

1
2 UNITED STATES COURT OF APPEALS
3
4 FOR THE SECOND CIRCUIT
5
6
7

8 August Term, 2011
9

10 (Argued: February 10, 2012 Decided: November 5, 2012)
11 Amended: November 15, 2012
12

13 Docket No. 10-3916-cr
14

15
16 UNITED STATES OF AMERICA,
17

18 *Appellee,*
19

20 -v.-
21

22 AAFIA SIDDIQUI,
23

24 *Defendant-Appellant.**
25
26

27
28 Before:
29

30 WESLEY, CARNEY, *Circuit Judges*, MAUSKOPF, *District Judge.***
31

32 Defendant-Appellant Aafia Siddiqui appeals her criminal
33 convictions, entered after a jury trial in the United States
34 District Court for the Southern District of New York
35 (Berman, J.), for attempted murder of United States
36 nationals, attempted murder of United States officers and
37 employees, armed assault of United States officers and
38 employees, assault of United States officers and employees,
39 and use of a firearm during a crime of violence. She also

*The Clerk of the Court is respectfully directed to amend the caption to conform with the above.

**The Honorable Roslynn R. Mauskopf, of the United States District Court for the Eastern District of New York, sitting by designation.

1 challenges her sentence of eighty-six years' imprisonment.
2 Siddiqui contends that the district court erred in a number
3 of ways. We address five of Siddiqui's arguments here:(1)
4 that Count One of the indictment was deficient because the
5 Attorney General failed to timely issue a required
6 certification for prosecution under 18 U.S.C. § 2332, and
7 because the statutes underlying Counts Two through Seven do
8 not apply extraterritorially in an active theater of war;
9 (2) that the district court committed reversible error by
10 admitting, under Federal Rule of Evidence 404(b), documents
11 allegedly found in her possession at the time Afghan
12 officials took her into custody; (3) that the district court
13 erred in allowing her to testify in her own defense despite
14 a request from defense counsel to preclude her from doing so
15 because of her alleged mental illness; (4) that the district
16 court erred in allowing the government to rebut her
17 testimony with un-Mirandized statements she gave to FBI
18 agents while hospitalized at Bagram Airfield because those
19 statements allegedly were not voluntary; and (5) that the
20 district court erred in applying the terrorism enhancement
21 under section 3A1.4 of the United States Sentencing
22 Guidelines. We address Siddiqui's remaining arguments in an
23 accompanying summary order.
24

25 AFFIRMED.
26
27

28
29 DAWN M. CARDI (Chad L. Edgar, *on the brief*), Dawn
30 M. Cardi & Associates, New York, NY, *for*
31 *Defendant-Appellant*.
32

33 JENNA M. DABBS, JESSE M. FURMAN, Assistant United
34 States Attorneys (Christopher L. Lavigne,
35 Assistant United States Attorney, *on the*
36 *brief*), *for* Preet Bharara, United States
37 Attorney for the Southern District of New
38 York, New York, NY, *for Appellee*.
39
40
41
42
43
44

1 WESLEY, *Circuit Judge*:

2 Defendant-Appellant Aafia Siddiqui appeals from a
3 judgment of the United States District Court for the
4 Southern District of New York (Berman, J.) entered on
5 September 23, 2010, convicting her after a jury trial of one
6 count of attempted murder of United States nationals in
7 violation of 18 U.S.C. § 2332(b)(1); one count of attempted
8 murder of United States officers and employees in violation
9 of 18 U.S.C. § 1114(3); one count of armed assault of United
10 States officers and employees in violation of 18 U.S.C. §§
11 111(a)(1) and (b); one count of using a firearm during a
12 crime of violence in violation of 18 U.S.C. § 924(c); and
13 three counts of assault of United States officers and
14 employees in violation of 18 U.S.C. § 111(a)(1). The
15 district court sentenced her principally to 86 years'
16 imprisonment. Siddiqui urges this Court to reverse her
17 convictions and, failing that, to vacate her sentence. We
18 address five of the arguments that Siddiqui raises on appeal
19 here and the remaining issues in an accompanying summary
20 order.

1 **I. BACKGROUND**

2 **A. Offense Conduct**

3 Around dusk on July 17, 2008, Afghan National Police
4 ("ANP") detained Aafia Siddiqui, a United States-educated
5 Pakistani national, in Ghazni City, Afghanistan, on
6 suspicion of attempting to attack the Governor of Ghazni.
7 When police took her into custody, Siddiqui possessed, among
8 other things, various documents that discussed the
9 construction of weapons, referenced a "mass casualty
10 attack," and listed a number of New York City landmarks.
11 Afghan authorities brought Siddiqui to an ANP facility for
12 questioning. Later that evening, the Governor of Ghazni
13 delivered the materials found in Siddiqui's possession to
14 the United States Army.

15 The following morning, the United States dispatched a
16 team to the ANP facility with the objective of interviewing
17 Siddiqui and ultimately taking her into American custody.
18 The team—most dressed in military fatigues—consisted of two
19 FBI agents and members of a military special forces unit.
20 Afghan officials brought the team to a poorly lit room
21 partitioned by a yellow curtain. The room was crowded with
22 Afghan officials, and unbeknownst to the Americans, Siddiqui
23 was sequestered unrestrained behind the curtain.

1 The presence of a large number of Afghan officials led
2 members of the American team to believe that they had been
3 brought to the room to discuss the terms of their access to
4 Siddiqui. One of the team members, a Chief Warrant Officer,
5 moved to a chair near the curtain dividing the room. After
6 quickly glancing behind the curtain and seeing nothing, he
7 set down his M-4 rifle and turned to engage the Afghan
8 officials in conversation. Moments later, Siddiqui gained
9 control of the rifle, aimed it at members of the American
10 team, shouted, and fired. The team's interpreter lunged at
11 and struggled with Siddiqui. As the interpreter wrestled
12 with her, the Chief Warrant Officer drew his sidearm and
13 shot Siddiqui in the stomach.

