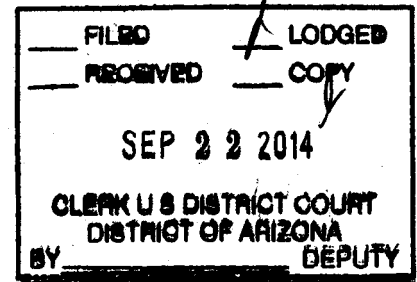


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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

SEALED

United States of America,

 Plaintiff,

 v.

 1. Marc Turi; and
 2. Turi Defense Group,

 Defendants

Cause No. 14-cr-00191-DGC
 SEALED

**INITIAL MOTION TO COMPEL
 DISCOVERY**

[FILED UNDER SEAL]

INTRODUCTION

Defendants and the Government have reached an impasse. The disagreements that this Court heard at the September 3 CIPA conference regarding what discovery must be produced in this case have continued and can now only be resolved by this Court. Despite Defendants' renewed efforts to provide narrowly-drawn categories of documents in their discovery request, the Government continues to take the unyielding position that it must produce **none** of the information requested, because, according to the United States, the information is "not related to the conduct alleged in the [I]ndictment."¹ Wrong. As explained in more-than-required detail in the discovery letter itself, the information requested is directly related to the allegations made in the Indictment, potentially

¹ See Ex. A.

1 exculpatory, and thus discoverable not only under Rule 16 but also *Brady v. Maryland*,
 2 373 U.S. 83 (1963), and its progeny.

3 Moreover, the Government's continued insistence that it can deny the requested
 4 information because, in its erroneous opinion, the documents sought are "not related" to
 5 the acts listed in the Indictment is without basis in law. "Evidence that the government
 6 does not intend to use in its case in chief is material [and discoverable] if it could be used
 7 to counter the government's case or to bolster a defense" *United States v. Stevens*,
 8 985 F.2d 1175, 1179-80 (2d Cir. 1993) (interpreting Fed. R. Crim. P. 16(a)(1)(C), the
 9 predecessor to Rule 16(a)(1)(E), under which Defendants move). So, even if the
 10 Government is correct that the information is not relevant to **its case**, the requested
 11 documents are nonetheless relevant to the **defense case**, which, in an effort to avoid this
 12 continued discovery litigation, Defendants have previously set forth in far-more-than-
 13 required detail.

14 "The right of an accused in a criminal trial to due process is, in essence, the right to
 15 a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*,
 16 410 U.S. 284, 294 (1973). More than just a "fair opportunity," "the Constitution
 17 guarantees criminal defendants a meaningful opportunity to present a **complete defense**."
 18 *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (emphasis added) (citation and internal
 19 quotation marks omitted). Consistent with that Constitutional right, Rule 16 provides that
 20 discoverable information includes items "**material to preparing the defense**," not just
 21 items material to the Government's side of the story. Fed. R. Crim. P. 16(a)(1)(E)(i).
 22 Because the discovery requested here goes to the absolute heart of the defense, both Rule
 23 16 and the Constitution require its production.

24 PROCEDURAL BACKGROUND

25 Prior to the September 3 CIPA conference, Defendants requested from the
 26 Government on August 6 various categories of discovery, which Defendants believed to
 27 be classified or classifiable (the "August 6 Letter").² This request was in addition to a

28 ² See Ex. B.

1 request for non-classified discovery, sent July 31.³ The Government denied the August 6
 2 request, insisting that it would produce **none** of the information sought. At the
 3 September 3 CIPA conference, this Court noted that at least some of the categories of
 4 information requested by Defendants may be discoverable pursuant to Fed. R. Crim. P.
 5 16. Accordingly, the Court established a schedule for the parties to exchange further
 6 communications on the subject and, if necessary, brief a motion to compel.

7 Pursuant to that scheduling order, Defendants sent the Government a supplemental
 8 request for discovery on September 8 (the "Discovery Request").⁴ Frustratingly, the
 9 Government's response, received September 15, still refused to produce **any** of the
 10 requested information.⁵

11 **FACTUAL BACKGROUND**

12 At its core, the Indictment alleges that Defendants, a State Department licensed
 13 arms dealer and its President who have previously, unquestionably, worked for the U.S.
 14 government through the Central Intelligence Agency, lied in an effort to arrange for the
 15 eventual transport of \$267 million worth of weapons into Libya in 2011.⁶ It alleges that
 16 they intended to transport this extraordinary quantity of weapons with the assistance of
 17 foreign governments. It alleges that they intended to transport the weapons on dozens of
 18 planes into NATO-restricted airspace without NATO approval or detection.⁷ It alleges
 19 that they did so unilaterally. In other words, it alleges that they did so without **any**
 20 knowledge or involvement of the United States Government. Nonsense.

21 The Government's story defies common sense and ignores basic realities and the
 22 facts. Defendants will show all of this, and more, at trial. In particular, Defendants intend
 23 to vigorously pursue a public authority defense, already noticed in this case, and premised
 24 on certain facts including, but not limited to, that: (1) Defendants had previously worked
 25

26 ³ See Ex. C.

27 ⁴ See Ex. D.

⁵ See Ex. A.

⁶ See, e.g., Indictment at 9.

⁷ See, e.g., Indictment at 10.

1 with the U.S. Government, including the CIA, on covert weapons transactions,⁸ (2) those
 2 transactions bore substantial similarities to the ones here, (3) Defendants either actually
 3 had public authority for the actions at issue here or reasonably believed that they had such
 4 authority based on that prior relationship, (4) the United States did in fact covertly arm the
 5 Libyan rebels using a plan remarkably similar to the one at issue here, (5) the United
 6 States frequently assists in the covert transportation of arms, and (6) the manner and
 7 means by which the United States typically conducts such transactions are identical to
 8 what actually happened in this case.

9 As to some of those premises, the Defense is **already certain** both that they are
 10 true **and** that the Government possesses documents corroborating these assertions. As to
 11 others, the Defense, through its investigation to date, has a good-faith belief to believe that
 12 they are true and that the Government possesses corroborating evidence of the assertions.
 13 As to all of them, the Defense has made reasonable and sufficiently narrow requests for
 14 material evidence from the Government, which the Government has declined to provide.

15 THE REQUESTS

16 In the updated discovery request, Defendants sought eight categories of documents
 17 relevant to the defense, within the possession of the Government, and discoverable under
 18 Fed. R. Crim. P. 16. Those requests are copied verbatim here:⁹

19 1) Any documents within the possession, custody or control of the Central
 20 Intelligence Agency containing the names Marc Turi or Turi Defense Group. This
 request includes specifically, but is not limited to:

21 a. Documents held, received, or created by the Near East Division (the "NE
 22 Division") of the Directorate of Operations (the Clandestine Service) of the
 23 CIA in the NE Division's "Memorandum Database."

24 b. Documents held, received, or created by the Office of Covert Procurement.

25
 26
 27 ⁸ The Government does not appear to dispute this fact. Additional evidence
 the Government possesses corroborating the Defendants' relationship with the CIA and
 28 the specifics of how previous transactions were conducted are nonetheless discoverable.
See Ex. D.

c. Accounting, banking, or other financial records reflecting or related in any way to the payment of funds to Marc Turi or Turi Defense Group.¹⁰

2) Any documents or other evidence relating to instances in which the United States assisted or considered assisting in the covert transportation, provision, acquisition, transfer, or transport of Defense Articles¹¹ to or from any person, entity, group of people, quasi-governmental entity, or government within the territory of Libya within the timeframe of 2010 to the date of this request.

a. This includes, but it is certainly not limited to, prior approval requests, approvals, denials, Returns Without Action ("RWAs"), licenses, and other approvals granted for any such transaction. It also includes the Covert Action Findings authorizing the program pursuant to which such covert actions were undertaken.

b. The basis for this request is a much-more-than-good-faith belief that the United States did covertly assist in the procurement and/or transportation of arms for individuals and/or entities in Libya pursuant to a Covert Action Finding issued by the President.¹² Defendants have noticed their intent to use a public authority defense. One prong of that defense will be that, during the relevant time frame, Defendants were acting at U.S. Government direction and consistent with U.S. Government interests. The Covert Action Finding(s) in effect at this time, and whether the United States covertly supported the arming of individuals and/or entities in Libya have a tendency to make the facts underlying Defendants' proffered defense "more probable or less probable than [they] would be without the evidence." [*United States v. Stever*, 603 F.3d [747, 753 (9th Cir. 2010)] (citing Fed. R. Evid. 401). So does the manner in which that transaction or series of transactions occurred.

¹⁰ Because Mr. Turi received such funds and because such records are required to be maintained by law, including for the purposes of congressional oversight, we are *certain* that such records exist.

¹¹ As used in this letter and any subsequent letters, "Defense Articles" means items included in the United States Munitions List. See 22 C.F.R. § 121.1.

¹² See, e.g., *United Nations Security Council Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya* (Feb. 15, 2014), available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_106.pdf (last accessed July 24, 2014) ("U.N. Final Report"); James Risen, Mark Mazzetti, and Michael S. Schmidt, *U.S.-Approved Arms for Libya Rebels Fell Into Jihadis' Hands*, New York Times (Dec. 5, 2012), available at <http://www.nytimes.com/2012/12/06/world/africa/weapons-sent-to-libyan-rebels-with-us-approval-fell-into-islamist-hands.html?pagewanted=all&r=0> (last accessed Aug. 5, 2014) ("N.Y. Times Article"). Senator McCain has publicly stated that the United States helped arm the Libyan rebels. See Ali Gharib, *McCain Falsely Claims U.S. Armed Libya Rebels to Make the Case for Arming Syrians*, Think Progress (June 15, 2012), available at <http://thinkprogress.org/security/2012/06/15/500433/mccain-arms-rebels-libya-syria/> (last accessed Aug. 5, 2014) ("Think Progress Article").

1 3) Any documents or other evidence relating to instances in which the United States
 2 assisted or considered assisting in the covert transportation, provision, acquisition,
 3 transfer, or transport of Defense Articles to or from any person, entity, group of
 4 people, quasi-governmental entity, or government within the territory of Qatar
 and/or the United Arab Emirates within the timeframe of 2010 to the date of this
 request.

5 a. This includes, but it is certainly not limited to, prior approval requests,
 6 approvals, denials, RWAs, licenses, and other approvals granted for any
 7 such transaction. It also includes the Covert Action Findings authorizing the
 program pursuant to which such covert actions were undertaken.

8 b. The basis for this request is largely the same as the basis for Request 2.
 9 Publically available materials suggest that Libyan and/or Syrian rebels were
 10 armed, pursuant to a Covert Action Finding signed by the President, with
 11 the cooperation of Qatar and the United Arab Emirates. If the United States
 12 assisted in that effort, and used the same two countries at issue in this case,
 13 that has a tendency to make the facts underlying Defendants' proffered
 14 defense "more probable or less probable than [they] would be without the
 evidence." *Steever*, 603 F.3d at 753 (citing Fed. R. Evid. 401). And again,
 the manner in which any such transaction was conducted, not just the
 transaction's existence or non-existence, is material to the defense.

15 4) Any documents or other evidence relating to instances in which the United States
 16 assisted or considered assisting in the covert transportation, provision, acquisition,
 17 transfer, or transport of Defense Articles to or from any person, entity, group of
 18 people, quasi-governmental entity, or government within the territory of Syria
 within the timeframe of 2010 to the date of this request.

19 a. This includes, but it is certainly not limited to, prior approval requests,
 20 approvals, denials, RWAs, licenses, and other approvals granted for any
 21 such transaction. It also includes the Covert Action Findings authorizing the
 program pursuant to which such covert actions were undertaken.

22 b. The basis for this request is a much-more-than-good-faith belief that the
 23 United States covertly assisted in the procurement and/or transportation of
 arms for individuals and/or entities in Syria.¹³ Publically available

24 ¹³ See, e.g., Greg Miller & Joby Warrick, *CIA Preparing to Deliver Rebels*
 25 *Arms Through Turkey and Jordan*, Washington Post (June 14, 2013), available at
 26 http://www.washingtonpost.com/world/national-security/cia-preparing-to-deliver-rebels-arms-through-turkey-and-jordan/2013/06/14/e38dabf2-d522-11e2-a73e-826d299ff459_story.html (last accessed Aug. 5, 2014) ("2013 Washington Post Article");
 27 Mark Hosenball, *Exclusive: Obama Authorizes Secret U.S. Support for Syrian Rebels*,
 28 Reuters (Aug. 1, 2012), available at <http://www.reuters.com/article/2012/08/01/us-usa-syria-obama-order-idUSBRE8701OK20120801> (last accessed Aug. 5, 2014) ("Reuters Article"); Karen DeYoung & Liz Sly, *Syrian Rebels Get Influx of Arms with Gulf*

documents suggest this transaction was executed in much the same way as the Libya transaction, by using partner countries within the region as middle-men, with the U.S. providing only logistical support. The manner in which the U.S. typically conducts covert arms transactions is highly material to the defense. Here, we have a good-faith belief that evidence exists of one such transaction that bears high levels of similarity to the one alleged in this case.

- 5) Any documents or other evidence relating to involvement or contemplated involvement by the United States in any transaction, or series of transactions, discussed in the United Nations Security Council (or its experts, investigators, or staff) relating to that body's *Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya*.¹⁴ This includes, but it is certainly not limited to, prior approval requests, approvals, denials, RWAs, licenses, and other approvals granted for any such transaction.

- a. This request may well be duplicative, as this transaction may be covered by Requests 2 and 3. To the extent it is not, however, it is material to the defense for the same reasons identified in those requests.

- 6) Any documents or evidence relating to the United States' participation or refusal to participate in that United Nations Security Council investigation.

- a. Again, it is material to the defense to know whether the U.S. covertly supported the shipment of arms into Libya, particularly if through Qatar and the United Arab Emirates. Evidence of any participation or refusal to participate in this UN investigation would help aid in the preparation of the defense and, ultimately, would help the jury in this case determine what, if any, involvement the U.S. had.

- 7) Any end user certificates used in transactions from 2008 to present that received covert U.S. Government support where, because of a covert action, the end user listed on the end user certificate is not the end user intended by the U.S. Government or CIA.

- a. Defendants have a much-more-than-good faith belief, both through publicly available documents and through highly credible investigative interviews, that the U.S. often covertly supports arms transactions in which arms are transshipped through an intermediary and/or where, because of a covert action, the end user listed on the end user certificate is not the end user

Neighbors' Money, U.S. Coordination, Washington Post (May 15, 2012), available at http://www.washingtonpost.com/world/national-security/syrian-rebels-get-influx-of-arms-with-gulf-neighbors-money-us-coordination/2012/05/15/gIQAAds2TSU_story.html (last accessed Aug. 5, 2014) ("2012 Washington Post Article").

¹⁴ See U.N. Final Report (note 12, *supra*).

intended by the U.S. Government or CIA.¹⁵ Documents relating to those transactions, particularly during the time frame Defendants have been in this business, bear directly on Defendants' proposed defense. The defense is unable to further narrow this request to identify specific transactions (other than those identified in Requests 2-5) as it cannot know of specific deals done pursuant to such an arrangement given their covert nature.

8) Any communications or other evidence relating to the Spring 2011 email communications between Defendants and Christopher Stevens.

a. Emails to Defendants suggest that Ambassador Stevens intended to take some further action with the State Department regarding Defendants' role in attempting to arm the Libyan rebels. Other evidence confirms that Ambassador Stevens was made aware of Defendants' proposed transaction.¹⁶ Any subsequent communications within the Government about this transaction (including, but not limited to, Defendants' involvement in it), or other evidence generated as a result thereof, is directly relevant to whether the Government was working with Defendants on any such transaction.

In a previous letter of July 31, 2014, Defendants also sought production of a ninth category of documents, which the Government has not produced and which Defendants now ask this Court to compel the Government to produce:

9) Any documents relating to the requests for prior approval relevant to this case, including, but not limited to:

a. All communications at the State Department - Directorate of Defense Trade Controls (DDTC) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.

b. All communications at the State Department - Bureau of Political Military Affairs Regional Security and Arms Transfers (PM/RSAT) - associated with

¹⁵ See, e.g., Ex. E (Ken Silverstein, *Licensed to Kill*, Harper's Magazine (May 1, 2000) (detailing how arms dealer Ernst Werner Glatt worked with the U.S. covertly for decades and frequently was required to use end user certificates stating false end users in such transactions)). Defendants are further prepared, as described previously in this letter, to proffer expert testimony along these lines if necessary.

¹⁶ See Ex. F (U.S. v. Turi 005769) (6/14/11 email from A. Yfantis to Y. Adam and M. Turi stating that "MR STEVENS THE AMERICAN EMBASSEDOR IN BENGHAZI HAS BEEN INFORMED OF THE ARRANGEMENT . . . AND THINGS SHOULD BE OK").

Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.

- c. All communications at the State Department - Bureau of Near Eastern Affairs (NEA) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
- d. All communications at the State Department - Bureau of Democracy, Human Rights, and Labor Affairs (DRL) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
- e. All communications at the Department of Defense (DoD), including but not limited to communications with the applicable DoD desk officer, associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
- f. All communications associated with State Department DDTC Licensing System (Ellie) associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
- g. All communications associated with PM/RSAT former Assistant Secretary of State Andrew Shapiro associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
- h. All communications associated with Director of Defense Trade Controls licensing Kevin Maloney associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.

LEGAL STANDARD

Rule 16(a)(1)(E)(i) requires the disclosure of any item “material to preparing the defense.” Documents are “material to preparing the defense,” *id.*, when the documents are “**relevant** to the development of a **possible** defense.” *United States v. Clegg*, 740 F.2d 16, 18 (9th Cir. 1984) (emphasis added); *see also* Fed. R. Evid. 401(a) (“Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence.”). The Government must accordingly produce documents when the defendant “present[s] facts which would **tend** to show that the Government is in possession of information **helpful to the defense.**” *United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990) (emphasis added) (citing *United States v. Little*, 753 F.2d

1 1420, 1445 (9th Cir. 1984); *United States v. Cadet*, 727 F.2d 1453, 1466-68 (9th Cir.
2 1984)).

