

APPENDIX

20-295

United States v. Abdalla et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit,
2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the
3 City of New York, on the 17th day of March, two thousand twenty-one.

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5 PRESENT: ROBERT D. SACK,
6 RICHARD C. WESLEY,
7 RICHARD J. SULLIVAN,
8 *Circuit Judges.*

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11 UNITED STATES OF AMERICA,

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Appellee,

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v.

No. 20-295

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IBRAHIM AKASHA ABDALLA, AKA Ibrahim
Akasha,

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*Defendant-Appellant.**

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* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

1

2 **FOR APPELLANT:**

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STEPHANIE M. CARVLIN, Law Office of
Stephanie M. Carvlin, New York, NY.

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5 **FOR APPELLEE:**

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JASON A. RICHMAN, Assistant United
States Attorney (Amanda L. Houle,
Anna M. Skotko, Assistant United
States Attorneys, *on the brief*), for
Audrey Strauss, United States
Attorney for the Southern District of
New York.

12

Appeal from the United States District Court for the Southern District of
New York (Victor Marrero, *Judge*).

13

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED that the judgment of the district court is
AFFIRMED.

14

Defendant-Appellant Ibrahim Akasha Abdalla appeals from a judgment of
conviction entered by the district court following his guilty plea to charges
including conspiracy to manufacture and import controlled substances into the
United States, in violation of 21 U.S.C. §§ 959(a), 959(d), 960(a)(3), 960(b)(1)(A),
960(b)(1)(H), and 963; distribution of controlled substances, in violation of 18
U.S.C. §§ 2, 959(a), 960(b)(1)(A), and 960(b)(1)(H); the use and carrying of
destructive devices in furtherance of drug trafficking crimes, in violation of 18
U.S.C. § 924(o); and corruption and bribery of public officials to avoid prosecution,

1 in violation of 18 U.S.C. §§ 1512(c)(2), 1512(h), and 1512(i).

2 On appeal, Abdalla argues that because he is not a citizen of the United
3 States and all his criminal actions occurred entirely outside of the United States,
4 his conduct lacked a sufficient jurisdictional nexus to the United States and he was
5 denied fair notice that he could be prosecuted in the United States. He therefore
6 contends that his prosecution violated his due process rights.

7 When considering Abdalla's challenge based on constitutional due process
8 rights, "we review the district court's factual determinations for clear error, while
9 the constitutional significance of those findings, including the ultimate
10 determination of whether due process has been violated, is reviewed *de novo*."

11 *United States v. Epskamp*, 832 F.3d 154, 160 (2d Cir. 2016) (internal quotation marks
12 and alterations omitted). We conclude that both of Abdalla's due process
13 arguments are foreclosed by our decision in *United States v. Al Kassar*, 660 F.3d 108
14 (2d Cir. 2011).

15 With respect to Abdalla's first argument regarding a lack of "nexus," we
16 determined in *Al Kassar* that where a non-citizen defendant acts entirely outside
17 of the United States, there is still a "sufficient nexus between the defendant and
18 the United States [to satisfy due process] . . . when the aim of that activity is to

1 cause harm inside the United States.” *Id.* at 118. Abdalla conceded in his guilty
2 plea that he specifically intended that the heroin and methamphetamine
3 manufactured and distributed by his organization would be imported into the
4 United States; his conduct is therefore more than sufficient to establish the
5 necessary jurisdictional nexus. *See United States v. Alarcon Sanchez*, 972 F.3d 156,
6 169 (2d Cir. 2020) (concluding that due process was not offended “in light of the
7 conspiracy’s nexus to United States interests in eliminating drug trafficking on the
8 high seas, and the fair warning we ascribe to those that participate in such
9 conspiracies”).

10 *Al Kassar* also rebuts Abdalla’s argument regarding fair notice. As we
11 explained there, “[f]air warning does not require that the defendants understand
12 that they could be subject to criminal prosecution *in the United States* so long as
13 they would reasonably understand that their conduct was criminal and would
14 subject them to prosecution *somewhere*.” *Al Kassar*, 660 F.3d at 119 (second
15 emphasis added). Abdalla nevertheless urges us to overrule the notice standard
16 for extraterritorial application of criminal statutes announced in *Al Kassar*, arguing
17 that the Due Process Clause should require that a defendant have notice of *where*
18 he risks being prosecuted. But this argument is a non-starter. Put simply, we

1 remain bound by *Al Kassar*, which has not been “called into question by an
2 intervening Supreme Court decision or by one of this Court sitting *in banc*.” *United*
3 *States v. Santiago*, 268 F.3d 151, 154 (2d Cir. 2001). Accordingly, Abdalla’s
4 argument fails.

5 We have considered Abdalla’s remaining arguments and conclude that they
6 are meritless. For the foregoing reasons, the judgment of the district court is
7 **AFFIRMED.**

8 FOR THE COURT:

9 Catherine O’Hagan Wolfe, Clerk of Court

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Catherine O'Hagan Wolfe

839 Fed.Appx. 656 (Mem)

This case was not selected for publication in West's Federal Reporter.