14 Team members then attempted to restrain Siddiqui, who
15 was fiercely resisting and screaming anti-American
16 statements. One witness recalled Siddiqui stating, "I am
17 going to kill all you Americans. You are going to die by my
18 blood." Another recounted that Siddiqui yelled "death to
19 America" and "I will kill all you motherfuckers."

20 Eventually, the Americans were able to subdue Siddiqui
21 enough to begin to render emergency medical aid to her.
22 After providing preliminary treatment at the scene, the

1 Americans transported her to a number of military bases in
2 Afghanistan to undergo surgery and receive further care. On
3 July 19, 2008, American forces moved Siddiqui to Bagram
4 Airfield to recuperate.

5 While recovering at Bagram, Siddiqui was guarded by an
6 FBI team. She was tethered to her hospital bed in soft
7 restraints. During the course of her stay at Bagram,
8 Siddiqui provided a number of incriminating, un-Mirandized
9 statements to two members of the security team. In
10 particular, she (1) asked about the penalty for attempted
11 murder; (2) stated that she had a number of documents in her
12 possession at the time of her arrest and recognized some of
13 them when shown to her; (3) said that she had picked up a
14 rifle with the intention of scaring the American team and
15 escaping; and (4) noted that "spewing" bullets at Americans
16 was a bad thing.

17 The government filed a sealed criminal complaint
18 against Siddiqui in the Southern District of New York on
19 July 31, 2008. On August 4, 2008, the government
20 transferred Siddiqui to the United States for prosecution.
21 A month later, Siddiqui was indicted.

1 **B. Pre-Trial**

2 Soon after the indictment was filed, the district court
3 ordered that Siddiqui undergo psychiatric evaluations of her
4 competence to stand trial. In a report issued on November
5 6, 2008, Dr. Leslie Powers opined that Siddiqui was not
6 currently competent, citing, among other things, Siddiqui's
7 reports of visual hallucinations. Later, Dr. Powers revised
8 her assessment, finding that Siddiqui was malingering to
9 avoid prosecution. Other experts arrived at the same
10 conclusion, although one expert commissioned by the defense
11 opined that Siddiqui was not competent. The district court
12 held a competency hearing on July 6, 2009. After canvassing
13 the relevant evidence, the court found Siddiqui competent to
14 stand trial.

15 In advance of trial, the district court ruled on a
16 number of motions, some of which are relevant here.
17 Siddiqui first moved to dismiss all of the counts of the
18 indictment. As to Count One, Siddiqui claimed that the
19 Attorney General failed to timely issue the required written
20 certification that her offense (attempted murder of United
21 States nationals) "was intended to coerce, intimidate, or

1 retaliate against a government or a civilian population.”¹
2 18 U.S.C. § 2332(d). Siddiqui also contended that Counts
3 Two through Seven, charging violations of 18 U.S.C. §§ 1114,
4 111, and 924(c), should be dismissed because the statutes do
5 not have extraterritorial application under the
6 circumstances of her case. The district court denied
7 Siddiqui’s motions.

8 The district court also considered the government’s
9 motion in limine to admit certain documents and other
10 evidence recovered from Siddiqui at the time of her arrest
11 by Afghan officials. These documents, some of which were in
12 Siddiqui’s handwriting and bore her fingerprints, referred
13 to attacks on the United States and the construction of
14 various weapons. The court found this evidence admissible
15 pursuant to Federal Rule of Evidence 404(b) to show
16 Siddiqui’s “motive, intent, identity, and knowledge.” In
17 finding the documents admissible, the court rejected the
18 argument that the evidence would cause Siddiqui unfair
19 prejudice, concluding that the documents were no more
20 sensational than the crimes charged. The court also noted
21 that it would instruct the jury that the documents were not
22 to be considered as propensity evidence.

¹The certification was filed on the same day as the indictment.

1 **C. Trial**

2 At trial, the government presented six members of the
3 American interview team who testified that Siddiqui gained
4 control of the Chief Warrant Officer's rifle and fired at
5 them. Three more witnesses who did not directly observe the
6 shooting testified that they heard M-4 rifle shots. A
7 government expert testified that the fact that no gunpowder
8 residue was found on the curtain hanging in the room did not
9 necessarily indicate that an M-4 had not been fired because
10 someone standing between the curtain and the weapon could
11 have absorbed the residue. The government also introduced
12 the 404(b) documents discussed above.²

13 The defense put forth a forensic metallurgist who,
14 based on the lack of forensic evidence of a discharge of a
15 M-4 rifle at the crime scene, testified that he did not
16 believe an M-4 had been fired in the room. In particular,
17 he found it implausible that someone could discharge an M-4
18 rifle in a room without bullet fragments or gunpowder
19 residue being recovered by authorities. The defense also

²The district court gave a limiting instruction to the jury, informing them that they could not consider the documents as proof that Siddiqui was predisposed to commit the crimes charged. The district court made clear that the documents could only be considered to the extent they demonstrated Siddiqui's motive, intent, or knowledge.

1 introduced deposition testimony of an ANP officer that when
2 Siddiqui was arrested she possessed documents describing how
3 to make explosive devices, among other things, and that
4 while in Afghani custody she made anti-American statements
5 and asked not be turned over to the United States. He also
6 stated that he saw an American soldier walk behind the
7 curtain prior to hearing shots fired, although he did not
8 directly observe the shooting.³ Significantly, the officer
9 testified that he observed a technician remove two rifle
10 shells from the scene.