3 A defendant must of course “make a threshold showing of materiality.” *United*
4 *States v. Santiago*, 46 F.3d 885, 894 (9th Cir. 1995). But that threshold showing simply
5 requires “a presentation of facts which would tend to show that the Government is in
6 possession of information **helpful to the defense.**” *Id.* (Emphasis added) (citation and
7 internal quotation marks omitted).

8 Owing in large part to the Constitution’s guarantee that defendants may mount a
9 complete defense, “[m]ateriality is a low threshold; it is satisfied so long as the
10 information” would help the Defendants prepare their defense. *United States v.*
11 *Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013) (citation and internal quotation marks
12 omitted). Although Defendants must identify how the information is relevant to their
13 defense, “[a] defendant needn’t spell out his theory of the case in order to obtain
14 discovery. Nor is the government entitled to know in advance specifically what the
15 defense is going to be.” *Id.* Rather, Defendants need only make a sufficient showing of
16 materiality, a low threshold that the Ninth Circuit has linked to Fed. R. Evid. 401’s
17 relevance standard. *See United States v. Stever*, 603 F.3d 747, 753 (9th Cir. 2010)
18 (holding in context of evidence relating to potential defense that evidence should have
19 been produced pursuant to Rule 16(a)(1)(E)(i) if it had “any tendency to make the
20 existence of any fact that is of consequence to the determination of the action more
21 probable or less probable that it would be without the evidence” (quoting Fed. R. Evid.
22 401)).

23 **Especially where, as here, Defendants seek to rely on an affirmative defense,**
24 the Ninth Circuit has recently and repeatedly compelled production of specific categories
25 of documents supporting the affirmative defense. *See, e.g., United States v. Muniz-*
26 *Jaquez*, 718 F.3d 1180, 1183-84 (9th Cir. 2013) (rejecting Government claims of a
27 “fishing expedition” and ordering discovery of dispatch tapes and other evidence
28 supporting affirmative defense of official restraint in illegal re-entry case); *United States*

1 *v. Doe*, 705 F.3d 1134 (9th Cir. 2013) (vacating conviction and holding that district court
 2 abused its discretion by failing, under Rule 16(a)(1)(E)(i) materiality standard, to require
 3 production of documents relevant to affirmative defense of public authority).

4 ARGUMENT

5 A. Evidence relating to Defendants' activities with the CIA and any other 6 Government entity for purposes of providing support for covert arms transactions is discoverable under Rule 16.

7 In Request 1, Defendants seek evidence that they **know exists**. They are asking for
 8 information confirming **their own** prior involvement with the U.S. Government on covert
 9 weapons transactions. What could be more narrow than a discovery request about
 10 themselves? But still the Government refuses to produce.

11 Undoubtedly, Defendants have an obligation to "make a threshold showing of
 12 materiality." *Santiago*, 46 F.3d 885 at 894. The documents sought in Request 1 are not
 13 just material to the defense -- they are crucial to it. For this set of requests, *United States*
 14 *v. Juan* is directly on point. 776 F.2d 256, 258 (11th Cir. 1985). There, the Eleventh
 15 Circuit held that the defendant, just like Defendants here, was entitled to disclosure, in
 16 another CIPA case, of evidence of past similar acts he had performed in cooperation with
 17 the U.S. Government. *Id.* Even while questioning the persuasiveness of such evidence,
 18 the *Juan* court held that "the past events tend to make more plausible that which, absent
 19 proof of those events, would be implausible," and thus that disclosure was required. *Id.*
 20 Like *Juan*, this is a "peculiar" case, and one in which Defendants' claim of believed
 21 public authority (either actual or mistaken) is supported by evidence of past acts done in
 22 cooperation with covert agents of the U.S. Government. *Id.*

23 Similarly authoritative is *Doe*, 705 F.3d 1134, in which the defendant sought
 24 evidence under Rule 16 to support his public authority defense. *Doe* sought two
 25 categories of documents: (1) documents evidencing information *Doe* had previously
 26 provided to the Government through cooperation and (2) a broad group of documents
 27 evidencing the relationship *Doe* had with the Government. *Id.* at 1150. The district court
 28 denied the requests as overbroad; but the Ninth Circuit reversed. *Id.* In doing so, the

1 Ninth Circuit noted that the requests explained “the specific information Doe was
2 requesting and the types of documents that would likely contain the information he
3 sought.” It also noted that the nature of the documents was such that Doe could be no
4 more specific. *Id.* (“Unless Doe had knowledge of specific FBI documents he could point
5 to by name and date of creation, a scenario we highly doubt existed, Doe’s requests could
6 not have been any more pointed.”).

7 The same is true of Defendants’ Request 1 (and other requests) here. And just like
8 in *Doe*, the documents requested here could be used by Defendants “to help establish
9 [their] state of mind,” establish their credibility, and by the jury to determine “whether
10 [Defendants’] belief that [they were] working with the [Government] was reasonable.” *Id.*
11 As noted above and in documents previously filed with this Court, Defendants will pursue
12 a public authority defense in this case. Especially to a jury likely familiar only with the
13 subject matter of this case from spy novels and movies, that defense is unquestionably
14 more solid with documents in the Government’s possession confirming that Defendants
15 have previously worked with the CIA on international weapons deals. To make this point,
16 Defendants should not be required to rely solely on their testimony and/or that of their
17 witnesses. Defendants **are certain** that the Government is in possession of documents
18 confirming their involvement with the CIA on previous covert transactions -- transactions
19 which were ongoing at the time of the events in question. They are, by rule and by the
20 Constitution, entitled to those documents.

21 But beyond simply adding great heft to a defense which might otherwise seem
22 incredible, those documents will corroborate that the details of the proposed transactions
23 at issue in this case bore material similarities to Defendants’ prior transactions done with
24 U.S. Government involvement and support. Those documents, we believe, will also
25 corroborate the likely testimony of experts in the field of international covert arms
26 procurement.

27 Far exceeding the low standard required for discovery of these documents,
28 Defendants have not only repeatedly explained how the requested documents are material

1 to their defense, but have also directed the Government to particular parts of the CIA and
 2 to particular databases within the CIA that they know hold relevant documents. This level
 3 of particularity is above and beyond what Rule 16 requires. Although, given the nature of
 4 the CIA's business, it is impossible for Defendants to provide an exhaustive list of the
 5 types of relevant documents that might exist, they have provided in Request 1 very
 6 specific direction regarding certain areas in which they know relevant documents exist.

7 **B. Evidence relating to what actions the U.S. Government actually took (or**
 8 **didn't take) in getting weapons into Libya is discoverable under Rule**
 9 **16.**

10 In Requests 2, 3, 5, and 6, Defendants seek discovery relating to the arming of the
 11 Libyan rebels. Central to Defendants' public authority defense is the premise that the
 12 U.S. Government sought to covertly assist in the arming of the Libyan rebels.
 13 Conclusively demonstrating that premise is true is critically material to the defense, and
 14 this case. Strong reasons exist to believe this premise is true, but Defendants are entitled
 15 to prove its truth with documents possessed by the Government, which Defendants
 16 strongly believe exist.

17 The Government maintains that the requested documents are beyond the scope of
 18 appropriate discovery here because they do not relate to the transaction charged in the
 19 Indictment.¹⁷ But that is not the test. *Stever* is particularly instructive. 603 F.3d 747.
 20 There, the defendant was charged with various crimes relating to growing marijuana. *Id.*
 21 at 750. He "sought to defend on the ground that the marijuana growing operation found
 22 on an isolated corner of his mother's 400-acre property was the work of one of the
 23 Mexican drug trafficking organizations (DTOs) that had recently infiltrated Oregon." *Id.*

24 *Stever* filed a Motion to Compel Discovery, seeking "any reports in the
 25 government's possession describing the 'characteristics, modus operandi, and other
 26 information regarding' Mexican DTOs involved in growing marijuana." *Id.* at 751. In
 27 support of his request, he "drew upon news reports, publically available information," and
 28 other documents "to argue that Mexican DTOs had recently infiltrated Eastern Oregon"

¹⁷ See Ex. A.

1 and “that the operation on Stever’s property bore several distinctive characteristics of
 2 Mexican DTO operations.” *Id.* Stever also proffered an expert who could testify
 3 regarding the modus operandi of DTO operations. *Id.* at 752.

4 The district court denied the Motion to Compel. The Ninth Circuit, however,
 5 reversed Stever’s convictions, holding that the district court erred in denying the motion
 6 even under a deferential abuse of discretion standard of review. *Id.* at 753. In doing so,
 7 the court emphasized the low threshold standards of materiality and relevance.

8 As in *Stever*, Defendants here have identified a specific defense and have
 9 enumerated specific types of evidence material to that defense. Also like Stever,
 10 Defendants provided, first in the August 6 Letter and now in the Discovery Request,
 11 publicly available documents indicating the existence of such evidence. Moreover, as in
 12 *Stever*, Defendants here could, as part of a “presentation of ‘facts which would tend to
 13 show that the Government is in possession of information helpful to the defense,’”
 14 *Santiago*, 46 F.3d at 894 (citation omitted), present or proffer the testimony of highly
 15 credible expert witnesses.

16 As detailed in Defendants’ Discovery Request, (1) UN documents show that arms
 17 entered Libya through Qatar and the UAE, the countries at issue here;¹⁸ (2) major news
 18 organizations have reported that the U.S. assisted in arming the Libyan rebels;¹⁹
 19 (3) Senator McCain has publicly stated that the U.S. assisted in arming the Libyan
 20 rebels;²⁰ and (4) Defendants have a good-faith basis to believe the President issued a
 21 Covert Action Finding for Libya during the relevant time. Defendants thus have a much-
 22 more-than-good-faith belief that the U.S. did covertly assist in arming the Libyan rebels.²¹
 23 They are entitled to discovery related to that transaction (or those transactions).

24
 25

 18 U.N. Final Report (note 12, *supra*).

19 N.Y. Times Article (note 12, *supra*).

20 Think Progress Article (note 12, *supra*).

21 Defendants’ investigation to date confirms that, should this Court desire,
 22 and should the proper procedures be instituted, Defendants could present multiple
 23 exceptionally credible witnesses on this issue.
 24
 25
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 28

1 The discovery requested will help prove that the U.S. desired to arm the Libyan
2 rebels, thus making Defendants' claim of public authority significantly more plausible. It
3 will likewise show how that transaction (or those transactions) was conducted, likely
4 confirming that the consummated transaction (or those transactions) bore material
5 similarity to the proposed transaction at issue here.

6 Moreover, even in the highly unlikely scenario where such documents showed that
7 the U.S. had no involvement whatsoever in transporting arms to Libya, those documents
8 would **still be discoverable** under Rule 16. Such documents would undoubtedly undercut
9 Defendants' proposed public authority defense. And even where documents weaken
10 rather than strengthen a potential defense, Rule 16 requires their production in response to
11 a defense request. *See Doe*, 705 F.3d at 1151 ("Even if the documents [requested under
12 Rule 16] caused [defendant] to completely abandon [his] entrapment defense and take an
13 entirely different path, the documents would still have been 'material to preparing the
14 defense' under Rule 16(a)(1)(E)(i)."). "A defendant who knows that the government has
15 evidence that renders his planned defense useless can alter his trial strategy. Or he can
16 seek a plea agreement instead of going to trial." *Muniz-Jaquez*, 718 F.3d at 1183.
17 Further, even "[i]nformation that is not exculpatory or impeaching may still be relevant to
18 **developing** a possible defense." *Id.* (emphasis added).

19 As part of the ongoing defense investigation of this case, defense counsel has
20 personally interviewed multiple individuals with irrefutably credible experience in the
21 business of covert arms dealing for the U.S. Government. Among other material topics,
22 these witnesses could testify that Defendants' actions here are consistent with a U.S.-
23 backed, CIA-involved, covert transaction. But Defendants should not be required to
24 prove up their defense through testimony alone.

25 Rule 16 requires the Government to produce corroborating (or impeaching)
26 discovery on these points. Simply put, whether the United States supported an arms
27 transaction in Libya during the relevant time period, and how it supports covert arms
28 transactions in general, are highly relevant to Defendants' public authority defense. It

1 defies common sense to think that the Government possesses neither documents showing
 2 it was involved in covert weapons transport to Libya nor documents showing it was not so
 3 involved. Surely one of those sets of documents must exist. Defendants are entitled to
 4 have them.

5 **C. Evidence relating to how the U.S. Government covertly transfers**
 6 **weapons is discoverable under Rule 16.**

7 In Requests 4 and 7, Defendants seek evidence relating to how the United States
 8 conducts covert weapons transactions generally. Just as evidence of how the U.S. assisted
 9 in the covert transportation of weapons into Libya is discoverable here, so is evidence of
 10 how the U.S. conducts such covert transactions generally. And just as recent Ninth
 11 Circuit case law directly supports Defendants' request for documents relating to a
 12 transaction with Libya, it likewise supports Requests 4 and 7. Just as the modus operandi
 13 of Mexico DTOs was critical evidence in *Stever*, so is the modus operandi of the U.S.
 14 Government in covert arms dealing here. See 603 F.3d at 752. Moreover, the evidence
 15 requested would "tend to make more plausible that which, absent proof of those events,
 16 would be implausible." *Juan*, 776 F.2d at 258.

17 Given the potentially broad subject matter at issue here, Defendants have asked
 18 only for very specific evidence, which they have a good-faith basis to believe exists, to
 19 help them prove how the United States typically conducts these types of transactions. In
 20 an attempt to be as specific as possible, Request 4 directs the Government's attention
 21 specifically to Syria, where public documents again provide Defendants a good-faith
 22 belief that the U.S. has assisted in the covert procurement of arms for rebel forces.²² Also
 23 narrowly, Request 7 seeks only (1) end-user certificates (2) for transactions in which the
 24 U.S. provided covert support (3) and for which the listed end-user was not the end-user
 25 intended by the U.S. Government. One would think that's a very small pool of
 26 documents, although our research has begun to make us think it might be quite large.

27 _____
 28 ²² See 2013 Washington Post Article; Reuters Article; 2012 Washington Post
 Article (note 13, *supra*).

Again, Defendants have a good-faith basis for their request. A 2000 Harper's Magazine article, for example, details how arms dealer Ernst Werner Glatt spent **decades** assisting the United States in covert weapons transactions and often doing so through the use of end-user certificates listing false end-users.²³ And again, Defendants could provide expert testimony that the U.S. Government still commonly uses private-sector arms brokers, friendly intermediary countries, and misleading end-user certificates to covertly assist in the transportation of arms around the world today.

D. Evidence relating to actions taken within the Government at Defendants' request for *the transaction at issue here* is discoverable under Rule 16.

Finally, Requests 8 and 9 relate to **direct evidence** of Government actions taken **relating to the transactions at issue here**. Evidence relating to the acts underlying the alleged offenses is, by definition and by common sense, central to this case. *Muniz-Jaquez*, decided just last year, is analogous and on point. 718 F.3d 1180. There, Muniz-Jaquez was charged with violating 8 U.S.C. § 1326(a), which prohibits a deported alien from entering, attempting to enter, or being found in the United States. *Id.* at 1182. Critically, Muniz-Jaquez was charged only with being found in the United States, and thus sought to pursue an official-restraint defense on the theory that he was watched by Government agents from the time of his entry to the time of his arrest. *Id.* After learning that the arresting Agent called for backup immediately after sighting Muniz-Jaquez and that the call was tape-recorded, Muniz-Jaquez moved for disclosure of the tape under Rule 16. *Id.* The district court denied the motion, but the Ninth Circuit reversed, holding that the tapes were directly relevant to the defense because they might reveal Muniz-Jaquez's location at the time he was sighted and provide impeachment of the Agent's version of events.

Here, Request 8 seeks any internal State Department communications in 2011 regarding Defendants' potential involvement (or non-involvement) in any covert weapons

²³

See Ex. E.

1 transactions involving Libya. Request 9 seeks documents and communications within
 2 specific units of the Government regarding the prior approval requests at the center of this
 3 case. Both categories of information are undoubtedly material, as they would by their
 4 very nature relate **directly** to the potential transactions at issue here. Moreover, there is
 5 strong reason to believe such communications and documents exist. At least some of the
 6 documents requested in Request 9 must exist, as they are created by standard procedure
 7 during the prior approval process that was completed here. The communications and
 8 documents requested in Request 8 also likely exist, as Defendants exchanged emails with
 9 Christopher Stevens, then-Special Envoy to the Libyan TNC.²⁴ Ambassador Stevens's
 10 response overtly mentions further actions taken by Ambassador Stevens in direct response
 11 to Mr. Turi's email. And further discovery in this case indicates further communication
 12 with Ambassador Stevens and his team.²⁵ This provides not only reason to believe that
 13 further discoverable documents exist, but also a direct and easily discernible starting point
 14 for where the Government should start looking for that information. As in *Muniz-Jaquez*,
 15 the evidence requested here would reveal facts critical to a clearly identified defense and
 16 provide potential impeachment of the Government's story. Moreover, some of the
 17 documents **must exist** and as to others, as in *Muniz-Jaquez*, the statements of a
 18 Government agent indicate that the evidence sought exists. "This [is] not a fishing
 19 expedition." *Id.* at 1184.

20 CONCLUSION

21 Defendants respectfully request that the Court compel the discovery of the
 22 information requested herein.

24 *See* Ex. G.
 25 *See, e.g.,* Ex. F.

1 Dated: September 22, 2014.

PERKINS COIE LLP

2
3 By: 

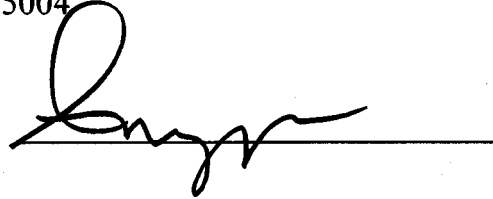
4 Jean-Jacques Cabou
5 JCabou@perkinscoie.com
6 Alexander W. Samuels
7 ASamuels@perkinscoie.com
8 2901 N. Central Avenue, Suite 2000
9 Phoenix, AZ 85012-2788
10 Telephone: 602.351.8000
11 Facsimile: 602.648.7000

12 Attorneys for Defendants Marc Turi and
13 Turi Defense Group
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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2014, an ORIGINAL and ONE COPY of the attached was filed with the Clerk of the Court and that a COPY was sent via U.S. Mail to:

David A. Pimsner
Kristen Brook
U.S. Attorney's Office
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004

A handwritten signature in black ink, appearing to read 'Pimsner', is written over a horizontal line.

