

Monday, September 13, 2004

DOI

DECISION OF INTEREST

Southern District

Court Upholds Statements, Evidence In Arrest by Joint Terrorism Taskforce

Judge Stein

UNITED STATES v. UZAIR PARACHA - Uzair Paracha, a Pakistani citizen, was indicted by a grand jury in November 2003 and charged with, inter alia, providing material support to a terrorist organization in violation of [18 U.S.C. §2339B](#). Paracha moved pursuant to [Rule 12\(b\)\(3\)\(C\) of the Federal Rules of Criminal Procedure](#) to suppress certain oral statements he made from March 28-30, 2003 during interviews with members of the Joint Terrorism Taskforce and to suppress items seized during a search of his belongings at his residence in Brooklyn in the early morning of March 29, 2003. He contends that his oral statements should be excluded because they were obtained involuntarily and in violation of his Fifth Amendment right not to incriminate himself. Paracha also seeks exclusion of the evidence seized during the search of his belongings as fruits of an unreasonable search because his consent to that search had been obtained involuntarily.

A factual hearing was held on this motion on May 10 and 11, 2004, at which time FBI Special Agent Janelle Miller, New York Police Department ('NYPD') Detective Thomas Fitzgerald, retired NYPD Detective Brendan Finn, and FBI Special Agent Anthony Bivona testified for the government. Those individuals were all members of the Joint Terrorism Taskforce (the "Joint Taskforce"), a collaborative effort between the FBI, the NYPD, and other agencies. The defense also called Agent Miller to testify on its case.

After reviewing the evidence presented at the suppression hearing and for the reasons set forth below, Paracha's motion is denied.

Background:

The following facts are either not in dispute or accepted as credible witness testimony from the suppression hearing.

Paracha entered the United States in early February 2003, after graduating from a business college in Pakistan, and resided in Brooklyn with members of his extended family. His father Saifullah Paracha is a businessman in Pakistan and is also a part owner of Chanco Buying Agents, a trading company with an office in midtown Manhattan. After he arrived in New York, Paracha worked in the Chanco office from time to time.

On Friday, March 28, 2003, Agent Miller received notification that Paracha and his father might have information relating to the terrorist network known as Al Qaeda, the focus of Agent Miller's unit. (Transcript of Suppression Hearing at 7:9-25). As part of a preliminary investigation, she and other Joint Taskforce agents discovered Paracha's link to Chanco and proceeded to pursue that. (Id. at 8:1-15) In the late afternoon, Agent Miller and Detective Fitzgerald met the co-owner and manager of Chanco, Charles Anteby, at his residence in Brooklyn and sought information on how to get in contact with Paracha. (Id. at 9:7-10:14) They were told that Paracha's contact information was in Chanco's office and decided to go there with Anteby.

Shortly after Agent Miller and Detective Fitzgerald arrived at Chanco's office, they found out that Paracha was there as were several other Joint Taskforce agents who had just arrived as well. (Tr. at 204:1-8) Miller and Fitzgerald approached Paracha and asked to speak with him. (Id. at 11:5- 13:12) He agreed and was interviewed for approximately 45 minutes in a room inside Chanco's office. The topics addressed during that interview included Paracha's background and his business in the United States. (Id. at 13:18- 15:17)

Detective Fitzgerald then asked Paracha if he would be willing to continue the interview in the FBI office instead of Chanco's office. (Tr. at 143:2-6) Paracha agreed to that request as well and was driven to the FBI office in downtown Manhattan in a government vehicle with Miller and Fitzgerald. (Id.) Upon arriving at the FBI office, Paracha was taken to an interview room, where he was told to wait for the agents. (Id. at 144:12-18) While Paracha was waiting, a member of the Joint Taskforce was posted in or immediately outside the interview room. This was, according to Agent Miller, pursuant to standard Joint Taskforce regulations regarding the presence of non-FBI personnel inside the FBI office. (Id. at 19:1-8)

After consulting briefly with their supervisors, Miller and Fitzgerald resumed their interview with Paracha at approximately 8 p.m. After further questions about Paracha's business in the United States, the interview focused on his interaction with an individual named Majid Khan, also known as "Adnan," before Paracha left Pakistan to come to the United States. (Tr. at 21:22-26:8) Paracha stated that he had accepted certain documents from Khan or "Adnan" and agreed to help Khan carry out a personal errand and that those papers were kept with Paracha's other belongings in Brooklyn. (Id.) At some point in the early stage of that interview, when neither Miller nor Fitzgerald was in the interview room with Paracha, Miller overheard Paracha asking a Joint Taskforce agent "if he needed a lawyer?" (Id. at 82:9-12) The record does not reveal, however, what response Paracha was given to that question.