11 Against the advice and over the objection of her
12 attorneys, Siddiqui took the stand to testify in her own
13 defense.⁴ Though her testimony at times lacked focus, she
14 was able to provide her version of the events that
15 transpired on July 18, 2008. According to Siddiqui, she was

³The government elicited admissions from the officer that he previously gave inconsistent statements to American investigators.

⁴Defense counsel viewed this as a disastrous decision, and went so far as to make an application to the court to prevent Siddiqui from testifying. In their view, Siddiqui suffered from diminished capacity, such that she did not appreciate the risks inherent in testifying. Further, based on previous outbursts during the proceedings, they feared that Siddiqui would "turn the [trial] into a spectacle," thus alienating the jury and damaging her prospects for acquittal. Prior to Siddiqui's testimony, the defense held an ex parte conference with the judge where they aired their concerns. The judge then opened the courtroom to the public, and Siddiqui indicated on the record that she understood (1) that testifying was a significant decision, and one that her counsel had unanimously recommended against; (2) that her testimony had to be relevant; (3) that if she veered off into tangential topics the court may stop her testimony; and (4) that by testifying she would be subject to an intense cross-examination aimed at undercutting her testimony.

1 sitting behind a curtain in a room at the ANP facility when
2 she heard American voices. She feared being taken into
3 American custody and peeked through an opening in the
4 curtain with the hope of finding an escape route. Siddiqui
5 testified that she was then shot from multiple directions.
6 She stated that she never picked up, aimed, or fired an M-4
7 rifle at the Americans.

8 Siddiqui claimed that she could not confirm that she
9 possessed documents at the time of her arrest in Afghanistan
10 because she was "in a daze." JA 2371. She stated that the
11 bag in which the documents were found was not hers but
12 rather was given to her. When confronted with the document
13 referencing mass casualty attacks and listing New York City
14 landmarks, Siddiqui testified that it was a "possibility"
15 that the document was in her own handwriting. JA 2372.

16 After the defense rested, the government presented its
17 rebuttal case. Two FBI agents who were members of
18 Siddiqui's security detail during her recovery at Bagram
19 recounted several incriminating statements that Siddiqui
20 made to them. Before receiving this testimony, the district
21 court held a hearing to determine whether Siddiqui gave

1 these un-*Mirandized* statements voluntarily.⁵ At that
2 hearing, the two FBI agents testified, as did Siddiqui. The
3 district court determined that Siddiqui's statements were
4 voluntary.

5 On February 3, 2010, the jury returned a guilty verdict
6 on all counts of the indictment. The district court
7 sentenced Siddiqui on September 23, 2010. In addition to a
8 number of other enhancements, the court applied the
9 terrorism enhancement pursuant to U.S.S.G. § 3A1.4. In
10 applying the enhancement, the court found that Siddiqui's
11 offense was calculated to influence the conduct of the
12 government by intimidation, namely, attempting to frustrate
13 the interview team's efforts to detain her. Further, based
14 on a number of anti-American statements Siddiqui made before
15 and at the time of the shooting, the court determined that
16 Siddiqui's conduct was calculated to retaliate against the
17 United States government. The district court sentenced
18 Siddiqui principally to 86 years' imprisonment and five
19 years of supervised release.

20 Siddiqui timely appealed her convictions and sentence.

⁵The court conducted this voluntariness inquiry prior to admitting Siddiqui's testimony, and the government asked Siddiqui about her statements during its cross-examination in an attempt to impeach her. On cross-examination, she denied she made the statements.

1 was the indictment, which was filed the same day the
2 Attorney General issued the § 2332(d) certification.

3 Siddiqui has an answer to the problem. She points out
4 that the statute requires certification prior to a
5 prosecution for an “offense *described* in this section.” 18
6 U.S.C. § 2332(d) (emphasis added). In her view, the
7 Attorney General is required to issue the certification
8 before an accusatory instrument describing facts that could
9 constitute a violation of § 2332 is filed, regardless of
10 whether that instrument actually charges a violation of
11 § 2332. Siddiqui reasons that because the criminal
12 complaint filed on July 31, 2008 described conduct
13 proscribed by § 2332, the Attorney General’s certification
14 filed the day of the indictment was untimely.

15 Siddiqui’s argument offers an unusual reading of what
16 appears to be straightforward statutory language—a reading
17 that would undercut the very purpose of the provision.
18 Section 2332(d)’s requirement that the Attorney General
19 issue a certification before “prosecution for any offense
20 described in [§ 2332] *shall be undertaken*” is most naturally
21 read as a requirement that the Attorney General issue the
22 certification either at the time of or before the filing of

1 the first instrument charging a violation of § 2332. This
2 view furthers the purpose of § 2332(d)—namely, ensuring that
3 the statute reaches only terrorist violence inflicted upon
4 United States nationals, not “[s]imple barroom brawls or
5 normal street crime.” See H.R. Conf. Rep. 99-783, at 87,
6 *reprinted in* 1986 U.S.C.C.A.N. 1926, 1960.

7 Under Siddiqui’s interpretation of the provision, the
8 Attorney General would have to issue the certification any
9 time someone engaged in conduct that could be covered by the
10 statute. This would deprive the Attorney General of the
11 opportunity to sort through the facts of each case to
12 determine if it merited certification—and prosecution—under
13 the statute. More simply put, Siddiqui’s interpretation
14 would undercut § 2332(d)’s primary objective. Accordingly,
15 the district court did not err in denying Siddiqui’s motion
16 to dismiss Count One of the indictment.