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Exhibit A



U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 N. Central Ave., Suite 1200
Phoenix, AZ 85004-4408

Main: (602) 514-7500
Main Fax: (602) 514-7693

September 15, 2014

Jean-Jacques Cabou
Alexander W. Samuels
Perkins Coie
2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2788

Re: United States v. Marc Turi and Turi Defense Group
CR-14-0191-PHX-DGC (DKD)

Dear Mr. Cabou and Mr. Samuels:

I have been advised that at the last hearing, Judge Campbell directed you to submit to our office an updated request for Rule 16 discovery. It is my understanding that Judge Campbell indicated that your request should be tailored to those items which bore some relevance and materiality to the allegations of the Indictment pursuant to Fed. R. Crim. P. 16(a)(1)(E)(i). We are in receipt of your letter dated September 8, 2014, in which you essentially renew, with some modifications, your previously submitted request for discovery that was contained in your letter dated August, 6, 2014.

We have disclosed all known evidence and material involving the charges as they relate to your client's attempt to broker an arms deal with the TNC rebels. This included over 5,000 pages of discovery and two hard drives containing the results of search warrants which were executed on various email accounts as well as at your client's residence. Included in the discovery is the known email exchange between your client and the late Ambassador Stevens. If any other email exchanges are discovered, that relate to this attempt to broker an arms transaction with the TNC rebels, they will also be promptly disclosed. Likewise, if any other new evidence that is material and relevant to this transaction is discovered, we will promptly disclose.

In your current letter requesting discovery, you actually expand the scope of your discovery requests for classified information from four categories to eight. While you do pair down by two the number of primary countries covered in your request from a total of six to four (Libya, Syria, Qatar and the UAE), it appears you have actually expanded the scope of what you are seeking in the form of classified information and records, including a completely open ended request for any and all end use certificates, for any person or entity, for any transaction since 2008, covering any country, for any type of a defense article for which the U.S. Government provided what you term as "covert" support.

Jean Jacques Cabou
Alexander Samuels
September 15, 2014
Page 2

Simply put, we cannot agree that this expanded request for classified information even remotely satisfies any degree of relevancy or materiality under either the standard of Fed. R. Evid. 401 or that of Fed. R. Crim P. 16. We believe your requests are overbroad and not related to the conduct alleged in the indictment. Accordingly, your discovery requests will need to be addressed with the court.

As we have advised, the government is well aware of its discovery obligations and we have conducted an extensive review of information at all relevant agencies of the United States. The government found no information that could be at all relevant to a public authority defense, to include any evidence by any public authority that defendant was authorized to submit to the Department of State, Directorate of Defense Controls, applications containing false end users to obtain an approval/license to broker arms to individuals in Libya. If your client is claiming that he was authorized to submit false end-user documents in this matter, we are requesting that he provide the name of the authorizing individual so that the government may investigate the claim further. Thank you.

Sincerely,

JOHN S. LEONARDO
United States Attorney
District of Arizona



DAVID A. PIMSNER
Assistant United States Attorney

Exhibit B



2901 N. Central Avenue, Suite 2000

Phoenix, AZ 85012-2788

PHONE: 602.351.8000

FAX: 602.648.7000

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Jean-Jacques Cabou
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FAX: (602) 648-7003
EMAIL: JCabou@perkinscoie.com

August 6, 2014

VIA EMAIL

David A. Pimsner
Kristen Brook
U.S. ATTORNEY'S OFFICE
40 North Central Avenue
Suite 1200
Phoenix, Arizona 85004

**Re: Classified Discovery in *United States v. Marc Turi*
Cause No. CR 14-191-PHX-DGC**

Dear David and Kristen:

As you know, we believe the production of classified or potentially classifiable information will be necessary to defend our client, Marc Turi. As you also know, we have filed a motion with the Court to set a pre-trial conference to discuss CIPA issues; Judge Campbell has granted that motion and set a conference for August 22.

Although we have not yet been able to review the discovery you've provided in significant detail, our initial review solidifies our view that classified or potentially classifiable information will be at issue in this case. For example, in his July 22, 2011 interview, Mr. Turi discussed how the "agency" and "chiefs of station" were involved in some of his work. Some of the investigative reports provided in the discovery detail transactions that may have involved work Mr. Turi did with active members of U.S. intelligence agencies. *See, e.g., U.S. v. Turi* 000802.

In light of our ongoing concerns and these facts, we urge you to reconsider your previous position that CIPA procedures will not be required here. In any event, however, in the interests of full disclosure (and hopefully speeding up the process) I wanted to make you aware of the type of information we are seeking. Accordingly, below is our first set of requests for classified discovery. These are by no means exhaustive; I'm sure more issues will arise as we review the

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ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
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Perkins Coie LLP

August 6, 2014
Page 2

discovery and the case progresses. We will supplement these requests as necessary. But I wanted to get you this first request as soon as possible.

The documents that we request are discoverable, among other reasons, under the Fifth and Sixth Amendments to the United States Constitution, *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and Fed. R. Crim. P. 16. We ask that you provide the discovery requested in this letter (including both classified and unclassified responsive documents) and advise us of any specific requests with which the government declines to comply. To the extent the government has already produced documents responsive to these requests, it is not necessary that those documents be produced again. We will be glad to meet with you to discuss the requests and attempt to resolve any differences we might have. These requests do not limit or modify requests already made or to be made in the future.

The documents¹ requested include not only documents in the possession, custody, or control of your office and the Department of Justice, but also (a) documents in the possession, custody, or control of any agency, organization, group, or individual allied with, or assisting in any way, the United States in this matter, including all agencies, departments, agents and/or employees of the United States, the FBI, the CIA, the Department of Homeland Security or the Department of State (collectively the "United States") and (b) all other documents of which your office and the Department of Justice have knowledge and/or to which they have access. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *United States v. Santiago*, 46 F.3d 885, 893-94 (9th Cir. 1995); *United States v. Brooks*, 966 F.2d 1500, 1501-05 (D.C. Cir. 1992); *United States v. Haldeman*, 559 F.2d 31, 74 (D.C. Cir. 1976); *United States v. Poindexter*, 727 F. Supp. 1470, 1477-78 (D.D.C. 1989).

DOCUMENT REQUESTS

While there is no obligation for us to explain here our rationale in seeking the requested documents, in an effort to minimize needless disputes and explain why we so strongly believe the disclosure of classified or potentially classifiable information is necessary here, I do so briefly below. I believe the requested documents are relevant and potentially exculpatory,

¹ The word "Documents" includes all books, papers, letters, correspondence, e-mails, notebooks, reports, memoranda, studies, diaries, notes, messages, computer facilitated or transmitted materials, images, photographs, information in any computer database, audio and video tapes, recordings, transcripts, ledgers, printouts, and all copies or portions thereof, and any other written, recorded, or memorialized material of any nature whatsoever.

As used in this letter, the words "and" and "or" mean "and/or," and the words "includes" and "including" mean "includes (or including) without limitation."

August 6, 2014
Page 3

particularly given Mr. Turi's intent to notice and aggressively pursue a public authority defense in this case. *See* Fed. R. Crim. P. 12.3.²

- 1) Any documents or other evidence relating to instances in which the United States assisted or considered assisting in any way, overtly or covertly, in the transportation, provision, acquisition, transfer, or transport of Defense Articles³ to or from any person, entity, group of people, quasi-governmental entity, or government within the territory of Libya, Syria, Qatar, the United Arab Emirates, Turkey, or Jordan (these countries collectively here the "Covered Countries") within the timeframe of 2010 to the date of this request.

- a. The Covered Countries are included in this request for the following reasons, among others:

- i. Libya, Qatar, and the United Arab Emirates: These are obviously the countries involved in the documents at the center of this case. Additionally, we have a good-faith basis to believe that Defense Articles eventually did covertly enter Libya from Qatar and the United Arab Emirates and that the United States may have been involved.⁴

² We are informed, and therefore believe, that certain documents may be within the personal control of agents and employees of the United States even though not stored in an official repository. For example, "gmails" to or from such people even though not stored on government email servers. These requests specifically include and are not limited to such documents.

³ As used in this letter and any subsequent letters, "Defense Articles" means items included in the United States Munitions List. *See* 22 C.F.R. § 121.1.

⁴ *See, e.g., United Nations Security Council Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya*, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_106.pdf (last accessed Jul. 24, 2014); J. Risen, Mark Mazzetti, and M. Schmidt, *U.S.-Approved Arms for Libya Rebels Fell Into Jihadis' Hands*, New York Times (Dec. 5, 2012), available at <http://www.nytimes.com/2012/12/06/world/africa/weapons-sent-to-libyan-rebels-with-us-approval-fell-into-islamist-hands.html?pagewanted=all&r=0> (last accessed Aug. 5, 2014). Senator McCain has publicly stated that the United States helped arm the Libyan rebels. *See McCain Falsely Claims U.S. Armed Libya Rebels to Make the Case for Arming Syrians*, Think Progress (June 15, 2012), available at <http://thinkprogress.org/security/2012/06/15/500433/mccain-arms-rebels-libya-syria/> (last accessed Aug. 5, 2014).

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Page 4

- ii. Syria, Turkey, and Jordan: We have a good-faith basis to believe the United States was similarly involved in covertly procuring weapons that entered Syria through Turkey and Jordan in an arrangement very similar to the Qatar/UAE/Libya arrangement.⁵
- 2) Any documents or other evidence relating to involvement or contemplated involvement by the United States in any transaction, or series of transactions, discussed in the United Nations Security Council (or its experts, investigators, or staff) relating to that body's *Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya*.⁶
 - a. Any documents or evidence relating to the United States' participation or refusal to participate in that United Nations Security Council investigation.
- 3) All prior approval requests (and subsequent approvals, denials, and RWAs) for brokering activity relating to the Covered Countries for Defense Articles from 2010 to the date of this request.
- 4) Any licenses or other approvals eventually granted for the transactions referenced in Request 3.

The Sixth Amendment ensures Mr. Turi, among other things, a "meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). And the right to due process in a criminal trial "is, in essence, the right to a fair opportunity to defend

⁵ See, e.g., G. Miller & J. Warrick, *CIA Preparing to Deliver Rebels Arms Through Turkey and Jordan*, Washington Post (June 14, 2013), available at http://www.washingtonpost.com/world/national-security/cia-preparing-to-deliver-rebels-arms-through-turkey-and-jordan/2013/06/14/e38dabf2-d522-11e2-a73e-826d299ff459_story.html (last accessed Aug. 5, 2014); M. Hosenball, *Exclusive: Obama Authorizes Secret U.S. Support for Syrian Rebels*, Reuters (Aug. 1, 2012), available at <http://www.reuters.com/article/2012/08/01/us-usa-syria-obama-order-idUSBRE8701OK20120801> (last accessed Aug. 5, 2014); K. DeYoung & L. Sly, *Syrian Rebels Get Influx of Arms with Gulf Neighbors' Money, U.S. Coordination*, Washington Post (May 15, 2012), available at http://www.washingtonpost.com/world/national-security/syrian-rebels-get-influx-of-arms-with-gulf-neighbors-money-us-coordination/2012/05/15/gIQAds2TSU_story.html (last accessed Aug. 5, 2014).

⁶ See *United Nations Security Council Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya*, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_106.pdf (last accessed Jul. 24, 2014).

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against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). The documents requested above are critical to Mr. Turi's exercise of these rights. We look forward to working with you to establish a procedure for, and to carry out, the efficient delivery of the information we have requested here.

Sincerely,

A handwritten signature in black ink, appearing to read 'JJ Cabou', with a stylized flourish at the end.

Jean-Jacques Cabou

JJC:lm

Exhibit C

Jean-Jacques Cabou
PHONE: (602) 351-8003
FAX: (602) 648-7003
EMAIL: JCabou@perkinscoie.com

July 31, 2014

VIA EMAIL AND U.S. MAIL

David A. Pimsner
Kristen Brook
U.S. ATTORNEY'S OFFICE
40 North Central Avenue
Suite 1200
Phoenix, Arizona 85004

**Re: Discovery in *United States v. Marc Turi*
Cause No. 14-cr-00191-1-DGC**

Dear David and Kristen:

As you know I have recently been appointed to represent Mr. Turi. I know that you have already prepared the production of some discovery; the speed with which you did so is much appreciated. In an abundance of caution, however, and pursuant to the Federal Rules of Criminal Procedure, the Due Process Clause of the Fifth Amendment, and other applicable authority, the defendant requests discovery. To the extent the government has already produced documents responsive to these requests, it is not necessary that those documents be produced again. We will be glad to meet with you to discuss the requests and attempt to resolve any differences we might have. We reserve the right to supplement these requests as the case progresses. These requests do not limit or modify requests already made or to be made in the future.

The government's obligation to provide Rule 16 discovery extends to all materials of which the prosecutor knows and to which he or she has access. *See United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989). The prosecutor is deemed to have knowledge of and access to anything in the possession, custody or control of any federal or cooperating non-federal agency participating in the same investigation of the defendant. *Id.* Therefore, please consult with all such agencies in preparing your discovery response.

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Page 2

Consistent with that obligation, the documents¹ requested include not only documents in the possession, custody, or control of your office and the Department of Justice, but also (a) documents in the possession, custody, or control of any agency, organization, group, or individual allied with, or assisting in any way, the United States in this matter, including all agencies, departments, agents and/or employees of the United States, the FBI, the CIA, the Department of Homeland Security, the Department of Defense (including but not limited to the Defense Criminal Investigative Service "DCIS"), and the Department of State (collectively the "United States") and (b) all other documents of which your office and the Department of Justice have knowledge and/or to which they have access. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *United States v. Santiago*, 46 F.3d 885, 893-94 (9th Cir. 1995); *United States v. Brooks*, 966 F.2d 1500, 1501-05 (D.C. Cir. 1992); *United States v. Haldeman*, 559 F.2d 31, 74 (D.C. Cir. 1976); *United States v. Poindexter*, 727 F. Supp. 1470, 1477-78 (D.D.C. 1989).

Pursuant to *Brady v Maryland*, 373 U.S. 82 (1963), *Giglio v. United States*, 405 U.S. 150 (1977) and *United States v. Agurs*, 427 U.S. 97 (1976), the defendant is entitled to discover all information of whatever form, source, or nature which tends to exculpate the defendant, either through an indication of the defendant's innocence or through the potential impeachment of any witness for the government. The defendant's right extends to information that is favorable to him on Guidelines sentencing issues. *United States v. Weintraub*, 871 F.2d 1257, 1264-65 (5th Cir. 1989).

This request includes, but is not limited to, the following:

- The criminal record, if any, of any witnesses whom the government intends to rely upon at trial.
- Any information concerning any government witnesses' history of alcohol or drug abuse or addiction.
- All promises and inducements, formal or informal, written or oral, made by attorneys and/or agents of federal, state, or local government to any witness, or any other party known to the government to any witness or other person with respect to cooperating, providing information and/or testifying in any proceeding related to this case (grand jury or trial), including but not limited to:

¹ The word "documents" includes all books, papers, letters, correspondence, e-mails, notebooks, reports, memoranda, studies, diaries, notes, messages, computer facilitated or transmitted materials, images, photographs, information in any computer database, audio and video tapes, recordings, transcripts, ledgers, printouts, and all copies or portions thereof, and any other written, recorded, or memorialized material of any nature whatsoever.

As used in this letter, the words "and" and "or" mean "and/or," and the words "includes" and "including" mean "includes (or including) without limitation."

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Page 3

- rewards, monetary or otherwise;
 - employment;
 - protection and relocation;
 - the rejection, dismissal, immunization from prosecution or reduction of any federal, state, or local offense charged in the past or present or that might be charged in the future; and
 - reduction of sentence, improvement of custody status or leniency at sentencing by making the witnesses' cooperation known to the prosecution, Court, probation or parole officer, or other federal, state or local agency or jurisdiction.
- Information concerning other cases in which a witness has cooperated with the government in return for any of the above forms of consideration or compensation.
- Any information concerning any prior statements or bad acts reflecting on any government witnesses' character for truthfulness or untruthfulness.
- The names and addresses of all witnesses to the charged offenses whom the government does not intend to call at trial, or whose testimony may be favorable to the defense. *United States v. Cadet*, 727 F.2d 1453, 1468-69 (9th Cir. 1984).
- Any evidence or testimony gathered during the investigation of this case, or during the investigation of other matters involving witnesses for the government in this case, that impeaches or contradicts the testimony and evidence to be offered against the defendant. For example, the defendant requests discovery of conflicting statements of witnesses given to law enforcement and prosecutorial officials.
- Any information concerning any government witnesses' history of psychological, psychiatric or emotional disorders and counseling, which may bear on his or her ability to perceive or relate events accurately and truthfully. This includes, but is not limited to, information on drug, alcohol, or other addiction.
- The defendant hereby demands production of the personnel files of all law enforcement officers and government employees whom the government intends to call as witnesses at trial. Please review those files, and provide me with any information that may be material to the defense, including without limitation,

July 31, 2014

Page 4

evidence of perjurious conduct or dishonesty. *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991).

