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January 3, 1997

The Honorable Raymond J. Dearie
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Haji Ayub Afridi
Criminal Docket No. 91-960 (S-1)(RJD)

Dear Judge Dearie:

The government respectfully submits this letter in support of its motion to introduce evidence of other criminal acts committed by the defendant. This evidence is relevant to the existence, background and ongoing common scheme of the conspiracy charged in Count Two of the superseding indictment, and relates to other acts of narcotics trafficking involving Haji Ayub Afridi and government witnesses Anwar Khattak and Iqbal Baig. Significantly, the government will elicit this information from its witnesses regardless of the outcome of this motion in an effort to "front" the bad acts of its own witnesses to the jury. Thus, granting this motion would not lengthen the trial to any extent, but would merely permit the witnesses to accurately and fully explain that their own involvement in hashish trafficking beyond what is charged in the indictment is inextricably linked with Afridi.

At trial, the government intends to call accomplice witnesses Anwar Khattak and Iqbal Baig to testify. Khattak and Baig were Haji Ayub Afridi's chief associates in the hashish distribution business in Pakistan from approximately 1982 to 1989. In that connection, these witnesses will provide detailed testimony about the narcotics conspiracy charged in this case, i.e., a conspiracy between Afridi, Khattak, and Iqbal Baig to import hashish into the United States from March 1983 to June 1988. The conspiracy centers around four attempts by cooperating witness Stewart Newton to import multi-ton shipments supplied by Afridi into the United States, three of which were successful. Government witnesses, including Khattak, Baig, Newton and others,

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are expected to testify that Afridi was the supplier for all of the Newton importations and was a party to virtually every important meeting and incident related to these importations.

In addition to participating in the conspiracy to import hashish to the United States with Stewart Newton, Khattak, Baig and Afridi engaged in several other crimes, including other multi-ton hashish transactions for which Afridi was the supplier. The anticipated testimony relating to those other acts is summarized below. The legal basis on which the government relies to offer this evidence is discussed in Part Two of this letter.

I. SUMMARY OF OTHER ACTS

A. Gold Smuggling

Government witness Iqbal Baig will testify that he has known Ayub Afridi since the 1960's, when both were in the gold smuggling business. Specifically, Afridi was a truck driver at the time, and delivered several loads of gold to Baig that had been illegally smuggled into Pakistan through its Northwest border.

B. The Exportation to Holland of 3,000 Kilograms.

Khattak participated in an exportation of approximately 3,000 kilograms of hashish to Holland in late-1982, early-1983. The exportation was accomplished through the concealment of the hashish in two commercial containers carrying frozen fish, and the hashish was packed together with the fish. The shipment was successfully imported into Holland, but was seized by local police before being distributed by the customer, a man named Carl Berth. Khattak ultimately learned that 1,000 kilograms was supplied by Afridi, and it was this transaction that eventually led to Khattak and Afridi meeting and forming a criminal partnership that would last for several years.

In testifying about this incident, Khattak is expected to report that he obtained 1,000 kilograms from an individual known as Kareem who was living in Karachi, Pakistan. At some point after the shipment was seized in Holland, Khattak was visited at his office by Afridi and Afridi's associate. Afridi, whom Khattak had never met, introduced himself and reported that he had been directed to Khattak by Kareem. Afridi told Khattak that Afridi supplied the hashish to Kareem for re-sale to Khattak, and that Kareem had not yet paid Afridi. According to Afridi, Kareem had told Afridi that the hashish was given to Khattak, and Afridi was seeking to determine that Kareem's explanation was truthful. In addition, Khattak will testify that Afridi and Khattak discussed their respective hashish businesses and Afridi told Khattak, in substance, that Khattak should

contact Afridi directly to obtain hashish for Khattak's future deals.

Khattak's testimony regarding this introductory meeting will provide a logical transition to the commencement of the charged conspiracy. Khattak will likely testify that, only a few months after the meeting, Khattak received a telephone call from Afridi to enlist Khattak's assistance with respect to real estate that Kareem was offering. Specifically, Afridi reported that Kareem proposed to pay Afridi by transferring to Afridi a parcel of Karachi real estate. Afridi sought Khattak's assistance by, among other things, asking Khattak's opinion as to the value of the property. Afridi ultimately accepted the property, which was a residence, and travelled to Karachi to stay there shortly thereafter. During that period, Afridi and Khattak spent significantly more time together and further discussed hashish trafficking.