About midnight-after the interview had gone on for approximately four hours-Paracha was asked whether he would permit the Joint Taskforce to search his belongings in his residence in Brooklyn. (Tr. at 26:10-21) Once again, he consented. After Agent Miller read him the contents of a standard FBI "Consent to Search" form, he signed that form. (Id.) Paracha also provided the key to his residence to Agent Miller. (Id. at 30:5-17)

A group of Joint Taskforce agents were dispatched to conduct the search. (Tr. at 21:21-26:8) While those agents were in transit, the interview continued and dealt with Paracha's intended assistance to Khan as well as Saifullah Paracha's political beliefs and activities. (Id. at 36:8-37:18) After the agents arrived at Paracha's residence, they requested Paracha to call his house in order to ensure "that [Joint Taskforce agents] would not scare anybody if [they went] in." (Id. at 34:3-12) He obliged. After the search was conducted, Paracha and Miller were informed that two bags had been located and the items belonging to Khan, which Paracha had described as being there, were found in those bags. (Id. at 34:13-19)

Approximately one hour after the search had concluded, Paracha told Agent Miller that he wanted to revoke his consent. (Tr. at 34:20-36:7) Miller explained, in essence, that it was too late to revoke consent because the items had already been found and seized. (Id.) Also around that time, Paracha again asked the question, addressed directly to Miller this time, if he "should get a lawyer." (Id. at 38:22-39:9) Miller told Paracha that it was he, and not Miller or any other agent, who must make that decision. (Id.) Miller then tried to explain the consequences of obtaining a lawyer-telling Paracha that if he were under arrest and had requested counsel, then she and other government agents would not be able to speak to him outside the presence of counsel. (Id. at 39:1-9) Paracha did not further pursue this line of questions and the interview concluded at approximately 4 a.m. (Id. at 40:2- 11)

At the conclusion of the interview, Miller and Fitzgerald asked Paracha if he would be willing to stay in a hotel room arranged for by the Joint Taskforce, in order "to continue the conversation." (Tr. at 40:5-41:21) Paracha agreed and a room was found for him in a nearby hotel. (Id.) Miller and Fitzgerald then left Paracha with two other Taskforce members, Detectives Finn and Ward, who took Paracha to his hotel room. (Id. at 113:10-117:5) Those detectives remained in the room while Paracha slept. According to Detective Finn, it was standard Joint Taskforce procedure to have an agent accompany a witness in a hotel room for ensuring the safety and continuing cooperation of that witness. (Id.)

Paracha was escorted back to the FBI office at around 2 p.m. on Saturday, March 29, 2003 by Joint Taskforce members. (Tr. at 42:7-44:15) While waiting for the interview to begin, Paracha inadvertently activated an alarm. (Id. at 45:10-46:2) The interview resumed at about 4 p.m., after the agents were able to shut off the alarm. (Id.)

Miller then read the FBI's "advice of rights" form to Paracha. (Tr. at 45:10- 19) This was the first time that Paracha was informed of his rights under *Miranda v. Arizona*, which include "the right to remain silent. that anything he says can be used against him in a

court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires prior to commencing custodial interrogation." See [id.](#), [384 U.S. 436, 478-79 \(1966\)](#). Agent Miller explained that although Paracha had been advised of his rights, he was not being placed under arrest and that the information was provided for his protection. (Id. at 46:7-47:12) After Paracha signed the advice of rights form,¹ the interview continued and focused on Paracha's interaction with Khan as well as certain investments his father had accepted from members of Al Qaeda. (Id. at 53:1-57:14)