17 Siddiqui next contends that Counts Two through Seven of
18 the indictment should be dismissed because the charging

1 statutes—18 U.S.C. §§ 1114,⁶ 111,⁷ and 924(c)⁸—do not have
2 application extraterritorially “in an active theater of
3 war.” This argument is without merit.

4 “Congress has the authority to ‘enforce its laws beyond
5 the territorial boundaries of the United States.’” *United*
6 *States v. Yousef*, 327 F.3d 56, 86 (2d Cir. 2003) (quoting
7 *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)). The
8 ordinary presumption that laws do not apply
9 extraterritorially has no application to criminal statutes.
10 *United States v. Al Kassar*, 660 F.3d 108, 118 (2d Cir.
11 2011). “When the text of a criminal statute is silent,
12 Congressional intent to apply the statute extraterritorially
13 must ‘be inferred from the nature of the offense.’” *Id.*
14 (quoting *United States v. Bowman*, 260 U.S. 94, 98 (1922)).

15 The statutes underlying Counts Two through Seven apply
16 extraterritorially. Subsequent to the filing of Siddiqui’s
17 brief, we held that 18 U.S.C. § 1114 applies
18 extraterritorially. *Al Kassar*, 660 F.3d at 118. We

⁶18 U.S.C. § 1114 prohibits the murder or attempted murder of any United States officer or employee while such officer or employee is engaged in, or on account of, his or her official duties.

⁷18 U.S.C. § 111 punishes those who assault, resist, oppose, impede, intimidate, or interfere with a United States officer or employee while he or she is engaged in, or on account of, his or her official duties.

⁸18 U.S.C. § 924(c) prohibits the use of a firearm during the commission of a crime of violence.

1 reasoned that “the nature of the offense-protecting U.S.
2 personnel from harm when acting in their official
3 capacity-implies an intent that [the statute] apply outside
4 of the United States.” *Id.* We see no basis for expecting
5 Congress to have intended to limit these protections to U.S.
6 personnel acting within the United States only. For the
7 same reason, § 111 applies extraterritorially. See *United*
8 *States v. Benitez*, 741 F.2d 1312, 1316-17 (11th Cir. 1984);
9 see also *United States v. Hasan*, 747 F. Supp. 2d 642, 685-86
10 (E.D. Va. 2010). Like 18 U.S.C. § 1114, the nature of the
11 offense-protecting United States officers and employees
12 engaged in official duties from harm-implies a Congressional
13 intent that § 111 apply outside of the United States. See
14 *Al Kassar*, 660 F.3d at 118.

15 As for § 924, which criminalizes the use of a firearm
16 during commission of a crime of violence, every federal
17 court that has considered the issue has given the statute
18 extraterritorial application where, as here, the underlying
19 substantive criminal statutes apply extraterritorially.
20 See, e.g., *United States v. Belfast*, 611 F.3d 783, 815 (11th
21 Cir. 2010); *United States v. Ahmed*, No. 10 Cr. 131 (PKC),
22 2012 WL 983545, at *2 (S.D.N.Y. March 22, 2012); *United*

1 *States v. Mardirossian*, 818 F. Supp. 2d 775, 776-77
2 (S.D.N.Y. 2011). We see no reason to quarrel with their
3 conclusions.

4 Siddiqui's argument that the statutes, even if
5 generally extraterritorial, do not apply "in an active
6 theater of war" is unpersuasive.⁹ As the government points
7 out, it would be incongruous to conclude that statutes aimed
8 at protecting United States officers and employees do not
9 apply in areas of conflict where large numbers of officers
10 and employees operate. The district court appropriately
11 denied Siddiqui's motion to dismiss Counts Two through Seven
12 of the Indictment.

13 **B. Admission of Documents under Federal Rule of Evidence**
14 **404(b)**
15

16 The district court admitted documents allegedly found
17 in Siddiqui's possession that explained the construction and

⁹Indeed, this argument is premised on a misreading of a number of cases. Siddiqui contends that international law "allow[s] an occupying force to try unlawful belligerents only in a military commission," see Siddiqui Br. 66, and thus extraterritorial application of the statutes at issue would run afoul of the general presumption that Congress intends its statutes to comport with international law. But the portion of *Ex parte Quirin*, 317 U.S. 1, 30 (1942), that Siddiqui cites merely stands for the more pedestrian observation that unlawful combatants, unlike lawful combatants, *may be* subjected to trial before a military commission. Moreover, the case Siddiqui cites for the proposition that "[a]t least one court has expressed reservation about extending the extraterritorial reach of § 1114 into Afghanistan because of the sensitive state of the relationship between the two nations," see Siddiqui Br. 65-66, does not mention § 1114 at all. Instead, the case addressed whether federal courts had jurisdiction to afford habeas corpus relief and the protection of the Suspension Clause to aliens held in Executive detention at Bagram Airfield. *Al Maqaleh v. Gates*, 605 F.3d 84, 99 (D.C. Cir. 2010).

1 use of various weapons and described a “mass casualty
2 attack” on a number of New York City landmarks for the
3 purpose of demonstrating Siddiqui’s knowledge, motive, and
4 intent. Siddiqui argues that her defense—that she never
5 picked up and fired the Chief Warrant Officer’s
6 rifle—removed those issues from the case and thus admission
7 of the documents was improper.

8 A district court’s evidentiary rulings encounter
9 trouble on appeal only where the district court abuses its
10 discretion. *United States v. Mercado*, 573 F.3d 138, 141 (2d
11 Cir. 2009). A district court abuses its discretion when
12 its evidentiary rulings are “arbitrary and irrational.” *Id.*
13 But even when an evidentiary ruling is “manifestly
14 erroneous,” the defendant will not receive a new trial if
15 admission of the evidence was harmless. *Cameron v. City of*
16 *New York*, 598 F.3d 50, 61 (2d Cir. 2010).