- Any written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government or any of its agents. Rule 16(a)(1)(A).
- That portion of any written record containing the substance of any relevant oral statement made by the defendant. Rule 16(a)(1)(A).
- The substance of any oral statement made by the defendant which the government intends to use at the trial. Rule 16(a)(1).
- Recorded testimony of the defendant before a grand jury which relates to the offense charged. Rule 16(a)(1)(A).
- All handwritten notes or other rough notes made by government agents while interviewing the defendant. Rule 16(a)(1)(A); *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976).
- Defendant's prior criminal record the existence of which is known, or by the exercise of due diligence may become known to the government, including, but not limited to, photocopy of NCIC or DAC records or a verbatim rendition of its content. Rule 16(a)(1)(B).
- Copies of or an opportunity to inspect and copy or photograph all books, papers, documents, photographs, tangible objects, buildings or places which are within the possession, custody or control of the government or any of its agents, and which are material to the preparation of defendant's defense or to his sentencing under the Guidelines, or which the government intends to use as evidence in chief at trial, or which were obtained from or belong to the defendant. Rule 16(a)(1)(C).
- Copies of or an opportunity to inspect and copy or photograph any results or reports of physical or mental examinations, or of scientific tests or experiments related to or made in connection with, the above-captioned case known to the government, or by the exercise of due diligence may become known to the government. Rule 16(a)(1)(D).
- Notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16. I will

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rely upon that list in determining whether to file any motions to suppress evidence. Rule 12(d)(2).

- A written summary of any expert whom the government intends to call at trial or sentencing, including name, area of expertise, qualifications, opinions, and the basis and the reasons therefore. Rule 16(a)(1)(E). The Advisory Committees' note on this Rule, at paragraph 6, states, in part:
 - The amendment requires a summary of the basis relied upon by the expert. That should cover not only written and oral reports, tests, and investigations, but any information that might be recognized as a legitimate basis for an opinion under Federal Rule of Evidence 703, including opinions of other experts.
 - This information will enable the defendant to determine in advance of trial whether he needs to obtain expert assistance in preparing his defense. *United States v. Barrett*, 703 F.2d 1076, 1081 (9th Cir. 1983); Rule 16(a)(1)(E). Additionally, if the government makes a request under Rule 16(b)(1)(C)(ii), the defendant hereby requests a written summary of testimony the government intends to use under Rules 702, 703, or 705 as evidence at trial on the issue of the defendant's mental condition.
- Reasonable notice of any evidence of "other crimes, wrongs, or acts," or convictions, that the government intends to introduce at trial for whatever reason pursuant to Federal Rules of Evidence 404(b) and 609. Please provide me with the nature of any such acts.
- Pursuant to *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976), please have all government agents, whether federal, state, local or tribal, preserve any and all handwritten notes of witness interviews or investigations for possible use at trial as Jencks Act material, and for in camera inspection by the Court for possible *Brady* material. *Brady v. Maryland*, 373 U.S. 82 (1963).
- Any documents relating to, summarizing, or evidencing the costs of investigation of this matter, including itemized receipts, itineraries, etc. for all travel expenses incurred by employees or agents of the United States in this investigation.
- Any documents relating to, summarizing, or evidencing the role of the FBI, including the names of specific FBI agents, if any, who participated in the assessment of Marc Turi's offer to provide Foreign Intelligence ("FI") information under Part 792.

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- Any documents relating to the requests for prior approval relevant to this case, including, but not limited to:
 - All communications at the State Department - Directorate of Defense Trade Controls (DDTC) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications at the State Department - Bureau of Political Military Affairs Regional Security and Arms Transfers (PM/RSAT) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications at the State Department - Bureau of Near Eastern Affairs (NEA) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications at the State Department - Bureau of Democracy, Human Rights, and Labor Affairs (DRL) - associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications at the Department of Defense (DoD), including but not limited to communications with the applicable DoD desk officer, associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications associated with State Department DDTC Licensing System (Ellie) associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications associated with PM/RSAT former Assistant Secretary of State Andrew Shapiro associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.
 - All communications associated with Director of Defense Trade Controls licensing Kevin Maloney associated with Case Numbers BA-L079-11, BA-L085-11, BA-L110-11, and BA-L189-11 from March to September 2011.

I realize, of course, that it will take some time for the Government and its various agencies to collect this information. I would appreciate you confirming by **August 7, 2014**,

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however, (1) that the Government is seeking the information I have requested and (2) the date upon which I can expect to be provided with this information.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jean-Jacques Cabou', with a stylized, looping flourish at the end.

Jean-Jacques Cabou

JJC:lm

Exhibit D

Jean-Jacques Cabou
PHONE: (602) 351-8003
FAX: (602) 648-7003
EMAIL: JCabou@perkinscoie.com

September 8, 2014

VIA EMAIL

A. William Mackie
Department of Justice
National Security Division
600 E Street, NW
10th Floor - Bicentennial Bldg
Washington, DC 20530

David A. Pimsner
Kristen Brook
U.S. ATTORNEY'S OFFICE
40 North Central Avenue
Suite 1200
Phoenix, Arizona 85004

**Re: Classified Discovery in *United States v. Marc Turi*
Cause No. CR 14-191-PHX-DGC**

Dear Will, David, and Kristen:

As you know, Judge Campbell asked us at the September 3 hearing to provide you with an updated request for classified discovery. Following the hearing, we have again reviewed the relevant authorities governing the scope of discovery, especially in the context of a public authority defense like Defendants' here. We have also continued our factual investigation. Put simply, we continue to firmly believe that a significant amount of classified information must be produced to us by the Government in this case. We are *certain* that discoverable, classified information exists. We are not, of course, certain of the quantum of such information, the exact form of such information, or of its precise location, but we know it exists. And we again respectfully request that it be produced.

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At the outset, it's important to note our belief that the requested documents are discoverable not just under Fed. R. Crim. P. 16, but also *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The discussion here, however, focuses primarily on Rule 16 given its broader reach. Rule 16(a)(1)(E)(i) requires the disclosure of any item "material to preparing the defense." "A defendant must make a threshold showing of materiality, which requires a presentation of facts which would tend to show that the Government is in possession of information helpful to the defense." *United States v. Santiago*, 46 F.3d 885, 894 (9th Cir. 1995) (citation and internal quotation marks omitted). Again, our investigation makes us *certain* that the Government is in possession of such information in this case.

"Materiality is a low threshold; it is satisfied so long as the information" would help the Defendants prepare their defense. *United States v. Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013) (citation and internal quotation marks omitted). Although Defendants must identify how the information is relevant to their defense, "[a] defendant needn't spell out his theory of the case in order to obtain discovery. Nor is the government entitled to know in advance specifically what the defense is going to be." *Id.* at 768. Rather, Defendants need only make a sufficient showing of materiality, a low threshold that the Ninth Circuit has linked to Fed. R. Evid. 401's relevance standard. See *United States v. Stever*, 603 F.3d 747, 753 (9th Cir. 2010) (holding that evidence should have been produced pursuant to Rule 16(a)(1)(E)(i) if it had "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence" (quoting Fed. R. Evid. 401)).

"Information that is not exculpatory or impeaching may still be relevant to developing a possible defense." *United States v. Muniz-Jaquez*, 718 F.3d 1180, 1183 (9th Cir. 2013). In fact, even if the documents requested would undercut Defendants' purported defense, they would nonetheless be discoverable. See *United States v. Doe*, 705 F.3d 1134, 1151 (9th Cir. 2013) ("Even if the documents [requested under Rule 16] caused [defendant] to completely abandon [his] entrapment defense and take an entirely different path, the documents would still have been 'material to preparing the defense' under Rule 16(a)(1)(E)(i)."). "A defendant who knows that the government has evidence that renders his planned defense useless can alter his trial strategy. Or he can seek a plea agreement instead of going to trial." *Muniz-Jaquez*, 718 F.3d at 1183.

Given the facts here, the Ninth Circuit's decision in *Stever* is particularly instructive. 603 F.3d 747. There, the defendant was charged with various crimes relating to growing marijuana. *Id.* at 750. He "sought to defend on the ground that the marijuana growing operation found on an isolated corner of his mother's 400-acre property was the work of one of the Mexican drug trafficking organizations (DTOs) that had recently infiltrated Oregon." *Id.*

Stever filed a Motion to Compel Discovery, seeking "any reports in the government's possession describing the 'characteristics, modus operandi, and other information regarding' Mexican DTOs involved in growing marijuana." *Id.* at 751. In support of his request, he "drew upon news reports, publically available information," and other documents "to argue that

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Mexican DTOs had recently infiltrated Eastern Oregon” and “that the operation on Stever’s property *bore several distinctive characteristics of Mexican DTO operations.*” *Id.* (emphasis added). Stever also proffered an expert who could testify regarding the modus operandi of DTO operations. *Id.* at 752.

The district court denied the Motion to Compel. The Ninth Circuit, however, reversed Stever’s convictions, holding that the district court erred in denying the motion even under a deferential abuse of discretion standard of review. *Id.* at 753. In doing so, the court emphasized the low threshold standards of materiality and relevance.

As in *Stever*, Defendants here have identified a specific defense and have enumerated specific types of evidence material to that defense. Also like *Stever*, Defendants provided in their August 6 letter and provide again below publicly available documents indicating the existence of such evidence. Moreover, as in *Stever*, Defendants here could, as part of a “presentation of ‘facts which would tend to show that the Government is in possession of information helpful to the defense,’” *Santiago*, 46 F.3d at 894 (citation omitted), present or proffer the testimony of highly credible expert witnesses.

As part of the ongoing defense investigation of this case, we have become aware of, and have personally interviewed, multiple individuals with irrefutably credible experience in the business of covert arms dealing for the U.S. Government. Among other material topics, these witnesses could testify that Defendants’ actions here are consistent with a U.S.-backed, CIA-involved, covert transaction. Simply put, whether the United States supported an arms transaction in Libya during the relevant time period, and how it supports covert arms transactions in general, are highly relevant to Defendants’ public authority defense.

With this legal framework and background in mind, Defendants make the following discovery requests. As noted in our previous letter, the documents¹ requested include not only documents in the possession, custody, or control of your office and the Department of Justice, but also (a) documents in the possession, custody, or control of any agency, organization, group, or individual allied with, or assisting in any way, the United States in this matter, including all agencies, departments, agents and/or employees of the United States, the FBI, the CIA, the Department of Homeland Security or the Department of State (collectively the “United States”) and (b) all other documents of which your office and the Department of Justice have knowledge

¹ The word “Documents” includes all books, papers, letters, correspondence, e-mails, notebooks, reports, memoranda, studies, diaries, notes, messages, computer facilitated or transmitted materials, images, photographs, information in any computer database, audio and video tapes, recordings, transcripts, ledgers, printouts, and all copies or portions thereof, and any other written, recorded, or memorialized material of any nature whatsoever.

As used in this letter, the words “and” and “or” mean “and/or,” and the words “includes” and “including” mean “includes (or including) without limitation.”

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and/or to which they have access.² See, e.g., *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *Santiago*, 46 F.3d at 893-94; *United States v. Brooks*, 966 F.2d 1500, 1501-05 (D.C. Cir. 1992); *United States v. Haldeman*, 559 F.2d 31, 74 (D.C. Cir. 1976); *United States v. Poindexter*, 727 F. Supp. 1470, 1477-78 (D.D.C. 1989). We continue to believe that the requests made in our August 6 letter were sufficiently narrow to trigger a production duty under Rule 16. We further believe that the requested information is discoverable under *Brady* and its progeny without any defense request whatsoever. Nonetheless, we have attempted to further narrow our requests in an effort to reach an agreement for now without the need for the court's intervention.

DOCUMENT REQUESTS

- 1) Any documents within the possession, custody or control of the Central Intelligence Agency containing the names Marc Turi or Turi Defense Group. This request includes specifically, but is not limited to:
 - a. Documents held, received, or created by the Near East Division (the "NE Division") of the Directorate of Operations (the Clandestine Service) of the CIA in the NE Division's "Memorandum Database."
 - b. Documents held, received, or created by the Office of Covert Procurement.
 - c. Accounting, banking, or other financial records reflecting or related in any way to the payment of funds to Marc Turi or Turi Defense Group.³
- 2) Any documents or other evidence relating to instances in which the United States assisted or considered assisting in the covert transportation, provision, acquisition, transfer, or transport of Defense Articles⁴ to or from any person, entity, group of people, quasi-

² We are informed, and therefore believe, that certain documents may be within the personal control of agents and employees of the United States even though not stored in an official repository. For example, "gmails" to or from such people even though not stored on government email servers. These requests specifically include and are not limited to such documents.

³ Because Mr. Turi received such funds and because such records are required to be maintained by law, including for the purposes of congressional oversight, we are *certain* that such records exist.

⁴ As used in this letter and any subsequent letters, "Defense Articles" means items included in the United States Munitions List. See 22 C.F.R. § 121.1.

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governmental entity, or government within the territory of Libya within the timeframe of 2010 to the date of this request.

- a. This includes, but it is certainly not limited to, prior approval requests, approvals, denials, Returns Without Action ("RWAs"), licenses, and other approvals granted for any such transaction. It also includes the Covert Action Findings authorizing the program pursuant to which such covert actions were undertaken.
 - b. The basis for this request is a much-more-than-good-faith belief that the United States did covertly assist in the procurement and/or transportation of arms for individuals and/or entities in Libya pursuant to a Covert Action Finding issued by the President.⁵ Defendants have noticed their intent to use a public authority defense. One prong of that defense will be that, during the relevant time frame, Defendants were acting at U.S. Government direction and consistent with U.S. Government interests. The Covert Action Finding(s) in effect at this time, and whether the United States covertly supported the arming of individuals and/or entities in Libya have a tendency to make the facts underlying Defendants' proffered defense "more probable or less probable than [they] would be without the evidence." *Stever*, 603 F.3d at 753 (citing Fed. R. Evid. 401). So does the manner in which that transaction or series of transactions occurred.
- 3) Any documents or other evidence relating to instances in which the United States assisted or considered assisting in the covert transportation, provision, acquisition, transfer, or transport of Defense Articles to or from any person, entity, group of people, quasi-governmental entity, or government within the territory of Qatar and/or the United Arab Emirates within the timeframe of 2010 to the date of this request.

⁵ See, e.g., *United Nations Security Council Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya* (Feb. 15, 2014), available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_106.pdf (last accessed July 24, 2014) ("U.N. Final Report"); James Risen, Mark Mazzetti, and Michael S. Schmidt, *U.S.-Approved Arms for Libya Rebels Fell Into Jihadis' Hands*, New York Times (Dec. 5, 2012), available at <http://www.nytimes.com/2012/12/06/world/africa/weapons-sent-to-libyan-rebels-with-us-approval-fell-into-islamist-hands.html?pagewanted=all&r=0> (last accessed Aug. 5, 2014). Senator McCain has publicly stated that the United States helped arm the Libyan rebels. See Ali Gharib, *McCain Falsely Claims U.S. Armed Libya Rebels to Make the Case for Arming Syrians*, Think Progress (June 15, 2012), available at <http://thinkprogress.org/security/2012/06/15/500433/mccain-arms-rebels-libya-syria/> (last accessed Aug. 5, 2014).

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- a. This includes, but it is certainly not limited to, prior approval requests, approvals, denials, RWAs, licenses, and other approvals granted for any such transaction. It also includes the Covert Action Findings authorizing the program pursuant to which such covert actions were undertaken.
 - b. The basis for this request is largely the same as the basis for Request 2. Publically available materials suggest that Libyan and/or Syrian rebels were armed, pursuant to a Covert Action Finding signed by the President, with the cooperation of Qatar and the United Arab Emirates. If the United States assisted in that effort, and used the same two countries at issue in this case, that has a tendency to make the facts underlying Defendants' proffered defense "more probable or less probable than [they] would be without the evidence." *Stever*, 603 F.3d at 753 (citing Fed. R. Evid. 401). And again, the manner in which any such transaction was conducted, not just the transaction's existence or non-existence, is material to the defense.
- 4) Any documents or other evidence relating to instances in which the United States assisted or considered assisting in the covert transportation, provision, acquisition, transfer, or transport of Defense Articles to or from any person, entity, group of people, quasi-governmental entity, or government within the territory of Syria within the timeframe of 2010 to the date of this request.
- a. This includes, but it is certainly not limited to, prior approval requests, approvals, denials, RWAs, licenses, and other approvals granted for any such transaction. It also includes the Covert Action Findings authorizing the program pursuant to which such covert actions were undertaken.
 - b. The basis for this request is a much-more-than-good-faith belief that the United States covertly assisted in the procurement and/or transportation of arms for individuals and/or entities in Syria.⁶ Publically available documents suggest this

⁶ See, e.g., Greg Miller & Joby Warrick, *CIA Preparing to Deliver Rebels Arms Through Turkey and Jordan*, Washington Post (June 14, 2013), available at http://www.washingtonpost.com/world/national-security/cia-preparing-to-deliver-rebels-arms-through-turkey-and-jordan/2013/06/14/e38dabf2-d522-11e2-a73e-826d299ff459_story.html (last accessed Aug. 5, 2014); Mark Hosenball, *Exclusive: Obama Authorizes Secret U.S. Support for Syrian Rebels*, Reuters (Aug. 1, 2012), available at <http://www.reuters.com/article/2012/08/01/us-usa-syria-obama-order-idUSBRE8701OK20120801> (last accessed Aug. 5, 2014); Karen DeYoung & Liz Sly, *Syrian Rebels Get Influx of Arms with Gulf Neighbors' Money, U.S. Coordination*, Washington Post (May 15, 2012), available at <http://www.washingtonpost.com/world/national-security/syrian->

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transaction was executed in much the same way as the Libya transaction, by using partner countries within the region as middle-men, with the U.S. providing only logistical support. The manner in which the U.S. typically conducts covert arms transactions is highly material to the defense. Here, we have a good-faith belief that evidence exists of one such transaction that bears high levels of similarity to the one alleged in this case.

