed by the first shots fired, causing the Kia to roll slowly forward, and that after approaching the car and seeing its driver dead, he ran in front of the convoy, holding up his hands and telling them to stop firing, then ran back to the Kia and walked slowly alongside it, trying to extract its passenger. The government highlighted his testimony again and again to argue the Kia driver's unprovoked death began the incident, and the officer's actions showed Defendants the Kia was no threat.

At sentencing, Mr. Monem submitted a written statement to the Court, on his own volition, telling a very different story: that he remained in traffic kiosk, rooted by fear and unable to move

or act, and that from that vantage point he witnessed the Kia's driver trying to get his mother out of the car, while they held one another fearing for their lives—proving the driver was alive after gunfire began, and was not killed by an unprovoked ambush as the government argued.

Stated differently, at the trial, Mr. Monem said that after he heard the convoy fire shots, he heard screaming from someone inside a Kia, and he ran to the vehicle, where he saw that the driver was dead from a gunshot wound to the head. The written statement that Mr. Monem prepared and submitted to the Court on his own volition appears to say that he never ran to the car, rather he cowered in his kiosk during the incident, and he heard the driver of the car speaking to the other passenger, the driver's mother, after shooting began. Thus, Monem's new statement contradicts the most important aspects of his testimony at trial.

This statement, supported by strong indicia of reliability, eviscerated the Government's entire theory of the case, not only as to the killing of the driver, but as to whether the Kia was an apparent threat—the crucial predicate for all that followed. But the defense was not able to attack this witness at trial with this statement and thereby degrade the prosecution's case and show reasonable doubt.

Such a statement, offered directly by Monem to the court at a time when the trial was behind him and he was away from anyone who would be influencing his testimony, could have been fairly viewed by jurors as finally providing Monem's unsolicited, candid, and exculpatory version of events. Its potential impact on the trial –even a lengthy and complicated trial such as this one –cannot be underestimated

E. Missing Drone Footage Would Have Conclusively Resolved What Happened.

The prosecution had in its possession satellite images and approximately 10 minutes of footage taken by a U.S. Army drone of the aftermath of the gun battle in Nisur Square. The

prosecutors knew about this footage at least as early as 2009. The prosecution asked the National Geospatial Intelligence Agency to evaluate the images and footage. At trial, they played just 46 seconds of that footage. Four minutes from the beginning and six minutes from the end of the drone footage had mysteriously gone missing.

That missing footage could have confirmed what witnesses testified to: Iraqi gunmen throwing aside their weapons and fake Iraqi police uniforms as they fled the square. Iraqi gunmen shooting at the convoy from a bus shelter south of the circle. Iraqi police sanitizing the scene by picking up AK-47 shell casings. But none of that footage was disclosed to the defense for its use, development, or presentation at trial. Instead, the prosecution claimed it was either inexplicably lost or deleted in the normal course of business.

For these reasons, Movants are actually innocent and deserving of relief.

CONCLUSION

For the foregoing reasons, the Court should grant this motion. Under Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States Courts, Movants have made substantial showings that they have been denied constitutional rights. As demonstrated, the violations of rights largely pertain to undisclosed exculpatory and impeachment evidence that goes to the very heart of the Government's theory of criminal liability. Accordingly, these violations were material to the jury's finding of guilt, and the Government's remaining evidence was not sufficient to render these errors harmless.

REQUESTED RELIEF

Upon finding for Movants, the statute provides that this Court "shall vacate and set the judgment aside and shall discharge the prisoner . . . . or correct the sentence as may appear appropriate." 28 U.S.C. § 2255.

Movants respectfully request this Court vacate and set aside the convictions, dismiss the charges with prejudice, and direct the Bureau of Prisons to immediately release each of the Movants.

Respectfully submitted,

September 23, 2020

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RULE 2 CERTIFICATIONS

This motion is signed under penalty of perjury by counsel for each Movant specifically authorized to sign for Movants.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2020, a copy of this filing was delivered via ECF to all counsel of record.

September 23, 2020

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