



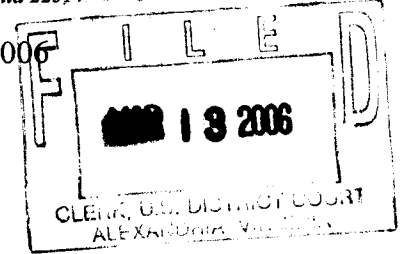
U.S. Department of Justice

United States Attorney

Eastern District of Virginia

2100 Jamieson Avenue  
Alexandria, Virginia 22314

March 13, 2006



**Ex Parte — Under Seal**

Hon. Leonie M. Brinkema  
United States District Judge  
401 Courthouse Square  
Alexandria, VA 22314

**By Hand Delivery**

Re: U.S. v. Zacarias Moussaoui; Crim. No. 01-455-A

Dear Judge Brinkema:

We write *ex parte* to inform the Court of a possible violation of the sequestration order as it relates to FAA witnesses. Late in the afternoon on Friday, March 10, 2006, we learned that Carla Martin, an attorney for the Transportation Safety Administration, provided a copy of the transcript from the first day of trial to one of the witnesses from the FAA, Lynne Osmus. Ms. Osmus did not read the transcript. We then investigated Ms. Martin's contact with other current/past employees of FAA, whom Ms. Martin represented in this case (she has since been replaced). We learned over the weekend that Ms. Martin sent e-mails with the transcript from the first day to the following potential witnesses:

Name of Witness	Side Calling Witness	Read E-Mail?	Read Transcript?
Lynne Osmus	Gov't	Yes	No
Claudio Manno	Gov't	Yes	Yes
Lee Longmire	Gov't	Yes	No
Pat McDonnell	Defense	Yes	No
Robert White	Defense	Yes	No
Matthew Kormann	Defense	Yes	Yes
John Hawley	Defense	Unknown	Unknown

We have been unable to contact Mr. Hawley to determine whether he reviewed the e-mails or the

1671

transcript.

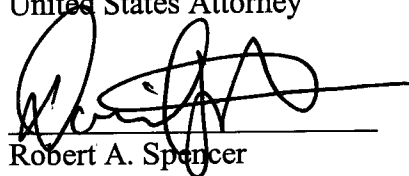
We view Ms. Martin's conduct as reprehensible and we frankly cannot fathom why she engaged in such conduct. As soon as we learned of her conduct, we contacted her supervisors and engaged in an investigation which yielded the above results. We also notified defense counsel of the conduct by letter, a copy of which is attached.

We submit this letter *ex parte* because we ask the Court to review Ms. Martin's e-mails, which we enclose, to determine whether they must be produced to defense counsel. As noted in the letter to defense counsel, one e-mail generated a response from Ms. Osmus and her response has been turned over as Jencks material. The rest of the e-mails consist of Ms. Martin pontificating about the openings, wrongly understanding the proof that the Government intends to offer. In our view, Ms. Martin's misguided opinions are not Brady material because she is not a fact witness. In addition, Ms. Martin was an attorney working on this case, and her e-mails consist of her opinions about on-going litigation prepared as part of her preparation for the litigation and, therefore, may constitute attorney work product. As noted above, we have provided notice to the defense that potential witnesses have learned of the contents of the opening statements and one portion of Agent Anticev's testimony, and this disclosure may be the subject of cross-examination. For this reason, we respectfully submit that Ms. Martin's e-mails should not be produced to defense counsel.

Respectfully submitted,

Paul J. McNulty  
United States Attorney

By:



Robert A. Spencer  
David J. Novak  
David Raskin  
Assistant United States Attorneys



U.S. Department of Justice

United States Attorney

Eastern District of Virginia

2100 Jamieson Avenue (703)299-3700  
Alexandria, Virginia 22314

March 13, 2006

Edward B. MacMahon, Jr., Esq.  
Alan Yamamoto, Esq.  
Gerald Zerkin, Esq.  
Ken Troccoli, Esq.