17 Federal Rule of Evidence 404(b) provides that evidence
18 of a defendant’s prior crimes, wrongs, or other acts cannot
19 be used to prove that a defendant was a bad fellow and most
20 likely remains one—that he has a criminal nature or
21 propensity and the acts in question are consistent with his
22 nature or tendency towards crime. However, this type of

1 evidence may be admissible for other legitimate purposes,
2 such as demonstrating motive, opportunity, identity, intent,
3 and knowledge. *Id.* Under our “inclusionary” approach, all
4 “other act” evidence is generally admissible unless it
5 serves the sole purpose of showing a defendant’s bad
6 character. *United States v. Curley*, 639 F.3d 50, 56 (2d
7 Cir. 2011).¹⁰

8 A defendant may, however, forestall the admission of
9 Rule 404(b) evidence by advancing a theory that makes clear
10 that the object the 404(b) evidence seeks to establish,
11 while technically at issue, is not really in dispute. See
12 *United States v. Colon*, 880 F.2d 650, 656 (2d Cir. 1989).
13 For example, a defense theory that the defendant did not
14 commit the charged act effectively removes issues of intent
15 and knowledge from the case. See *id.* at 657; *United States*
16 *v. Ortiz*, 857 F.2d 900, 904 (2d Cir. 1988). Siddiqui’s
17 defense was just that—“I didn’t fire the M-4.”

18 But even assuming that Siddiqui’s defense theory
19 effectively removed any issue of her intent or knowledge,
20 the documentary evidence remained relevant to demonstrate

¹⁰Of course, the strictures of Federal Rules of Evidence 401, 402, and 403 still apply to Rule 404(b) evidence. The evidence must be relevant to an issue in dispute, and its probative value must outweigh the risk of unfair prejudice. See *United States v. Colon*, 880 F.2d 650, 656 (2d Cir. 1989).

1 Siddiqui's motive. Motive has been variously defined as
2 "the reason that nudges the will and prods the mind to
3 indulge the criminal intent," *United States v. Benton*, 637
4 F.2d 1052, 1056 (5th Cir. 1981) (internal quotation marks
5 omitted); "the rationale for an actor's particular conduct,"
6 *United States v. Awan*, 607 F.3d 306, 317 (2d Cir. 2010); and
7 "an emotion or state of mind that prompts a person to act in
8 a particular way," Charles Alan Wright and Kenneth W.
9 Graham, Jr., *Federal Practice and Procedure: Federal Rules*
10 *of Evidence* § 5240. "Although it does not bear directly on
11 the charged elements of a crime, evidence offered to prove
12 motive is commonly admitted." *United States v. Salameh*, 152
13 F.3d 88, 111 (2d Cir. 1998). And unlike issues of knowledge
14 and intent, the defendant's motive—an explanation of *why* the
15 defendant would engage in the charged conduct—becomes highly
16 relevant when the defendant argues that he did not commit
17 the crime.

18 For instance, in *Salameh*, the defendants were charged
19 with a conspiracy to bomb the World Trade Center. *Id.* at
20 108. The district court admitted documents possessed by the
21 defendants that "bristled with strong anti-American
22 sentiment." *Id.* at 111. On appeal, we found those

1 documents admissible to demonstrate the conspiracy's motive.
2 *Id.*

3 Here, the documents the government introduced pursuant
4 to Rule 404(b) detail, among other things, the construction
5 of fertilizer and plastic explosives. One document in
6 particular discusses radioactive bombs, biological weapons,
7 and chemical weapons. That document also contains the
8 phrase "mass casualty attack" and lists a number of New York
9 City landmarks, including Grand Central Terminal, the Empire
10 State Building, the Statute of Liberty, and the Brooklyn
11 Bridge. Taken together, these documents, which were in
12 Siddiqui's possession at the time Afghan officials took her
13 into custody¹¹ and some of which were in her handwriting,
14 supply a plausible rationale for why Siddiqui would fire a
15 rifle at the American interview team, namely, she harbored
16 an anti-American animus. This motive was relevant to *the*
17 ultimate issue in dispute at trial-whether Siddiqui picked
18 up and fired the M-4 rifle at the American interview team.

¹¹In her brief, Siddiqui appears to contend that the government was required to call Afghan witnesses who were present at Siddiqui's arrest to confirm this fact. We disagree. There was more than sufficient evidence to establish that the documents were in Siddiqui's possession at the time of her arrest. Some were in her handwriting, and some bore her fingerprints. Moreover, on the day of her arrest, Afghan officials delivered the documents to American military authorities, which also tends to corroborate that Siddiqui possessed the documents when arrested by Afghan authorities.

1 Accordingly, the district court did not abuse its discretion
2 in admitting the documents pursuant to Rule 404(b).¹²

3 But even if we agreed with Siddiqui that the district
4 court abused its discretion in admitting the documents, that
5 would not end the matter. There would remain the question
6 of whether the error was harmless. An evidentiary error is
7 harmless "if the appellate court can conclude with fair
8 assurance that the evidence did not substantially influence
9 the jury." *United States v. Cadet*, 664 F.3d 27, 32 (2d Cir.
10 2011) (internal quotation marks omitted). Several factors
11 bear on the inquiry: whether the evidence was tied to "an
12 issue that [was] plainly critical to the jury's decision";
13 "whether that [evidence] was material to the establishment
14 of the critical fact or whether it was instead
15 corroborat[ive] and cumulative"; and "whether the wrongly
16 admitted evidence was emphasized in arguments to the jury."
17 *Curley*, 639 F.3d at 58 (internal quotation marks omitted).
18 But the most critical factor is "the strength of the
19 government's case." *Id.* (internal quotation marks omitted).