Khattak will further testify that, shortly after Afridi returned to his residence in the Northwest Frontier Province, Afridi contacted Khattak and enlisted Khattak's participation in the first Newton shipment. Afridi informed Khattak that Iqbal Baig, who was Afridi's associate, was attempting to organize a multi-ton shipment to an American customer (Newton) from Karachi, and that Afridi wanted Khattak to supervise several logistical aspects of the transaction in Karachi, where Khattak resided, such as the transportation of the load out to Newton's ship which was anchored offshore. The resulting 9-ton shipment is encompassed by the charges in the Superseding Indictment.

C. Additional Hashish Transactions Between Afridi, Khattak, and Baig.

As is explained above, Afridi, Khattak and Baig completed the first successful shipment to Newton in 1983. In the years that followed, Afridi, Khattak and Baig engaged in additional transactions with Newton, and also several additional transactions with other customers. The government intends to present evidence of the transactions with other customers under Federal Rule of Evidence 404(b).

1. The Houston, Texas Shipment. Khattak will testify that he and Afridi were involved in a shipment of 4,500 kilograms of hashish to Houston, Texas by an American individual known to Afridi and Khattak as Habib. Afridi was introduced to Habib through Afridi's associate, Momim Shinwari. Afridi supplied Habib with the hashish, and the shipment was ultimately seized in the United States.

2. Shipments to Canada. Khattak and Baig are also expected to testify that Afridi served as the supplier for several hashish shipments to Canada in the 1983-1985 time frame.

Khattak and Afridi consummated the first two deals with an individual known as Ali, who had customers in Canada. Khattak and Afridi sent both shipments, each of which was approximately 4,500 kilograms, to Ali's designated customers in Canada.

Khattak and Baig will then testify about a scheme involving Baig, for which Afridi served as the supplier. Specifically, also in 1984, Baig reported that he had Canadian customers who were interested in receiving a hashish shipment. Afridi supplied approximately 4,000 kilograms. Baig will also testify to a subsequent deal with customers in Canada. For that deal, Baig merely supplied Afridi with the information regarding the customer and Afridi handled the hashish shipment without needing Baig's assistance.

Khattak will also testify that, later in 1984 or early 1985, he was asked to obtain additional hashish shipments for Ali's customers, but Afridi refused to continue supplying Ali because Ali had delayed in paying for the previous shipments.

Finally, Khattak will testify to an early-1985 shipment to Canada of 12 tons of hashish to a different group of individuals. Afridi's organization shipped the hashish, all of which was supplied by Afridi, to persons known to Khattak as Wayne -- who had been directed to Khattak and Afridi by Habib -- and Mohammed. Khattak will report that Khattak and Akbar Sheik travelled to Singapore and received payments from these individuals on several occasions, and that Afridi was present in Singapore with them for the last payment. Akbar Sheik is an unindicted coconspirator for the charged crimes. In fact, his role in the charged conspiracy is similar to that played in this transaction. Khattak, Baig, Stewart Newton and other government witnesses are expected to testify that Akbar Sheik received and laundered several million dollars in cash in Singapore from Newton's associates as payment for the Newton shipments.

Shipment to California (Same Organization). In connection with the same group that transported this 12 ton shipment to Canada, Khattak will report that an associate of Wayne and Mohammad, who was known to Khattak as "Sufi," purchased 30 tons of Afridi hashish from Khattak, Afridi and Sheikh which was delivered successfully to California. Khattak will testify that this shipment was exported from Pakistan in February, 1989. Khattak was arrested in April, 1989. For that reason, Khattak was not at liberty when the payments were made, and will testify that he and Afridi had several discussions regarding the payments while Khattak was incarcerated.

3. Shipments to Italy. Khattak is expected to testify about an attempted exportation of 17 tons of hashish to three men in Italy. In 1984, three men, whom Khattak knew as Gino, Mario and Johnny, were introduced to Khattak. It was then

proposed that a ship be purchased by Hafeez and Ali in partnership with Khattak and Afridi to be used for shipments to Italy. Khattak will report that Afridi contributed \$200,000 to purchase the ship and another \$100,000 in furtherance of repairs. Ultimately, Afridi supplied 17 tons of hashish. Afridi transported the hashish from the Northwest Frontier Province towards Karachi for ultimate delivery to the waiting ship. However, it was seized by Pakistani officials outside of Karachi.