During a break in the interview at approximately 5:15 p.m., Agent Miller left the interview room to go to the office of the United States Attorney, where she helped an Assistant United States Attorney prepare a material witness warrant for Paracha's arrest pursuant to [18 U.S.C. §3144](#). (Tr. at 98:17-22, 99:5-13) That warrant was signed by a judge of this Court at approximately 7 p.m. (Id.) It was not immediately served upon Paracha, however. Instead, after his interview concluded on Saturday evening at approximately 9 p.m., Paracha once again agreed to stay in a hotel room arranged by the Joint Taskforce. (Id. at 57:15-23)

Paracha's interview with Miller and Fitzgerald resumed at approximately 10 a.m. on Sunday, March 30. (Tr. at 58:13-60:7) The interview went on for approximately four hours and explored Paracha's interaction with Khan and his knowledge about Khan's background. (Id. at 60:23-61:1) After it concluded in the early afternoon, Paracha was again taken to a hotel room by Joint Taskforce agents. (Id. at 61:2-13) The next morning, Paracha was served with the material witness warrant and placed under arrest. (Id. at 60:14-22)

Paracha seeks to suppress his statements to the Joint Taskforce agents on the grounds, first, that the agents' coercive tactics overwhelmed his will and the statements are therefore involuntary under the due process clause of the Fifth Amendment to the United States Constitution. Second, Paracha urges this Court to find that he was subject to custodial interrogation during his interviews with Agent Miller and Detective Fitzgerald, from March 28 to March 30, 2003. He contends that the statements made before his Miranda rights were read to him March 29 were obtained in violation of his Fifth Amendment privilege from self-incrimination and should be suppressed on that ground. Paracha further asserts that because the agents obtained an invalid waiver of his Miranda rights and failed to heed his request for counsel, all other statements he made while in the FBI office should also be suppressed. He also seeks to suppress the evidence seized during the search of his belongings conducted in the early morning of March 29 on the ground that his consent for that search was obtained involuntarily.

LEGAL STANDARDS:

A. Suppression of Paracha's Statements

i. Requirements of Due Process

The right to due process protects individuals from being subjected to coercive **interrogation techniques** that "are so offensive to a civilized system of justice that they must be condemned." See [Colorado v. Connelly, 479 U.S. 157, 163, 107 S. Ct. 515 \(1986\)](#). Because Paracha has challenged the voluntariness of his statements, the government bears the burden to demonstrate, by a preponderance of the evidence, that his confession had not been "obtained under circumstances that overb[ore his] will at the time it [was] given." See [United States v. Anderson, 929 F.2d 96, 99 \(2d Cir.1991\)](#). In making that determination, this Court looks to the totality of the circumstances, including three important factors-the defendant's individual characteristics, the conditions of interrogation, and the conduct of the law enforcement officers. See [Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S. Ct. 2041 \(1973\)](#); [United States v. Kaba, 999 F.2d 47, 51 \(2d Cir. 1993\)](#). The cynosure of this analysis is, moreover, whether the agents and detectives engaged in "wrongful acts" to obtain a coerced confession. See [Colorado v. Connelly, 479 U.S. at 165; Kaba, 999 F.2d at 51](#) (observing that the district court's task is to determine "whether the government agents' conduct was such as to overbear [a defendant's] will to resist and bring about confessions not freely self-determined").

ii. Definition of Custodial Interrogation

'Custodial interrogation exists when a law enforcement official questions an individual and that questioning was (1) conducted in custodial settings that have inherently coercive pressures that tend to undermine the individual's will to resist and to compel him to speak, [Miranda v. Arizona, 384 U.S. at 467, 86 S.Ct. 1602](#) (the in custody requirement) and (2) when the inquiry is conducted by officers who are aware of the potentially incriminatory nature of the disclosures sought (the investigative intent requirement)." [United States v. Rodriguez, 356 F.3d 254, 258 \(2d Cir. 2004\)](#) (quoting [United States v. Morales, 834 F.2d 35, 38 \(2d Cir.1987\)](#)).

