UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

CRIMINAL NO. 2:10-CR-20005
HONORABLE NANCY G. EDMUNDS

v.

D-1, UMAR FAROUK ABDULMUTALLAB,
Defendant.
_____/

MOTION TO SUPPRESS STATEMENTS MADE AT THE UNIVERSITY OF MICHIGAN HOSPITAL

NOW COMES the Defendant, UMAR FAROUK ABDULMUTALLAB ("Defendant ABDULMUTALLAB"), by and through standby-by counsel, ANTHONY T. CHAMBERS, and moves this Honorable Court to Suppress the statements made at the University of Michigan Hospital.

In support of said Motion, standby counsel further states as follows:

1. That on December 25, 2009, Defendant ABDULMUTALLAB was being treated by physicians at the University of Michigan Hospital.
2. That to reduce pain, physicians had to give the Defendant 300 mg of fentanyl.
3. That hospital staff advised federal agents that the Defendant was in no position to conduct a legal interview because he had just been administered 300 mg of fentanyl.
4. That hospital staff were direct and clear when advising federal agents that the Defendant would not be able to conduct a legal interview for four to six hours.
5. That federal agents bypassed the hospital staff's advice and interviewed the Defendant anyways.

6. That these interviews resulted in several Investigative Reports made by FBI agents. (Attachment A, filed under seal).
7. That the federal agents disregard of the hospital staff's advice was ultimately a disregard of the Defendant's legal rights.
8. That coercive police conduct such as knowingly interviewing a Defendant who is under the influence of hospital-regulated medication infringes upon the Defendant's Due Process rights under the Fourteenth Amendment.
9. That while the agents interviewed the Defendant he was under the influence of fentanyl and did not have a clear state of mind.
10. That any use of involuntary statements in a criminal trial is a violation of due process, and such statements are inadmissible. *See Mincey v. Arizona*, 437 U.S. 385, 398 (1978).
11. That the Defendant was heavily sedated and as a result of his semiconscious state and the FBI's coercive investigative tactics the statements the Defendant made from his hospital bed were involuntary.
12. That the coercive tactics of the federal agents was sufficient to overbear the will of the Defendant.
13. That when viewed under the totality of circumstances it is apparent that federal agents engaged in coercive activity.
14. That the coercive activity of the federal agents is illustrated by the fact that at the time of questioning the Defendant did not possess the requisite mind state to give any statements, yet agents still proceeded.

15. That federal agents did not give the Defendant any Miranda rights during this initial interview.
16. That agents purposely did not read the Defendant his Miranda rights because they were looking to take full advantage of his limited state of mind caused by the 300 mg of fentanyl.
17. That a suspect is entitled to a reading of his Miranda rights while he is "in custody." *Thompson v. Keohane,* 516 U.S. 99, 102 (1995).
18. That it is without question that the Defendant was "in custody" when he was initially interviewed by federal agents.
19. That federal agents did not even consider the Defendant's Constitutional Rights when conducting the initial interview.
20. That if federal agents used such tactics on an American citizen it would undoubtedly be a violation of that individual's Constitutional Rights. Defendant ABDULMUTALLAB'S status as a Nigerian citizen should have no bearing on what Constitutional Rights he should and should not receive.
21. That additionally there is another statement that the government recently provided that was allegedly made by the Defendant while at the University of Michigan Hospital. This statement was provided to the FBI by an individual that works for the U.S. Customs and Border Protection. On July 12, 2011 this individual was interviewed by representatives from the government (Attachment B, filed under seal). Furthermore this particular individual was initially interviewed by representatives from the government on December 26, 2009. (Attachment C, filed

under seal). And standby counsel has reason to believe that these alleged statements were obtained in violation of the Defendant's Constitutional Rights.

WHEREFORE, standby counsel and Defendant ABDULMUTALLAB respectfully requests that this Court suppress the statements made at the University of Michigan hospital.