- 5) Any documents or other evidence relating to involvement or contemplated involvement by the United States in any transaction, or series of transactions, discussed in the United Nations Security Council (or its experts, investigators, or staff) relating to that body's *Final Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya*.⁷ This includes, but it is certainly not limited to, prior approval requests, approvals, denials, RWAs, licenses, and other approvals granted for any such transaction.
 - a. This request may well be duplicative, as this transaction may be covered by Requests 2 and 3. To the extent it is not, however, it is material to the defense for the same reasons identified in those requests.
- 6) Any documents or evidence relating to the United States' participation or refusal to participate in that United Nations Security Council investigation.
 - a. Again, it is material to the defense to know whether the U.S. covertly supported the shipment of arms into Libya, particularly if through Qatar and the United Arab Emirates. Evidence of any participation or refusal to participate in this UN investigation would help aid in the preparation of the defense and, ultimately, would help the jury in this case determine what, if any, involvement the U.S. had.
- 7) Any end user certificates used in transactions from 2008 to present that received covert U.S. Government support where, because of a covert action, the end user listed on the end user certificate is not the end user intended by the U.S. Government or CIA.
 - a. Defendants have a much-more-than-good faith belief, both through publicly available documents and through highly credible investigative interviews, that the U.S. often covertly supports arms transactions in which arms are transshipped through an intermediary and/or where, because of a covert action, the end user listed on the end user certificate is not the end user intended by the U.S.

rebels-get-influx-of-arms-with-gulf-neighbors-money-us-coordination/2012/05/15/gIQAds2TSU_story.html (last accessed Aug. 5, 2014).

⁷ See U.N. Final Report (note 5, *supra*).

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Government or CIA.⁸ Documents relating to those transactions, particularly during the time frame Defendants have been in this business, bear directly on Defendants' proposed defense. The defense is unable to further narrow this request to identify specific transactions (other than those identified in Requests 2-5) as it cannot know of specific deals done pursuant to such an arrangement given their covert nature.

- 8) Any communications or other evidence relating to the Spring 2011 email communications between Defendants and Christopher Stevens.
 - a. Emails to Defendants suggest that Ambassador Stevens intended to take some further action with the State Department regarding Defendants' role in attempting to arm the Libyan rebels. Other evidence confirms that Ambassador Stevens was made aware of Defendants' proposed transaction.⁹ Any subsequent communications within the Government about this transaction (including, but not limited to, Defendants' involvement in it), or other evidence generated as a result thereof, is directly relevant to whether the Government was working with Defendants on any such transaction.

We hope that these further narrowed requests satisfy your concerns and that we can reach an agreement for the production of the requested discovery. Per Judge Campbell's ordered schedule, we look forward to hearing back from you regarding these requests by September 15.

Sincerely,



Jean-Jacques Cabou

JJC:lm

⁸ See, e.g., Ken Silverstein, *Licensed to Kill*, Harper's Magazine (May 1, 2000) (detailing how arms dealer Ernst Werner Glatt worked with the U.S. covertly for decades and frequently was required to use end user certificates stating false end users in such transactions), attached hereto for convenience. Defendants are further prepared, as described previously in this letter, to proffer expert testimony along these lines if necessary.

⁹ See U.S. v. Turi 005769 (6/14/11 email from A. Yfantis to Y. Adam and M. Turi stating that "MR STEVENS THE AMERICAN EMBASSADOR IN BENGHAZI HAS BEEN INFORMED OF THE ARRANGEMENT . . . AND THINGS SHOULD BE OK").

Exhibit E

R E P O R T

LICENSED TO KILL

Shadowing our government's favorite arms dealer

By Ken Silverstein

"Vote! Bah! When you vote, you only change the names of the cabinet. When you shoot, you pull down governments, inaugurate new epochs, abolish old orders and set up new."

—Andrew Undershaft, the munitions magnate of George Bernard Shaw's *Major Barbara*

"Arms dealers provide the grease that makes foreign policy work. If you're going to have a covert war somewhere, somebody has to provide the bullets."

—John Miley, former weapons dealer for the CIA

At the foothills of the Blue Ridge Mountains, about twenty miles south of Charlottesville, sits Nelson County, one of Virginia's most bucolic corners. Unimpeded by a single traffic light, the main thoroughfare is Route 56, a two-lane country road that wends among vineyards, orchards, and farms. The rolling landscape draws plenty of weekenders, who come to take in Crabtree Falls, the highest waterfall east of the Mississippi, and to stop by the Walton's Mountain Museum, which celebrates the series that brought John-Boy and his family to millions of TV viewers.

Despite this nod to good plain folk,

Ken Silverstein is a contributing editor of Harper's Magazine. His last article, "The Radioactive Boy Scout," appeared in the November 1998 issue. His investigation on the arms trade for Harper's has led to a book, *Private Warriors*, which will be published this June by Verso.

Nelson County seems destined to be overtaken by the horsey set and car-pethagging celebrities as they push south into Falwell country. Nelson is still cheaper than Charlottesville or Middleburg, but new money is attracted by the Wintergreen ski resort and spectacular estates such as Level Green, built in 1803 for the Revolutionary War leader Major Thomas Massie, and Bellevette (pronounced "believe it"), constructed fifty years earlier by Charles Rose on land granted to his family by King George II. Across the Tye River from Bellevette lies Markham Farm, a plot of land once held by a granddaughter of Thomas Jefferson's. Markham Farm has changed hands many times, most recently in 1980, when it was bought by a German named Ernst Werner Glatt. He subsequently purchased adjoining lands and turned the estate, valued in 1994 at \$2.4 million, into a modern sheep farm. The entrance to Glatt's farm from Route 56 is announced by a sign that sports a crowned black eagle, a symbol harkening back to imperial Prussia and the past of the farm's owner, who as a teenager fought in the Nazi army.

Given Nelson County's boutique intimacy, most residents have heard of Glatt and his Black Eagle Farm, but few seem to have pondered the sign's meaning or know much about their neighbor at all. And why should they? They might have heard that Glatt spends most of his time in Europe, but that's hardly atypical of the *Town & Country* set. They probably

figured Glatt to be the kind of man who spends money to buy privacy.

In that they are correct. But perhaps it would surprise locals to learn that their reclusive neighbor is one of the most important and enigmatic arms dealers of all time. For more than a quarter century, Glatt has had a hand in some of the most sensational U.S. covert operations. He secretly funneled weapons to a number of American-backed guerrilla forces and client regimes during the Cold War, and was the leading supplier for the Foreign Materiel Acquisition Program (FMA), a still-active "black" U.S. military operation that obtained huge amounts of weaponry from the former Soviet bloc and other "enemy" states. Yet he and his government sponsors have so successfully hidden his activities that Glatt is barely known outside of intelligence circles.

I first came across Glatt when the National Security News Service told me of an unreported 1995 lawsuit between Glatt and a former Pentagon official named Charles Petty. The lawsuit, filed by Glatt at the Fairfax County Courthouse in Virginia and settled on terms sealed from the public, stemmed from a botched effort to sell Hungarian-made mortars to the U.S. Army. During the discovery process, Petty's lawyer asked Glatt to reveal his connections to dozens of people. In addition to many retired and active-duty military officers, these ranged from the notorious—Oliver North and Ed Wilson, the for-

mer CIA agent now serving a fifty-two-year jail term for selling explosives to Muammar Qaddafi and then attempting to kill Lawrence Barcella, the U.S. attorney who prosecuted him—to the obscure—“Loftur Johannesson the ‘Icelander’” and “One Mr. Martin in Miami,” both of whom I later discovered are arms dealers. *Glatt v. Petty* was settled before Glatt responded to the motion for discovery, but the list of names provided a useful guide for investigating his career. I tracked down most of the people named, and the majority were willing to talk to me, as were many in the U.S. intelligence community, though often they asked to remain anonymous.¹

Glatt had never before given an on-the-record interview, but over the twenty months I investigated him we did have several friendly phone conversations and correspondences, though he skirted most of my questions. Not only was Glatt's cooperation limited but his acquaintances often provided confusing and contradictory information. A number of people insisted that Glatt is Austrian, not German. Some denounced Glatt as a Nazi, while others said with equal certainty that he is secretly Jewish. From his current home at the maximum-security Allenwood Federal Penitentiary in

¹ That I encountered such secrecy is hardly surprising. Arms dealers operate within a maze of front companies, aliases, and Swiss bank accounts. Charles Kerr, assistant counsel for the Senate during the Iran-Contra hearings, told me that one weapons broker he interviewed confessed to having “operated in a hall of mirrors for so long that he himself didn't know the difference between fact and fiction anymore.” Furthermore, Glatt's universe is a tiny one, and before long I'd bumped up against its outer limits. Former arms dealer Arif Durrani called me unsolicited; he was “curious.” When I rang Michael Kokin, an American who brokered deals for the CIA during the 1980s, the first thing he said was, “I've been expecting your call”; the second was, “I won't talk with you.” Because Glatt's activities on behalf of the United States remain classified, even friendly sources revealed only a fraction of what they knew. And not everyone was friendly. One person refused to help because, he said, there were people within the national security establishment who would prefer that I not write the story. The CIA would neither confirm nor deny a relationship with Glatt but said that if there were an association, the agency wasn't prepared to discuss it.

Pennsylvania, Ed Wilson sent a cryptic remark: “Yes, I knew Werner. But no one knew Werner well! He is a smooth character.”² Another source claimed that Ernst Werner Glatt is not a real person but merely an alias for a U.S. intelligence agent.

What I discovered about Glatt is nonetheless a remarkable and revealing story. His business holdings

London two blocks from Harrods, an estate in Austria, and another in Luxembourg, his principal residence. His most lavish holding is a vast forested estate near Edinburgh, bought in the early 1980s from a former lord mayor of London; Glatt, an avid equestrian, built an enormous indoor practice ring so that the Scottish weather would not deter



include factories, farms, and real estate spread across Europe, the Middle East, and the United States. In addition to the Black Eagle, he owns three Swiss chalets, an apartment in

² Wilson, who unsuccessfully tried to interest Glatt in selling arms to Libya, says, “I liked him a lot.” Wilson's affection was apparently not reciprocated. Lawrence Barcella, who ironically became Glatt's attorney after serving as the assistant U.S. attorney who put Wilson behind bars, says that Glatt provided the Justice Department with information about Wilson's movements after he had been indicted but remained at large in Libya.

him from riding. His friends and colleagues are just as baroque and diverse—they include European aristocrats, Middle Eastern officials, and Third World defense ministers—and his ties to the American military run deep—he helped fund the High Frontier, the “Star Wars” lobby headed, until his death, by Glatt's close friend General Daniel Graham.

Combined with his military brush cut, tailor-made suits, and dueling scar, Glatt's trade and appetite for

luxury make it easy to typecast him as the kind of shadowy villain who populates the James Bond genre. But the uncomfortable truth is that Glatt and his ilk are simultaneously 007 and SPECTRE's Ernst Stavro Blofeld,³ acting as both government agents and mercenaries with only the "pure motive of pure profit" in mind. "Do you want him to be a hero or a snake?" asked one former intelligence official, "because he's both." The Bond movies are of course a soothingly jingoistic version of the Cold War. If we are truly to understand that era we must examine the men who were the means by which the United States asserted its political agenda on the rest of the world. Glatt had a major role in almost every action the United States orchestrated to fight Communism: the arming of the Contras, the wars in Afghanistan, Somalia, Angola, and on and on. A virtual how-to guide for covert operations, Glatt's tale reveals the relationship between governments and black-market arms dealers, and affords us new insight into American foreign policy since World War II, when anti-Communism, national security, and other dogmas were invoked as rationales for conducting secret wars, supporting military dictators, and ignoring national and international laws, all in the name of democracy.

MERCHANTS OF DEATH

The term "merchants of death" arose in the early 1900s, when the giant munitions makers of the day dispatched agents around the globe to advance their commercial interests. Salesmen sold to both sides of a conflict, bought off government officials, and used their power to increase international ten-

³ Like Bond's archnemesis, Glatt has a soft spot for animals. After Pan Am declined to let his dachshund sit in a first-class seat, Glatt deplaned and never flew the airline again.

sion, this being the most practical means of generating demand.⁴ Basil Zaharoff, the most famous of these merchants, represented several big Western munitions firms and was thought to be the inspiration for Shaw's Andrew Undershaft. (Under-



shaft's motto: "Give arms to all men who offer an honest price for them, without respect of persons or principles.") Zaharoff pioneered the use of credit, thereby paving the way for arms races among cash-strapped nations, and was especially adept at fueling military insecurity. His most noted accomplishment came in the late 1800s, when, as a salesman for

⁴ The spirit of the times was captured in a 1932 letter sent by a Colt Firearms executive to a company representative. "Dear Mr. Foster," the letter opens. "In view of the flareup in some of the Latin American countries, it would be most advisable for you to keep closely in touch with the Colombian, Bolivian, and Peruvian consuls, advising them that we understand their respective countries may be in the market for munitions and it is our desire to extend them every cooperation. As you know, these opéra bouffe revolutions are usually short-lived, and we must make the most of the opportunity."

the Swedish company Nordenfeldt, he sold a submarine to Greece, a country he claimed when it suited him, explaining to a Greek official that he was "first a Greek, a patriot like yourself," and only second a salesman. Whereupon Zaharoff immediately went to the Turks, the Greeks' most hated enemy, and so terrified them with tales of the sinister new Greek submarine that they bought two of their own.

The activities of Zaharoff and other arms salesmen outraged the public, and by 1934 the call "to take the profit out of war" led the U.S. Senate to convene a special committee, which concluded that dealers "produce fear, hostility, and greater munitions orders on the part of neighboring countries, culminating in economic strain and collapse or war." But the subsequent reforms (henceforth all arms makers had to seek an export license from the State Department) hardly put an end to weapons manufacturing, which was an ever more important component of modern economies. As George Thayer wrote in his 1969 book, *The War Business*, "Instead of operating at 10 to 20 per cent of capacity... the free-world's arms industries have been operating since the late 1940s at 80 to 90 per cent of capacity. With governments ensuring high production levels and buying nearly the entire output, arms industries have had no need of Zaharoff-type salesmen who roam the world in search of sales."

Far from restraining the arms trade, government oversight merely institutionalized it. The State Department won't release its list but says that "tens of thousands" of companies and individuals are registered to sell weapons abroad. As Thayer wrote, the officials who supervise the trade "control budgets that would stagger the imagination of a Zaharoff, and they operate in

bureaucracies that are so large, so Byzantine, so powerful that effectively they are beyond the control of elected representatives. . . ."

The bulk of the global weapons business is composed of tanks, planes, ships, and other big-ticket items sold by and to governments. (In 1998 the U.S. government sold \$7 billion worth of weapons—roughly one third of the \$23 billion world market—and delivered another \$10 billion that had been ordered in previous years.) But private arms dealers still come in handy, especially when governments wish to ship matériel discreetly to controversial clients: guerrilla armies, regimes facing international arms embargoes, and states that are notorious human-rights abusers. In this regard, nothing has changed since 1934, when H. C. Engelbrecht and F. C. Hanighen wrote in their famous book, *Merchants of Death: A Study of the International Armaments Industry*, "The international sale of arms . . . has far deeper roots than the 'conscienceless greed' of the arms makers. If all private arms makers decided to discontinue their international traffic tomorrow, a world-wide protest of governments would not permit them to do it."

A 1997 article in *Jane's Intelligence Review* estimates that such black-market sales come to about \$2 billion in lean years and up to five times that much in good ones. Private dealers such as Glatt primarily supply rifles, machine guns, mortars, grenade launchers, antitank rockets, and other matériel used in small-scale wars. And by arming combatants in border skirmishes and civil and proxy wars, they play a far more significant role in geopolitical affairs than is reflected by this relatively small percentage of the global arms trade. To keep such sales out of the public eye, brokers break the paper trail by setting up shell companies and offshore bank accounts, securing needed documents such as end-user certificates—which serve as a pledge by purchasers not to reexport military matériel to third parties, but which, for the right price, some governments are willing to issue regardless of the true destination of the arms—and handling the delicate

task of paying off government officials and customs agents. Most important, middlemen provide governments with "plausible deniability" if a deal is exposed or otherwise bungled. "That old opening to *Mission Impossible* is true," says one arms dealer. "The secretary really will disavow any knowledge of you if things go wrong."

Buyers, especially pariah regimes, also employ brokers. Identifying a source of merchandise, shopping for a good price, and arranging shipping and financing can be complicated, especially if the parties involved prefer to operate in the shadows. "Why do buyers use brokers?" asked Val Forgett, as we sat in the modest offices of his company, Navy Arms of Ridgefield, New Jersey. "For the same reason you use one when you're looking to buy a house."

Forgett decided to become a weapons trader when, as a child, he read about Zaharoff's exploits; during our interview, he pulled his 1948 high school yearbook from a bookshelf and pointed to the words below his graduation photo: "Will design and export arms." Today, Forgett sells mainly to collectors, but he has dealt with controversial regimes, such as Augusto Pinochet's, that were supposedly under international arms embargoes. "Ninety percent of the things that are said about the

wouldn't sell to. "There might be, but I can't think of one off-hand," he replied. "Our government is the biggest arms dealer in the world, and if they issue me a license I'll sell."

UBER ALLES

There are modern arms dealers who have made more money than Glatt, among them Adnan Khashoggi, who for many years represented Lockheed and other U.S. companies that sold weapons to Saudi Arabia, and Sarkis Soghanalian, who began by arming Christian militias in Lebanon at the request of the CIA and was the leading supplier of Saddam Hussein during the 1980s. But these men largely made their money on registered transactions that went through official channels. Glatt, to the best of my knowledge, never engaged in an aboveboard deal. When, as was frequently the case, he arranged for a shipment at the behest of the U.S. government, it always involved a phony paper trail to obscure the true buyer and seller of the weapons. Glatt was a tool that the U.S. government used when it didn't want the public to know what it was doing.

