

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD) (SN)  ECF Case
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This document relates to:

*All Actions*

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**PLAINTIFFS' AUTHORIZED SURREPLY MEMORANDUM OF LAW IN  
OPPOSITION TO THE RENEWED MOTION TO DISMISS OF  
THE KINGDOM OF SAUDI ARABIA [ECF No. 9368]**

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## GLOSSARY

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**\*Bold-face text denotes Government of Saudi Arabia officials or employees**

**Acronyms**

AQ Al Qaeda

CIA United States Central Intelligence Agency

DOJ United States Department of Justice

EO Executive Order on Declassification Review of Certain Documents Concerning the Terrorist Attacks of September 11, 2001, Exec. Order 14040

FBI United States Federal Bureau of Investigation

ICSD Islamic Center of San Diego

IIRO International Islamic Relief Organization, Saudi Arabia

IFSIT Islamic Foundation of Sheikh Ibn Taymiyah, KFM's owner and operator, Saudi Arabia

KFM	King Fahad Mosque, Culver City, CA
KSM	Khalid Sheikh Mohamed
KSA	Kingdom of Saudi Arabia
LA	Los Angeles, CA
LAX	Los Angeles International Airport
MOIA	Ministry of Islamic Affairs
MOIA HQ	Ministry of Islamic Affairs headquarters, Riyadh, Saudi Arabia
MPS	Metropolitan Police Service
PCA	Presidency of Civil Aviation
SD	San Diego, CA
TOEFL	Test of English as a Foreign Language
USIU	United States International University

**Citation Forms**

- ¶|# Refers to that paragraph number in Plaintiffs’ Averments of Facts and Evidence (ECF 9488-1) and in Plaintiffs’ Response to Defendants’ Exhibit 160 (filed herewith as Ex. 700 to First Declaration of Robert T. Haefele), except where the “¶” is part of an Exhibit (“Ex.”) citation.
- (#) Refers to that page number in Defendant Saudi Arabia’s Reply Memorandum (ECF 9610)

**I. The Scope of Thumairy’s and Bayoumi’s Agency or Employment with the Saudi Government is the Sole Remaining Jurisdiction Question.**

KSA’s reply doubles down on its misguided claim that this Court must rule on the merits to decide if it has jurisdiction (4-6). Contrary to KSA’s theory, JASTA’s text eliminating immunity for a “tortious act or acts,” does not eliminate any line between jurisdiction and the merits.<sup>1</sup>

As this Court found in its 2018 Decision, the substantive proofs applicable to Plaintiffs’ tort claims are distinct from JASTA’s jurisdictional requirements (a holding KSA persists in ignoring). 298 F. Supp. 3d at 631, 645 n.8 (S.D.N.Y. 2018). The Court concluded that Plaintiffs had satisfied JASTA’s threshold tortious act and causation requirements already,<sup>2</sup> and that the sole jurisdictional question requiring further inquiry was the nature of Thumairy’s and Bayoumi’s agencies. *Id.* at 651. Judge Netburn affirmed the distinction between jurisdiction and the merits throughout discovery, ECF 6577 at 4-6, and again emphasized the “narrow scope” of the “only issues that are at play right now” in setting the structure for the present briefing, referring specifically to “the issues of agency and the like.” April 11, 2023 Tr. at 23; *see also* Feb. 26, 2019 Tr. at 31 (“We are here on jurisdictional discovery[,] . . . not . . . on merits discovery.”). KSA’s motion disregards these rulings and directives and would have the Court go straight to closing argument before merits discovery.

This Court applied the correct approach in its 2018 Decision. Contrary to KSA’s claims, JASTA’s “tortious act” language merely identifies the class of claims courts are empowered to hear and is satisfied by identification of an actionable tort that forms the basis of the suit. Opp. 5-8. This reading is inherent in the fact that the FSIA addresses *only* foreign states’ “amenability to suit,” and not the circumstances under which they are liable on the merits. *Cassirer v. Thyssen-Bornemisza*

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<sup>1</sup> To the extent the merits of the underlying tort claim were incorporated into the jurisdictional inquiry, as KSA argues, foreign states would be exposed to discovery on all merits elements at the jurisdictional stage.

<sup>2</sup> Even if a claim to immunity could be predicated on challenges to the merits of a plaintiff’s tort claim, the Court found that KSA failed to offer any competent factual challenge in its motion to dismiss. KSA may not use its renewed motion as a do-over, to advance arguments it waived in moving to dismiss in the first instance.

*Collection Found.*, 596 U.S. 107, 113 (2022); see also *Republic of Austria v. Altmann*, 541 U.S. 677, 700 (2004) (sovereign immunity “merely raises a jurisdictional defense,” not a “substantive defense on the merits”). This structure lies at the heart of the Second Circuit’s controlling holding that immunity under the FSIA’s tort-related exceptions is not “coterminous” with the merits of the plaintiff’s substantive tort claims. *Robinson v. Gov’t of Malaysia*, 269 F.3d 133, 142 (2d Cir. 2001).

JASTA’s text makes this line all the more clear, by stating that it removes immunity in “any case” in which damages “*are sought*” for a relevant tortious act. § 1605B(b) (emphasis supplied). That statutory phrasing necessarily refers to a prospective claim to relief. See *Coffey v. Freeport McMoran Copper & Gold*, 581 F.3d 1240, 1245 (10th Cir. 2009) (per curiam) (“[A] ‘defendant from whom significant relief is sought’ does not mean a ‘defendant from whom significant relief may be obtained.’”). The House Report on the FSIA underscores this conclusion, explaining that the term “tortious act” in the FSIA refers to the types of “causes of action” covered. H.R. Rep. No. 94-1487 at 21. The FSIA’s structure, text, and history thus all show the phrase “tortious act or acts” focuses on whether a plaintiff has identified a valid claim (and not entitlement) to relief in tort.

KSA’s efforts to invoke *Bovarian Rep. of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, 581 U.S. 170 (2017) and *Robinson*, and to distinguish *Usoyan v. Rep. of Turkey*, 6 F.4th 31 (D.C. Cir. 2021), mischaracterize those decisions and are without merit. *Helmerich* did not involve JASTA or § 1605(a)(5) at all. It did, however, confirm the critical line between the FSIA’s jurisdictional requirements and the merits of a plaintiff’s substantive causes of action, *Helmerich*, 581 U.S. at 174, the very line KSA’s arguments propose to eliminate.<sup>3</sup> *Robinson*, meanwhile, concerned whether the tort at issue (committed by a third party) was attributable to the foreign state. Opp. 8. *Robinson* did not address (much less require proof) whether the conduct at issue was in fact tortious. *Robinson*, 296

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<sup>3</sup> *Helmerich*’s statement that resolution of jurisdictional facts under the expropriation exception may also resolve the merits *Helmerich*, 581 U.S. at 187, simply recognizes that, in some cases, the jurisdictional question whether property was taken in violation of international law may be the only issue in dispute.