¹²Although Siddiqui often characterizes the admitted documents as "adverse and prejudicial," "incendiary," and "powerful, prejudicial, and damning," she never argues in her briefs that the evidence should have been excluded under Federal Rule of Evidence 403 on a theory that its probative value is substantially outweighed by a danger of unfair prejudice. As such, the argument is waived. See *Tolbert v. Queens College*, 242 F.3d 58, 76 (2d Cir. 2001); see also *Frank v. United States*, 78 F.3d 815, 833 (2d Cir. 1996), *vacated on other grounds by*, 521 U.S. 1114 (1997).

1 Here, although the government by its own admission
2 "repeatedly referenced the documents introduced at trial,"
3 Government Br. 37, the jury also had ample testimony before
4 it regarding anti-American statements Siddiqui made at the
5 time of the shooting from which it could conclude that
6 Siddiqui harbored an animus towards the United States. And
7 most importantly, the strength of the government's case was
8 overwhelming. Among other evidence, *six* members of the
9 American interview team testified that Siddiqui gained
10 control of the Chief Warrant Officer's rifle and fired at
11 them. Another three government witnesses who did not
12 observe the shooting testified that they heard M-4 rifle
13 shots. Moreover, after Siddiqui testified, the government
14 introduced the testimony of two FBI agents who had
15 interviewed Siddiqui. According to those agents, Siddiqui,
16 among other things, (1) asked what the penalty for attempted
17 murder was; and (2) noted that "spewing" bullets at
18 Americans was a bad thing.

19 Siddiqui counters that her forensic expert's opinion
20 that an M-4 rifle had not been fired in the room effectively
21 neutralized the government's case against her. However,
22 this forensic expert's testimony was undermined by one of

1 Siddiqui's own witnesses, who testified that two rifle
2 shells were recovered from the room, and by a government
3 expert's testimony that the absence of certain forensic
4 evidence from the room was not necessarily inconsistent with
5 the firing of a weapon.

6 Siddiqui also asserts that our decision in *United*
7 *States v. Colon*, 880 F.2d 650 (2d Cir. 1989), requires us to
8 grant her a new trial. She argues that *Colon* mandates that
9 we assess the strength of the government's case without
10 reference to the government's cross-examination of Siddiqui
11 or the incriminating statements she made at Bagram and that
12 *Colon* requires a new trial because the admission of the
13 documents forced her to testify and she was harmed by doing
14 so. We disagree.

15 In *Colon*, the defendant was charged with heroin
16 distribution. *Id.* at 652. His defense was that he did not
17 engage in the charged act. *Id.* at 658. Nevertheless, the
18 district court admitted evidence concerning two prior
19 instances in which the defendant had sold heroin to
20 demonstrate knowledge and intent—an obvious error. *Id.* at
21 656. The defendant then testified, and, in the words of his
22 counsel, "the [Assistant] U.S. Attorney made a jackass out

1 of him." *Id.* at 661 (brackets in original). Specifically,
2 the cross-examination cast doubt on the defendant's
3 credibility and delved deeply into the circumstances
4 surrounding the defendant's prior involvement with heroin.
5 *Id.* Because the record in *Colon* demonstrated that the
6 defendant's case was badly damaged by the erroneous
7 admission of the evidence, and because the defense may have
8 felt that there was no alternative but to have the defendant
9 testify as a result, we granted the defendant a new trial.
10 See *id.* at 661-62.

11 Here, we need not resolve the issue of whether *Colon*
12 necessitates that we measure the strength of the
13 Government's case without reference to either Siddiqui's
14 cross-examination or the admission of the incriminating
15 statements she made at Bagram. Even without that evidence,
16 the government's case against Siddiqui can only be fairly
17 characterized as devastating.

18 We also disagree with Siddiqui's claim that *Colon*
19 requires a new trial because the admission of the 404(b)
20 evidence forced her to testify and her defense was badly
21 damaged by that testimony. Unlike in *Colon*, the
22 introduction of the 404(b) evidence here did not necessitate

1 Siddiqui's testimony from an objective, strategic
2 standpoint. The 404(b) evidence was somewhat cumulative on
3 the issue of whether Siddiqui harbored an anti-American
4 animus, given that numerous witnesses testified as part of
5 the government's case-in-chief that she made anti-American
6 statements during the shooting incident. Further, even
7 after the introduction of the 404(b) evidence, defense
8 counsel advised Siddiqui not to testify, we presume in large
9 part because her testimony would open the door to the
10 admission of the incriminating statements she made while
11 recovering at Bagram. *Colon* does not allow a defendant to
12 make an otherwise harmless error harmful based on her simple
13 assertion that the error compelled her to testify.

14 **C. Denial of Defense Counsel's Application to Keep Siddiqui**
15 **from Testifying**
16

17 It is well established that criminal defendants have
18 the right to testify in their own defense. *Rock v.*
19 *Arkansas*, 483 U.S. 44, 49 (1987); see *Brown v. Artuz*, 124
20 F.3d 73, 76 (2d Cir. 1997). "This right . . . is . . .
21 essential to due process of law in a fair adversary
22 process." *Bennett v. United States*, 663 F.3d 71, 84 (2d
23 Cir. 2011) (internal quotation marks omitted). That is
24 because "the most important witness for the defense in many

1 criminal cases is the defendant himself," and he has the
2 "right to present his own version of events in his own
3 words." *Rock*, 483 U.S. at 52. The ultimate decision to
4 testify remains at all times with the defendant; defense
5 counsel, though charged with an obligation to apprise the
6 defendant of the benefits and risks of testifying, cannot
7 make the decision, regardless of tactical considerations.
8 *Brown*, 124 F.3d at 77-78.