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United States Court of Appeals, Second Circuit.

UNITED STATES of America, Appellee,

v.

Ibrahim Akasha ABDALLA, aka

Ibrahim Akasha, Defendant-Appellant.^{*}

* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

No. 20-295

|

March 17, 2021

Appeal from the United States District Court for the Southern District of New York ([Victor Marrero, Judge](#)).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED.

Attorneys and Law Firms

FOR APPELLANT: [Stephanie M. Carvin](#), Law Office of Stephanie M. Carvin, New York, NY.

FOR APPELLEE: [Jason A. Richman](#), Assistant United States Attorney ([Amanda L. Houle](#), Anna M. Skotko, Assistant United States Attorneys, on the brief), for [Audrey Strauss](#), United States Attorney for the Southern District of New York.

PRESENT: [ROBERT D. SACK](#), [RICHARD C. WESLEY](#), [RICHARD J. SULLIVAN](#), Circuit Judges.

*657 SUMMARY ORDER

Defendant-Appellant Ibrahim Akasha Abdalla appeals from a judgment of conviction entered by the district court following his guilty plea to charges including conspiracy to manufacture and import controlled substances into the United States, in violation of [21 U.S.C. §§ 959\(a\), 959\(d\), 960\(a\)\(3\), 960\(b\)\(1\)\(A\), 960\(b\)\(1\)\(H\)](#), and [963](#); distribution of controlled substances, in violation of [18 U.S.C. §§ 2, 959\(a\), 960\(b\)\(1\)\(A\), and 960\(b\)\(1\)\(H\)](#); the use and carrying of destructive devices in furtherance of drug trafficking crimes, in violation of [18 U.S.C. § 924\(o\)](#); and corruption and bribery of public officials to avoid prosecution, in violation of [18 U.S.C. §§ 1512\(c\)\(2\), 1512\(h\), and 1512\(i\)](#).

On appeal, Abdalla argues that because he is not a citizen of the United States and all his criminal actions occurred entirely outside of the United States, his conduct lacked a sufficient jurisdictional nexus to the United States and he was denied fair notice that he could be prosecuted in the United States. He therefore contends that his prosecution violated his due process rights.

When considering Abdalla's challenge based on constitutional due process rights, "we review the district court's factual determinations for clear error, while the constitutional significance of those findings, including the ultimate determination of whether due process has been violated, is reviewed *de novo*." [United States v. Epskamp](#), 832 F.3d 154, 160 (2d Cir. 2016) (internal quotation marks and alterations omitted). We conclude that both of Abdalla's due process arguments are foreclosed by our decision in [United States v. Al Kassar](#), 660 F.3d 108 (2d Cir. 2011).

With respect to Abdalla's first argument regarding a lack of "nexus," we determined in [Al Kassar](#) that where a non-citizen defendant acts entirely outside of the United States, there is a still a "sufficient nexus between the defendant and the United States [to satisfy due process] ... when the aim of that activity is to cause harm inside the United States." *Id.* at 118. Abdalla conceded in his guilty plea that he specifically intended that the heroin and methamphetamine manufactured and distributed by his organization would be imported into the United States; his conduct ***658** is therefore more than sufficient to establish the necessary jurisdictional nexus. *See*

United States v. Alarcon Sanchez, 972 F.3d 156, 169 (2d Cir. 2020) (concluding that due process was not offended “in light of the conspiracy’s nexus to United States interests in eliminating drug trafficking on the high seas, and the fair warning we ascribe to those that participate in such conspiracies”).

Al Kassar also rebuts Abdalla’s argument regarding fair notice. As we explained there, “[f]air warning does not require that the defendants understand that they could be subject to criminal prosecution *in the United States* so long as they would reasonably understand that their conduct was criminal and would subject them to prosecution *somewhere*.⁷ *Al Kassar*, 660 F.3d at 119 (second emphasis added). Abdalla nevertheless urges us to overrule the notice standard for extraterritorial application of criminal statutes announced

in *Al Kassar*, arguing that the Due Process Clause should require that a defendant have notice of *where* he risks being prosecuted. But this argument is a non-starter. Put simply, we remain bound by *Al Kassar*, which has not been “called into question by an intervening Supreme Court decision or by one of this Court sitting *in banc*.⁸ *United States v. Santiago*, 268 F.3d 151, 154 (2d Cir. 2001). Accordingly, Abdalla’s argument fails.

We have considered Abdalla’s remaining arguments and conclude that they are meritless. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

All Citations

839 Fed.Appx. 656 (Mem)

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**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of April, two thousand twenty-one,

Before: Robert D. Sack,
 Richard C. Wesley,
 Richard J. Sullivan,
 Circuit Judges.

United States of America,
Appellee,
v.

Ibrahim Akasha Abdalla, AKA Ibrahim Akasha,
Defendant - Appellant.