F. 3d at 145. To the contrary, the Court explicitly directed that district courts “do[] not . . . decide a case on the merits in order to decide if [they] have jurisdiction,” *id.* at 141. *Robinson* thus makes clear that a limited inquiry into questions of attribution may be appropriate to determine if a cognizable cause of action has been presented as against the foreign state, but that the determination of liability for that tort is a merits inquiry. KSA does not engage this distinction, or for that matter the Second Circuit’s decision in *USAA Cas. Ins. Co. v. Permanent Mission of the Rep. of Namibia*, 681 F.3d 103 (2d Cir. 2012), which affirmed this line between jurisdiction and the merits that this Court properly drew. *Id.* at 108 n.24; *see Opp.* 7.

KSA similarly mischaracterizes *Usoyan*, which it discounts by claiming that Turkey did not contest whether the actions at issue were tortious (5). In fact, *Usoyan* specifically noted that Turkey “disputed” the merits of plaintiffs’ tort claims, challenging both the factual account of the altercation and asserting that its agents’ actions were “justified.” *Usoyan*, 6 F.4th at 37, 47. The Court’s holding that those challenges raised a “merits question, not a jurisdictional one,” *id.* at 47, was unambiguous, and not a “passing remark” (5). The district court decision also noted these factual challenges, but likewise held that their resolution was unnecessary because they were “not material” to the immunity inquiry. *Usoyan v. Rep. of Turkey*, 438 F. Supp. 3d 1, 8, 9, 21 n.4 (D.D.C. 2020).

KSA fares no better in summarily claiming that the Court can resolve sharply contested factual disputes in its favor, without a hearing and by crediting the implausible and contradicted denials of its witnesses submitted solely in the form of written deposition transcripts. As KSA’s own citations make explicit, a court may resolve factual disputes in favor of a foreign state defendant on the basis of the paper submissions only where the facts “*are readily ascertainable*” and do not “*turn on questions of credibility*.” *Peterson v. Islamic Republic of Iran*, 876 F.3d 63, 76 n.6 (2d Cir. 2017) (quoting *Filetech S.A. v. Fr. Telecom S.A.*, 304 F.3d 180, 183 (2d Cir. 2002) (per curiam)) (emphasis supplied). This standard mirrors the one courts apply under Rule 56, and incorporates fundamental principles

of due process and essential traditions of the American judicial system. *See* Fed. R. Civ. P. 43, Advisory Committee Note on 1996 Amendment (“The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition.”). Here, the record is complex and sharply disputed, with witness credibility central to those disputes, and KSA cannot meet its ultimate burden of persuasion by pointing to dubious denials in deposition transcripts.<sup>4</sup>

## **II. Thumairy’s and Bayoumi’s Support for the Hijackers Was within the Scope of Their Agency or Employment with the Saudi Government.**

Plaintiffs produced ample evidence that Thumairy’s and Bayoumi’s support for the hijackers was within the scope of their agency or employment. *See* Opp. 12-39. In its Reply, KSA tries by sleight of hand to change the legal standard for respondeat superior liability and then falls back on a demonstrably fictional story of what Thumairy’s and Bayoumi’s jobs actually were.

KSA does not dispute that New York and California law on the scope of agency are materially the same (20). Both states apply the respondeat superior doctrine, under which an employer is vicariously liable for the misdeeds of its employees or agents committed within the scope of employment or agency, which is determined based on enterprise risk principles.<sup>5</sup>

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<sup>4</sup> KSA has not asked for a hearing. The Court thus may properly deny its motion by finding that Plaintiffs have met their modest burden of production on the sole remaining jurisdictional question of agency. *See Ball v. Metallurgie Hoboken-Ovespelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990) (plaintiff may meet jurisdictional production burden through averments of fact). If, however, the Court goes beyond the adequacy of Plaintiffs’ *prima facie* showing, to decide disputed issues of jurisdictional fact, it must hold and Plaintiffs request that it hold an evidentiary hearing. KSA also makes misleading claims about the scope of discovery (6 n.2). Discovery on agency was “narrowly circumscribed” and the bulk of the evidence came from the EO and MPS productions. Plaintiffs were not permitted to examine KSA’s witnesses on that new evidence but would do so at a hearing. Even as to the limited discovery afforded, KSA selectively invoked objections to prevent discovery on key matters. *See, e.g.*, Second Declaration of Robert T. Haeefele (filed herewith).

<sup>5</sup> *See Riviello v. Waldron*, 391 N.E.2d 1278, 1281 (N.Y. 1979) (“[F]or an employee to be regarded as acting within the scope of his employment, the employer need not have foreseen the precise act or the exact manner of the injury as long as the general type of conduct may have been reasonably expected.”); *Perez v. Van Groningen & Sons, Inc.*, 719 P.2d 676, 678 (Cal. 1986) (“[W]here the question is one of vicarious liability, the inquiry should be whether the risk was one that may fairly be regarded as typical or broadly incidental to the enterprise undertaken by the employer.”).

KSA tries to eliminate vicarious liability, arguing that “Plaintiffs have no evidence that Saudi Arabia *directed* Al Thumairy or Al Bayoumi to assist the 9/11 hijackers.” (19) (emphasis added). Putting aside the substantial evidence showing that KSA officials *did* direct Thumairy and Bayoumi, Opp. 12-39, this argument fails because Plaintiffs do not have to show express direction by KSA to establish respondeat superior liability. *See, e.g., Fountain v. Karim*, 838 F.3d 129, 134 (2d Cir. 2016) (“[T]he fact that Karim lacked explicit permission does not end the [respondeat superior] inquiry.”).<sup>6</sup>

In arguing that Plaintiffs must prove that the Saudi government expressly directed its agents’ specific torts, KSA tries to evade liability by rewriting agency law to eliminate vicarious liability and require direct fault of the principal.<sup>7</sup> This fault requirement is contrary to New York law, *see, e.g., Cronin v. Hertz Corp.*, 818 F.2d 1064, 1068 (2d Cir. 1987) (“When we talk of vicarious liability, we are not looking for the employer’s fault . . .”), as well as California and general common law.<sup>8</sup>

This argument also is contrary to JASTA itself, which abrogates sovereign immunity for claims caused by “a tortious act or acts of the foreign state ***or of any official, employee, or agent of that foreign state*** while acting within the scope of his or her office, employment or agency . . . .” 28 U.S.C. § 1605B(b)(2) (emphasis added). KSA’s specific direction requirement would reduce JASTA to covering only those torts in which the sovereign is a direct participant, while erasing its express coverage of agents’ tortious acts that are characteristic of the principal’s wrongful enterprise.

Faced with JASTA’s clear application to tortious acts committed within the scope of an individual’s agency or employment, KSA again falls back on the implausible (and contradicted)

<sup>6</sup> *See also Proietti v. Civiletti*, 603 F.2d 88, 90 n.1 (9th Cir. 1979) (“It is not necessary that a particular act or failure to act be expressly authorized by the principal to bring it within the scope of the agent’s [authority].”).

<sup>7</sup> *See Paula Dalley, Destroying the Scope of Employment*, 55 Washburn L.J. 637, 643 (Summer 2016) (“[A] principal who actually authorizes conduct that itself constitutes a tort is directly liable for the tort . . . . There is no need for respondeat superior liability in any of those cases . . .”).