9 Siddiqui's counsel does not challenge these clearly
10 established principles. Instead, she urges us to craft an
11 exception to the general rule, arguing that in some cases a
12 defendant may be competent to stand trial yet incompetent to
13 exercise her right to testify without the approval of
14 defense counsel.

15 In support of her argument, counsel relies heavily on
16 the Supreme Court's decision in *Indiana v. Edwards*, 554 U.S.
17 164 (2008). There, the Court held that a state may
18 determine that a defendant who is competent to stand trial
19 may nonetheless be incapable of representing himself at
20 trial and may thus insist that the defendant have trial
21 counsel. *Id.* at 167. The Court noted that a mentally ill
22 defendant may not possess the ability to execute tasks such

1 as organizing a defense, arguing points of law, and
2 questioning witnesses. *Id.* at 176-77. It further observed
3 that a prolonged spectacle could result from such a
4 defendant representing himself, and that spectacle would
5 undercut the Constitution's goal of providing a fair trial.
6 *Id.* at 177.

7 Counsel's reliance on *Edwards* is misplaced. First, as
8 three other circuits have recognized, *Edwards* holds that a
9 court may require that trial counsel appear on behalf of a
10 mentally ill defendant, not that it must do so. See *United*
11 *States v. Turner*, 644 F.3d 713, 724 (8th Cir. 2011); *United*
12 *States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009); *United*
13 *States v. DeShazer*, 554 F.3d 1281, 1290 (10th Cir. 2009).

14 But even if *Edwards* mandated trial courts to require trial
15 counsel for a discrete group of mentally ill defendants, the
16 case still would have no application here. Common sense
17 dictates that the mental capacity needed to conduct an
18 entire trial is much greater than the mental capacity
19 required to play the more limited role of witness on one's
20 own behalf. Moreover, the defendant's right to air her
21 version of events before a jury is "more fundamental to a
22 personal defense than the right of self-representation."

1 *Rock*, 483 U.S. at 52. As such, *Edwards* does not
2 significantly support, let alone compel, the conclusion that
3 a district court may prevent a mentally ill defendant from
4 testifying on her own behalf if defense counsel moves to
5 keep the defendant off the stand.

6 We question whether the Constitution permits a finding
7 that a criminal defendant is competent to stand trial, yet
8 incompetent to determine whether to testify on her own
9 behalf. But we need not decide that question today. Here,
10 the district court went to extraordinary lengths to ensure
11 that Siddiqui understood the implications of testifying and
12 had the capacity to testify. Even were we to discern any
13 daylight between the standards governing a defendant's
14 capacity to stand trial and those for assessing her capacity
15 to determine whether to testify (and then, actually to
16 testify), we would find no reason to upset the district
17 court's implicit determination that Siddiqui did in fact
18 have the requisite capacity to make the latter decision
19 here. That Siddiqui's choice to testify—like many
20 defendants' decisions to testify—was a poor one, does not
21 alter our analysis. See *Brown*, 124 F.3d at 77-78.

1 **D. Voluntariness of Siddiqui's un-*Mirandized* statements at**
2 **Bagram**

3
4 Siddiqui contends that the district court erred in
5 finding that the incriminating, un-*Mirandized* statements she
6 gave to two members of the FBI security team while she was
7 hospitalized at Bagram Airfield were voluntary and thus
8 could be used in the government's rebuttal case after
9 Siddiqui testified. Prior to Siddiqui's testimony, the
10 court held a hearing to determine the voluntariness of the
11 statements. At that hearing, the two FBI agents testified,
12 and the district court's ruling credited their testimony.
13 Their testimony established the following.

14 During the course of her stay at Bagram, Siddiqui was
15 tethered to her bed in soft restraints to prevent her
16 escape.¹³ The agents endeavored to meet Siddiqui's needs as
17 best they could and never denied her access to the restroom,
18 food, water, or medical attention. Further, Siddiqui had
19 access to a medical call button that allowed her to contact
20 the hospital's medical staff directly; therefore, she was

¹³These soft restraints, made of terry cloth and cotton, provided Siddiqui a fair range of mobility. In fact, the restraints provided such mobility that Siddiqui was able to remove them. After Siddiqui removed the restraints, the agents positioned the straps such that it was impossible to remove the strap on one hand with the other. The restraints were loose enough to allow her to read, drink, and wash, and were removed when Siddiqui required use of the washroom.

1 not entirely dependent on the agents to meet her basic
2 needs. Although Siddiqui was at times in pain and
3 medicated, she was coherent, lucid, and able to carry on a
4 conversation.

5 Special Agent Angela Sercer spent the most time with
6 Siddiqui. She would arrive in the morning and stay
7 approximately eight hours in Siddiqui's room. Upon
8 arriving, she would ask Siddiqui if she wanted to talk; if
9 Siddiqui indicated she did not, Sercer would remain quietly
10 in the room as a member of Siddiqui's security detail.

11 Although the topic of the July 18th shooting did come up,
12 Sercer's primary objective was to gather intelligence
13 related to another investigation of Siddiqui commenced years
14 earlier. Siddiqui was generally receptive to speaking with
15 Sercer and indicated that she enjoyed their discussions.

16 Special Agent Bruce Kamerman spent significantly less time
17 with Siddiqui. Although he was not initially tasked with
18 interviewing Siddiqui, supervisors instructed Kamerman to
19 "continue the dialog" when Siddiqui made unsolicited
20 incriminating statements to him. Siddiqui never indicated
21 to Kamerman that she was unwilling to talk. Neither agent
22 gave Siddiqui *Miranda* warnings.