Respectfully Submitted,

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Dated: August 5, 2011

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,
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CRIMINAL NO. 2:10-CR-20005
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D-1, UMAR FAROUK ABDULMUTALLAB,
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DEFENDANT ABDULMUTALLAB'S BRIEF IN SUPPORT OF MOTION TO SUPPRESS STATEMENTS MADE AT THE UNIVERSITY OF MICHIGAN HOSPITAL

This Brief is filed pursuant to the Fifth Amendment and is submitted by Defendant UMAR FAROUK ABDULMUTALLAB ("Defendant ABDULMUTALLAB"), by and through stand-by counsel, ANTHONY T. CHAMBERS, in support of his Motion to Suppress Statements made at the University of Michigan Hospital.

The Prosecution's use of compelled testimony is prohibited by the Fifth Amendment. *Ledbetter v. Edwards*, 35 F.3d 1062, 1067 (6th Cir. 1994) (citing *Oregon v. Elstad*, 470 U.S. 298, 306-07 (1985)). The Supreme Court has held that a statement is not compelled "if an individual 'voluntarily, knowingly and intelligently' waives his constitutional privilege." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Any use of involuntary statements in a criminal trial is a violation of due process, and such statements are inadmissible. *See Mincey v. Arizona*, 437 U.S. 385, 398 (1978). The

voluntariness of a statement is determined by looking at the totality of circumstances. *United States v. Rutherford*, 555 F.3d 190, 195 (6th Cir. 2009) (citing *Colorado v. Connelly*, 479 U.S. 157, 166 (1986)). Additionally an accused is entitled to the reading of his or her *Miranda* rights only when he or she is interrogated while "in custody." *Thompson v. Keohane*, 516 U.S. 99, 102 (1995).

In the matter at hand, Defendant ABDULMUTALLAB suffered several injustices at the hands of Federal agents. The Defendant's Constitutional rights were discarded and he was treated as an enemy combatant[1] instead of a suspect that was soon to be tried in a Civilian Court. At the initial interview the Defendant did not receive his Miranda rights and he was interviewed immediately after being sedated by hospital staff. The Defendant was confronted and interrogated by several federal agents after receiving medication that literally rendered him incapable of voluntarily submitting a statement.

If Federal agents performed such tactics on an American citizen it would undoubtedly be a violation of that individual's Constitutional Rights. The Defendant's status as a Nigerian citizen should have no bearing on what rights he is to be afforded. Defendant ABDULMUTALLAB deserves the full protections of our laws and anything less would be a most heinous injustice.

I. THE STATEMENTS MADE AT THE UNIVERSITY OF MICHIGAN HOSPITAL SHOULD BE SUPPRESSED BECAUSE FEDERAL AGENTS BYPASSED HOSPITAL STAFF AND QUESTIONED THE DEFENDANT WHILE HE WAS SEDATED AND SEMICONSCIOUS

The determination of whether a statement is involuntary requires careful evaluation of all the circumstances of the interrogation. *Mincey v. Arizona*, 437 U.S. 385,

[1] Any person in an armed conflict who could be properly detained under the laws and customs of war. United States Department of Defense.

401 (1978) (citing *Boulden v. Holman*, 394 U.S. 478, 480, (1969)). In *Mincey*, the Supreme Court held that statements made by a Defendant that was interrogated while being treated in the intensive care unit of a hospital could not be used against him, considering at the time he was heavily sedated and under immense pain. 437 U.S. at 401. The Defendant had been seriously wounded just a few hours earlier, and had arrived at the hospital "depressed almost to the point of coma," according to his attending physician. *Id*. at 398. The Defendant had received some treatment, but his condition at the time of the Detective's interrogation was still sufficiently serious that he was in the intensive care unit. *Id*. at 398. The Court reasoned that the Defendant "was weakened by pain and shock, isolated from family, friends, and legal counsel, and barely conscious, and his will was simply overborne." *Id*. at 402. The Court further reasoned that the Defendant was evidently confused and unable to think clearly about either the events of that afternoon or the circumstances of his interrogation. *Id*. at 398.

Mincey and the present case are indistinguishable. In *Mincey*, the Defendant was seriously injured and transported to the nearest hospital where he was sedated and interrogated by a law enforcement official. Here the Defendant suffered third degree burns to his thighs and was transported to the hospital where he was given 300 mg of fentanyl and subsequently interrogated by several federal agents. Both Defendants were in the intensive care unit. Both Defendants were still in a state of shock when they were interrogated. Both Defendants were isolated from family, friends, and legal counsel. And both Defendants were on the brink of consciousness considering they both were given a considerable amount of medication to reduce pain.