<sup>8</sup> *See Diaz v. Carvamo*, 253 P.3d 535, 538 (Cal. 2011) (“Respondeat superior, a form of vicarious liability, makes an employer liable, irrespective of fault, for [acts] by its employee in the scope of employment.”); Dalley, 55 Washburn L.J. at 643 (“[T]he essence of vicarious liability, as opposed to direct liability, is precisely the employer’s *lack* of fault.”) (emphasis in original).

claims that Thumairy and Bayoumi were in the United States as, respectively, a “quietist” imam and an accountant furthering his education (20, 25). Plaintiffs have already shown that these cover stories do not withstand scrutiny. Opp. 19-23 (Thumairy’s radicalism); 23-27 (Bayoumi’s lack of accounting or data processing work or class attendance); 39-41 (Thumairy and Bayoumi’s assistance to the hijackers). KSA’s Reply does not and cannot show otherwise. The evidence shows that Thumairy and Bayoumi were part of an extremist platform KSA created to advance MOIA’s radical anti-American agenda closely intertwined with terrorism. Opp. 12-39. This evidence renders Saudi Arabia vicariously liable for its agents’ support for the hijackers, regardless of express direction.

Further, the proof shows that senior Saudi officials did in fact “direct” Thumairy and Bayoumi (1, 15, 19).<sup>9</sup> The two men were part of a MOIA-led militant extremist network headed by Sowailem, Sudairy, Sadhan, and other more senior Saudi officials<sup>10</sup> Prior to the 9/11 Attacks, Saudi Arabia was not a U.S. “ally” nor AQ’s “sworn enemy.” Rather, MOIA joined with AQ to lead a campaign of violent jihad directed against the U.S.<sup>11</sup> KSA’s claim that MOIA was “quietist” (1, 25, 26, 43) misappropriates a domestic political term that has no bearing on the anti-U.S. campaign that MOIA promoted.<sup>12</sup> Saudi Arabia brought MOIA officials, including Thumairy, as well as Bayoumi, into the U.S. under false pretenses. ¶¶114-30, 706-23. The facts compel the inference that AQ sent

<sup>9</sup> Recognizing this, KSA renews its baseless argument to eviscerate the evidence by asking the Court to “disregard the parts of Plaintiffs’ Averment that are improperly cited or not cited at all” in Plaintiffs’ briefs (14). Plaintiffs already addressed this issue (ECF 9504 at 2-3). There are no uncited Averment paragraphs, and KSA’s claim that paragraphs are “improperly” cited is pure *ipse dixit* that is refuted by the Court’s and KSA’s own citation conventions.

<sup>10</sup> Annex 1 to this Brief, Ex. 701, is a chart of the Saudi government extremist network that operated inside the U.S.

<sup>11</sup> Official MOIA publications found at both the KFM and Al Madinah Mosque espoused violent jihad against non-believers. ¶¶ 441-443, 890-91. MOIA’s Minister Ash-Sheikh led the Al Haramain organization, ¶¶1936-41, which KSA admitted (in 2016) had been “one of the biggest terror-financing operations in the world,” funded the AQ U.S. Embassy bombings in 1998, and was “notoriously tied to Osama bin Laden.” ¶1957. Saudi cleric Uthmayeen was not “peaceful” (49) but supported Al Haramain and violent jihad. ¶¶25, 1279. In the years immediately prior to 9/11, the U.S. warned KSA’s leadership that KSA was endangering U.S. citizens by “empowering jihadists” via MOIA and Al Haramain. ¶72. Nakhleh compared KSA to “Dr. Jekyll and Mr. Hyde” because it claimed to be a U.S. ally while MOIA was exporting its virulently anti-U.S. and pro-jihadist agenda into the U.S. ¶52.

<sup>12</sup> “Quietism” describes how Saudi religious officials acquiesce to the domestic rule of their government leaders including the King. It has nothing to do with the violent jihadism promoted by MOIA overseas. ECF 9163 at 57-59. Wahhabism is the branch of Islam in Saudi Arabia and is not a “pejorative term.” (43). *Id.* at 68; ¶18.

its first operatives for the 9/11 Attacks to Los Angeles and San Diego only because of its trust in the MOIA-led support network established there. *See U.S. v. Anderson*, 747 F.3d 51, 66 (2d Cir. 2014).

Saudi Arabia recycles the same lie Thumairy told the 9/11 Commission, ¶254, now claiming that Bayoumi did his extensive religious work as a “volunteer.” (2, 17, 21, 23, 47). Yet Bayoumi hosted and personally worked with over 25 MOIA and other Saudi government religious officials in San Diego;<sup>13</sup> reported to numerous high-level Saudi government officials;<sup>14</sup> worked with MOIA and Al Haramain as “General Supervisor” to establish Al Madinah Mosque and install extremist cleric Barzanjee as its Imam;<sup>15</sup> teamed up with the existing Sunni extremist cell, and recruited its leader, ██████████, as a Saudi propagator and Al Haramain operative;<sup>16</sup> and enlisted AQ operative Aulqi and a cadre of like-minded young men to provide critical support to the hijackers.<sup>17</sup>

This evidence further confirms the FBI’s 2017 finding of Bayoumi’s “involvement with Saudi intelligence...” as a “cooptee”, ¶868, and contradicts Saudi Arabia’s false cover stories that Bayoumi was in the U.S. as a “PCA employee” (21) and “accountant” (20). Bayoumi’s arrangement was hardly “similar” to genuine students (22) as he did not attend school; had unusual demands and “exorbitant” expenses; was paid “significantly higher than actual students”; and other employees

<sup>13</sup> These include (as shown in Annex 1) over 20 MOIA officials ¶¶839, 842-861; Embassy official Al-Ali, who reported to Bandar and headed the IIRO and Sanabel Al-Khair organizations in the U.S., found by the FBI to have had “connections...to terrorism” and employed AQ members ¶¶ 802-811; and Saudi religious official Qahtani, who received payments from Noshan ¶¶812-13. KSA’s suggestion that Bayoumi worked merely to “type up and edit a report” with Al-Ali (23) ignores their year-long relationship and multi-faceted work for KSA in Southern California. ¶¶802-11.

<sup>14</sup> Bayoumi’s files detail his contacts across KSA’s religious elite, from MOIA HQ including its Minister, leading “Sheikhs and Scholars,” MOIA propagators, religious educators, Mosque officials, and Islamic officials at the Saudi Embassy and Consulate. ¶¶724-9; Ex. 12AA and 12BB (Bayoumi’s handwritten address book and “green folder”). His contacts included listings for the Embassy’s Noshan (denoted with a “\$” sign), who had links to AQ funding, ¶¶799-801; and MOIA’s Shuaib, the propagator working under Thumairy, for whom Bayoumi kept contact details in KSA. ¶1116.

<sup>15</sup> Bayoumi’s title (“*Mushrif Al Alaam*” in Arabic) had a known meaning among KSA officials; it was used by ██████████ ¶1936; Ghesheyani at KSA’s religious printing complex, Ex. 12AA, MPS 738\_24; and Khalil for the KFM project, ¶101. Bayoumi supported and was not “opposed” (55) to Al Haramain. *See infra* n.31.