ORDER
Docket No. 20-295

Ibrahim Akasha Abdalla having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe



UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA)	JUDGMENT IN A CRIMINAL CASE
v.)	
Ibrahim Akasha Abdalla)	Case Number: 14 CR 716
)	USM Number: 75953-054
)	Dawn Cardi
)	Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 through 6 of Superseding Information S12 14 CR 716

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§960(b)(1)(A)	Conspiracy to Manufacture and Distribute Heroin	1/30/2017	1
963, 959(a)&(d), and			
18 U.S.C. § 3238			

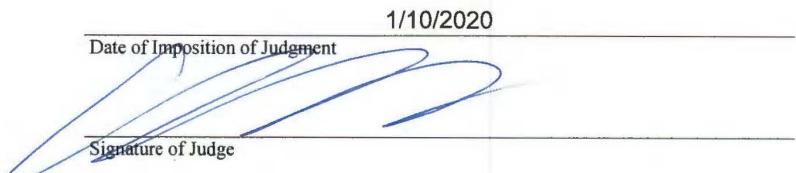
The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) Any remaining is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>1/14/20</u>

1/10/2020
 Date of Imposition of Judgment

 Signature of Judge

Honorable Victor Marrero, U.S.D.J.
 Name and Title of Judge

1/13/2020
 Date

DEFENDANT: Ibrahim Akasha Abdalla
CASE NUMBER: 14 CR 716

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§960(b)(1)(H)	Conspiracy to Manufacture and Distribute	1/30/2017	2
963, 959(a)&(d), and	Methamphetamine		
18 U.S.C. § 3238			
21 U.S.C. §§ 959(a), 960(b)(1)(A), and	Distributing Heroin	1/30/2017	3
18 U.S.C. §§ 2, 3238			
21 U.S.C. §§ 959(a), 960(b)(1)(H), and	Distributing Methamphetamine	1/30/2017	4
18 U.S.C. §§ 2, 3238			
18 U.S.C. §§ 924(o), 3238	Using and Carrying Machine Guns and Destructive Devices in Furtherance of Drug Trafficking Crimes	1/30/2017	5
18 U.S.C. §§ 1512(c)(2), 1512(h), 1512(i)	Corruption and Bribery of Public Officials to Avoid Prosecution	1/30/2017	6

DEFENDANT: Ibrahim Akasha Abdalla
CASE NUMBER: 14 CR 716

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 276 months on each of Counts One through Five, to run concurrently, and 84 months on Count 6, to run concurrently with the other terms.

The court makes the following recommendations to the Bureau of Prisons:
That Mr. Abdalla be designated to the facility in Oakdale, Louisiana.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Ibrahim Akasha Abdalla
CASE NUMBER: 14 CR 716**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 600.00	\$	\$ 50,000.00	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____ 0.00	\$ _____ 0.00
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Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Ibrahim Akasha Abdalla
CASE NUMBER: 14 CR 716

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 600.00 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: <u>9/12/18</u>
DATE FILED: <u>9/12/18</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA :
: 14 CR 716 (VM)
- against - :
BAKTASH AKASHA ABDALLA, et al., :
: DECISION AND ORDER
: Defendants. :
-----X
VICTOR MARRERO, United States District Judge.

Defendants Baktash Akasha Abdalla and Ibrahim Akasha Abdalla (collectively, the "Akasha Brothers" or "Defendants") separately move to dismiss the indictment against them. (See "Baktash Motion," Dkt. No. 75; "Ibrahim Motion," Dkt. No. 77.) The Akasha Brothers urge the Court to dismiss the indictment, arguing that the Court lacks jurisdiction over them and venue is improper. Defendant Baktash Akasha Abdalla also moves for various forms of pretrial relief. (See Baktash Motion at 2.) Defendant Ibrahim Akasha Abdalla joins in his co-defendant's motion. (See Ibrahim Motion at 1.) Because the Court has jurisdiction over the prosecution of the Akasha Brothers and because the motions for pretrial relief are either premature or moot, the Akasha Brothers' Motions are DENIED.

I. BACKGROUND

The Akasha Brothers, along with Gulam Hussein, Vijaygiri Anandgiri Goswami, and Muhammad Asif Hafeez, are charged with

orchestrating an international narcotics conspiracy based in Kenya, with a distribution network that included the United States. (See "Superseding Indictment," Dkt. No. 55.) On July 2, 2018, the Court denied the Akasha Brothers' motion to compel the Government to produce documents related to their extradition and/or expulsion from Kenya. See United States v. Akasha Abdalla, 317 F. Supp. 3d 786 (S.D.N.Y. 2018) (the "July Order"). The facts and procedural history are set forth in greater detail in the July Order, familiarity with which is presumed.