Hand-delivery

Re: United States v. Zacarias Moussaoui; Crim. No. 01-455-A

Dear Counsel:

We write to inform you of a possible violation of the sequestration order as it relates to FAA witnesses. Late in the afternoon on Friday, March 10, 2006, we learned that Carla Martin, an attorney for the Transportation Safety Administration, provided a copy of the transcript from the first day of trial to one of the witnesses from the FAA, Lynne Osmus. Ms. Osmus did not read the transcript. We then investigated Ms. Martin's contact with other current/past employees of FAA, whom Ms. Martin represented in this case (she has since been replaced). We learned over the weekend that Ms. Martin sent e-mails with the transcript from the first day to the following potential witnesses:

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Pat McDonnell	Defense	Yes	No
Robert White	Defense	Yes	No
Matthew Kormann	Defense	Yes	Yes
John Hawley	Defense	Unknown	Unknown

We have been unable to contact Mr. Hawley. When we learn whether he reviewed the e-mail and the transcript, we will promptly let you know.

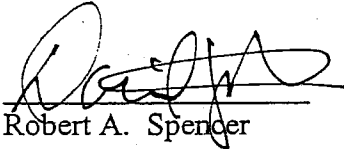
Additionally, Ms. Osmus responded to one of Ms. Martin's e-mails about the possible subject of her testimony. We enclose a copy of that e-mail as part of Ms. Osmus's Jencks material.

Ms. Martin's e-mails contained portions of the opening statements from both sides regarding the FAA evidence. She also included, however, a comment about the testimony of Agent Anticev, stating that he "got tripped up on the Murad issue of flying a plane into the CIA bldg., stating that before 9/11 'no one had ever thought about flying an airplane into a building.'" We are providing a copy of all of Ms. Martin's e-mails to the Court for an *ex parte* determination as to whether they must be produced in discovery.

Sincerely,

Paul J. McNulty  
United States Attorney

By:

  
Robert A. Spencer  
David J. Novak  
David Raskin  
Assistant United States Attorneys

Novak, David (USAVAE)

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From: Kerner, Francine [REDACTED]  
Sent: Saturday, March 11, 2006 11:57 AM  
To: Novak, David (USAVAE)  
Subject: FW: Got your message

-----Original Message-----  
From: Martin, Carla <TSA OCC>  
Sent: Sat 3/11/2006 9:53 AM  
To: Kerner, Francine  
Cc:  
Subject: FW: Got your message

FYI  
-----Original Message-----  
From: [REDACTED]  
Sent: Wednesday, March 08, 2006 8:15 AM  
To: Carla  
Subject: Got your message

And agree w need to be careful in describing how these measures would have impacted the attack, and will be prepared. I don't support including 100percent gate screening...couldn't be done in the shortterm, which is why CAPPS was used to identify who would get the gate screening.

Novak, David (USAVAE)

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From: Kerner, Francine [REDACTED]  
Sent: Saturday, March 11, 2006 1:57 PM  
To: Novak, David (USAVAE)  
Subject: Fw: Moussaoui Transcripts

Attachments: 3-6-06 1.PDF; 3-6-06.1a.pdf



3-6-06 1.PDF (780 KB)



3-6-06.1a.pdf (5 MB)

Here is the email that went to Pat. I left you a voice mail. When Carla went into the office today to check her records, she determined that she sent the transcript to TSA witnesses too. I will be following up with additional email.

-----Original Message-----

From: Martin, Carla <TSA OCC> [REDACTED]  
To: Kerner, Francine [REDACTED]  
Sent: Sat Mar 11 12:32:01 2006  
Subject: FW: Moussaoui Transcripts

<<3-6-06 1.PDF>>

-----Original M <<3-6-06.1a.pdf>> message-----

From: Martin, Carla <TSA OCC>  
Sent: Wednesday, March 08, 2006 12:40 PM  
To: [REDACTED]  
Subject: FW: Moussaoui Transcripts

Pat: here are the opening statements-unfortunately, there are big gaps that the defense can exploit:

Among the highlights:

"The FAA is responsible for commercial airline security in the United States. Where the FBI would be the offense looking for the plot, had Moussaoui not lied, the FAA would be the defense."