4. Shipment to London. Iqbal Baig will also testify concerning a 2,500 kilogram shipment that he and Afridi sent to London through India. That shipment occurred in 1984 or 1985. Afridi supplied the hashish and then arranged for its delivery to India, where it was then re-routed for London.

5. Additional Shipments to Holland. Khattak is expected to testify about two additional shipments to Holland of Afridi hashish to a customer named Abass. Khattak will explain that Abass was introduced to Afridi initially by Afridi's associate named Momin Khan, and then to Khattak thereafter. Abass took the shipments by open-sea transfers to private vessels, as opposed to commercial containers. This was essentially the same method that had been employed by Stewart Newton. The first shipment occurred in early-1987 and totalled 19 tons. According to Khattak, the shipment followed meetings in Karachi involving Khattak, Afridi, Momin Khan and Abass.

Khattak will also testify that Abass met with Afridi and Khattak after the 19 ton shipment and requested that they supply 100 tons. Shortly before Khattak's arrest, Afridi compiled 57 tons which was delivered in the open sea to Abass's ship. After Khattak was arrested, Afridi told Khattak that the shipment had gone to Holland successfully.

II. ARGUMENT

The Evidence Regarding Other Criminal Acts Is Admissible to Establish Background

The testimony relating to Afridi that the government intends to offer through Khattak and Baig is admissible under Federal Rule of Evidence 404(b) to establish the nature of the relationship between Afridi, Khattak, Baig, and Akbar Sheik, and to explain to the jury why it is that Afridi would be inclined to serve as the supplier for the Newton importations, a course of conduct that continued until June, 1988. The extensive criminal dealings engaged in by Khattak, Afridi, Baig and Sheik establish the background, context and common scheme of the charged conspiracy, and is admissible in evidence.

In addition to subscribing to an inclusionary view of similar act evidence, the Second Circuit has repeatedly held that evidence of other illegal dealings among members of a conspiracy may be admitted "to enable the jury to understand the complete story of the crimes charged" and "to explain to the jury how the illegal relationship between [the conspirators] developed." United States v. Brennan, 798 F.2d 581, 589 (2d Cir. 1986). "In numerous conspiracy prosecutions, the [Second Circuit] has permitted the government to use similar act evidence to inform the jury of the background of the conspiracy charged." United States v. Harris, 733 F.2d 994, 1006 (2d Cir. 1984).

A review of recent Second Circuit cases establishes the admissibility of evidence tending to show the basis for trust among co-conspirators. In United States v. Rosa, 11 F.3d 315, 334 (2d Cir. 1993), cert. denied, 114 S.Ct. 1565 (1994) the witness, who was 30, testified that he had met the defendant, who was charged with narcotics trafficking, when the witness was 16 or 17, and that in the intervening years, the two had stolen cars together. The Second Circuit held that the admission of evidence relating to the defendant's stealing of cars was appropriate because it explained "how the illegal relationship between [the defendant and the witness] developed and to explain why [the witness] had appointed [the defendant] to a leading position in the Organization." In United States v. Langford, 990 F.2d 65, 70 (2d Cir. 1993), the court held that it was proper to admit evidence of prior dealings between a government witness and the defendant to show the "background and history" of the relationship among parties. Similarly, in United States v. Pitre, 960 F.2d 1112, 1119 (2d Cir. 1991), the court held that admission of evidence of prior narcotics trafficking was relevant to inform the jury of the background of the conspiracy charged, in that such evidence was useful to explain the relationship among and between the defendants and the cooperating witnesses. Finally, in United States v. Roldan-Zapata, 916 F.2d 795, 804 (2d Cir. 1990), cert. denied, 499 U.S. 940 (1991), the Second Circuit affirmed the trial court's decision to admit evidence of a pre-existing drug trafficking relationship between the defendant and a co-conspirator to aid the jury's understanding of how the transaction for which the defendant was charged came about and the defendant's role in it. See also United States v. Brennan, supra, (Court noted that without evidence of prior bad acts between defendant and witness, "the jury would have a truncated and possibly confusing view" of certain facts in the case); United States v. Moten, 564 F.2d 620, 628 (2d Cir.) cert. denied, 434 U.S. 942 (1977) (proof of prior drug dealing between defendants and witness at a time prior to the beginning of the conspiracy charged held admissible to show mutual trust that existed between witness and his customers).