If the one page of information released by Army Intelligence is to be believed, Glatt was born on April 13, 1928, and raised near the small Ger-

ARMS DEALERS LIKE GLATT ARE TOOLS THAT THE U.S. GOVERNMENT USES WHEN IT DOESN'T WANT THE PUBLIC TO KNOW WHAT IT'S DOING

'black market' in arms are the figment of writers' and politicians' imagination," Forgett says. "There are no secrets in this world. Everybody knows what you're doing. If weapons are being 'smuggled,' some government agency is behind it." For example, despite a worldwide embargo, in 1993 \$2 billion worth of arms flowed to Balkan war combatants: Germany helped arm Croatia, Russian entrepreneurs supplied Serbia, and Iran, with help from the United States, funneled weapons to Bosnia. I asked Forgett if there is a regime he

man town of Lörrach, on the edge of the Black Forest. The forest was the setting for many of the traditional German fairy tales that Glatt read voraciously as a child. And perhaps for that reason he identified with an important figure in those legends, Wieland, a magical smith who could fashion elaborate armor, shields, swords, and even metal wings he once used to escape an evil king. A hero is a conqueror, Glatt has told acquaintances, but Wieland is the real professional. His family grew prosperous, Glatt says, in textiles, tires, and real

estate. They were also avidly pro-Nazi during Hitler's years in power. A former Army Intelligence officer who became an arms dealer, and whom I will refer to as "Colonel Ryan," has reviewed Glatt's CIA file. Colonel Ryan said that Glatt's father, an officer in the Nazi army, was badly wounded on the Russian front. Glatt himself joined the Hitler Youth—as did the great majority of young Germans—and served in an air defense unit sent to occupied France. Allied forces captured his unit in the waning days of the war, and at the age of seventeen Glatt spent time in a French POW camp. "He grew up as a thoroughly indoctrinated young German," Ryan says. "Germany's defeat at the end of the war was crushing for him, as was the fact that he lived in an occupied, divided country. He [became] an ardent nationalist with severe right-wing tendencies, but . . . he didn't do any stoking of the ovens."

After returning to Germany, Glatt graduated from the University of Heidelberg, where he studied economics, political science, law, and history and joined one of the university's dueling societies, which were incubators of the German right wing.

"GLATT LIKED THE IDEA OF BRIBING COMMUNIST OFFICIALS TO SELL US COMMUNIST WEAPONS TO KILL COMMUNISTS," SAID GENERAL JOHN SINGLAUB

Glatt sports a scar on his cheek from a match, considered a mark of honor, and still clearly views Fascism as being preferable to Communism. "Since my early days in university, I wanted to know why there are still people which do not hate Communism, for Communism had killed until 1939 [the year Hitler invaded Poland] 40 million people. Until 1989 the Communists killed approximately 180 million people," he wrote me. "I wonder why the mass media keep the 'public' in the dark, and a number of Communists are back in power and politics, and I wonder even more why people ask me why I am anti-Communist."

Originating with Nazi indoctrination, Glatt's virulent anti-Communism was later reinforced by his interaction with the American military and his obsessive love of money. But his acquaintances differ over whether he shows any residual traces of anti-Semitism. The vast majority of people who know him say he doesn't, pointing out that in 1960 he married Vera Gmelin, the daughter of an aristocratic Jewish family that fled Austria when the Nazis annexed it. (Although she converted to Glatt's Calvinist faith, he was detained during a trip to Saudi Arabia when a German competitor informed security forces that Glatt was married to a Jew. Glatt was freed a day later on the orders of his Saudi contact, who was a relative of King Faisal's.) Over the years, Glatt has made significant investments and many friendships in Israel. "He was a *Deutschland über alles* type of guy and would never apologize for what the Germans did," says a retired American general. "But if you asked him if it was a good idea to weed out the Jews, I presume he'd say no." On the other hand, I spoke to a few people who had an experience similar to that of gunrunner John Miley, who recounts meeting Glatt for

stereotype, perhaps because it amuses him and perhaps because, in his business, such a stereotype might sometimes work to your advantage.

BUILDING A GUNRUNNING EMPIRE

In any case, postwar Germany was not the best place for a man with Glatt's ambition to make his mark, and he soon "decided that I needed to study languages if I wanted to succeed in international business." By 1959 he was a student at the University of Geneva, where he met Sam Cummings, the most famous arms dealer of the time. After serving as a gun instructor for the U.S. Army during World War II, Cummings went to work for the CIA. He was sent to Europe with a cover story of purchasing weapons on behalf of a Hollywood studio, but his real task was to buy up surplus wartime stocks, which the CIA funneled to organizations and governments friendly to American interests. In 1953, Cummings launched his own company, Interarms, which supplied weapons for the 1954 CIA-led coup in Guatemala and for pro-U.S. dictators such as Anastasio Somoza in Nicaragua and Rafael Trujillo in the Dominican Republic.

Impressed with Glatt's linguistic skills, Cummings asked Glatt to try to buy weapons in Budapest, which was difficult for Americans to enter. When Glatt was successful, Cummings sent him on other trips to the Eastern bloc, and this hobby soon became a full-time job. Glatt rose quickly within company ranks, eventually becoming a vice president. The two men became so close that Glatt served at Cummings's wedding as his best man. (Or so says Glatt. Cummings has claimed it was the other way around—just one of the ways these two would play out elaborate dominance issues.)

Glatt left Cummings's employ in the early 1970s, but the two men continued to collaborate until later in the decade, when Cummings accused Glatt of cheating him out of a major deal. For his part, Glatt told me that he cut ties with Cummings when the

the first time: "He starts off on this Nazi routine, that the one thing he'd like to see before he dies is the resurrection of the Third Reich," Miley says. "He didn't care about a nuclear exchange between the U.S. and the Soviet Union, because it would create a power void that Germany would fill. Maybe he was just trying to shock me, but it was offensive."

My own sense is that this posturing is too straight out of central casting to be taken very seriously. Certainly Glatt likes getting under people's skin, and he displays the exceedingly black humor common in these circles. And so it makes perfect sense that he would enjoy playing with his own

latter became persona non grata at the Pentagon because of what Glatt called "his love for stupid publicity, [which] caused all sorts of difficulties with the competent authorities in the trade and affected my income." Glatt told me that another reason for Cummings's diminished stature was that in the 1970s he renounced his U.S. citizenship for tax purposes. Given that the CIA has worked with Nazi war criminals and Guatemalan death squad members, I found it hard to believe that this act could get one blacklisted, until several intelligence sources corroborated that it did.

Whatever the circumstances, the falling-out coincided with Cummings's eclipse in the arms world. From the mid-1970s until his death in 1997, Cummings sold mostly to collectors, though he would brag to journalists that he still kept enough weapons on hand to equip forty army divisions. In the end, "Cummings was the P. T. Barnum of the gun business," says Colonel Ryan. "He had a warehouse full of junk—old, antiquated arms—and there were probably enough rifles to outfit a division. But there's no magic in having a warehouse. I could buy rifles in lots of 1,000 today without blinking an eye. All he did was every once in a while dump a few thousand rifles into some African countries that nobody gave a flying fuck about."

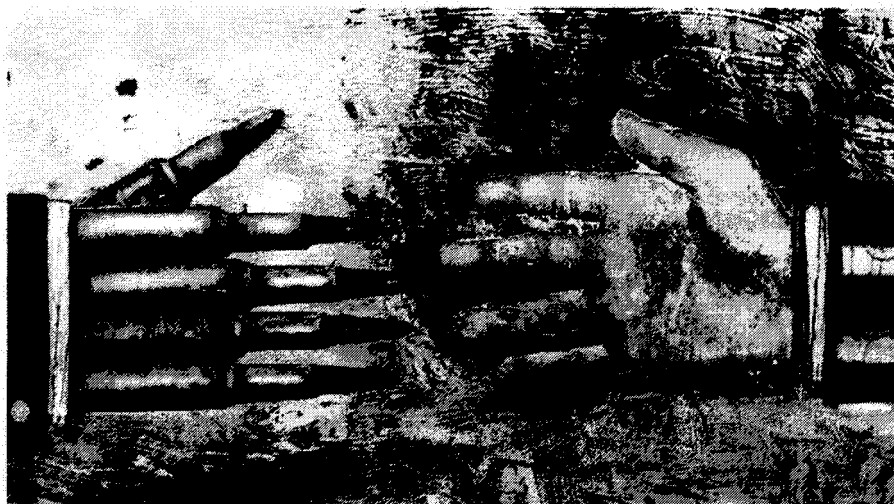
After his break with Cummings, Glatt became obsessed with outdoing his former employer. Like Cummings, Glatt got into the business of refurbishing used weapons and for a time was a co-owner of a company called Collector's Armoury, in suburban Virginia. Cummings had a huge farm in Middleburg,⁵ so Glatt bought the Black Eagle. "He often

⁵ It was there that in 1997 Cummings's daughter Susan killed her Argentinean polo-player boyfriend Roberto Villegas with a Walther P1. Prosecutors claimed that she shot him four times as he ate a croissant, but her lawyer (best known for defending Lorena Bobbitt) persuaded the jury that it was self-defense. Convicted of voluntary manslaughter, Cummings received sixty days in jail and a \$2,500 fine.

said he wanted above all else to be bigger in the arms business than anyone else, particularly Sam Cummings, so that one day the West German government would call him to Bonn and offer him the position of defense minister," says a former business partner. The call from Bonn never came, but by the late 1970s Glatt was known as one of the top international arms dealers.

It was a marvelous time to be in the arms business. After selling for years almost exclusively to close al-

brought Pinochet to power, its attempt to assassinate Fidel Castro, and other embarrassments—left the CIA badly uninformed about the international arms market. "Turner fired the old boys, and they were the memory bank," says Vietnam veteran John Miley, who in 1979 became a junior partner to Loftur Johannesson ("The Iclander" from Petty's list) after having served as an assistant army attaché to the American Embassy in London. "The new boys couldn't find their names in a telephone book."



lies, the United States had begun offering up sophisticated arms to Third World countries as a means of winning support in the Cold War. Buyers were also plentiful. In 1973, OPEC raised oil prices by 70 percent, and a number of once poor countries were awash in "petrodollars," great quantities of which were recycled back to Western countries via arms purchases. The American government's sales soared from less than \$5 billion in 1970 to \$27 billion in 1982 (figures adjusted for inflation).

A proliferation of U.S. covert operations in support of anti-Soviet guerrilla groups brought about a simultaneous boom in the black market. Private weapons brokers were in great demand, especially after CIA Director Stansfield Turner began dismissing some 800 agents in mid-1977. The firings—which came in response to revelations about the agency's involvement in the Chilean coup that

Miley now lives in suburban Tampa, and we spent the better part of two days going through old files in his small study, where a solitary air purifier was hopelessly overwhelmed by the cigarettes Miley ferociously consumed. Once Miley armed revolutions; today he publishes a community newsletter and, like virtually every former gunrunner I met, dreams of writing his memoirs. He told me how Glatt would sometimes team up with Johannesson, a former commercial pilot and Red Cross flyer who ran a Panamanian-registered shell company called Techaid International out of an eighth-floor office at London's Roebuck House. One of Techaid's most lucrative operations came in 1980, when Miley and Johannesson supplied the CIA with rifles and other weapons for anti-Communist guerrillas in Afghanistan. The CIA could, of course, acquire all the American-made

equipment it desired, but for covert operations the agency preferred Soviet matériel. Not only was it cheap and of high quality but its use obscured American fingerprints. Carrying Russian equipment also allowed U.S.-backed groups to rearm themselves on the battlefield with weapons captured from Soviet-supplied opponents. "You're not sending Fedex," a U.S. Special Forces veteran patiently explained. "Shipping routes are often difficult, and you might not be able to send in American weapons whenever you want."

One of the perverse secrets of the Cold War was that, if properly greased, Eastern bloc officials were more than willing to sell Russian equipment to arms dealers working with the West. Russia's allies were so desperate for hard currency that such sales were frequently approved at the highest levels of government, even when it was obvious that the matériel would end up in the hands of anti-Communist armies. No one was better at quietly tapping into Soviet bloc armories than Glatt, who had worked extensively in Eastern Europe during his years with Cummings. And as a European, Glatt was exempt from the Foreign Corrupt Practices Act, which prohibits Americans from bribing foreign officials. "He liked the idea of bribing Communist officials to sell us Communist weapons that could be used to kill Communists," retired U.S. General John Singlaub, who worked with Glatt in the 1980s, told me. "He thought that was neat."

Ready access to Soviet equipment and exemption from American laws also made Glatt a valuable source to the Foreign Materiel Acquisition Program, the "black" operation run by the three military services and the Defense Intelligence Agency. Unlike the CIA, which passed Russian matériel on to its Third World allies, the services used Eastern bloc equipment to test against their own equipment and design countermeasures. "What Glatt [along with other U.S.-linked dealers] was able to do just boggles the mind," says a former CIA official. "They were dealing with Communist officials at the highest levels and getting factory-

fresh weapons out of the Eastern bloc. There was nothing money couldn't buy."

Indeed, it was Glatt's great wealth, which grew by leaps and bounds as he prospered in the arms trade, that often gave him a leg up on his rivals. Colonel Ryan recalls that he once had a jump on a deal but didn't have sufficient funds to secure a \$7 million letter of credit needed to close it. As Ryan began the process of arranging a bank loan, Glatt used personal funds to secure a letter of credit, and the weapons in question disappeared from the market. Money was also vital in obtaining an end-user certificate showing a false destination—a piece of paper essential to any secret-weapons transaction. Viennese arms dealer Heinz Baumann said the going rate was around \$50,000 and fondly remembered the flexibility of Peruvian officials in supplying this vital document. "If all the end-users issued over the years by Peru were legitimate, the country would have a bigger army than the United States," he said. A retired CIA agent waxed nostalgic over Chad in the same regard. "The country was poor, the government corrupt, communications almost nonexistent, and for a long time the Soviets didn't have representation there," he said. "It was an ideal situation." Glatt is said to have secured end-users from a variety of Third World countries, including Syria, Nigeria, and Oman, which was more or less run as a subsidiary of Western intelligence services.

Beyond that, Glatt's success stemmed from a keen intellect, a powerful personality, a fiercely competitive business drive, and what several arms dealers described as "steel nuts."

HOW THE WEST WON SOMALIA

Glatt's first major operation for the United States, and one that made him a small fortune, involved a 1977 deal to arm Somali dictator Muhammad Siad Barre. That year, Somalia and Ethiopia went to war over the disputed Ogaden region, a desolate stretch of desert lying between the

two countries. Siad Barre had been the Soviet Union's closest client in Africa, but Moscow decided to back Ethiopia—which had been in the American orbit until a 1974 left-wing military coup—in the Ogaden conflict. The Carter Administration officially declared that it would play no part in the war, but the Pentagon, promising weapons and economic aid, quietly encouraged Siad Barre to break with the Soviets. "The Carter government clearly understood that the Horn of Africa was endangered," Glatt wrote me. "The situation in Iran had just started to worsen as well, and the support of Somalia became a necessity."

Fearing that the still sharp memories of Vietnam might provoke public opposition if U.S. involvement was exposed, the Pentagon gathered a web of foreign players to handle the deal. The Saudis, who frequently supported American covert activities, picked up the tab for the operation, which was coordinated by Glatt and ICW Systems, a private Swiss arms firm. Glatt, who had a personal relationship with the Somali defense minister, was in charge of securing the needed weapons, which he got from Technika, Hungary's state-owned arms company. He presented Hungarian officials with a fake end-user certificate showing that the arms were destined for Nigeria, which then had close relations with the Soviet Union.

Charged with moving the arms to Africa, Loftur Johannesson hired his friend Hank Warton, a freelance adventurer who owned the three Boeing 707s that carried the weapons from Hungary to Somalia. A German Jew, Warton fled the Nazi regime and joined the U.S. Army. After the war ended, he obtained a pilot's license under the G.I. Bill, and for the next two decades, until his doctor grounded him following a heart attack, Warton was almost always in the air. In the mid-1960s, he gained a certain notoriety when he ferried food and weapons to the Ibo tribe after it seceded from Nigeria and declared the independent state of Biafra. The Nigerian government ended the rebellion by cutting Biafra's links to the outside world—it

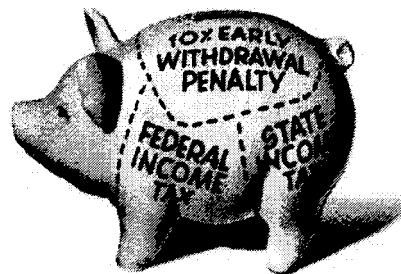
put a \$250,000 bounty on Warton's head for running the blockade—with the result that a million people died from starvation and disease.

Now eighty-three, and still disabled from a crash landing he once made in Cameroon, Warton recounted his role in the Somalia episode as we sat in his apartment overlooking Miami Beach. Warton supplied the planes and rounded up crews to fly them (including Larry Raab, a retired U.S. airman; Alberto Alberty, a Cuban exile who helped lead the Bay of Pigs operation; and Bill Lear Jr., son of the inventor of the Learjet). "The crews were mostly Americans, and they weren't allowed to go to Budapest, which was behind the Iron Curtain and off-limits," Warton recalled. "Glatt said not to worry because it was all sanctioned by the CIA and was basically a CIA operation." Between runs from Budapest to Jeddah—where the Saudis let them refuel—to Mogadishu, the pilots stayed in Salzburg,⁶ where Glatt put them up at the Hotel Vollerhof. Between August and December of 1977, Warton's crews hauled 580 tons of weapons on twenty-eight separate flights to Mogadishu.

All went smoothly until a feud erupted between ICW and Glatt over dividing the profits. Like most arms dealers, Glatt was an ardent practitioner of what one broker calls the trade's First Commandment: Fuck Thy Neighbor. When the Swiss company tried to squeeze him out, Glatt leaked details of the airlift to newspapers in Switzerland and England, and the ensuing publicity shut the operation down. Still, from the U.S. perspective the operation was a rousing success. Siad Barre gave the United States rights to highly desirable naval and air bases. Things didn't turn out as well for Somalia itself. Ethiopian troops decimated Siad Barre's forces, inflicting some 100,000 civilian and military casualties. The United States maintained support for the dictator, and all the weaponry that poured into

⁶ Glatt attends the Salzburg Mozart festival every year; his wife's family helped found the festival, Glatt says, and at one time owned 80 percent of the librettos of another great Austrian composer, Johann Strauss.

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Somalia destabilized the country, which fell into a state of complete anarchy following Siad Barre's overthrow in 1991, which coincided with the end of the Cold War. Despite the Bush Administration's brief and disastrous intervention in Somalia the following year, the country no longer holds any interest for the United States. "The thing about Somalia," an unnamed "regional analyst" told the *Washington Post* in 1998, "is they really don't get the fact that nobody gives a shit about them anymore."