<sup>16</sup> ██████████ (23 n. 13) was “Emir” of the San Diego extremist cell and recruited by KSA. ¶¶167-72, 885-87 893-910. A member of that cell was ultimately convicted for terror support; the affirming opinion cited evidence also submitted here. *United States v. Jayyousi*, 657 F.3d 1085, 1094-5 (11th Cir. 2011); *see* Ex. 5 (Youssef Rpt.) at 23 n.16, 88-89, 138.

<sup>17</sup> Aulqi and Bayoumi organized a paintball war game event in early 1998. The participants (including a visiting MOIA propagator) wore military fatigues and engaged in battle simulations. Bayoumi videotaped the event. ¶924; Ex. 10A.



Saudi Arabia persists (3, 27, 44, 25) in ignoring this Court’s determination that “neither the 9/11 Commission Report, nor any other governmental report, adequately and specifically refutes Plaintiffs’ allegations.” 2018 Decision, 298 F.Supp.3d at 650. Saudi Arabia now adds the FBI’s inadmissible prosecutorial opinions in a May 2021 Memo “administratively closing” Operation Encore,<sup>23</sup> while ignoring detailed findings from the 2004 FBI/CIA Joint Assessment about MOIA’s support for AQ and the FBI’s newly declassified July 2021 EC about the “Saudi (Wahhabi)/Salafi/ militant network...created, funded, directed and supported by the KSA... in the U.S.” from the FBI Arabian Peninsula Squad’s two-decade long probe of KSA. ¶¶1-15.

Saudi Arabia’s support network was indispensable in providing AQ with its beachhead for the 9/11 Attacks. The mission that Bin Laden hand-picked Hazmi and Mihdhar to carry out required sustained, meticulous planning for their reception and assistance in California. Thumairy and Bayoumi, with the guidance of MOIA and Saudi Embassy officials, filled these critical roles.

### **III. Even if Other Merits Facts Were Relevant to Jurisdiction, Plaintiffs Provide Far More Than Prima Facie Evidence Supporting Their Claims.**

Saudi Arabia treats evidence in isolation to distort its import and refuses to draw inferences from its totality, as required.<sup>24</sup> The motion is premised on the false exculpatory testimony of involved Saudi government officials and their agents. Saudi Arabia asks the Court to credit their denials, while objecting to the binding admissions of those same plot participants,<sup>25</sup> and makes

<sup>23</sup>Prosecutorial decisions in an FBI closing memo are not “factual findings.” *U.S. v. Davidson*, 308 F. Supp.2d 461, 476 (S.D.N.Y. 2004). The same May 2021 Memo, did, however, find that Thumairy led a “Southern California based network” of “Sunni extremists.” ¶16.

<sup>24</sup> “[W]e consider the evidence presented ‘in its totality, not in isolation...’” and “inferences [are] drawn from the totality of the evidence.” *Anderson*, 747 F.3d at 59; *see also Kaplan v. Lebanese Canadian Bank, S.A.L.*, 999 F.3d 842, 854 (2d Cir. 2021) (requiring consideration of all facts “taken collectively, not . . . in isolation”).

<sup>25</sup> The prior statements of Saudi officials and agents, including to FBI and 9/11 Commission investigators, are admissible because they were verified by government agency subject-matter experts and are not hearsay. FRE 801(d)(2); *Spanierman Gallery v. Merritt*, 2003 WL 22909160, at \*5–6 (S.D.N.Y. Dec. 9, 2003); *Tokio Marine Mgmt., Inc. v. M/V Zim Tokyo*, 1993 WL 322869, at \*9 (S.D.N.Y. Aug. 17, 1993). Similarly, Bayoumi’s KSA work correspondence and his handwritten address book and “green folder” seized from him by the MPS are not hearsay. *Id.*; *U.S. v. Jaramillo-Montoya*, 834 F.2d 276, 278 (2d Cir. 1987) (address book of co-conspirator is not hearsay); *U.S. v. Canieso*, 470 F.2d 1224, 1232 n.8 (2d Cir. 1972) (letters found in defendant’s possession “were receivable as adopted admissions”). The records also are

repeated claims of “no evidence” or “coincidence” contrary to law enforcement factual findings.<sup>26</sup> Saudi Arabia’s claims of “no evidence” necessarily insist that only direct evidence should be considered, despite the covert nature of the enterprise, and its motion systematically attempts to decouple damning circumstantial evidence from related events, evidence, and context. The record, viewed in its *entirety*, shows that Saudi Arabia’s agents were directly involved at “critical stages of the conspiracy that cannot be explained by happenstance...”<sup>27</sup> Saudi Arabia’s operation to support AQ was directed from inside its Embassy, Consulate, and Mosques under its control.<sup>28</sup>

**December 1998-February 1999** Sadhan and Sudairy visited Thumairy in Los Angeles and Bayoumi in San Diego as an “advance team” to assess Southern California as an AQ base. ¶¶1025-26. Bayoumi recruited Shaikh to board Sadhan and Sudairy at his secluded Lemon Grove house.<sup>29</sup>

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admissible on other grounds. *United States v. Kaiser*, 609 F.3d 556, 574 (2d Cir. 2010) (handwritten planner is admissible business record); *U.S. v. Al-Moayad*, 545 F.3d 139, 176 (2d Cir. 2008) (phone book proves links among conspirators).<sup>26</sup> FBI, CIA, and State Department factual reports are admissible as FRE 803(6) business records or FRE 803(8) public records. *Bradford Trust Co. v. Merrill Lynch*, 805 F.2d 49, 54 (2d Cir. 1986); *In re Terrorist Attacks on Sept. 11, 2001*, 2023 WL 2430381, at \*7 (S.D.N.Y. Mar. 9, 2023) (admitting CIA reports); *Air Disaster at Lockerbie Scotland on Dec. 21, 1988*, 37 F.3d 804, 827 (2d Cir. 1994) (admitting detective’s report “based upon other officers’ reports of interviews they had conducted in this necessarily lengthy and involved investigation.”); *Gentile v. Cnty. of Suffolk*, 129 F.R.D. 435, 453 (E.D.N.Y. 1990) (NYS Commission report admitted because the “agency as a whole qualified as an expert” and “[w]hatever hearsay it relied upon was, we find, adequately evaluated and filtered within its capacity as expert”), *aff’d*, 926 F.2d 142 (2d Cir. 1991). KSA has consistently cited FBI and CIA reports as reliable. *E.g.*, ECF 3668 at 20-22; ECF 3851 at 15. None of the cases KSA now cites as involving interim and preliminary agency proposals, submissions, and “recommendations” (7) involve law enforcement fact findings like those here. KSA cannot meet its burden of showing untrustworthiness in the FBI’s Encore investigation by misconstruing three words (“seeks to prove”) in two Encore reports (9). Nor does KSA have any legitimate basis to claim bias in the FBI’s investigation where Plaintiffs hired two Encore agents long after they retired. Indeed, KSA chose not to question either of those agents about their declarations, which outlined FBI guidelines for preparing interview reports. Ex. 89, Gonzalez Decl. ¶¶12-22; Ex. 345, Vasquez Decl. ¶¶8-14. The 9/11 Commission extensively relied on FBI reports, including form “302” interviews, as well as its own interview memos. 9/11 Comm. Rpt. 450, 456 n. 80. The grounds for admission of hearsay in those records under the specific or residual exceptions, FRE 803, 807, are particularly compelling here because Plaintiffs (unlike KSA) had no genuine opportunity to collect evidence concerning key facts until after the FBI’s factual findings were first declassified and released (2021 through 2023), largely after depositions were closed.