That "CAPPS (the "computer assisted passenger preselection system" (sic) would have been changed to look not for explosives but for small knives and box cutters, and that would have prevented the terrorists from getting on the plane and getting on the plane with the weapons they used to turn those aircraft into weapons to kill Americans."

"It would have been a very straightforward effort for the FAA to keep those hijackers and to keep anyone with a knife or a box cutter off a plane."

"Because the FAA before 9/11 was concerned about people smuggling explosives in checked luggage onto planes. They weren't concerned at that point about people taking over a plane with a primitive weapon."

The defense, essentially responded by saying "what the Govt. wants you to believe is only a dream, and its most seductive quality is that we all wish it had come true, but it is only a dream."

Today, the FBI agent on the stand got tripped up on the Murad issue of flying a plane into the CIA bldg., stating that before 9/11 "no one had ever thought about flying an airplane into a building."

and p. 59, from the defense: "The evidence in this case will be that every measure taken after 9/11 to protect airline pax could have been taken before, and the Govt. and the airlines' inability to adapt to the new threat of suicide hijackings was the fundamental weakness most plainly exploited by the real hijackers on September 11th."

As you can see, Claudio, Lynne, Ed Soliday and Larry Wannsley have their work cut out for them, and you may as well.

Carla

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Novak, David (USAVAE)

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From: Kerner, Francine [REDACTED]  
Sent: Saturday, March 11, 2006 2:17 PM  
To: Novak, David (USAVAE)  
Subject: Fw: Moussaoui Transcripts

Attachments: 3-6-06 1.PDF; 3-6-06.1a.pdf



3-6-06 1.PDF (780  
KB)



3-6-06.1a.pdf (5  
MB)

-----Original Message-----

From: Martin, Carla <TSA OCC> <[REDACTED]>  
To: Kerner, Francine <[REDACTED]>  
Sent: Sat Mar 11 13:31:45 2006  
Subject: FW: Moussaoui Transcripts

<<3-6-06 1.PDF>>

-----Original M <<3-6-06.1a.pdf>> message-----

From: Martin, Carla <TSA OCC>  
Sent: Tuesday, March 07, 2006 4:54 PM  
To: White, Robert L <Intelligence TSI>; Hawley, John; Kormann, Matthew  
Cc: Stauffer, Stefanie; Longmire, Lee  
Subject: FW: Moussaoui Transcripts

FYI: Among the highlights:

"The FAA is responsible for commercial airline security in the United States. Where the FBI would be the offense looking for the plot, had Moussaoui not lied, the FAA would be the defense."

That "CAPPS (the "computer assisted passenger preselection system" (sic) would have been changed to look not for explosives but for small knives and box cutters, and that would have prevented the terrorists from getting on the plane and getting on the plane with the weapons they used to turn those aircraft into weapons to kill Americans."

"It would have been a very straightforward effort for the FAA to keep those hijackers and to keep anyone with a knife or a box cutter off a plane."

"Because the FAA before 9/11 was concerned about people smuggling explosives in checked luggage onto planes. They weren't concerned at that point about people taking over a plane with a primitive weapon."

The defense, essentially responded by saying "what the Govt. wants you to believe is only a dream, and its most seductive quality is that we all wish it had come true, but it is only a dream."

Today, the FBI agent on the stand got tripped up on the Murad issue of flying a plane into the CIA bldg., stating that before 9/11 "no one had ever thought about flying an airplane into a building."