To determine whether Paracha was in custody during the interviews in question, this Court's "ultimate inquiry" is to ascertain "whether there [was] ... restraint on [his] freedom of movement of the degree associated with a formal arrest." See [United States v. Newton, 369 F.3d 659, 670 \(2d Cir. 2004\)](#) (quoting [California v. Beheler, 463 U.S. 1121, 1125, 103 S. Ct. 3517 \(1983\)](#)). This is a two-part inquiry. See [United States v. Badmus, 325 F.3d 133, 138 \(2d Cir. 2003\)](#) (quoting [Thompson v. Keohane, 516 U.S. 99, 112 \(1995\)](#)). First, this Court must determine the objective circumstances surrounding Paracha's interaction with the Joint Taskforce agents during his interview, which took place over several days. See [id.](#), [325 F.3d at 138](#); see also, [Cruz v. Miller, 255 F.3d 77, 86 \(2d Cir. 2001\)](#). Second, on the basis of those circumstances, the Court must decide "whether a reasonable person in defendant's position would have understood himself to be subjected to restraints comparable to those associated with a formal arrest." See [Newton](#), at 671.

The "interrogation" aspect of the analysis looks to whether a defendant was subject to questioning or equivalent that provides "a measure of compulsion above and beyond that inherent in custody itself." See [Rodriguez, 356 F.3d at 258](#). Thus, unforeseeable, incriminating responses to ordinary questions do not transmute an interview into an

interrogation. See [United States v. Gelzer, 50 F.3d 1133, 1138 \(2d Cir. 1995\)](#).

iii. Right to Miranda Warnings and Effectiveness of Waiver

An individual has the right not to be subjected to custodial interrogation before being informed of his rights under the Fifth Amendment, commonly referred to as the Miranda warnings. Once having been apprised of those rights, they can be waived. A waiver is valid only if the government can show, by a preponderance of the evidence, that "(1) the relinquishment of [a defendant's] right was voluntary, and that (2) [the defendant] had a full awareness of the right being waived and of the consequences of waiving that right." See [United States v. Jaswal, 47 F.3d 539, 542 \(2d Cir. 1995\)](#). Once again, the totality of the circumstances must be taken into consideration. The fact that a defendant signed a written waiver form may be highly probative but is not by itself dispositive in establishing the voluntariness or involuntariness of a waiver of rights. See *id.*; see also, [United States v. Dillard, 99 Cr. 214, 2002 WL 987267 at 1-2 \(S.D.N.Y. Jul. 18, 2000\)](#). Ultimately, the government must overcome "a presumption that the defendant did not waive his rights." See [United States v. Scarpa, 897 F.2d 63, 68 \(2d Cir.\)](#), cert. denied, [498 U.S. 816 \(1990\)](#).

iv. Invocation of the Right to Counsel

Once someone's right to counsel has been invoked, he must not be "subject to further interrogation by the authorities until counsel has been made available to him." See [Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S.Ct. 1880 \(1981\)](#). Thus, since the government has conceded that Paracha was never provided with counsel during his interview with Miller and Fitzgerald on March 28-30, 2003, any statements made by defendant after he made a valid request for counsel must be suppressed. A valid request for counsel must be reasonably clear "to be construed as an expression of a desire for the assistance of an attorney," see [Diaz v. Senkowski, 76 F.3d 61, 64 \(2d Cir. 1996\)](#) (quoting [McNeil v. Wisconsin, 501 U.S. 171, 178, 111 S.Ct. 2204 \(1991\)](#)); it is insufficient, however, to "make a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel." See [Davis v. United States, 512 U.S. 452, 459, 114 S.Ct. 2350 \(1994\)](#) (emphasis in original). Accordingly, a question raised during questioning regarding whether someone needs or should have a lawyer, in the absence of a clear and unambiguous request for one, is typically not a valid invocation of one's right to counsel. See [Diaz v. Senkowski, 76 F.3d at 64-65](#); cf. [United States v. Scarpa, 897 F.2d at 69-70](#).

B. Suppression of the Evidence Seized in the Search

Because the search of Paracha's belongings in his residence in Brooklyn was carried out without a warrant, the government bears the burden of establishing that it had obtained Paracha's voluntary consent to that search. See [United States v. Elliot, 50 F.3d 180, 185 \(2d Cir. 1995\)](#). Here too, in determining the validity of a consent to search, a Court examines the totality of the circumstances surrounding the grant of that consent.

including the defendant's background, his physical and mental condition and the setting under which the consent was provided. See [United States v. Jones, 154 F. Supp. 2d 617, 621 \(S.D.N.Y. 2001\)](#) (enumerating list of relevant factors such as "the individual's age, intelligence and educational background, the length and nature of questioning and whether the law enforcement officials engaged in coercive behavior"); [Schneckloth, 412 U.S. at 226](#). Unlike a waiver of Miranda rights, once the government has established that a consent to search is voluntary, it need not make the additional showing that the consent is also "knowing and intelligent." See [United States v. Garcia, 56 F.3d 418, 422 \(2d Cir. 1995\)](#).