The Akasha Brothers now move to dismiss the Superseding Indictment pursuant to Rules 12(b) (2) and 12(b) (3) (A) (i) of the Federal Rules of Criminal Procedure ("Rule 12(b) (2)" and "Rule 12(b) (3) (A) (i)," respectively). (See "Baktash Mem.," Dkt. No. 76; Ibrahim Motion). The Akasha Brothers argue that the Court lacks jurisdiction over their prosecution because: (1) the Government "manufactured" jurisdiction when CS-1 told the Akasha Brothers that CS-1 wanted to import narcotics into the United States, and (2) the Akasha Brothers' removal from Kenya constituted a violation of the Kenya-U.S. Extradition Treaty that divested the Court of jurisdiction. (See Baktash Mem. at 4-18; Ibrahim Motion at 3-5.) Defendants also argue that the Court should dismiss the Superseding Indictment because the Government does not allege that the Akasha

Brothers committed any overt acts in the United States, thus making venue in the Southern District of New York improper. (See Baktash Mem. at 18-20; Ibrahim Motion at 6.)

Defendant Baktash Akasha Abdalla, joined by Defendant Ibrahim Akasha Abdalla, also requests various forms of pretrial relief. First, the Akasha Brothers move to suppress any pretrial identifications as well as any in-court testimony that would identify the Defendants, arguing that such identifications would be impermissibly suggestive and unreliable. (See Baktash Mem. at 20-21.) Second, the Akasha Brothers move to suppress any statements they made to the Government while they were under custodial interrogation, arguing that any such statements were made in violation of their Miranda rights. (See id. at 21-22.) Third, the Akasha Brothers move to preclude any potential evidence of their prior crimes and prior criminal or immoral acts, arguing that the introduction of such evidence would have a disproportionately prejudicial impact on the Defendants. (See id. at 23.) Fourth, the Akasha Brothers request the immediate disclosure of various Brady and Giglio materials, arguing that Defendants require such disclosure to prepare for trial. (See id. at 24-26.)

In opposition, the Government argues that the Akasha Brothers' motions to dismiss the Superseding Indictment

should be denied because the motions are based on arguments related to their removal from Kenya, arguments which the Court has already found to be without merit, and because venue has been sufficiently established. (See "Government Opp'n," Dkt. No. 80, at 7-18.) In support of its position, the Government submits a sworn declaration from Hamisi Salim Massa, an assistant inspector general of police in Kenya's National Police Service, stating that Kenya independently (and without participation by U.S. officials) decided and acted to expel the Akasha Brothers from Kenya. (See "Massa Declaration," Dkt. No. 80-1.)

The Government also opposes the Akasha Brothers' requests for pretrial relief. First, the Government argues that the Akasha Brothers' request to preclude pretrial identifications should be denied because there are no pretrial identification procedures to suppress, and there is no basis for precluding in-court identification testimony during trial. (See Government Opp'n at 25-27.) Second, the Government argues that the Akasha Brothers' request to suppress any statements they made to the Government while they were under custodial interrogation by the DEA is moot because the Government will not offer any such statements at trial. (See id at 27.) Third, the Government argues that the Akasha Brothers' motion to preclude any potential evidence of

their prior crimes and prior criminal or immoral acts is premature because the Government will provide notice pursuant to Rule 404(b) of the Federal Rules of Evidence prior to trial. (See id. at 27.) Fourth, the Government argues that it is in compliance with its Brady and Giglio discovery obligations, and the Akasha Brothers are not entitled to earlier disclosures. (See id. at 18-25.)

In reply, Baktash Akasha Abdalla argues that the Government fails to establish that the Akasha Brothers were "expelled" from Kenya, and the orders from the High Court of Kenya prohibiting Kenyan Law Enforcement Agents from removing the Akasha Brothers from the jurisdiction of the Kenyan courts constitute an objection by Kenya to the removal of the Akasha Brothers to the United States. Defendant also argues that the Government "manufactured" jurisdiction because the actions taken by Baktash Akasha Abdalla differ from those taken by the defendant in the case on which the Government relies, United States v. Campo Flores, No. 15 Cr. 765, 2017 WL 1133430 (S.D.N.Y. Mar. 24, 2017). (See "Baktash Reply," Dkt. No. 81.)

In reply, Ibrahim Akasha Abdalla argues that the Superseding Indictment should be dismissed because it fails to allege that Defendant committed a requisite jurisdictional act of the charged offenses. Defendant argues that venue is improper because the Superseding Indictment does not allege

that any offense took place in the Southern District of New York. Ibrahim Akasha Abdalla also urges the Court to disregard the Massa Declaration. (See "Ibrahim Reply," Dkt. No. 82.)

II. DISCUSSION

A. Motions to Dismiss for Lack of Jurisdiction

Rule 12(b)(2) provides that "[a] motion that the court lacks jurisdiction may be made at any time while the case is pending." Fed. R. Crim. P. 12(b)(2). On a pretrial motion to dismiss an indictment pursuant to Rule 12(b), the Court takes the allegations in the indictment as true. See United States v. Goldberg, 756 F.2d 949, 950 (2d Cir. 1985). In addition, "[a]n indictment must be read to include facts which are necessarily implied by the specific allegations made." United States v. Stavroulakis, 952 F.2d 686, 693 (2d Cir. 1992).