Carla

--

**Novak, David (USAVAE)**

---

**From:** Martin, Carla <TSA OCC> [REDACTED]  
**Sent:** Saturday, March 11, 2006 5:28 PM  
**To:** Kerner, Francine  
**Subject:** FW: Got your message

-----Original Message-----

**From:** Martin, Carla <TSA OCC>  
**Sent:** Wednesday, March 08, 2006 11:52 AM  
**To:** [REDACTED]  
**Subject:** RE: Got your message

Lynne-let me put it this way: my friends Jeff Ellis and Chris Christenson, NY lawyers rep. UAL and AAL respectively in the 9/11 civil litigation, (and rep. Ed S. and Larry W. here) all of us aviation lawyers, were stunned by the opening. The opening has created a credibility gap that the defense can drive a truck through. There is no way anyone could say that the carriers could have prevented all short bladed knives from going through-Dave MUST elicit that from you and the airline witnesses on direct, and not allow the defense to cut your credibility on cross, (just as they did yesterday with the FBI witness) by saying, "do you really believe, as the prosecution has stated, that all knives could have been found, when there are x-thousands of domestic flights daily in the US, that even now post 9/11 the screener detection rates are very low, and that's all it would have taken to prevent 9/11? That's all he would really need to say.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Wed 3/8/2006 8:14 AM  
**To:** Carla  
**Cc:**  
**Subject:** Got your message

And agree w need to be careful in describing how these measures would have impacted the attack, and will be prepared. I don't support including 100percent gate screening...couldn't be done in the shortterm, which is why CAPPS was used to identify who would get the gate screening.

**Novak, David (USAVAE)**

---

**From:** Martin, Carla <TSA OCC> [REDACTED]  
**Sent:** Saturday, March 11, 2006 5:29 PM  
**To:** Kerner, Francine  
**Subject:** FW: Security Counter-Measures

-----Original Message-----

**From:** Martin, Carla <TSA OCC>  
**Sent:** Tuesday, March 07, 2006 6:32 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Security Counter-Measures

Lynne:

I don't want you to respond to this by email, but I want you to think about this: I am of the opinion, based on what was said in the opening, (and I am VERY CONCERNED about this opening) and how the defense can exploit it-i.e., the fact that by merely finding all the "primitive weapons" (assuming that could be done) that that's all it would take to prevent the 9/11 attacks from happening? I don't think so.

If you look at the Exhib. list, as I said yesterday, we would have had a measure to initiate 100 per cent gate screening with hand-helds before boarding the aircraft, but FAR MORE IMPORTANTLY-all of these hijackers, particularly Atta, and Jarrah, were well trained in hand to hand combat. Assuming some of them got on board the plane, we know that many things could have been utilized on the aircraft to intimidate and to kill people with. Therefore: we MUST emphasize the deterrent value of the measures-i.e., putting up big signs at the screening checkpoints re knives, the scanning of the names through the pax reservation systems, 100 per cent gate screening of pax, but more importantly, assuming they actually got on the plane, we would have had to have some provision that forbid the cockpit from opening the door for any reason, that F/A's could not use their keys to open the doors. Something, to take into account that the banning of small knives alone would NOT have prevented the attacks from going forward-but that the deterrent value of knowing that security measures had been stepped up, would have caused them to re-think their plans, and thus thwart them from going forward.

This is what I would have said in the opening:

"That the multilayered system of aviation security -which you will see examples of in this case-which the FAA had initiated before, and would have initiated again, a multilayered, redundant system of security counter-measures involving close cooperation between the FAA and the regulated air carriers who would implement such measures-

These measures would have acted as a deterrent to the hijackers and their deadly plans to take over these aircraft, and would have thwarted the attacks."

Unfortunately, we can't redo this now.