Discussion:

A. Paracha's Statements Were Voluntary

In his declaration in support of the [Rule 12](#) motion to suppress, Paracha alleges that during the course of his interview at the FBI office, he "was subjected to conditions that caused [him] to lose [his] will to resist the enormous pressure being placed upon [him]." (Declaration dated February 4, 2004 at ¶6) The Court construes this to assert a challenge to the voluntariness of defendant's statements. After considering the testimony and exhibits presented at the suppression hearing, as well as Paracha's declaration, this Court finds that the government has discharged its burden and shown that Paracha's statements were not made under such coercive circumstances that would "overbear [his] will to resist." See [Kaba, 999 F.2d at 51](#).

Paracha clearly spent a substantial amount of time being interviewed by Agent Miller and Detective Fitzgerald between the late afternoon of March 28, 2003 and the afternoon of March 30. The government has also established, through the credible testimony of Miller and Fitzgerald, that Paracha was provided with food and refreshments during those interviews and hotel rooms for sleep. In addition, according to Miller and Fitzgerald, they took a number of breaks during the interview sessions with Paracha, which the Court finds credible. While Paracha is a foreign citizen, he is also a well-educated young man who has, according to Miller and judging from correspondence from Paracha to the Court, an excellent command of the English language. (Tr. at 27:25-28:7) Paracha has not proffered any evidence of any physical or mental ailment that would make the interviews he participated in uniquely difficult or oppressive for him. Viewing the totality of the circumstances, there is no objective evidence that the interviews produced such mental distress or physical exhaustion as to overcome his will.

Detective Fitzgerald testified that he and Agent Miller would sometimes challenge Paracha and "point out inconsistencies in his information" or "press" him for information. (Tr. at 170:20-172:13) There is, therefore, the possibility that Paracha might have found his interaction with the agents confrontational at times. However, the government has established that, based on credible testimony, the mode of interaction between Paracha on the one hand and Miller and Fitzgerald on the other was largely cooperative rather than coercive. (Id. at 31:21-32:7)

Moreover, this Court also finds that the agents' efforts were designed to elicit information from Paracha rather than to coerce him into inculcating himself. There is, moreover, no evidence of misconduct or overreaching by the agents that would have created a level of physical or psychological pressure sufficient to "overbear [Paracha's] will to resist and bring about a confession not freely self-determined." See [Kaba, 999 F.2d at 51](#). Accordingly, this Court concludes that Paracha's statements were voluntary and were not obtained in violation of his right to due process.

B. Paracha's Statements Were Not Obtained in Violation of the Fifth Amendment

Paracha also seeks to suppress his statements as having been obtained in violation of his right to be free from self-incrimination. Specifically, he asserts that he was not informed of his Miranda rights until nearly 24 hours after the start of custodial interrogation. He also asserts that his requests for counsel were ignored. Finally, he asserts that the waiver of his Miranda rights was invalid because it was obtained involuntarily. We address each argument in turn.

i. Paracha Was Not in Custody in the Evening and Night of March 28, 2003

The Court finds the following facts relevant to its determination of whether Paracha was in custody in the evening and the night of March 28, 2003: he was approached in Chanco's office by Agent Miller and Detective Fitzgerald early that evening. (Tr. at 11:5-13:12) Other agents were also present in Chanco's office but did not have any significant interactions with Paracha. The Joint Taskforce agents, including Detective Fitzgerald and Agent Miller, were dressed in business attire and no weapons were visible. (Id. at 11:5-13:12)

The initial interview involving Paracha, Miller and Fitzgerald took place at Chanco's office and lasted approximately 45 minutes. (Tr. at 13:18- 15:17) The tone of that conversation was "businesslike" and did not occasion any yelling or raised voices. (Id.) The discussion was informational and focused on the purpose of Paracha's trip to the United States. (Id.) At the end of that interview, Fitzgerald asked Paracha whether he would be willing to continue speaking with the agents in the FBI office. (Id. at 143:2-16) Without any compulsion or insinuation of adverse consequences, he agreed to do so. (Id.)