Rule 7(c) of the Federal Rules of Criminal Procedure provides that the indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c). Under the applicable standard, the Court does not consider the sufficiency of the evidence at this early stage in the proceedings, but rather focuses on the legal sufficiency of the indictment itself without looking any further. See United States v. Alfonso, 143 F.3d 772, 776-77 (2d Cir. 1998). "[A]n indictment is sufficient if it, first, contains the elements

of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974); see also United States v. D'Amelio, 683 F.3d 412, 418 (2d Cir. 2012) (holding that the "core of criminality" of an offense about which a defendant must be on notice "involves the essence of a crime, in general terms . . . [and] the particulars of how a defendant effected the crime falls [sic] outside that purview."). Thus, "an indictment need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." Alfonso, 143 F.3d at 776 (quoting Stavroulakis, 952 F.2d at 693).

The Akasha Brothers move to dismiss the Superseding Indictment for lack of jurisdiction, arguing that jurisdiction does not exist because the Government "manufactured" jurisdiction when CS-1 told the Akasha Brothers that CS-1 wanted to import narcotics into the United States. (Baktash Mem. at 4-7; Ibrahim Motion at 3-5.) As a result, the Akasha Brothers contend, each offense lacks an adequate U.S. nexus. (See id.) Yet, as the Government notes, "the 'manufactured jurisdiction' concept is properly understood not as an independent defense, but as a subset of

three possible defense theories: (i) the defendant was entrapped into committing a federal crime, since he was not predisposed to commit the crime in the way necessary for the crime to qualify as a federal offense . . . ; (ii) the defendant's due process rights were violated because the government's actions in inducing the defendant to commit the federal crime were outrageous . . . ; or (iii) an element of the federal statute has not been proved, so federal courts have no jurisdiction over the crime." United States v. Wallace, 85 F.3d 1063, 1065-66 (2d Cir. 1996) (internal citations omitted).

To satisfy the first theory, the Akasha Brothers must demonstrate entrapment as a matter of law, i.e., they must "prove[] that: (1) the government originated the criminal design, (2) the government suggested the design to the defendant and induced him to adopt it, and (3) the defendant had no predisposition to engage in the criminal design prior to the government's inducement." United States v. Al Kassar, 660 F.3d 108, 119 (2d Cir. 2011). The Akasha Brothers have failed to prove they had no predisposition to engage in narcotics trafficking prior to CS-1's inducement. According to the Government, the Akasha Brothers were "well-known, notorious gangsters in Kenya." (Government Opp'n at 2.) It therefore cannot be said as a matter of law that the Akasha

Brothers were not predisposed to conspire to import narcotics into the United States.

Under the second theory, the Akasha Brothers "must show that the government's conduct is so outrageous that common notions of fairness and decency would be offended were judicial processes invoked to obtain a conviction." Al Kassar, 660 F.3d at 121 (internal citations omitted). Here, too, the Akasha Brothers' argument fails because the outrageous conduct to which the Akasha Brothers object was the conduct of Kenyan officials, not the U.S. government. See Akasha Abdalla, 317 F. Supp. 3d at 794 ("these allegations, if true, charge only Kenyan officials with violent conduct against Ibrahim Akasha Abdalla [and] [t]he Akasha Brothers do not claim that they suffered any violence, custodial interrogation, or torture at the hands of United States officials").

Under the third theory, "even if the government initiates an essential element of a crime, jurisdiction is not manufactured if the defendant then takes voluntary actions that implicate the [government-initiated] element." Al Kassar, 660 F.3d at 120 (internal citations omitted). It would be premature for the Court to decide this issue given that the Government asserts it has not yet made "a full proffer of the evidence it intends to present at trial."

(Government Opp'n at 14.) The Court is therefore not convinced that dismissal of the Superseding Indictment is warranted based on a theory of "manufactured jurisdiction."

Neither has the Court been divested of jurisdiction due to a violation of the Kenya-U.S. Extradition Treaty. In its July Order, the Court determined that the Akasha Brothers "lack[ed] standing to raise a violation of the Extradition Treaty, and . . . any such challenge would lack merit if they did have standing to raise it." Akasha Abdalla, 317 F. Supp. 3d at 794. On the present motions, the Akasha Brothers adduce no new evidence to counter the Court's prior determination that no violation of the Kenya-U.S. Extradition Treaty has occurred. Because the Akasha Brothers' motion to dismiss the Superseding Indictment is based on an assertion that the Court has already rejected, the Court holds that the Superseding Indictment is legally sufficient and declines to dismiss it on that basis.