<sup>27</sup> *Anderson*, 747 F.3d at 60. *See also U.S. v. Bari*, 599 F.3d 176, 178 (2d Cir. 2010) (“[t]aking all of the evidence together... there were ‘too many coincidences’”).

<sup>28</sup> “[A] conspiracy by its very nature is a secretive operation, and it is a rare case where all aspects of a conspiracy can be laid bare in court with the precision of a surgeon’s scalpel.” *Anderson*, 747 F.3d at 73.

<sup>29</sup> Sadhan and Sudairy did not find Shaikh’s remote rooming house “by chance” (46). Bayoumi arranged their stay, as Shaikh admitted. ¶1103. Bayoumi hosted Sadhan and Sudairy throughout their visit to San Diego, as shown in his photographs and video. ¶¶1099-1101, 1124, 1137-38. Bayoumi knew Shaikh well for several years, and Shaikh met the two propagators at Bayoumi’s Al Madinah Mosque, despite not worshipping there regularly. ¶¶1104, 1111. Bayoumi handwrote a note with various contact information, including Shaikh’s, for Sadhan and Sudairy ¶¶1105-07. In 2000, Bayoumi similarly arranged for Hazmi, Mihdhar, and Salmi to stay with Shaikh. ¶¶1108, 1804-09. Bayoumi continuously



Plaintiffs present evidence showing that AQ arranged for Hazmi and Mihdhar to be materially supported by existing, Saudi government-controlled extremist cells, founded in the early 1990s by the “Blind Sheikh” Abdul Rahman.<sup>34</sup> That evidence is not based on any “classified” data.<sup>35</sup>

**April 7, 1999** Bayoumi got word that Hazmi and Mihdhar had obtained U.S. visas and took immediate steps to advance the support plan. Bayoumi wrote and faxed urgent letters to MOIA HQ officials Sadhan and Sudairy, referencing Shaikh’s small Uthman Mosque in Lemon Grove, CA, to get approval from MOIA’s Minister for their plan to use Shaikh’s house (where Sadhan and Sudairy had stayed in December 1998 and January 1999) to lodge the AQ operatives. ¶¶1181-88. In his letters, Bayoumi individually addressed Sadhan and Sudairy as “*al-Mujtabideen*” – a derivative of *jihad* – in recognition of these two MOIA HQ officials’ shared extremist mission to support AQ. *Id.*

**April 11, 1999** Days after the hijackers’ visa approvals, Thumairy, Bayoumi, Khalil, and Ali held a recruitment and training event at KFM’s offices<sup>36</sup> attended by Noaman,<sup>37</sup> who later assisted Hazmi and Mihdhar with translation, flight lessons, and other tasks. ¶¶810, 1199.

**May 10, 1999** Bayoumi took Shaikh to Los Angeles to meet with Khalil and Thumairy, confirming Shaikh’s role as a Saudi agent and facilitator in San Diego. ¶¶1203-1207.<sup>38</sup>

<sup>34</sup> ¶¶139-48, 152, 412-14. Youssef observed (and Khalil admitted) that the Blind Sheikh visited Ibn Taymiyah Mosque and led a radical group there. *Id.*; Snell Decl., Ex. 5 at 7-8. KSA misleadingly cites [REDACTED]

[REDACTED] KSA repeats Sageman’s misguided attack on eyewitness and KFM Manager Madha (51, 55), who observed first-hand that Thumairy was leading the KFM extremist cell and had to call the police to remove members of that cell, including Thumairy’s MOIA assistant Muhanna, who led protests after 9/11 *in support of* the 9/11 hijackers. ECF 9092 at 38-41; ¶¶412-14, 423-26, 432-39, 511-16.

<sup>35</sup> KSA’s “classified” information claim (53) is bogus – it made a strategic decision not to question Youssef. Ex. 105, Youssef Dep., Ex. 47:14-20. The claim is addressed in Plaintiffs’ *Daubert* pleadings. ECF 9163 at 36-38.

<sup>36</sup> KSA’s claim that “[n]o evidence shows” the Foundation or KFM “was funded or controlled by Saudi Arabia” (53) is hogwash. Nine of the twelve Board members were KSA officials, including its Chairman Khalil and Sowalem, and KSA built KFM and provided the operational funding for IFSIT and its KFM. ¶¶182-84, 191-94, 329.

<sup>37</sup> Noaman is identified by name on Bayoumi’s video and his Arabic name tag is legible. ¶1198; Ex. 10E, 31:03; Ex. 703.

<sup>38</sup> KSA’s claim that “[t]here is no evidence that Al Thumairy knew Shaikh” (57) is contradicted by Bayoumi’s admission that he brought Shaikh to L.A. to meet Thumairy, and Bayoumi’s May 10, 1999 photos, showing Shaikh at the KFM with Khalil, and at the Ibn Taymiyah Mosque where Thumairy was working at the time. ¶¶1203-06.

**June 23-July 4, 1999** A Bayoumi videotape shows that he went to the Saudi Embassy to report to Sadhan and Sudairy – whom MOIA had just deployed under cover as diplomats, ¶1228 – as well as Sowailem.<sup>39</sup> That same videotape contains Bayoumi’s casing report of the U.S. Capitol, ¶1224, prepared at the very time AQ was scoping the potential targets for its attack, including the Capitol. ¶1231. Bayoumi’s chilling video narration confounds defense claims of a “run-of-the-mill tourist visit” (2, 48), showing Bayoumi did not act alone but was following instructions from his Embassy MOIA superiors. He addresses his “esteemed brothers” to “report in detail” about “results” pursuant to a “plan,” using anti-U.S. rhetoric and documenting the Capitol’s structural features and security in a manner consistent with AQ protocols. ¶¶1212-30; Ex. 10F; Ex. 704.<sup>40</sup>

**December 1999-February 2000** Intense phone activity took place among Bayoumi, Thumairy, █████ Sowailem, the Embassy Islamic Affairs number, Sudairy, Mersal, and other members of the support network regarding the arrangements for the hijackers prior to and after their arrival in the U.S. on January 15, 2000. ¶¶1248-53, 1504. Saudi Arabia uses misdirection to attack Plaintiffs’ phone charts (1, 38),<sup>41</sup> bereft of any rebuttal to the evidence that: (a) Bayoumi made calls using the phone in his Mosque office – his line was not “shared” (15 n.8, 48 n.40);<sup>42</sup> and

<sup>39</sup> KSA failed to disclose Bayoumi’s 1999 Embassy visits, which it now brazenly describes as a “vacation” (34). Ex. 24, June 12, 2018 KSA Resp. Interrog.14. Yet Sowailem admitted to the FBI in October 2001 that he knew Bayoumi “professionally” from meeting him at the Embassy, which must have occurred in June 1999. ¶¶787-88. Sowailem sought to cover his work relationship with Bayoumi by making the nonsensical claim he talked with Bayoumi “every three to four months...about his education.” *Id.* Yet the timing of Bayoumi’s phone calls – including to Sowailem’s personal cellphone at night on weekends – corresponded closely with the support for the hijackers provided by Thumairy and Bayoumi. ¶¶1504-31, 1717, Ex. 12K. Bayoumi falsely claimed not to remember Sowailem at all but testified that he went to the Embassy once to “certify” documents and met “inside the Embassy” with “someone” he could not identify who worked “[p]erhaps in Islamic Affairs or in the studying affairs.” ¶789; Ex. 120, Bayoumi Dep. 317:7-320:9.