Once he arrived at the FBI building, Paracha was permitted to bypass the normal security check on his way to an interview room. (Tr. at 144:12-18) Nor was he subjected to a pat-frisk or similar procedure then - or any other point prior to his arrest on March 31, 2003. (Id. at 144:7-11) The interview room, where he waited to speak with Miller and Fitzgerald, was not designed to hold suspects and could not be locked from the outside to prevent the occupant from leaving. (Id. at 18:8-19:8)

Miller and Fitzgerald resumed talking with Paracha in that interview room. (Tr. at 18:16-19:17) The interview began at approximately 8 p.m. and continued for approximately seven hours. (Id. at 145:21-146:2) Paracha requested to take several breaks during that period and those requests were honored by Miller and Fitzgerald. (Id. at 146-147)

Paracha was also offered refreshments on several occasions that evening. He never indicated a desire to discontinue the conversation, even after he was asked to consent to a search of his belongings in the Brooklyn residence. (Id. at 31:21-32:12)

After midnight and the signing of the "Consent to Search" form, the interview proceeded but was interrupted by a number of updates from the Joint Taskforce agents assigned to conduct the search. Paracha continued to be cooperative and agreed to help the agents conducting the search by placing a telephone call to his residence to alert anyone home that agents were coming over. Around 3:15 a.m. that morning, Paracha stated that he wanted to revoke his consent to the search, but the search had already been completed. Shortly thereafter, Miller and Fitzgerald stopped the interview for the night and arranged for a hotel room for Paracha.

In light of the credible testimony of Agent Miller and Detective Fitzgerald and in view of the totality of the circumstances of Paracha's interaction with Joint Taskforce agents, the Court finds that Paracha was not subject to "restraint on [his] freedom of movement of the degree associated with a formal arrest." See [Newton, 369 F.3d at 670](#). Specifically, when Miller, Fitzgerald, and other Joint Taskforce agents initially approached Paracha at Chanco's, they did not draw weapons or accuse defendant of illegal conduct. Furthermore, Paracha voluntarily went to the FBI office to continue the interview. See e.g., [United States v. Mussaleen, 35 F.3d 692, 697 \(2d Cir. 1994\)](#). In addition, his willingness to continue the conversation and to call his residence also indicates that he did not experience a significant constraint on his freedom.

The fact that Paracha was - pursuant to Joint Taskforce procedure - accompanied by an agent while inside the FBI office placed some measure of restraint on his freedom of movement. Yet, such a restraint was not sufficient to rise to the level tantamount to a formal arrest. Finally, although Detective Fitzgerald testified that sometimes he would "press" Paracha for information, the level of coercive pressure asserted by such investigative tactics did not create an atmosphere equivalent to that of an interrogation of an arrested suspect. Therefore, in light of the totality of the circumstances of Paracha's first night of interview, this Court concludes that he was not in custody for Miranda purposes.²

ii. Paracha Did Not Make a Clear and Unambiguous Request for Counsel

Paracha alleges that his "requests for counsel were met with ambiguous responses and silence." (Decl. at ¶6) However, Agent Miller testified that she did not hear defendant make a clear request for counsel. During the "second break" in the evening of March 28, 2003, according to Miller, she overheard Paracha asking an agent about whether he needed an attorney. (Trans. at 82:9- 12) However, Miller could not determine which agent had responded to that question. (Id. at 105:1-11)

Toward the conclusion of Paracha's first night of interview, Miller further testified, he asked her directly whether "[he] should get a lawyer." (Id. at 38:22-39:12) According to Miller, she "explained to [Paracha] that [it was] not mv decision to make. that is his

decision." (Id.) When Paracha further asked what the consequences were of obtaining legal counsel, Miller explained that she and Fitzgerald "would not be able to talk to him at any point unless a lawyer was present." (Id.)