B. Motions to Dismiss for Improper Venue

The Akasha Brothers move to dismiss the Superseding Indictment pursuant to Rule 12(b)(3)(A)(i), which provides that improper venue "must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits." Fed. R. Crim. P. 12(b)(3)(A)(i). Under both Article III and the

Sixth Amendment to the United States Constitution, "[t]he Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed." U.S. Const. art. III, § 2, cl. 3; see also U.S. Const. Amend. VI; United States v. Ramirez, 420 F.3d 134, 138 (2d Cir. 2005). Accordingly, Rule 18 of the Federal Rules of Criminal Procedure provides that the "government must prosecute an offense in a district where the offense was committed." Fed. R. Crim. P. 18. If a defendant is charged with more than one count, venue must be proper with respect to each individual charge. See United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1188 (2d Cir. 1989).

Prior to trial, the Government "need only allege that criminal conduct occurred within the venue, 'even if phrased broadly and without a specific address or other information.'" United States v. Ohle, 678 F. Supp. 2d 215, 231 (S.D.N.Y. 2010) (citing United States v. Bronson, No. 05 Cr. 714, 2007 WL 2455138, at *4 (E.D.N.Y. Aug. 23, 2007)). "[T]he Government's burden is limited to showing that the indictment alleges facts sufficient to support venue." United States v. Peterson, 357 F. Supp. 2d 748, 751 (S.D.N.Y. 2005).

The Government has satisfied this burden. "The trial of all offenses begun or committed . . . elsewhere out of the jurisdiction of any particular State or district, shall be in

the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought." 18 U.S.C. § 3238. The Superseding Indictment includes six Counts alleging offenses "begun outside the jurisdiction of any particular State or district of the United States." (Superseding Indictment ¶¶ 1, 4, 7, 8, 9, 11.) Each of those six Counts further alleges that the defendants "were first brought to and arrested in the Southern District of New York." (Id.) Because the Superseding Indictment alleges that the offenses described in Counts One through Six of the Superseding Indictment began outside the jurisdiction of any particular State or district, venue in the Southern District of New York is properly alleged.

Count Seven of the Superseding Indictment alleges a violation of 18 U.S.C. § 1512(c)(2). (Id. ¶ 12.) Specifically, the Indictment alleges that the violation constituted an "effort to avoid extradition to the United States for official proceedings in the Southern District of New York." (Id. ¶ 13.) "A prosecution under [18 U.S.C. § 1512] may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected." 18 U.S.C. § 1512(i). Because the Superseding Indictment alleges that the offense described in Count Seven

was intended to affect an official proceeding in the Southern District of New York, venue is properly alleged.

C. Motions for Pretrial Relief

1. *Pretrial Identifications*

The Akasha Brothers ask the Court to suppress any pretrial identifications, as well as any in-court testimony that would identify the Defendants. In support of that motion, the Akasha Brothers assert only that "there is no sufficiently reliable 'independent source'" for in-court identification testimony. (Baktash Mem. at 20-21.) The Government represents that it will not offer any "photo arrays or similar pre-trial identification techniques" at trial. (Government Opp'n at 25.) The Government also represents that the anticipated in-court identifications are sufficiently reliable to be admissible. (See id. at 25-26.) Because the Akasha Brothers "[rely] simply on statements that are general, conclusory, and based on conjecture," they "fail[] to demonstrate any disputed issues of fact that warrant a pretrial hearing concerning the reliability of an anticipated in-court identification." United States v. Dames, 380 F. Supp. 2d 270, 275 (S.D.N.Y. 2005). As such, the Akasha Brothers' request to suppress such evidence is denied as moot, in part, and premature, in part.

2. Miranda Statements

The Akasha Brothers move to suppress any statements they made to the Government while they were under custodial interrogation, asserting that any such statements were obtained in violation of Defendants' Miranda rights. (See Baktash Mem. at 21-22.) The Government represents that it will not offer "any statements made by the Akasha Brothers to DEA personnel after the defendants were taken into custody by the DEA in Kenya." (Government Opp'n at 27.) As such, the Court denies the Akasha Brothers' motion as moot.

3. Evidence of Prior Crimes and Prior Criminal or Immoral Acts

The Akasha Brothers ask the Court to exclude any potential evidence of their prior crimes and prior criminal or immoral acts pursuant to Rules 403 and 609 of the Federal Rules of Evidence. (See Baktash Mem. at 23.) The Government represents that it will provide notice pursuant to Rule 404(b) of the Federal Rules of Evidence by September 21, 2018. (See Government Opp'n at 27.) Until it is known whether and how the Government intends to use the evidence of the Akasha Brothers' prior crimes and prior criminal or immoral acts at trial, the Court denies the Akasha Brothers' motion to preclude the admittance of such evidence as premature.

4. *Expedited Government Disclosure or Production*

Finally, the Akasha Brothers request the immediate disclosure of various Brady and Giglio materials. (See Baktash Mem. at 24-26.) Defendants argue that expedited production of certain discovery materials is warranted to permit Defendants a reasonable opportunity to prepare for trial. (See id. at 24.) The Government represents that it has complied with its Brady obligations, and that it will continue to do so. (See Government Opp'n at 19.) The Government also represents that it will produce Giglio materials no later than October 15, 2018. (See id. at 19-20.) Based on these representations, the Court is satisfied that the Government is meeting its Brady and Giglio obligations and denies the Akasha Brothers' motions. See United States v. Canter, 338 F. Supp. 2d 460, 462 (S.D.N.Y. 2004).