DEALING WITH THE CEAUȘESCU

Somalia was such a success that Glatt and Johannesson teamed up to acquire weapons for the Foreign Materiel Acquisition Program. The FMA dates to 1973, when the Israelis captured large quantities of Soviet equipment from Egypt and Syria during the Yom Kippur War. Grateful for the help President Nixon had provided to Israel, Prime Minister Golda Meir decided to share the captured weapons. The Pentagon concluded that it needed a steady supply of Russian arms to test U.S. weaponry, and the FMA was born.

Johannesson had already made one deal for the FMA, and perhaps for that reason, when he and Glatt teamed up in 1979 to acquire Russian armored personnel carriers from Romania, Techaid's London office was their center of operations. Their secretary was Nini Baring, whom associates recall as the estranged wife of an heir to the Baring Bank fortune. For transportation, Techaid sometimes turned to Farhad Azima, an Iranian exile who ran a CIA-linked airline out of Kansas City. (Azima later became a large donor to the Democratic Party, thereby winning himself three White House coffee klatches in 1995 and 1996.) Anthony Sykes, who ran in royal circles thanks to his marriage to the sister of the Duke of Devonshire, sometimes traveled abroad to meet with potential customers. So, too, did Clyde Ferguson, who'd served as a deputy assistant secretary of state for African affairs

during the Nixon years and, following his brief career in the arms trade, became a Harvard law professor specializing in international human rights. An equally exotic cast of characters occasionally dropped by Techaid's offices in hopes of drumming up deals of one sort or another, not all of them involving arms. Of particular note was Sheila Petrie, a one-time burlesque dancer who had access to a small cargo plane and was running whiskey to Idi Amin, to whose regime she also sold French locomotives. "Do you have a good impression or a bad impression of Idi Amin?" she asked during my initial call. "Because my experience with him was very good."

This was the first major deal that Western arms dealers made with Romania, and it set the tone for those that followed. Transactions generally required bribing the brothers of the country's dictator, Nicolae Ceaușescu: Marin, who headed the Romanian trade mission in Vienna until 1989, when he committed suicide after Nicolae was overthrown and murdered; and Ilie, who served as deputy defense minister until being incarcerated in Bucharest. Nicolae Ceaușescu often took a cut himself. As a result, millions of Pentagon dollars found their way into Swiss bank accounts controlled by the Ceaușescu family.

In this case, according to a senior military official who read the relevant intelligence reports, Glatt paid off Marin Ceaușescu, the Peruvian generals who supplied a bogus end-user certificate, and officials aboard the *Klek*, the Yugoslav passenger freighter that picked up the Soviet personnel carriers at a Romanian port. The *Klek* headed for America, where first the passengers were supposed to disembark and then the vehicles would disappear into the hands of army officials, bound for a military base in Charlottesville, Virginia. But when the vessel stopped at a navy facility in Earle, New Jersey, the vehicles were unloaded before gaping passengers, who were furious about being delayed. Some talked to the press, and an Associated Press story reported: "In a move tinged with mystery, the U.S. Army has ob-

tained some new Communist Warsaw Pact military equipment through a private company whose identity is being kept secret." Even worse, one passenger took a picture of the carriers that somehow got into the hands of Eastern bloc officials. "Heads probably rolled in Romania, but the vehicles finally ended up in Charlottesville," recalls the military official. The foul-up created a flap at the Pentagon and led to a bitter split between Johannesson and Glatt when the inevitable dispute arose over the division of spoils.⁷

MAN ABOUT GEORGETOWN

Somehow the fallout from the *Klek* didn't taint Glatt. Having established Romania as a major source of Soviet weaponry, he soon became the darling of the U.S. military. He established close personal friendships with a number of high-ranking military officials, hosting some at the Black Eagle or at his European estates. Over the years, Glatt conducted business of one sort or another with various retired military officers and spooks, among them General John Singlaub and General Ed Soyster, a former director of the Defense Intelligence Agency. One intelligence officer's daughter became the godmother to one of Glatt's grandchildren. Through his friendship with General Daniel Graham, Glatt helped the daughter of a retired general get a job at the High Frontier.

Nevertheless, he was not universally admired. "I'm no Pollyanna," says one former military officer. "You've got to deal with people you wouldn't want as friends. I've done a

⁷ The arms trade is marked by an atmosphere of paranoia and greed, and business partnerships are frequently short-lived. "There are a lot of bribes paid, so it's hard for one partner to know the real expenses being paid by the other partner," says Miley. "You may say you paid \$250,000 in bribes and you may even have a check stub to prove it, but the guy you wrote it to gave you a kickback of \$100,000." After splitting with Glatt, Johannesson developed excellent contacts in the East German Stasi. He became a top supplier to the FMA, and in 1987 bought a dozen T-72 tanks for the CIA. With his earnings he bought a home in Barbados and an estate on Maryland's Eastern Shore that was previously owned by a member of the Dupont family.

lot of work in intelligence and I accept that. But Glatt's political views were repugnant to any decent human being." Another says, "Arrogant. Dictatorial. Stubborn. Go down the list of all the endearing qualities of the German people and Glatt has them."

By the time Ronald Reagan took office in 1981, however, U.S. intelligence agencies were fighting to court Glatt. (Army Intelligence won out and became his main handler.) That year, the Pentagon threw a birthday party for Glatt at Washington's George Town Club,⁸ an exclusive private club where government insiders and prominent locals discreetly gather to discuss affairs of state. Held on the same night that then vice president George Bush was feted in another part of the club, Glatt's birthday party was a heady affair, hosted by club cofounder Milton Nottingham—a friend and sometime shipping agent for Glatt—and attended by senior intelligence officials, generals, and bankers who laundered money for the Pentagon's "black" programs. The George Town Club is secretive (membership is usually revealed only in one's obituary), but Colonel Ryan, who attended the party, describes the club as elegant yet reserved. "It bespeaks good taste, power, and sophistication. . . . There are no Robert Hall suits to be found anywhere."

On several occasions, I spoke with Ryan at his Washington-area boutique-weapons firm; the nondescript office was notable only for a sign-in sheet that asks visitors to declare if their appointment is of a classified nature. "There were some people who felt Glatt was not a nice man. But who cares?" he told me. "Western civilization required his services." Didn't anyone object to his choice of the Black Eagle—a symbol of Nazi Germany—as a name for his Virginia property? I asked. Not at all, Ryan replied: "Glatt was viewed as a

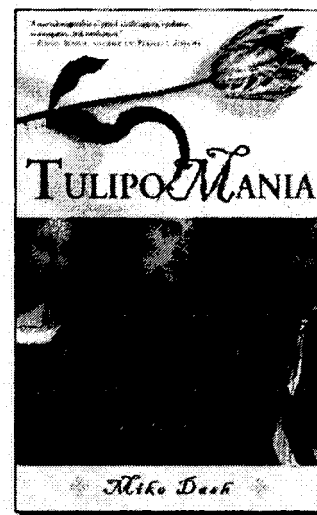
source, potentially our most lucrative source, of Russian arms. We weren't considering him for citizenship, we were hunting for Soviet weapons that had great military value to the United States. The more virulently right-wing he was, the more we felt comfortable with him, because we knew he wouldn't deal with the Russians. We weren't running a de-Nazification program. If he wanted to call his farm the Black Eagle, that was his business. We weren't going to tell him what to name his property."

Ryan's point is logical, but such ends-justify-the-means paternalism has also led U.S. intelligence agencies to hire assassins, rig elections, and arm fanatical guerrillas. "Governments need gunrunners and arms dealers because they don't want to put the question of whether the cause they are supporting is acceptable to their own populations," says Jack Blum, former special counsel to the Senate Foreign Relations Committee. "To me this is disdain for the democratic process. If they believe in the cause they should be willing to face losing the next election." But why run that risk when you can wrap yourself in the flag and claim to know what's best? Arms dealers justify their actions with the same sour mix of pragmatism and patriotism as intelligence operatives (and, given the revolving door between the two professions, the distinction seems mostly semantic). Governments sell some 90 percent of the world's military arms, they point out; besides, "guns don't kill people"—a philosophy that evidently remains just as soothing when writ large. And when you're operating at the behest of the U.S. government, you can also take additional comfort in the "I was just following orders" defense. But as Dr. Daniel N. Nelson of the Marshall Center points out, "No one who transfers weapons across borders can excuse or rationalize his activity on the basis of presumed governmental approval. The people who profit bear the burden of their own defense. If I sell you a weapon to kill someone—knowing that you will kill with it—I cannot create a case for my normative exoneration based on govern-

⁸ The club was founded in 1966 by power brokers such as Robert Gray, head of Hill & Knowlton; FDR aide Thomas "Tommy the Cork" Corcoran; and Tongsun Park, later revealed to be a South Korean agent who'd paid members of Congress some \$800,000 to influence policy on Korea.

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mental stupidity or collusion. When you sell instruments of death, you deal in death."

MAKING THE WORLD SAFE FOR CAPITALISM

The American military intelligence community, however, perceived the Communist threat to be so great that it was willing to set aside almost any moral qualm or pesky law to combat it. With ICBMs being paraded through Red Square, the American public was so terrified by the prospect of nuclear war that it paid little attention to the regional wars through which the United States and the Soviet Union fought by proxy. According to a 1984 CNN documentary made on the arms business, of the 160 countries then in the world, the United States was arming (directly or through men like Glatt) 130 of them, and 40 wars were being waged.

Ronald Reagan's CIA director, William Casey, greatly expanded the scope of government-run covert actions. The agency's support for the mujahedin rebels in Afghanistan, which started under Jimmy Carter, grew to become a multibillion-dollar effort. The United States also ran huge programs in support of forces seeking to topple left-wing governments in Nicaragua and Angola. Directly or indirectly, Glatt had a hand in arming all three of those guerrilla groups. "I realized that the monolithic bloc of the so-called Soviet empire showed big cracks which were beyond repair. . . . As a student of history who knew what Communism means, I wished to work on the widening of the cracks," he wrote me.

It was also a good business opportunity. In the case of Angola, Glatt purchased Soviet weapons for South African military officials, who in turn passed the matériel on to UNITA, a right-wing guerrilla group led by Jonas Savimbi. (The CIA also supplied Savimbi and was surely aware of Glatt's activities.) Glatt insisted to me that he did not arm the fundamentalist Afghan rebels, who were fighting a pro-Soviet regime as well as Russian troops sent by Moscow to support it. "With the mujahedin in

Afghanistan I never had any dealings," he wrote. "It is my understanding that this . . . was done by professionals in this special type of business." While technically correct, I later learned that the reply was a classic Glatt feint. According to at least three intelligence sources, Glatt bought huge quantities of weapons for the mujahedin—land mines, grenades, rifles, machine guns, and other small arms—from CENZIN, the Polish state arms agency. However, his client was not the mujahedin but U.S. Army Intelligence, which turned the matériel over to the CIA, which in turn transported the weapons to depots the agency set up in Pakistan. From there, Pakistani agents sent Glatt's provisions across the border into Afghanistan for distribution to the guerrillas.

Glatt's biggest find for the mujahedin were hundreds of Russian-made Strela-1 shoulder-launched surface-to-air missiles. Glatt arranged for a Polish plane to carry the Strelas to a military airstrip in Oman, where it was met by an American plane, which then departed for a U.S. naval base at Diego Garcia in the Indian Ocean. From there, the Strelas were shipped to the CIA's depots in Pakistan. The mujahedin used the Strelas against helicopter gunships flown by Soviet pilots, and although they weren't nearly as effective as the American-made Stingers the CIA began sending in 1986 they prevented pilots from acting imperviously. "We wanted to see the Russians get their asses kicked, and it was demoralizing as shit to have your own weapons being fired at you," says a person directly involved in the Strela deal.

GOD'S MIGHTY TEAM

In the summer of 1987 the Iran-Contra hearings were broadcast on national television, and not since 1934 were the merchants of death on such public display. Glatt had, of course, played a part in the Iran-Contra affair, though so sensitive was his role that the FBI took his testimony in secret. Glatt's involvement came about through his association with eccentric former

beauty queen Barbara Studley. Then a right-wing radio host in Miami, Studley had gathered archconservative military and political leaders to establish a Washington-based arms company called GeoMiliTech Consultants Corporation (GMT). Her board members and employees included General Singlaub, head of the World Anti-Communist League; John Carbaugh, a top aide to Senator Jesse Helms; and Robert Schweitzer, an army general who supervised Oliver North at the National Security Council until he was fired in 1982 for declaring to a reporter that the Russians were preparing to invade Poland. In his Iran-Contra deposition, Schweitzer said the real meaning of GMT's initials was "God's Mighty Team."

Within GMT, Studley was known by the code name of "Cleo," as in Cleopatra, and Glatt—"The Baron"—was her arms dealer of choice. (In internal memos I obtained, GMT dubbed rocket launchers "mothers" and rockets "children.") Through Glatt's longtime financial adviser, Eddy Maisonneuve of the Banque Nationale de Paris in Geneva, Studley set up a Swiss account to handle GMT's funds.

GMT was one of the three important suppliers to the Nicaraguan Contras, the other two being The Enterprise of Oliver North and retired Air Force major general Richard Secord, and the Honduras-based Arms Supermarket run by Ronald Martin, the CIA-linked arms dealer based in Miami who was on Petty's list. Studley declined a request for an interview, but I did speak with Singlaub at the 1998 *Soldier of Fortune* convention in Las Vegas, an annual affair at which the retired general is a perennial VIP. The four-day event culminated at a shooting range on the outskirts of Las Vegas, where conventioners machine-gunned and dynamited a white van with the words "Bin Laden's Explosives Express, Worldwide Deliveries" painted on its side. Peter Kokalis, an SOF editor, emceed the assault, telling jokes—What do you get when you cross a bisexual Communist with a congenital liar? Answer: Chelsea Clinton—and berating reporters in

attendance for being a bunch of pansy-assed liberals.

Inside the vast exhibition hall rented by SOF, exhibition booths offered a vast array of guns and ammunition, photo ops with women clad in American-flag bikinis, and spacious underground bunkers where buyers could comfortably ride out the apocalypse. I caught up with Singlaub as he signed copies of his 1991 autobiography, *Hazardous Duty*. I had read Singlaub's book, which mentions a Western European arms dealer referred to only as "Sam." Yes, Singlaub conceded, Sam is a pseudonym for Glatt,⁹ who came to GMT on the recommendation of two old friends—General Daniel Graham, who had held top positions at both the CIA and the DIA; and CIA Director William Casey. Singlaub first met Glatt in early 1985, at the Palm Court of Washington's Sheraton Carlton Hotel. According to *Hazardous Duty*, Studley and a top Contra official, Adolfo Calero, were also in attendance:

"As he perused the shopping list I had drawn up with [Contra leader] Enrique Bermudez, Sam nodded calmly and made notes on a pad with a gold mechanical pencil. He might as well have been pricing out a plumbing job. Sam looked up and said he could procure brand-new, high-quality Polish AKMS-47 assault rifles in quantity for only \$135 each ...

"Barbara and I looked at each other. We had learned that AK-47s normally retailed for between \$200 and \$300 on the international arms market. These were the lowest prices we had ever heard quoted.

"This is new equipment?" I asked.

"New from the factory," Sam assured us. "This is even better than Soviet manufacture."

"Why are the prices so low?" Barbara asked.

"Sam shrugged. 'I'm a good client.'"

The deal under discussion came to-

⁹ Singlaub also protected Glatt's identity before the Iran-Contra committee. Asked by House investigators to identify his arms dealer, Singlaub spelled out his name as C-L-O-T-S. Later, confused investigators asked if Singlaub knew the dealer in question as Werner L-O-T-T. Singlaub now spelled Glatt's name as K-L-O-T-Z. No one noticed the obfuscation.

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gether in May of 1985, seven months after Congress passed the Boland Amendment forbidding any U.S. aid, direct or indirect, to the Contras. Glatt obtained a fake end-user certificate—from Syria, Singlaub recalled—and lined up a Greek freighter that docked in Gdansk to pick up the matériel. From there, the weapons (in addition to AK-47s, there were machine guns, grenade launchers, and shoulder-fired anti-aircraft rockets) were delivered to Contra bases in Honduras. Calero subsequently described the shipment as the “biggest and best” deal arranged for the Contras by the private arms suppliers.¹⁰

Glatt's low prices threatened The Enterprise's profits, and Oliver North went to Casey and blackballed Glatt with a bogus story that the German was a Soviet double agent. (North told me he'd never heard of Glatt, which is hard to fathom given that Glatt's name appears several times in North's infamous National Security Council diaries.) Ron Martin was also displeased. He swiftly dispatched an employee to make an unannounced call at the Polish Embassy in Washington; to the horror of officials there, he demanded that the Arms Supermarket be offered weapons at the same prices. “It took all of Sam's considerable diplomatic finesse (and probably a fair amount of hush money) to calm down the offended government officials,” Singlaub writes in *Hazardous Duty*.