In determining whether Paracha made a clear request for counsel at either point during his interview, this Court must resolve ambiguities in his favor to further the fundamental purpose of the Fifth Amendment protections. See [United States v. Quiroz](#), 13 F.3d 505, 511 (2d Cir. 1993); [U.S. v. Perez](#), 01 Cr. 848, 2002 WL 31368108 at 2 (S.D.N.Y. Oct 21, 2002). However, with respect to both instances described above, this Court accepts as credible Miller and Fitzgerald's testimony and concludes that Paracha's words were merely questions regarding whether they thought he needed counsel. In the Second Circuit, such questions have been deemed too ambiguous to trigger a defendant's right to be free from further questioning and to be furnished access to legal counsel. See e.g., [Diaz v. Senkowski](#), 76 F.3d at 64-65; [Scarpa](#), 897 F.2d at 69-70; [Mastin v. Senkowski](#), 297 F.Supp.2d 558, 593 (W.D.N.Y. 2003).

iii. Paracha's Waiver of Miranda Rights Was Voluntary, Knowing and Intelligent

After Paracha returned to the FBI office in the afternoon of March 29, 2003, the interview resumed. According to Miller, she began the interview by giving Paracha "the FBI's advice of rights form" and "read it out loud to [him]." (Tr. at 45:10-23) Miller ascertained that Paracha understood the content of the form and then "handed it to him" and "asked him to read it to himself." (Id. at 45:23-24) Miller also testified that she again asked Paracha whether he understood it. After ascertaining again that he indeed understood the form, she "asked [him] to sign the bottom of it, which he did," and then signed the form herself. (Id. at 45:25-46:2) A copy of that form, bearing the signatures of Paracha, Miller and Detective Fitzgerald and dated March 29, 2003 at 3:45 p.m., is part of the record of the suppression hearing.

This Court finds credible Agent Miller's testimony regarding the circumstances of Paracha's signing the "advice of rights" form. She testified that she specifically informed Paracha that he was not under arrest but that she wanted to make certain "that he knew what his rights were." (Tr. at 46:14- 47:12) Moreover, upon cross-examination, Miller acknowledged that she did not read and ascertain Paracha's understanding as to each specific statement of right, but instead read the statements altogether. (Id. at 96:12-25)

In light of Miller's credible testimony and in view of the totality of the circumstances of Paracha's interaction with the Joint Taskforce agents up to the early afternoon of March 29, 2003, this Court finds that Paracha made a voluntary, knowing, and intelligent waiver of his Miranda rights. The fact that he signed the FBI advice of rights form is significant but not dispositive. In addition, Paracha also twice communicated his understanding of his rights and the consequences of waiving them to Agent Miller. Moreover, as noted above, Paracha is an intelligent and well-educated person with an excellent command of English. Accordingly, there is little reason to doubt his capacity to understand the meaning of the rights. Finally, there is no evidence of government misconduct or overreaching that would undermine the voluntariness of his waiver. Therefore, this Court

finds that the government has shown, by a preponderance of the evidence, that Paracha made a valid waiver of his Miranda rights at or about 3:45 p.m. on Saturday, March 29, 2003.

C. The Search of Paracha's Belongings at His Brooklyn Residence Was Reasonable Because It Was Pursuant to a Valid and Voluntary Consent

Paracha claims that he signed the Consent to Search form, provided to him by Agent Miller, "out of fear, frustration and exhaustion" and that he "was afraid not to provide the requested consent." (Decl. at ¶6 and at ¶8) He further states that Joint Taskforce agents removed the key to his residence from his pocket. (Id.) Accordingly, Paracha contends that the documents and other physical evidence seized during the search of his belongings must be suppressed as the fruits of an unreasonable search. However, because the government has been able to establish that Paracha's consent was voluntary and that he did not make an oral revocation until after completion of the search and the discovery of the evidence in dispute, this Court concludes that the search and seizure was reasonable.

Agent Miller testified that during the interview at the FBI office on Friday, March 28, Paracha stated that before he left Pakistan, a person known to him as "Adnan" had given him certain documents to bring to the United States and that those documents were in his belongings at his Brooklyn residence. Agent Miller further testified that she then sought and obtained Paracha's verbal assent to a search of his belongings and obtained a standard FBI Consent to Search form for Paracha to see. According to Agent Miller, and as corroborated by Detective Fitzgerald, she read and explained the terms of that form. After that exchange, both defendant and Agent Miller signed it. According to Miller, it was Paracha, rather than one of the Joint Taskforce agents, who took the keys out of his pocket. Moreover, Miller also testified that, in order to assist the agents conducting the search, Paracha placed a telephone call to his residence and told the agents that no one was home.