III. ORDER

For the reasons stated above, it is hereby

ORDERED that the Motions (Dkt. Nos. 75 & 77) of defendants Baktash Akasha Abdalla and Ibrahim Akasha Abdalla to dismiss the indictment and for various forms of pretrial relief are **DENIED**.

SO ORDERED.

Dated: New York, New York
11 September 2018



VICTOR MARRERO
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA : SUPERSEDING INDICTMENT
: S9 14 Cr. 716 (VM)
- v. - :
BAKTASH AKASHA ABDALLA, :
a/k/a "Baktash Akasha," :
IBRAHIM AKASHA ABDALLA, :
a/k/a "Ibrahim Akasha," and :
GULAM HUSSEIN, :
a/k/a "Hussein Shabakhash," :
a/k/a "Hadji Hussein," :
a/k/a "Old Man," :
Defendants. :
:-----x

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
FILED: DEC 07 2017

COUNT ONE

The Grand Jury charges:

1. From at least in or about March 2014, up to and including in or about January 2017, in Kenya and elsewhere, and in an offense begun outside the jurisdiction of any particular State or district of the United States, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, who were first brought to and arrested in the Southern District of New York and whose point of entry into the United States was the Southern District of New York, Muhammad Asif Hafeez, a/k/a "Mohammad Asif Hafeez," a/k/a "Mohammad Asif Hafiz," a/k/a "Muhammed Asif

Hafiz," a/k/a "Sultan," a/k/a "Baigan" ("Hafeez"), and others known and unknown, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, Hafeez, and others known and unknown, would and did manufacture and distribute a controlled substance, intending and knowing that such a substance would be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States, in violation of Sections 812, 959(a) & (c), and 960(a)(3) of Title 21, United States Code (2014).

3. The controlled substance that BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, conspired to manufacture and distribute, intending and knowing that such substance would be unlawfully imported into the United States and into waters within a distance of 12 miles of the coast of the United States from a place outside thereof, was one kilogram and more of mixtures and substances containing a

detectable amount of heroin, in violation of Title 21, United States Code, Section 960(b)(1)(A).

(Title 21, United States Code, Sections 960(b)(1)(A), 963 & 959(c) (2014); and Title 18, United States Code, Section 3238.)

COUNT TWO

The Grand Jury further charges:

4. From at least in or about March 2014, up to and including in or about January 2017, in Kenya and elsewhere, and in an offense begun outside the jurisdiction of any particular State or district of the United States, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, who were first brought to and arrested in the Southern District of New York and whose point of entry into the United States was the Southern District of New York, and others known and unknown, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to violate the narcotics laws of the United States.

5. It was a part and an object of the conspiracy that BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, and others known and unknown, would and did manufacture and distribute a controlled substance, intending and knowing that such a substance would be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast

of the United States, in violation of Sections 812, 959(a) & (c), and 960(a)(3) of Title 21, United States Code (2014).

6. The controlled substance that BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, conspired to manufacture and distribute, intending and knowing that such substance would be unlawfully imported into the United States and into waters within a distance of 12 miles of the coast of the United States from a place outside thereof, was 50 grams and more of methamphetamine, its salts, isomers, and salts of its isomers, and 500 grams and more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Section 960(b)(1)(H) of Title 21, United States Code.

(Title 21, United States Code, Sections 960(b)(1)(H), 963 & 959(c) (2014); and Title 18, United States Code, Section 3238.)

COUNT THREE

The Grand Jury further charges:

7. From at least in or about March 2014, up to and including in or about November 2014, in Kenya and elsewhere, and in an offense begun outside the jurisdiction of any particular State or district of the United States, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a

"Hadji Hussein," a/k/a "Old Man," the defendants, who were first brought to and arrested in the Southern District of New York and whose point of entry into the United States was the Southern District of New York, intentionally and knowingly did distribute a controlled substance, to wit, one kilogram and more of a mixture and substance containing a detectable amount of heroin, and aided and abetted the same, intending and knowing that such substance would be imported into the United States from a place outside thereof, in violation of Title 21, United States Code, Sections 959(a) and 960(b)(1)(A).

(Title 21, United States Code, Sections 959(a) & 960(b)(1)(A); and Title 18, United States Code, Sections 2 & 3238.)

COUNT FOUR

The Grand Jury further charges:

8. From at least in or about March 2014, up to and including in or about November 2014, in Kenya and elsewhere, and in an offense begun outside the jurisdiction of any particular State or district of the United States, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, who were first brought to and arrested in the Southern District of New York and whose point of entry into the United States was the Southern District of New York, intentionally and knowingly did distribute a controlled substance, to wit, 50 grams and more of methamphetamine, its

salts, isomers, and salts of its isomers, and 500 grams and more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, and aided and abetted the same, intending and knowing that such substance would be imported into the United States from a place outside thereof, in violation of Title 21, United States Code, Sections 959(a) and 960(b)(1)(H).

