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17 **UNITED STATES DISTRICT COURT**  
18 **EASTERN DISTRICT OF CALIFORNIA**

19 THE UNITED STATES OF AMERICA ) Case No. CR. S-05-0240 GEB  
20 )  
21 Plaintiff, )  
22 vs. ) **DEFENDANTS' JOINT REPLY TO**  
23 ) **GOVERNMENT'S OPPOSITION TO**  
24 ) **DEFENDANTS' MOTION FOR**  
25 ) **RECONSIDERATION REGARDING**  
26 ) **RELEASE ON BOND**  
27 )  
28 HAMID HAYAT and )  
29 UMER HAYAT, )  
30 ) Date: August 22, 2005  
31 ) Time: 2:00 p.m.  
32 ) Court: Hon. Dale A. Drozd  
33 )

34 The Defendants, by and through their respective undersigned attorneys, hereby file this  
35 Joint Reply to the Government's Opposition to Defendants' Motion for Reconsideration  
36 Regarding Release on Bond.

37 ///

1 DATED: August 21, 2005

Respectfully submitted,

2  
3 /s/ Johnny L. Griffin, III  
4 JOHNNY L. GRIFFIN, III  
5 Attorney for Defendant Umer Hayat

6 /s/ Wazhma Mojaddidi  
7 WAZHMA MOJADDIDI  
8 Attorney for Defendant Hamid Hayat

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I.**

11 **DEFENDANTS' MOTIONS FOR RECONSIDERATION ARE PROPER BECAUSE**  
12 **THERE ARE NEW FACTS AND CIRCUMSTANCES THAT WERE NOT KNOWN**  
13 **AND DID NOT EXIST AT THE BAIL HEARINGS.**

14 The government contends that Defendants have not shown "good cause" for  
15 reconsideration because the "defendants have not offered any new evidence or basis to  
16 demonstrate... that there are sufficient grounds for reconsideration of the Court's previous  
17 detention orders." Government's Opposition at 2. The government's analysis of the facts in  
18 this case demonstrates their profound misunderstanding of the requirements for bail  
19 reconsideration pursuant to the Bail Reform Act, the Local Rules and the applicable case law.

20 The Bail Reform Act specifically authorizes the reopening of a detention hearing if the  
21 judicial officer finds that "information exists that *was not known* to the movant at the time of  
22 the hearing..." 18 U.S.C. § 3142(f) (Emphasis added). Likewise, Local Rule Crim 12-430(i)  
23 allows the reconsideration of a motion upon the showing of "new or different facts or  
24 circumstances that... *did not exist or were not shown at the prior motion* or...[upon the  
25 showing of] what other grounds exist for the motion." Moreover, in United States v. Navarro,

1 Judge Karlton specifically ruled that “before reconsideration may be granted there must be a  
2 change in the controlling law, *facts, or other circumstances*, the need to correct a clear error, or  
3 the *need to prevent manifest injustice.*” 972 F. Supp. 1296, 1298 (E.D. Ca. 1997) (Emphasis  
4 added).

5 As demonstrated below, (1) the Grand Jury’s June 16, 2005 decision to indict  
6 defendants only on false statements’ violations was “information that did not exist” and “was  
7 not known” by the movants at their June 7<sup>th</sup> and June 10<sup>th</sup> detention hearings; and (2) the  
8 District Court’s decision on August 5, 2005 to grant the government’s motion to vacate the trial  
9 date (previously set within the statutory time frame) was “information that did not exist” and  
10 “was not known” by the movants at the detention hearings.

11  
12 **A. At the time of the detention hearings, the charges in the Indictment did not  
13 exist and, therefore, were not known.**

14 There can be no dispute that the Grand Jury’s decision to indict defendants solely on  
15 false statements’ violations did not exist and, therefore, was not known at the detention  
16 hearings. Notwithstanding, because he reviewed affidavits and authorized the criminal  
17 complaint and search warrants, Magistrate Judge Nowinski placed great weight on uncharged  
18 allegations of terrorist activities. His reliance on such uncharged allegations is evidenced by  
19 his finding that the “charges are very serious” and “because of the nature of the underlying  
20 accusations,...[Hamid Hayat is] a danger to the community.” Transcript of Hearing June 10,  
21 2005 (Hamid Hayat) at 4:9-10, 17-19. Further, Judge Nowinski placed great weight on an  
22 allegation that there was a mission to “return to the United States to kill Americans whenever  
23 and wherever they could be found.” Transcript of Hearing June 7, 2005 (Umer Hayat) at 6:1-2.  
24 Simply put, Judge Nowinski anticipated that the Grand Jury’s indictment would charge  
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1 violations more serious than false statements.<sup>1</sup> On June 16<sup>th</sup>, the Grand Jury chose not to indict  
2 the defendants on material support charges and made no allegations that defendants were on a  
3 mission to “kill Americans whenever and wherever they could be found.” The Grand Jury’s  
4 decision is a “new fact” sufficient for reconsideration of the court’s previous detention orders.