The evidence of other drug dealing that occurred subsequent to the inception of the conspiracy is similarly

admissible to show a continuing conspiratorial relationship and the overarching scheme that existed between the defendant and his co-conspirators. See United States v. Cavallaro, 553 F.2d 300, 305 (2d Cir. 1977). In Cavallaro, the defendants were charged for their participation in a kidnapping scheme. The district court allowed the government to present evidence, under Rule 404(b), that after the charged kidnapping, the defendants restrained and shot another individual. On appeal, the Second Circuit upheld the decision to admit evidence, holding "[i]t is well-established in this circuit that evidence of subsequent similar acts, including other crimes, is admissible in the discretion of the trial court 'if it is substantially relevant for a purpose other than merely to show a defendant's criminal character or disposition.'" Id. (quoting United States v. Deaton, 381 F.2d 114, 117 (2d Cir. 1967); see, e.g., United States v. Ramirez, 894 F.2d 565, 569 (2d Cir. 1990) (evidence of narcotics transaction that occurred after charged crime properly admitted under Rule 404(b)).

The evidence summarized above concerning other criminal dealings between Afridi and the other members of this conspiracy, including Khattak and Baig, is highly significant in explaining to the jury why Afridi was inclined to play the crucial role as supplier for the charged importations involving Khattak, Baig and Newton.

First, the gold smuggling activities of Baig and Afridi were the basis for their having known each other in the first place. This information explains how it is that Baig would have been inclined to contact Afridi when he needed to obtain hashish to supply to Stewart Newton. Along the same lines, the shipment to Holland to customer Carl Berth actually led to Afridi and Khattak meeting for the first time. Thus, this deal is exceedingly relevant as it explains to the jury just how it is that Afridi and Khattak would have formed a criminal venture in the first instance. Therefore, the occurrence of these crimes make more plausible the allegation that Afridi would have trusted Khattak and Baig enough to join this conspiracy in the first place. Without this evidence, the jury would be far less able to accurately evaluate the case because it will lack a complete understanding as to how the union between Afridi, Khattak and Baig developed. Thus, the jury would be left with a "truncated and . . . confusing view of the case." Brennan, supra, and possibly entertain an unreasonable, unjustified suspicion of Khattak's and Baig's testimony that they and Afridi were close associates.

The same is true for the remaining drug transactions described above. Here, the other act evidence shares a strong factual identity with the crime charged, and is especially probative of a common scheme. See United States v. Arroyo-Angulo, 580 F.2d 1137, 1149 (2d Cir.) (evidence of drug deal occurring

nine months after crime charged admissible to show common scheme), cert. denied, 439 U.S. 913 (1978). Indeed, the scheme was common and ongoing given that the charged conspiracy in this case continued until well into 1988, while these other similar deals were taking place.

In addition, these crimes as well establish the background of this criminal relationship and help explain how the criminal alliance remained cohesive and even grew during the time-period charged in the indictment. They tend to prove the veracity of the government's contention that Afridi, Khattak, Baig and Sheikh would have engaged in multiple transactions, which expanded in scope significantly, with Newton over the five-year period charged in the indictment.

The Probative Value of the Evidence Outweighs Any Possible Prejudicial Effect

Assuming that the Court finds that the evidence the government seeks to offer is for a proper purpose, the Court must next determine whether the probative value of the evidence is outweighed by its prejudicial effect. Quite simply, none of the additional evidence the government seeks to offer is so prejudicial as to warrant its exclusion in the government's direct case. In Roldan-Zapata, supra, the Court noted that the evidence admitted in that case did "not involve conduct any more sensational or disturbing than the crimes with which the defendant is charged." Thus, the Court found that the probative value was not outweighed by the possible prejudicial effect of the murder.

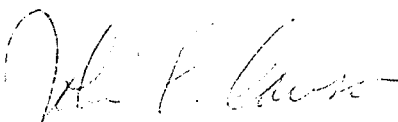
Here, the additional crimes that we seek to establish are additional instances of narcotics dealing, precisely the same conduct as is charged in the superseding indictment. Facts about additional multi-ton hashish transactions can hardly be expected to prejudice the jury in light of the facts underlying the charged crimes. Indeed, the charged conspiracy involved the importation of approximately 50 tons of hashish into the United States, while the additional transactions were for comparatively equal, if not smaller, amounts. Thus, these other hashish deals are not likely to inflame this jury to any degree in the face of evidence that Afridi imported 50 tons of hashish to the Eastern District of New York.

For the foregoing reasons, it is respectfully requested that the Court grant this motion in limine for the admission of evidence of other acts evidence involving Afridi.

Respectfully submitted,

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By:



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cc: Ivan S. Fisher, Esq.