<sup>40</sup> Bayoumi states: “I will report to you in detail” (23:23); “I will provide you with the results soon.” (40:47-55); and “You said that in the plan.” (58:18). KSA’s claim that the tape was innocuous because Bayoumi filmed artwork, lamp posts, and a squirrel (48) is belied by his narration and focus on the Capitol’s security, structural features, and surroundings.

<sup>41</sup> Plaintiffs have submitted errata to correct minor, good faith errors in certain phone charts included in Ex. 12, including those that resulted from FBI production of duplicate records. None of these errors went to the accuracy or reliability of Plaintiffs’ exhibits, which properly summarize and attribute cited phone numbers and their call data, and thus are admissible. FRE 1006; *U.S. v. Yousef*, 327 F.3d 56, 157-58 (2d Cir. 2003).

<sup>42</sup> Bayoumi’s Mosque office was a private, locked room not accessed by others with a “Single Line” phone. Its call usage patterns matched Bayoumi’s other phones and tracked with Bayoumi’s presence in San Diego Bayoumi paid bills by personal check and made annotations when he allowed others to make calls. ¶¶748-54, 778; Ex. 12U; ECF 9163 at 46-47





old deceit that Bayoumi made only “one trip” (35) to Los Angeles, but the U.K. Government’s MPS production of Bayoumi’s photos and videos ends all doubt. *First*, on January 31, Bayoumi went with his family to get passport photos, file passport applications at the Consulate, and go to the KFM.<sup>50</sup> *Second*, on February 1, Bayoumi returned to Los Angeles with Morgan and went through the charade of getting passport photos and going to the Consulate (where he met in private with Mana) as the prelude for a staged “by chance” restaurant meeting with the hijackers.<sup>51</sup> That staged meeting gave Bayoumi the cover of an alternative backstory. ¶1605.<sup>52</sup> Indeed, Morgan would at the time perceive meeting the hijackers as “coincidental.” *Id.* In reality, Bayoumi had already searched for an apartment for the two AQ operatives.<sup>53</sup> After leaving the restaurant, Bayoumi and Morgan went to the KFM, where Bayoumi met in private with Mana and Thumairy. ¶¶1583-96. The timing and sequence of events belie Saudi Arabia’s argument that those meetings were not about the hijackers (35 n. 27) and Bayoumi’s shifting exculpatory claims that he “got lost” and couldn’t find KFM,

<sup>50</sup> ¶¶826, 1533-40. The MPS production contains photos and video footage of Bayoumi’s wife and children in Los Angeles on January 31 wearing the same clothes (and his wife using the same pose) as in their passport pictures, showing that they went with Bayoumi to file passport applications at the Consulate on that day. ¶1533; Ex. 705 (Bayoumi L.A. visits). KSA’s own records confirm two trips – and its complicity. A KSA report shows Bayoumi was at the Consulate on January 31, 2000 “and met with colleague [Awad]” regarding passport renewals. ¶1534. A Bayoumi note recovered by the MPS shows he saw Awad “through...Sowaillem.” ¶826. KSA’s interrogatory answers show Bayoumi returned “on or around February 1, 2000” with Morgan to “*pick up a renewed passport.*” ¶1535 (emphasis added). Bayoumi admitted that when he went to the Consulate with Morgan, he did not meet Awad – only Mana and staff. Ex. 120 (Bayoumi Dep.) 389:12-390:14.

<sup>51</sup> ¶¶1542-82. Among other lies (¶¶1554-55, 1561), Bayoumi falsely testified that he did not invite Morgan on the trip until he was driving to the Consulate and happened to see Morgan walking down the street. ¶1551. Yet Bayoumi admitted to the MPS, and Morgan testified, that Bayoumi invited him 1-2 days in advance. ¶¶1544-52. Also, Bayoumi told Morgan in Mana’s presence that he had not been to the Consulate for three months, ¶1560, despite his visit there the day before. Bayoumi’s call home on February 1 on his way back to San Diego further confirms the date. ¶1598.

<sup>52</sup> KSA argues that it made no sense for Bayoumi to bring Morgan and meet the hijackers in public (2, 36), but those were facets of tradecraft to establish Bayoumi’s cover – and the ploy worked until now. Bayoumi’s stop for photos was not “genuine” (25) – it was demonstrably a ruse, because Bayoumi’s passport renewal had already been submitted and he went for passport pictures with his family the previous day. In any event, the photo used in Bayoumi’s 2000 passport was identical to the one in his 1995 passport. ¶1558; Ex. 705. KSA falsely claims that Bayoumi “voluntarily” told law enforcement about meeting the hijackers (2, 33, 36) when in fact it was only after the MPS arrested Bayoumi and questioned him over two days about his involvement with the 9/11 hijackers that Bayoumi told his story about the restaurant meeting. ¶1582. Bayoumi’s MPS interview and Morgan confirm that Bayoumi offered to help the hijackers, invited them to San Diego, and gave them his phone number. ¶1578.

<sup>53</sup> Contrary to Saudi Arabia’s claims (37), Bayoumi admitted his prior apartment search to Morgan, ¶1606, and Ratchford testified that Bayoumi came to her office multiple times to check on apartments for Hazmi and Mihdhar “in close proximity” to his own. *Id.*; Ex. 91, ¶6. Saudi Arabia chose not to cross-examine Ratchford.



**February 13, 2000** Bayoumi submitted a form for Hazmi and Mihdhar confirming his plan to move them to Shaikh’s house, Ex. 91 ¶17, which ultimately occurred in May 2000.

**February 17, 2000** Bayoumi held a welcome party for Hazmi and Mihdhar, as Morgan testified, Ex. 92, ¶24, and which is clearly evidenced by the video footage seized from Bayoumi. In it, Bayoumi announced: “[w]e are welcoming the brothers, in fact... whom we have not yet had the pleasure of meeting.” ¶¶1683-85. The “brothers” were the hijackers.<sup>59</sup> Bayoumi addressed Hazmi by his first name: “Nawaf, may God greet you, Nawaf.” ¶1686. The tape shows that the hijackers acted as co-hosts – standing at the front alongside Bayoumi, preparing food and serving the guests, moving through the room at ease and engaging in conversation – not hiding in a “back room,” as KSA wrongly claims (39 n.31).<sup>60</sup> KSA repeats Bayoumi’s falsehoods about the party,<sup>61</sup> fails to explain the presence of its MOIA-employed religious official Qahtani;<sup>62</sup> and ignores the key support given to the hijackers by Bayoumi’s invitees, including a future roommate, communications assistance with computer, internet, and phone, to stay in touch with AQ, purchase of a car, wire transfers, medical care, assimilation, flight lessons, and furtherance of the plot. ¶¶1656-1717; Ex. 702; Ex. 703.