Carla

**Novak, David (USAVAE)**

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**From:** Martin, Carla <TSA OCC> [REDACTED]  
**Sent:** Saturday, March 11, 2006 6:17 PM  
**To:** Kerner, Francine  
**Subject:** FW: Moussaoui Transcripts

Francine: as we discussed, the quote below of the FBI witness was taken from a Fox News website article on Tues. Mar. 7th. Here's the link:

[www.foxnews.com/story/0,2933,187021,00.html?sPage=specialsections.foxnews/lawcenter](http://www.foxnews.com/story/0,2933,187021,00.html?sPage=specialsections.foxnews/lawcenter)

-----Original Message-----

**From:** Martin, Carla <TSA OCC>  
**Sent:** Wednesday, March 08, 2006 11:38 AM  
**To:** [REDACTED]  
**Subject:** RE: Moussaoui Transcripts

Claudio-Matt has said he can live with the substitution, except for one small part, which he says is incorrect-and I will go over this with you-I need to pick it up downstairs. More importantly, re the issue of did we ever explore the scenario of flying planes into buildings-and partic. Murad's talk of flying a plane into CIA HQ-I had Matt pull the unclass. Airman checks that we did to check on Murad's assoc. and the fact that we briefed the carriers on our investigation-I will look at what he pulled.

Also, Dave is going to have to go over the lack of information sharing with you ON DIRECT EXAMINATION-to blunt the blow of having the defense raise it for the first time on cross, thus weakening your credibility-and I'm speaking specifically of the following issues: 1. the Phoenix Memo-no, we did not get it, but if we had, this is what we would have done, just as we did when we got the Moussaoui info. -no, we did not know that DCI Tenet was being briefed on Moussaoui re "Islamic Fundamentalist Learns to Fly", but it doesn't matter, because we did get the information, we were following up on it, and he was in custody at the time, so we knew he himself posed no immediate threat to aviation-the question will be raised did you have any reason to believe that M. was part of a conspiracy? Did you think about this? Did you do anything about this? How did you follow up on this?

In other words, the defense will exploit the fact that the FAA was not clued in to what was going on-you need to assert that we did not necessarily need to wait until we got all available information, that we acted independently, indeed, we had a statutory mandate, to follow up on any issue that we thought was a threat to civil aviation, regardless of whether the IC had any information to share on the subject or not.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Wednesday, March 08, 2006 10:44 AM  
**To:** Carla Martin  
**Subject:** Re: Moussaoui Transcripts

Ok. Incredible -- 3 lengthy assessments whittled down to 2 pages. The best way to get it here is probably to fax it since it's only 2 Pages. Our fax number is [REDACTED].

----- Original Message -----

From: "Martin, Carla <TSA OCC>" [REDACTED]  
Sent: 03/08/2006 10:29 AM  
To: [REDACTED]  
Subject: RE: Moussaoui Transcripts

Yes, I have it-it's 2 pages-and I had Matt review it.

-----Original Message-----

From: [REDACTED]  
Sent: Wed 3/8/2006 10:01 AM  
To: [REDACTED]  
Cc:  
Subject: RE: Moussaoui Transcripts

OK. Thanks . Do you know what the status of the substitution is. today is already Wednesday and they supposedly were to have it done by Monday evening.

"Martin, Carla  
<TSA OCC>"

To  
03/07/2006 04:37 [REDACTED]  
PM cc  
[REDACTED]  
Subject  
RE: Moussaoui Transcripts

Also, Claudio-the FBI agent today got tripped up when questioned about flying airplanes into buildings-he said that no one, before 9/11 "had ever thought about flying airplanes into buildings." The defense countered with Murad re the plane and CIA. I've asked Matt to pull any unclass. Information on Murad-as I know we ran down this issue, deemed it not to be credible, and ran names through the airman registry, those

names of other indiv. assoc. with Murad. Dave will need to go over that with you.

-----Original Message-----

From: Martin, Carla <TSA OCC> [REDACTED]  
Sent: Tuesday, March 07, 2006 4:31 PM  
To: Claudio.Manno [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Moussaoui Transcripts

Yes-and here are some of the highlights I'm not too happy about:

"The FAA is responsible for commercial airline security in the United States. Where the FBI would be the offense looking for the plot, had Moussaoui not lied, the FAA would be the defense."