The following August, Glatt and Singlaub offered a surprising deal to CIA Director Casey. This was at a point when Congress had restored funding for the CIA's Contra effort, but the appropriated moneys would not be available for several months. So Glatt agreed not only to sell the CIA millions of dollars worth of Soviet arms from Poland but also to float the agency money to pay for the merchandise. “Our banker [Maison-neuve] is prepared to fly to Washing-

ton and take care of the Letter of Credit directly with your designated bank,” Singlaub informed Casey in a confidential letter. “This eliminates all bank tested telexes or paper trails. The loan can be in the name of a corporation of your choice. It is not necessary for our bank to know your identity, only your banker. Our bank has been exceptionally discreet in processing our transactions in the past. At the close of the transactions, the bank file will only show corporations, numbered items and amounts. No reference will be made of... the individuals or actual organizations involved.” Casey turned down the offer—perhaps because of North's efforts to discredit Glatt—and GMT's trail in the Iran-Contra affair goes cold at this juncture.¹¹

For the American military, all of the operations Glatt supported were huge successes, especially Afghanistan, where the mujahedin's defeat of the Red Army accelerated the breakup of the Soviet Union. As with Somalia, however, there was a significant problem of blowback. In 1998, President Clinton ordered cruise missile attacks on what he described as a terrorist training camp run by Osama bin Laden in a remote corner of Afghanistan. Other mujahedin supporters have not only been responsible for acts of terrorism around the world but are busily destabilizing Pakistan, thus increasing the likelihood of nuclear war on the subcontinent. In Angola, the CIA's old ally Jonas Savimbi was defeated in a 1992 presidential election. He refused to honor the results

and has again taken up arms against the country's government. Ten years after the Sandinistas were ousted in elections in Nicaragua, that country has yet to recover from the U.S.-sponsored war. It is the second poorest nation in the Western Hemisphere, and its current president is an old crony of the Somoza dictatorship. Having armed dubious allies in the name of preventing the spread of Communism, we find that those allies have often turned against us and, in some cases, turned the very weapons we supplied upon us.

BOMBING THE outhouse

If Glatt was an important supplier of weapons to Reagan's “freedom fighters,” he was more vital yet in securing Russian weapons for the Foreign Materiel Acquisition Program. Other than a few stories in the *Washington Post*—which didn't mention the name of Glatt or any other weapons dealer who supplied the Pentagon—the program's history is all but unknown.

The Defense Intelligence Agency and the military services would give shopping lists to a small group of Beltway firms with strong ties to intelligence agencies: BDM International, which was bought in 1997 by defense contractor TRW; Vector Microwave Research Corp., whose executives included Lieutenant General Leonard Perroots (Retired), a former director of the DIA; and Electronic Warfare Associates, whose board of directors included, until his death in 1996, former CIA director William E. Colby. The American companies relied in turn on a cabal of European-based arms brokers to buy the desired goods in the Eastern bloc, a strategy that allowed the U.S. government to skirt the Foreign Corrupt Practices Act.

By all accounts, Glatt was far and away the program's single biggest supplier. During the lawsuit with Petty, he revealed that he handled between \$150 and \$200 million worth of FMA contracts between 1983 and 1993. His competitors say that's less than half the true amount and complain that Glatt exercised undue influence on the FMA, citing his rela-

¹⁰ The deal violated the spirit if not the letter of the congressional ban on military aid to the Contras. Glatt's attorney Lawrence Barcella, who was an assistant U.S. attorney at the time, told me that a government official he would not identify came to him for a legal opinion about the deal. Barcella insisted then, and now, that the deal broke no laws. “They were foreign arms from a foreign port sent on a foreign ship to a foreign group and Glatt himself was a foreigner. It was not illegal.”

¹¹ GMT's activities were never fully explored by the Iran-Contra committee. A wealth of information can be found in a 1992 sworn statement given by Ron Harel—a former Israeli Air Force officer who ran a GMT office in Tel Aviv—in an unrelated lawsuit that involved Studley. Harel submitted dozens of internal company documents in support of his account. One 1984 memo discusses a series of meetings that Singlaub arranged between American officials—including Oliver North—and Shapoor Ardalan, an Iranian opposition leader whom the CIA hoped to enlist to overthrow the Ayatollah Khomeini and put the former Shah's son in power. During one meeting, a CIA official is described as offering a briefcase full of money to Ardalan. Either an honest man or embarrassed to be receiving so public a bribe, Ardalan asked that funding for his group be routed through its Swiss bank account.

tionship with Lieutenant Colonel Larry Caylor, who headed the army FMA office from 1985 to 1991 and upon retirement went to work as Glatt's assistant in the arms business.

The FMA's precise budget is hidden in the Pentagon's "black" account ("It's a democracy, but there are ways of being creative," one player said), but I was told that over \$100 million per year was allocated to the program throughout much of the 1980s. The FMA's black dollars were laundered by a Washington branch of the American Security Bank (now owned by Bank of America), where the Pentagon and the Beltway firms set up accounts for their respective dummy corporations. "We were asked to do it as a favor to the U.S. government, to do our patriotic duty," says former American Security executive James Kleindienst. "We didn't know what the hell they were buying, and we didn't want to know. What made me feel damn good was that after the Gulf War I got a call from somebody—I won't mention who—at the big house there in Virginia saying that thanks to all your work we knew what that bastard Saddam Hussein had."

The FMA sometimes revealed enormous problems with U.S. weapons systems. In 1984, an Israeli arms dealer helped to obtain a Soviet-made attack helicopter that was brought to a military testing ground and matched up against a fantastically expensive anti-aircraft gun called the DIVAD. Made by a subsidiary of the Ford Motor Company, the DIVAD was designed to home in on the sound of helicopter blades. The demonstration not only showed that the range of the Russian attack helicopter surpassed that of the DIVAD but revealed in embarrassing fashion that the DIVAD's homing mechanism was fatally flawed. Since a number of military poobahs attended the demonstration, someone decided to install a portable toilet near the V.I.P. bleachers. To ensure that the generals faced no unpleasant aromas, a fan was installed in the outhouse. In the midst of the test, the DIVAD's guns mis-

took the sound of the fan for helicopter blades, swiveled on the chassis, and blew the (empty) outhouse to smithereens. Defense Secretary Caspar Weinberger immediately killed the DIVAD program.

Glatt declined to discuss his work for the FMA, so I paid a visit to Heinz Baumann, who has brokered deals on behalf of BDM and Electronic Warfare Associates. Now retired, Baumann resides in Bad Fischau, a spa town in the hills outside of Vienna. I was put in touch with him by John Miley, who e-mailed me: "[Heinz] is one helluva nice guy. . . suspect you'll be expected to partake of a healthy ration of schnapps. Might be useful to go with the flow and then do the necessary penance." This advice proved

beer were consumed in my hotel room discussing the degenerate ways of the West." Today, says Colonel Ryan, Russians request Viagra.)

According to Baumann and others, Glatt had carte blanche at CENZIN, the Polish state arms company. Glatt became close friends with CENZIN's head, General Boguslaw Likowski, a man known affectionately as Bolo. "Bolo was the key at CENZIN, but he was also the managing director for all FMA business in Europe," Baumann said. "When he told you that a piece from Bulgaria will arrive at three o'clock tomorrow, it was there—at five to three. He knew about all the deliveries, who was involved, and who to call if there was trouble."

WE ARMED DUBIOUS ALLIES ONLY TO SEE THEM TURN AGAINST US, AND SOMETIMES TURN THE VERY WEAPONS WE SUPPLIED UPON US

prescient. Wearing a leather jacket and jeans, Baumann was waiting at the international arrivals area and, though it was only 11 A.M., escorted me to an airport bar for three rounds of beer and schnapps. We then moved on to his comfortable home, where over many more glasses of beer he reminisced about his biggest coup, purchasing infrared-seeking missile heads from the Ukraine, and other FMA deals. For each successful transaction—and the process could take up to a year from start to finish—many more fell by the wayside. "There was no steady income," Baumann sighed, lifting his glass. "In this business you have to be a dreamer." He paused and ground out another cigarette. "You couldn't get a screw out of the Eastern bloc without bribes. I wouldn't call it a bribe; it was a reimbursement for services. If they did a good job, they deserved the money." (Sometimes, in addition to money, they wanted Western electronics. Miley recalls always providing Chinese officials with current issues of *Playboy* and *Penthouse*: "Quite a few bottles of Tsingtao

Over the years, CENZIN sold Glatt everything from an antidote kit issued to Soviet soldiers in Afghanistan to protect them against their own chemical weapons (by analyzing it, the Pentagon could better understand the Soviet chemical-weapons program) to three Russian-made torpedoes worth \$3.5 million. In the mid-1980s, Likowski died in a car crash, but Glatt remained in good standing at CENZIN through his ties to two other key officials, Zbigniew Tarka and Tadeusz Koperwas. They were arrested in 1992 in a sting operation conducted by U.S. Customs agents in Frankfurt and accused of illegally attempting to sell \$15 million worth of weapons to Iraq. The charges were later dropped, reportedly at the request of the CIA, which was grateful for their service to the United States.

Glatt has credited NATO's easy success in Kosovo to his work with the FMA, saying he had bought everything in Serbia's arsenal years ago. Yet the FMA has seen as much profiteering as patriotism. In 1997, Vector's offices were raided by federal officials who claimed that, among other things, the company was double-dealing: trading highly sensitive Stinger missile

technology with the Chinese in order to gain Chinese weaponry to sell to the United States.

TWILIGHT OF THE GODS

With the end of the Cold War, the world of gunrunning has been radically transformed. The CIA still stages covert operations but nothing on the scale of the huge Reagan/Bush-era programs, and now that the conflict in the Balkans is relatively contained, there are no decent wars to speak of. The Russian Army has dumped huge quantities of small arms in the course of its brutal downsizing, and China, which is in the process of rearming its troops, recently added another 2 million old rifles to the global arms pile. Combined with the growing production of countries such as the Czech Republic, Pakistan, and Israel, the end result is a textbook case of oversupply and underdemand.

The players have changed, too. Where once a few mega-brokers held sway, today hundreds of small-time mafiosos who also traffic in drugs and prostitutes have emerged. "The old guys could get a pistol and a tank," says Keith Prager, a former weapons-trade specialist for U.S. Customs. "The new guys can get one or the other, but not both. They're the kindergarten class compared to the old Ph.D.'s." Some former Communist states, most notably Bulgaria, sell arms to embargoed regimes and controversial clients without the help of middlemen, further narrowing the domain of brokers who exploited Soviet bloc contacts. "Ten years ago, if you wanted to get something out of CENZIN you had to go through Glatt," says a Washington-area arms broker. "Now anyone can show up in Eastern Europe with an end-user certificate and buy whatever he wants."

Glatt is now seventy-two, and he likes to portray himself as retired. Slowed in recent years by a heart bypass and a bout with cancer, he spends more time with his family and has taken up philanthropy. He has paid for an irrigation system for Swiss farmers, incubators for Polish newborns, and is a large donor to his alma mater, Heidelberg. At the behest of the eminent American cardiologist Dr. Robert Matthews, Glatt met with the cardinal

of Hungary and offered to put up \$2.2 million to help finance a heart laboratory for a Catholic hospital in Budapest. "My 'charitable activities' are my tribute for having had a wonderful and interesting life," Glatt wrote me. "But I do not want to talk about it. I am not a Pharisee!"

But if, as he insists, arms now make up a much smaller part of his business activities, he remains a player. Glatt still hosts High Frontier conferences at his various estates, and since 1996 he has carried out at least two large deals for the FMA. China and North Korea are currently targets, as is Russia, which is no longer an official "enemy" but which sells to countries that are. Now matériel comes straight out of the Kremlin, which is so broke that it is willing to sell virtually anything—short of nuclear, chemical, and biological weapons—to the United States. In one of those bizarre twists in the arms world, the Russian military uses the Pentagon's money to finance its next generation of weaponry. Rosvoorouzhnie, the Russian state arms agency, publishes a glossy seven-volume sales catalogue that includes everything from small arms to submarines, planes, and even warheads. Such an atlas would have constituted the single biggest intelligence find of the Cold War; now it's available for \$1,500.

Yet Moscow and Washington still insist on the use of middlemen who can play the enduring role of scapegoat in the event that things go sour. And as always, Glatt has positioned himself well. Some years ago a Russian general needed a hip replacement. The general—now in a position of some power—couldn't afford the operation, so Glatt paid for it himself. And as corporations start to eclipse nation-states, arms deals may be decided by board meetings. In 1997, a private company seeking to do business in Azerbaijan came up with four options to curry favor with the government, one of which was to broker a \$20 million arms deal for the country, which is under sanction for its aggression against Armenia. The firm chose another course of action but had identified Glatt as the preferred supplier if the arms plan were to move forward. "There are a lot of fly-by-nights in the private arms business," says a person familiar with the details. "Glatt has been around,

and he's trustworthy. He's one of only four or five men in the world who can quickly obtain and transport large quantities of Russian equipment."

Like Glatt, many of the other arms dealers who supplied Cold War combatants continue to profit from the war business. In 1998, Barbara Studley and John Singlaub tried to sell an Israeli missile guidance system to the American government. Ron Martin's company advertises itself on the World Wide Web as "The #1 Supplier of 40 mm Grenade Launchers." Richard Secord was seen not long ago in Azerbaijan, attempting to sell its military a package of equipment and training. Sarkis Soghanalian, who has offices on the Champs Elysées and works closely with French intelligence, helped funnel weapons to the military officers who overthrew the president of the Congo Republic in 1997. "There's nothing as big as the Iran-Iraq War, but there's still a lot going on," he told me from Paris during a phone interview. "The countries change, but there's always business." (Indeed. A few months later he was arrested in the United States on bank-fraud and money-laundering charges.) Even Oliver North, the would-be senator and talk-show host, heads a floundering body-armor company called Guardian Technologies International. "Every time you think one of these guys has died he turns up somewhere peddling arms," says an American weapons broker who himself still dabbles in the field. "These guys never die. Once you're in the business, you're in the business."

And why not? Arms dealing is an extremely profitable enterprise conducted remotely by fax and wire transfer. Unlike soldiers, arms dealers rarely put their own lives on the line and never have to confront the carnage caused by the weapons they sell. To them their trade is a game: a lot of money, a little espionage, but few personal consequences. As long as governments employ them, arms dealers like Glatt will grow rich and old and happily live out their days in the shadow of patriotism. For the moment, there may be less business than in the 1980s, but as Sam Cummings once noted, "In the broadest sense, the military arms business is based on human folly. And that is an extremely reliable element." ■

Exhibit F

Kiser, Jeremy

15

From: Angelo Yfantis <angelo.yfantis@russian-petroleum.com>
Sent: Tuesday, June 14, 2011 3:25 AM
To: Yasser Adam; Marc Turi
Subject: FW: sale of items

DEAR ANGELO ,

I SENT YOU AN EMAIL DAYS BACK AND NO ANSWER FROM YOU ...
ANYHOW , MR STEVENS THE AMERICAN EMBASSEDOR IN BENGHAZI HAS BEEN INFORMED
OF THE ARRANGEMENT AND THINGS SHOULD BE OK .

WE HAVE TO BE IN CONSTANT CONTACT FOR ANY UPDATES AND FOR ANY INFORMATION
NEED TO BE DONE
AS YOU KNOW , FOR ME I CA NOT CONTACT YOU AS WE STILL DO NOT HAVE THE
INTERNATIONAL LINE FROM HERE HOWEVER , YOU CAN CALL ME DIRECTLY FROM THE US .

ALSO , CAN YOU SENT ME THE AGREEMENT BETWEEN YOU AND THE QATARI , WHERE THE
QATARI AGREED TO PURCHASE THSESE MERCHANDISE ...AND ONE LAST THING , I MIGHT
SEND YOU SOME MILITARY ITEMS LIKE SPECIAL VEHICLES AND SO ON THAT NEED TO BE
QOUTED ONOK

BEST REGARDS AND I HOPE TO RECIEVE YOUR REPLY ..

BY THE WAY THE COMMISSION , NEED TO BE DISCUSSED BECAUSE I DO HAVE AND ARMY OF
TAKERS HEREOK

CIAO ,

Not shown

Exhibit G



Marc Turi <marc@turico.com>

DDTC Case #BA-L102-111

3 messages

Marc Turi <marc@turico.com>

Wed, Apr 6, 2011 at 11:26 PM

To: jcsneareast@yahoo.com

Dear Mr. Stevens:

I hope your meetings are going well. I wanted to make sure you had some important information during your discussions. Attached you will find a request for prior approval with DDTC. As of this morning the document is still out for staffing. As you will see we were contacted in the beginning of March a few days after the council formed. We immediately requested prior approval however the request was denied. A new request was resubmitted to the Directorate of Defense Trade Controls on March 27th and then it was staffed on April 1st to the following divisions.

1. DOD
2. NEA - Near East Affairs
3. DRL - Bureau of Democracy, Human Rights and Labor
4. PMRSAT - Bureau of Political-Military Affairs Office of Regional Security and Arms Transfer

We are prepared to move immediately once given an approval should foreign policy change at NEA.

Best Regards,

--

Marc Turi
President

Turi Defense Group, Inc.
7251 W. Lake Mead Blvd., Suite 300
Las Vegas, NV 89128
Ph: (888) 953-5999 Fax: (702) 543-1402
Cell: (702) 274-3638
Email: marc@turico.com
Web: www.turidefense.com

2 attachments

PRIOR APPROVAL - 3-27-2011.pdf
275K

DENIAL - 3-22-2011.pdf
139K

stevens chris <jcsneareast@yahoo.com>
To: Marc Turi <marc@turico.com>

Thu, Apr 7, 2011 at 11:21 PM

Dear sir,

Thank you for this information. I'll keep it in mind and share it with my colleagues in Washington. Regards, Chris Stevens

--- On Wed, 4/6/11, Marc Turi <marc@turico.com> wrote:

From: Marc Turi <marc@turico.com>
 Subject: DDTC Case #BA-L102-111
 To: jcsneareast@yahoo.com
 Date: Wednesday, April 6, 2011, 3:26 PM

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Best Regards,

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Marc Turi
 President

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 Las Vegas, NV 89128
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 Cell: (702) 274-3638
 Email: marc@turico.com
 Web: www.turidefense.com

Marc Turi <marc@turico.com>
 To: stevens chris <jcsneareast@yahoo.com>

Thu, Apr 7, 2011 at 11:22 PM

Roger that! Stay safe!

On Thu, Apr 7, 2011 at 12:21 PM, stevens chris <jcsneareast@yahoo.com> wrote:

Dear sir,

Thank you for this information. I'll keep it in mind and share it with my colleagues in Washington. Regards, Chris Stevens

--- On Wed, 4/6/11, Marc Turi <marc@turico.com> wrote:

From: Marc Turi <marc@turico.com>
Subject: DDTC Case #BA-L102-111
To: jcsneareast@yahoo.com
Date: Wednesday, April 6, 2011, 3:26 PM

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Marc Turi
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