**February 18-19, 2000** On the next two evenings immediately following the welcome party, Bayoumi reported to Sowailem in Washington, DC on his personal cell. ¶1717.

<sup>59</sup> KSA’s claim that “[t]he guests did not know one another because they were from different congregations” (39) is contradicted by extensive photo and video evidence of inter-Mosque events in San Diego, dating back at least five years to 1995, including Eid gatherings, communal meals, and volleyball and soccer matches. ¶1685; Ex. 703; Ex. 709. The only “brothers” whom this extremist network had “not yet had the pleasure of meeting” were Hazmi and Mihdhar.

<sup>60</sup> The 9/11 Commission never had the more “complete” MPS videotape now before this Court, which shows, *inter alia*: both Mihdhar and Hazmi standing with Bayoumi during the party’s main ceremonies; Mihdhar preparing food alongside Bayoumi in the kitchen and walking among the guests in the main room; and Hazmi serving dates to Barzanjee, and interacting with others including Bayoumi’s son and Yafai, in a manner which shows they already knew one another well. ¶¶1656-71; Ex. 10K.

<sup>61</sup> Bayoumi falsely told the 9/11 Commission that the party was to “honor Barzanjee” – a “visiting Imam” – “before his return to Norway...” (39 & n.33). Yet Bayoumi is heard on video heralding Barzanjee as Al Madinah Mosque’s permanent Imam, and correspondence from Bayoumi’s work files confirms that Barzanjee remained as Imam through the end of 2000, *i.e.* the entire time the hijackers were in San Diego. ¶1712.

<sup>62</sup> Contrary to KSA’s claims (40 n. 34), Bayoumi is heard at the welcome party telling Morgan “don’t film here” while gesturing to where Qahtani was sitting, ¶1676, Ex. 10K (17:27-30), and it can be inferred that Bayoumi gave Morgan similar directions about the hijackers, given that they (like Qahtani) only appear on the footage for brief moments, and Hazmi’s face is not shown even though his introduction is the focus of much discussion. ¶1688.

**March 17, 2000** Hazmi called Bayoumi.<sup>63</sup>

**April 19, 2000** Hazmi used Bayoumi's -6662 phone to call Aulaqi.<sup>64</sup>

**May 31, 2000** Saudi Arabia's alibi that "Bayoumi was out of the country" when Hazmi and Mihdhar moved into Shaikh's house (40) is belied by proof that Bayoumi planned for over a year, with three MOIA officials, for the hijackers to stay with Shaikh and that Bayoumi's return to San Diego was timed for the day of the hijackers' move.<sup>65</sup>

**June 9-10, 2000** Two eyewitnesses confirmed Thumairy met in private with Hazmi and Mihdhar at the KFM; Abdullah was in "shock" Thumairy knew the two men.<sup>66</sup>

**Four months in 2000** Sudairy lived with AQ operative Khaleel in Missouri. ¶¶1064-65.

**December 2000** Bayoumi flew back from UK and reconnected with Sowailem and Thumairy to coordinate the departure of Hazmi and Hanjour from San Diego. ¶¶1818-23.

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<sup>63</sup>The call occurred as Bayoumi was trying to help Hazmi get fraudulent TOEFL certification to extend Hazmi's visa, ¶¶1735-51, not to "help Al Hazmi pass an English proficiency test...." (40).

<sup>64</sup> The FBI found that the -6662 number belonged to Bayoumi and was used as part of a "Yemeni-Saudi support cell" for the hijackers. ¶¶756-58, 1754-55. The Aulaqi call was made on the same day that Hazmi got his driver's license and received a \$5,000 wire from AQ, showing that the phone was likely used by the hijackers to communicate with Aulaqi. ¶¶1757-58. The FBI refused to produce Bayoumi's -6662 phone records and its analysis of them to Plaintiffs.

<sup>65</sup> See *supra* n.29. KSA falsely claims that Bayoumi stayed in a U.K. dormitory in June 2000; this lie cannot be excused by a "hard-to-read" passport stamp (40 n. 35). Bayoumi's flight ticket and call records show he returned to the U.S. and was in San Diego for the hijackers' move to Shaikh's house. ¶¶1767-74. KSA cites reports that Shaikh has been an FBI informant (13, 56) but does not rebut the evidence that he had been co-opted by Bayoumi and was working for KSA when Hazmi and Mihdhar lived with him. Nor does KSA acknowledge that Shaikh was duplicitous with the FBI, withheld material information regarding Hazmi, and invoked the Fifth Amendment when the OIG sought to question him. ¶¶1112-14. Coordinated planning of Bayoumi, Sadhan, Sudairy, Sowailem, Thumairy, and MOIA HQ laid the groundwork for Shaikh to host the hijackers. Moreover, Shaikh travelled to meet Sadhan and Sudairy in KSA, and placed calls to them at their workplaces in the U.S. Shaikh had a Saudi cellphone number that Bayoumi kept in his address book. ¶¶1115-17. A Bayoumi video shows that Shaikh dined with Bayoumi at his home in December 2000 shortly after Hazmi and Hanjour left San Diego. ¶1826. The FBI reported that in December 2000, Shaikh emailed Hazmi with a greeting to "Hani," yet Shaikh claimed that the note had nothing to do with hijacker Hani Hanjour, who had just visited San Diego to pick up Hazmi. ¶1824. Hanjour would pilot AA flight 77 into the Pentagon.

<sup>66</sup>Three eyewitnesses' testimony (corroborated by prior FBI statements) shows that Thumairy had at least three meetings with the hijackers, ¶¶1477-81, 1779-87, contrary to KSA's claims that he met them only "once" (1, 25, 41, 58). KSA fails to conjure an alibi for Thumairy by citing to an unreliable and unproven "official" calendar and an airport passport stamp. (3, 42). KSA did not produce Thumairy's flight records from June 2000, nor evidence about the Hijri date conversion used at its airport where his passport was stamped. Plaintiffs cite a uniformly accurate (and fact-checked) Hijri date conversion chart relied on by KSA's own expert, Sageman. KSA Ex. 167, Sageman Rpt. 704 n. 2361. KSA's criticism of that chart as the work of a "Bangladeshi hobbyist[]" (3) does not flag anything unreliable about its methodology. KSA's alternate alibi that Thumairy was at the Washington, DC Embassy, not Los Angeles, is belied by *inter alia*, KSA's answers to interrogatories, and Thumairy's testimony and admissions, which confirm that he made only one Embassy visit, shortly after his arrival in 1996. ¶¶1793-94.