That "CAPPS (the "computer assisted passenger preselection system" (sic) would have been changed to look not for explosives but for small knives and box cutters, and that would have prevented the terrorists from getting on the plane and getting on the plane with the weapons they used to turn those aircraft into weapons to kill Americans."

"It would have been a very straightforward effort for the FAA to keep those hijackers and to keep anyone with a knife or a box cutter off a plane."

"Because the FAA before 9/11 was concerned about people smuggling explosives in checked luggage onto planes. They weren't concerned at that point about people taking over a plane with a primitive weapon."

The defense, essentially responded by saying "what the Govt. wants you to believe is only a dream, and its most seductive quality is that we all wish it had come true, but it is only a dream."

-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, March 07, 2006 4:28 PM  
To: Carla Martin  
Cc: [REDACTED]  
Subject: Re: Moussaoui Transcripts

Thanks Carla. We'll look at it. 119 pages -- did they really talk that Long?

----- Original Message -----

From: "Martin, Carla <TSA OCC>" [REDACTED]  
Sent: 03/07/2006 03:06 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: FW: Moussaoui Transcripts

Lynne, Claudio-you need to read this transcript of the prosecutor's opening statements-it is all about the FAA, and how it would have caught the hijackers and prevented 9/11.

I believe there are more than a few errors here.

Carla

-----Original Message-----

From: Jeffrey Ellis [REDACTED]  
Sent: Tuesday, March 07, 2006 12:26 PM  
To: Martin, Carla  
Subject: Fw: Moussaoui Transcripts

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Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Christensen, Christopher R. <[REDACTED]>  
To: Jeffrey Ellis [REDACTED]  
Sent: Tue Mar 07 10:27:17 2006  
Subject: Fw: Moussaoui Transcripts

Y <<3-6-06 1.PDF>> ou may have had di <<3-6-06.1a.pdf>> ffinity opening the prior version of the transcripts

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Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: Selinger, Maia L. <[REDACTED]>  
To: Christensen, Christopher R. <[REDACTED]>  
Sent: Tue Mar 07 10:24:52 2006  
Subject: Moussaoui Transcripts

<<<3-6-06 1.PDF>> <3-6-06 1.PDF>> <<3-6-06.1a.pdf>> <<3-6-06.1a.pdf>>

Maia Selinger  
Legal Assistant  
Condon and Forsyth LLP



7 Times Square  
New York, NY 10036



**Novak, David (USAVAE)**

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**From:** Martin, Carla <TSA OCC> [REDACTED]  
**Sent:** Saturday, March 11, 2006 6:27 PM  
**To:** Kerner, Francine  
**Subject:** FW: Moussaoui Transcripts

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**From:** Martin, Carla <TSA OCC>  
**Sent:** Tuesday, March 07, 2006 4:38 PM  
**To:** [REDACTED]  
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**Sent:** Tuesday, March 07, 2006 4:31 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Moussaoui Transcripts

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To: Carla Martin  
Cc: [REDACTED]  
Subject: Re: Moussaoui Transcripts

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To: [REDACTED]  
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To: Jeffrey Ellis <[REDACTED]>  
Sent: Tue Mar 07 10:27:17 2006  
Subject: Fw: Moussaoui Transcripts

Y <<3-6-06 1.PDF>> ou may have had di <<3-6-06.1a.pdf>> fficulty opening the prior version of the transcripts

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Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

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To: Christensen, Christopher R. [REDACTED]

Sent: Tue Mar 07 10:24:52 2006

Subject: Moussaoui Transcripts

<<3-6-06 1.PDF>> <3-6-06 1.PDF>> <<3-6-06.1a.pdf>> <<3-6-06.1a.pdf>>

Maia Selinger  
Legal Assistant  
Condon and Forsyth LLP  
7 Times Square  
New York, NY 10036  
[REDACTED]