(Title 21, United States Code, Sections 959(a) & 960(b)(1)(H); and Title 18, United States Code, Sections 2 & 3238.)

COUNT FIVE

The Grand Jury further charges:

9. In or about 2014, in Kenya and elsewhere, and in an offense begun outside of the jurisdiction of any particular State or district of the United States, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, who were first brought to and arrested in the Southern District of New York and whose point of entry into the United States was the Southern District of New York, and others known and unknown, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Section 924(c).

10. It was a part and an object of the conspiracy that BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, and others known and unknown, during and in relation to drug-trafficking crimes for which they may be prosecuted in a court of the United States, to wit, the offenses alleged in Counts One, Two, Three, and Four of this Indictment, would and did use and carry a firearm, and, in furtherance of such drug-trafficking crimes, possess a firearm, in violation of Title 18, United States Code, Section 924(c).

(Title 18, United States Code, Sections 924(o) and 3238.)

COUNT SIX

The Grand Jury further charges:

11. In or about 2014, in Kenya, South Africa, and elsewhere, and in an offense begun out of the jurisdiction of any particular State or district, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, who were first brought to and arrested in the Southern District of New York, during and in relation to drug-trafficking crimes for which they may be prosecuted in a court of the United States, to wit, the offenses charged in Counts One, Two, Three, and Four of this Indictment, did use and carry firearms, which were brandished, and, in furtherance of such drug-trafficking crimes, possess firearms, which were

brandished, and did aid and abet the use, carrying, and possession of firearms, which were brandished.

(Title 18, United States Code, Sections 924(c)(1)(A)(ii), 3238, and 2.)

COUNT SEVEN

The Grand Jury further charges:

12. From at least in or about November 2014, up to and including at least in or about January 2017, in Kenya and elsewhere, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, and others known and unknown, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Section 1512(c)(2).

13. It was a part and an object of the conspiracy that BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, and others known and unknown, knowingly and corruptly obstructed, influenced, and impeded an official proceeding, to wit, the defendants agreed to pay bribes, and cause others to pay bribes, to officials, including, law enforcement officers, judges, and at least one prosecutor, in

Kenya, in an effort to avoid extradition to the United States for official proceedings in the Southern District of New York relating to the prosecution of the defendants.

(Title 18, United States Code, Sections 1512 (i), (j) & (k).)

FORFEITURE ALLEGATION AS TO COUNTS ONE AND THREE

14. As a result of committing the controlled substance offenses charged in Counts One and Three of this Indictment, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, shall forfeit to the United States, pursuant to Title 21, United States Code, Sections 853 and 970, any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of said offenses and any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

FORFEITURE ALLEGATION AS TO COUNTS TWO AND FOUR

15. As a result of committing the controlled substance offenses charged in Counts Two and Four of this Indictment, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, shall forfeit to the United States, pursuant to Title 21, United States Code, Sections 853 and 970, any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of said offenses and any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

FORFEITURE ALLEGATION AS TO COUNTS FIVE AND SIX

16. As a result of committing the firearms offenses charged in Counts Five and Six of this Indictment, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," and IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d), all firearms and ammunition involved in and used in the commission of the offenses charged in Counts Five and Six of this Indictment.

FORFEITURE ALLEGATION AS TO COUNT SEVEN

17. As a result of committing the offense charged in Count Seven of this Indictment, BAKTASH AKASHA ABDALLA, a/k/a "Baktash Akasha," IBRAHIM AKASHA ABDALLA, a/k/a "Ibrahim Akasha," and GULAM HUSSEIN, a/k/a "Hussein Shabakhash," a/k/a "Hadji Hussein," a/k/a "Old Man," the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28 United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense.

Substitute Assets Provision

18. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Sections 853(p) and 970, to seek forfeiture of any other property of the defendants up to the value of the forfeitable property.

(Title 21, United States Code, Sections 853 & 970.).

Karen E. Wath
FOREPERSON

Joon H. Kim
JOON H. KIM
Acting United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

BAKTASH AKASHA ABDALLA,
a/k/a "Baktash Akasha,"
IBRAHIM AKASHA ABDALLA,
a/k/a "Ibrahim Akasha," and
GULAM HUSSEIN,
a/k/a "Hussein Shabakhash,"
a/k/a "Hadji Hussein,"
a/k/a "Old Man,"

Defendants.

SUPERSEDING
INDICTMENT

S9 14 Cr. 716

(21 U.S.C. §§ 959(a), 959(d) & 963 (2014); and 18 U.S.C. §§ 924(c), 924(o), 1512(k), 3238, and 2.)

JOON H. KIM
Acting United States Attorney.

A TRUE BILL

Karen Elwath
12/7/17 FILED SUPERSEDING INDICTMENT
Foreperson.

(COT, udm)