**March 31-April 1, 2001** Sudairy and likely also Sadhan met with Hazmi and Hanjour as the hijackers’ traveled cross-country, contrary to Saudi Arabia’s denials (46). Bayoumi called Sudairy at his assigned workplace in Columbia, MO to arrange that meeting, and kept handwritten notes of Sudairy’s contact details, as well as three cities on the hijackers’ planned route east.<sup>67</sup> Bayoumi also handwrote Hazmi’s AQ codename for the 9/11 Attacks - “Rabi’ah Ibn Ka’ab” – and linked it to Sudairy’s “Columbia, Missouri” location.<sup>68</sup> Bayoumi’s notes reveal intimate knowledge of Hazmi’s AQ mission and show that Bayoumi and Sudairy were not outsiders to AQ’s plot (33).<sup>69</sup>

**June 14, 2001** The call [REDACTED] received from the Virginia apartment of two individuals who worked with Aulqi to support Hazmi and other 9/11 hijackers on the East Coast was not a “cursory” matter (51 n. 44) but evidences a link between the East and West Coast support networks for AQ operatives. ¶¶1850-71. The [REDACTED] call was timed with Mihdhar’s return to the U.S. ¶1867-73.

**August 3, 2001** Saudi Arabia claims that Abdullah had no relationship with Thumairy (56), yet Abdullah called Thumairy weeks before the 9/11 Attacks, and Thumairy abruptly planned to leave his post in Los Angeles and travel overseas days before the 9/11 Attacks.<sup>70</sup>

**September 2, 2001** Bayoumi called Thumairy days before the 9/11 Attack. ¶1876-78.

### **CONCLUSION**

For all of the reasons set forth, KSA’s renewed motion to dismiss should be denied.

<sup>67</sup> Bayoumi’s handwritten note with the hijackers’ route also included Sadhan’s cell number with a New York “917” area code. Ex. 706 (Hijackers’ Cross-Country Trip), MPS738 5 and MPS688 2.

<sup>68</sup> Ex. 12AA, MPS 738 5; 9/11 Comm. Rpt. 166; KSA Ex. 223 at 112-13. In violation of the requirement for accredited Embassy diplomats to live and work in Washington, DC, a MOIA “workplace” document shows that Sadhan was assigned to Oklahoma and Sudairy to Missouri. ¶¶1842, 1847.

<sup>69</sup> Likewise, Schiff concluded that Bayoumi’s notepad equation and aviation sketch were flight planning preparations to gauge the key visual cues necessary for AQ to carry out the 9/11 Attacks, contrary to KSA’s misleading claims, which are addressed in the *Daubert* pleadings. ECF 9163 at 25-26, 65-69. Bayoumi admitted that the purpose of the equation “was to remember, to memorize the equation” and cited U.S. cities including “Washington” – one of AQ’s targets - as examples of visual distances from the air that he sought to calculate. ¶1916. KSA’s counsel did not ask Bayoumi a single question about the aircraft descent calculation and sketch, yet KSA now makes the baseless claim that it was a “high-school math assignment” (2, 34), contrary to Bayoumi’s own testimony, the assistance he provided to the hijackers, his Capitol casing video, and all reasonable inferences.

<sup>70</sup> ¶¶484-90. Thumairy was with Sowailam at a MOIA forum in Denmark on September 11, 2001. ¶¶500-05.

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Respectfully submitted,

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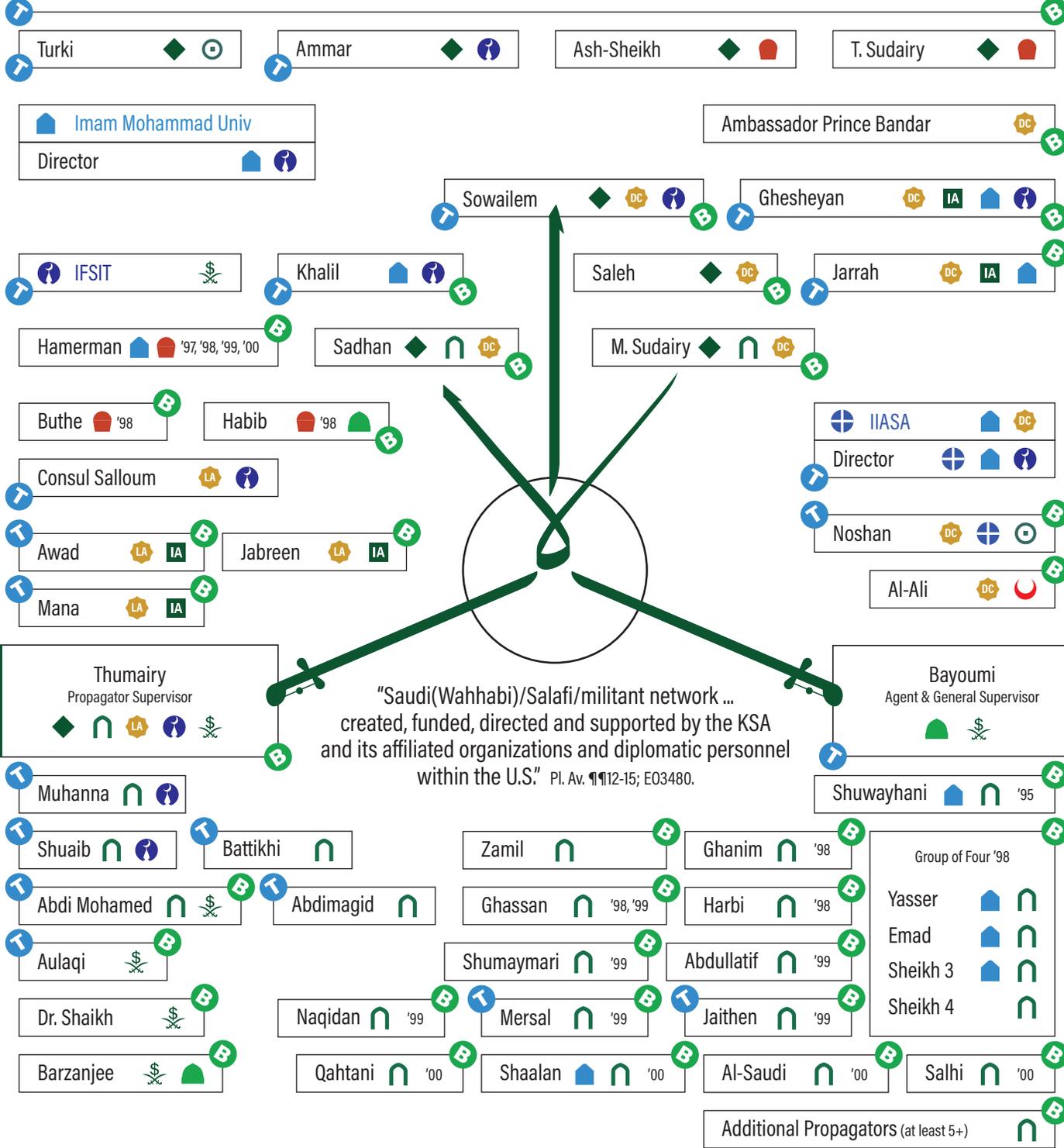
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ⓘ ISLAMIC FOUNDATION OF SHAIKH IBN TAYMIYAH (IFSIT)

➔ THUMAIRY COORDINATED WITH / REPORTED TO

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