5 **B. At the time of the detention hearings it was not known that the government**  
6 **would seek to delay the trial and that the District Court would in fact grant the**  
7 **government’s motion.**

8 There can also be no dispute that the District Court’s decision to grant the government’s  
9 motion to vacate the trial date (previously set within the statutory time frame) was “information  
10 that did not exist” and “was not known” at the detention hearings. From their first court  
11 appearance and thereafter, the defendants refused to waive time and they demanded their right  
12 to a speedy trial pursuant to the Speedy Trial Act. Strategically, the government delayed filing  
13 its motion to “stop the clock” until after defendants’ were ordered detained. Had the  
14 government (prior to the detention hearings) noticed the defense of its intention to delay the  
15 trial, the defense would have argued the impact of such trial delay at the detention hearings.

16 Currently there is no trial date set and, accordingly, the defendants are being detained  
17 indefinitely pending a trial date. This indefinite continuance of the trial date is a new fact and  
18 circumstance that was not known at the time of the detention hearings. Judge Nowinski did not  
19 know or consider that defendants would be sitting in jail beyond 70 days without a trial or even  
20 an anticipated trial date.

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23 <sup>1</sup> During the various hearings before Judge Nowinski, the government repeatedly advised the court and defense  
24 counsel that the investigation was continuing and additional charges may be filed. Additionally, U.S. Attorney  
25 McGregor W. Scott emphasized in his June 8, 2005 press conference that “this investigation is ongoing at this time  
and evolving literally by the moment ... [and that he] fully anticipate[s] that there will be further developments in  
the hours and days ahead.” Moreover, even in its most recent filings with the court, the government again stresses  
that the defense “should not discount the possibility that additional charges may be filed.” Government’s Motion  
in Opposition at 5:7-8.

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**II**

**DEFENDANTS SHOULD BE RELEASED ON BOND BECAUSE THEY DO NOT POSE A FLIGHT RISK AND THEY ARE NOT A DANGER TO THE COMMUNITY**

**A. The nature of the crime charged supports pretrial release.**

The government contends that defendants are a “danger” based on allegations in the indictment of “jihad” and terrorist training. Specifically, the government argues that this is not “some garden variety false statement on a loan application or benefits’ application.” However, the government must concede that these allegations do not transform a false statement charge into a “crime of violence.” If the government had any credible evidence that the defendants were truly engaged in jihad and terrorist training, they would have sought an indictment for such conduct. Their refusal to do so is telling. Without any charges of “crimes of violence,” the government cannot simply infer that defendants pose a danger to the community.

**B. The weight of the evidence supports pretrial release.**

The government contends that the weight of the evidence against defendants is “substantial and compelling.” In support of this contention, the government argues that various undercover recordings between defendants and a “cooperating witness” confirms defendants’ involvement in terrorist activity. Again, the government misses the mark. As they concede, their proffered “related conversations between the CW and Hamid Hayat, as well as all other such conversations proffered [in their Opposition] are based on preliminary summary translations of the recorded conversations.” Government’s Opposition, footnote 4. The defense firmly anticipates that the actual statements made during these recordings, and the circumstances under which certain statements were made, will not support the government’s position.

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1                   **C. The defendants' history and personal characteristics support pretrial**  
2                   **release.**

3                   The government's argument concerning "misleading and/or false statements to  
4 government officials in the past," is simply side-splitting. Simply put, the issues regarding the  
5 money seized on April 19, 2003 were all resolved in favor of the defendants and the money  
6 was ultimately returned.

7                   The government's position regarding the potential custodial sentences is unpersuasive.  
8 Even if the defendants were convicted, a term of 8 years (or even a consecutive term of 16  
9 years) in and of itself do not support a finding of flight risk. This is especially true considering  
10 defendants' significant ties to the United States, their substantial and long-established ties to  
11 family and friends in Lodi and in the Sacramento Valley region. Moreover, all of the members  
12 of defendants' immediate family are United States citizens. It also should be noted that  
13 defendant Umer Hayat's mother, father and brother (who are all Legal Permanent Residents of  
14 the United States) recently returned to Lodi, CA on August 18, 2005, from a visit to Pakistan.  
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16                   Further, the government's assessment regarding defendants' employment is misplaced.  
17 Defendant Umer Hayat is and has been permanently employed for 15 years as an ice-cream  
18 truck driver. The fact that he may work more hours in the summer months as opposed to other  
19 times of the year, does not take away from the fact that he was gainfully employed. Likewise,  
20 defendant Hamid Hayat was also gainfully employed. Immediately upon his arrival into the  
21 United States, he sought and obtained employment and maintained such employment until his  
22 arrest.

23                   Regarding defendant Umer Hayat's misdemeanor conviction for battery, the  
24 government's argument that he is a flight risk or danger to the community is truly a stretch.  
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1 Finally, contrary to the government's arguments, defendants' proposed collateral is  
2 sufficient to reasonably assure their appearance at future proceedings and to safeguard the  
3 community. The defendants' property in Lodi has sufficient equity to post a sizeable bond.  
4 Additionally, there is other property in Lodi owned by defendant Umer Hayat's brother that can  
5 be used to secure defendants' release.<sup>2</sup>

6 DATED: August 22, 2005

Respectfully submitted,

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8  
9 /s/ Johnny L. Griffin, III  
JOHNNY L. GRIFFIN, III  
Attorney for Defendant Umer Hayat

10  
11 /s/ Wazhma Mojaddidi  
WAZHMA MOJADDIDI  
Attorney for Defendant Hamid Hayat

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<sup>2</sup> Contrary to the government's assertion, the record owners of all property that is being proffered for bail are within the United States and willing to execute the appropriate documents.