This Court finds credible the testimony that Miller and Fitzgerald provided at the suppression hearing regarding the events leading to Paracha's giving his consent to search his belongings. This Court also does not credit Paracha's unsupported assertion concerning the removal of his keys by Joint Taskforce agents.

In light of Agent Miller and Detective Fitzgerald's credible testimony, there is no basis for concluding that they or any other Joint Taskforce agent engaged in misconduct in seeking Paracha's consent for the search. There is also no evidence that Paracha was subjected to fear sufficient to coerce him into giving an involuntary consent to a search of his belongings. Cf. [United States v. Sanchez, 635 F.2d 47, 61 \(2d Cir. 1980\)](#). Similarly, there was credible testimony to support the government's assertion that Paracha was actively participating and forthcoming during the interview. Thus, there is no basis for Paracha's assertion of overwhelming frustration causing him to give an involuntary consent.

Although Paracha gave his consent at around midnight, after approximately four to five

hours of questioning (including the initial interview at Chanco's), the participants took periodic breaks and, as noted above, there is no evidence that Paracha suffered from any physical or mental weakness that would render him more susceptible to police manipulation or coercion. Furthermore, although Agent Miller did not expressly inform Paracha of his right to refuse consent for a search, that fact does not render the consent ineffective. (Tr. at 88:1- 7) See [United States v. Medina, 301 F. Supp. 2d 322, 330 \(S.D.N.Y. 2004\)](#) (citing [Garcia, 56 F.3d at 422](#)). In light of the other circumstances discussed above, this Court finds that Paracha's consent was voluntary even if he were not explicitly informed of his right to refuse consent.

Lastly, because this Court's inquiry into the reasonableness of the search of Paracha's belongings focuses on the time when that search was conducted, his revocation of consent - orally communicated to the agents after completion of the search - does not render that search unreasonable. See [U.S. v. Mitchell, 82 F.3d 146, 151 \(7th Cir. 1996\)](#) (noting that a "consent [to search] remains valid and [a] seized ... item is admissible ... when a suspect does not withdraw his valid consent to a search before" the discovery of that item); [United States v. Jachimko, 19 F.3d 296, 299 \(7th Cir. 1994\)](#). The government has shown, by a preponderance of evidence, that Paracha's consent to the search was "the product of an essentially free and unconstrained choice" and, therefore, voluntary. See [Oguns, 921 F.2d at 448](#) (citing [Schneckloth, 412 U.S. at 225](#)). The search of his belongings and the seizure of documentary evidence were reasonable and not in violation of his right to due process.

Conclusion:

For the reasons set forth above, the government has established, by a preponderance of evidence, that Paracha's statements were not obtained involuntarily and that those statements were not obtained in violation of his Fifth Amendment privilege not to incriminate himself. Therefore, Paracha's motion to suppress his statements is denied. In addition, the government has established, by a preponderance of evidence, that the search of Paracha's belongings was not an unreasonable search because it was conducted with his voluntary consent. Therefore, his motion to suppress evidence seized during that search as the fruits of an unreasonable search and seizure is also denied. Accordingly, defendant's [Rule 12\(b\)\(2\)\(C\)](#) motion is hereby denied.

So Ordered.

1. That form states that "before we ask you any questions, you must understand your rights," including "you have the right to remain silent," that "anything you says can be used against you in court," that "you have the right to talk to a lawyer for advice before we ask you any questions" that "you have the right to have a lawyer with you during questioning," that "if you cannot afford a lawyer, one will be appointed for you before any questioning if you wish" and that if "you decide to answer questions now without a lawyer present, you have the right to stop answering at any time." (FBI Advice of Rights Form at 1)

2. In light of this Court's finding that Paracha made a voluntary, knowing and intelligent waiver of his Miranda rights before the interview resumed in the afternoon of March 29, 2003 and because no questioning took place at the hotel where he slept, the Court need not reach a conclusion as to whether his interaction with Detective Finn in the hotel room created conditions sufficient for custody for Miranda purposes.

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