However in *Mincey*, the law enforcement official did read the Defendant his Miranda rights before he began his interrogation. *Id*. at 396. The same cannot be said in the present case. Nonetheless, even with the Miranda warnings the Supreme Court still held that that the conduct of the law enforcement official was overbearing and coercive in nature, resulting in several involuntary statements by the Defendant. *Id*.

The Court looks to the totality of the circumstances in analyzing the voluntariness of a statement. *United States v. Rutherford,* 555 F.3d 190, 195 (6th Cir. 2009). The totality of the circumstances can include such factors as "age, education, and intelligence of the defendant; whether the defendant has been informed of his *Miranda* rights; the length of the questioning; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as deprivation of food or sleep." *McCalvin v. Yukins,* 444 F.3d 713, 719 (6th Cir.2006) (citing *Schneckloth v. Bustamonte,* 412 U.S. 218, 226 (1973)). The Court should consider three factors: whether "(i) the police activity was objectively coercive; (ii) the coercion in question was sufficient to overbear the defendant's will; and (iii) the alleged police misconduct was the crucial motivating factor in the defendant's decision to offer the statement." *Rutherford,* 555 F.3d at 195 (quoting *United States v. Mahan,* 190 F.3d 416, 422 (6th Cir.1999)).

In light of the totality of the circumstances in the present case, it is apparent that the federal agents acted at all costs, in a manner that was conducive to their own interests. It just so happens that the Defendant's Constitutional Rights were a casualty to the federal agents' pursuit of information. The federal agents interrogation of a sedated foreign suspect that they knew was oblivious to American law and refusing to read him his Miranda rights reflects law enforcement activity that was objectively coercive. The fact

that the Defendant was heavily sedated and semiconscious proves that it would not take much to overbear his will. The federal agents decision to interrogate at that precise moment shows that they were trying to take advantage of the Defendant's mental state. The agents could have easily waited four to six hours as the hospital staff advised, but they knew at that moment the Defendant was confused and unable to think clearly therefore they seized the opportunity, violating all Constitutional Rights that one in the United States of America is afforded.

II. THE STATEMENTS SHOULD BE SUPPRESSED BECAUSE FEDERAL AGENTS PURPOSELY WITHHELD GIVING THE DEFENDANT HIS MIRANDA RIGHTS WHEN HE WAS INTERROGATED WHILE IN CUSTODY

An accused is entitled to the reading of his or her *Miranda* rights only when he or she is interrogated while "in custody." *Thompson v. Keohane,* 516 U.S. 99, 102 (1995). For an individual to be "in custody," there must be "a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." *Thompson,* 516 U.S. at 112. In determining whether a suspect is "in custody" for purposes of applying the *Miranda* doctrine, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty,* 468 U.S. 420, 442, (1984). The custody determination hinges upon whether, "given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson,* 516 U.S. at 112.

Here there is no question as to the Defendant being in custody while he was at the University of Michigan Hospital. He was first arrested and then escorted off an airplane to a local hospital. Then while at the hospital the Defendant was surrounded by both local and federal officials at all times. Under the circumstances, a reasonable person would not

have felt free to terminate the interrogation or leave. This was a horrifying event for the Defendant and at no point did he ever feel safe. During the entire interrogation the Defendant feared for his life and was scared to even move around on his hospital bed.

Since the Defendant was clearly "in custody" he was entitled to a reading of his Miranda rights. It is inexcusable for federal agents to interrogate a suspect that was undeniably in custody without first reading him his Miranda Rights. The circumventing of one's Constitutionally protected right is a practice that should not tolerated by this Honorable Court. The blatant refusal to read the Defendant his Miranda rights coupled with the interrogation of a sedated and semiconscious Defendant is a violation of his Constitutional rights.

WHEREFORE, standby counsel and Defendant ABDULMUTALLAB respectfully requests that this Court suppress the statements made at the University of Michigan hospital.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that the forgoing papers were hand delivered this date, served electronically or by mail to the following:

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