1 Statements taken from a defendant in violation of
2 *Miranda* may not be introduced by the government during its
3 case in chief. *United States v. Douglas*, 525 F.3d 225, 248
4 (2d Cir. 2008). But because a defendant “must testify
5 truthfully or suffer the consequences,” the government may
6 introduce un-*Mirandized* statements to impeach the
7 defendant’s testimony. *Id.* (internal quotation marks
8 omitted). The government cannot, however, introduce a
9 defendant’s involuntary statements. *See, e.g., Mincey v.*
10 *Arizona*, 437 U.S. 385, 397-98 (1978); *see also United States*
11 *v. Khalil*, 214 F.3d 111, 121-22 (2d Cir. 2000). Because
12 Siddiqui testified at trial, the government was free to
13 introduce the statements she made at Bagram Airfield so long
14 as those statements were voluntary.

15 The government bears the burden of demonstrating that
16 the defendant’s statements were voluntary. *See United*
17 *States v. Capers*, 627 F.3d 470, 479 (2d Cir. 2010); *United*
18 *States v. Anderson*, 929 F.2d 96, 99 (2d Cir. 1991). To
19 determine whether a defendant’s statements were made
20 voluntarily, courts look to the totality of the
21 circumstances surrounding the statements. *Anderson*, 929
22 F.2d at 99. “Relevant factors . . . include the accused’s

1 age, his lack of education or low intelligence, the failure
2 to give *Miranda* warnings, the length of detention, the
3 nature of the interrogation, and any use of physical
4 punishment." *Campaneria v. Reid*, 891 F.2d 1014, 1020 (2d
5 Cir. 1989). A defendant's mental vulnerability also bears
6 on the analysis. See *Colorado v. Connelly*, 479 U.S. 157,
7 164 (1986).

8 A number of decisions have assessed the voluntariness
9 of a defendant's statements where the defendant was in
10 medical distress. For example, in *Mincy*, 437 U.S. at 398-
11 400, the Supreme Court held that a defendant's statements to
12 police were involuntary where the defendant (1) arrived at
13 the hospital a few hours before the interrogation "depressed
14 almost to the point of coma"; (2) suffered "unbearable"
15 pain; (3) was unable to think coherently; (4) was
16 "encumbered by tubes, needles, and [a] breathing apparatus";
17 (5) expressed his desire that the interrogation cease
18 numerous times to no avail; and (6) was falling in and out
19 of consciousness. By contrast, courts tend to view a
20 hospitalized defendant's statements as voluntary where the
21 defendant was lucid and police conduct was not overbearing.
22 See *Khalil*, 214 F.3d at 121-22; *Pagan v. Keane*, 984 F.2d 61,
23 63 (2d Cir. 1993); *Campaneria*, 891 F.2d at 1019-20.

1 We review the factual findings underpinning the
2 district court's voluntariness determination for clear error
3 while subjecting the ultimate conclusion that a defendant's
4 statements were voluntarily to *de novo* review. See *Khalil*,
5 214 F.3d at 122; see also *United States v. Pettigrew*, 468
6 F.3d 626, 633 (10th Cir. 2006); *United States v. Bell*, 367
7 F.3d 452, 460-61 (5th Cir. 2004). Doing so, we find no
8 error in the district court's determination that Siddiqui's
9 statements were voluntary. Although no *Miranda* warnings
10 were given and Siddiqui was kept in soft restraints for the
11 duration of her hospital stay, the agents' conduct was not
12 overbearing or abusive. To the contrary, the agents
13 endeavored to meet her basic needs. Siddiqui conversed
14 freely with the agents, and when she indicated that she did
15 not want to engage in conversation, Special Agent Sercer sat
16 quietly in her room. Further, Siddiqui is highly educated,
17 having earned her undergraduate degree from Massachusetts
18 Institute of Technology and a doctorate from Brandeis
19 University. Most importantly, just as in *Khalil*, *Pagan*, and
20 *Campaneria*, Siddiqui was lucid and able to engage the agents
21 in coherent conversation despite the pain attendant to her
22 injury.

1 Thus, the district court did not err in allowing the
2 government to introduce the statements Siddiqui made while
3 recuperating at Bagram Airfield to rebut her trial
4 testimony.

5 **E. Application of the Terrorism Enhancement to Siddiqui's**
6 **Sentence**

7
8 Finally, we address Siddiqui's challenge to the
9 district court's application of the terrorism enhancement
10 under U.S.S.G. § 3A1.4. The enhancement increases by twelve
11 the defendant's offense level and elevates the defendant's
12 criminal history category to category six if the defendant's
13 offense "is a felony that involved, or was intended to
14 promote, a federal crime of terrorism." *Id.* A "federal
15 crime of terrorism" is an offense that "is calculated to
16 influence or affect the conduct of government by
17 intimidation or coercion, or to retaliate against government
18 conduct"; and is a violation of any one of a number of
19 enumerated statutes, including 18 U.S.C. §§ 1114 and 2332.
20 U.S.S.G. § 3A1.4 app. n. 1; 18 U.S.C. § 2332b(g)(5).

21 The district court found that Siddiqui's offenses were
22 calculated to influence or affect government conduct and
23 that they were calculated to retaliate against government
24 conduct. As to the former, the court determined that

1 Siddiqui's offenses were "calculated to influence or affect
2 by intimidation the government's fulfillment of its official
3 duties including, among other things, the interview team's
4 efforts to interview . . . and . . . detain her." JA 2848.
5 The court, pointing to statements Siddiqui made while in
6 Afghan custody, determined that Siddiqui began scheming to
7 avoid transfer to American custody on July 17, 2008, and
8 that the scheming came to fruition when Siddiqui gained
9 control of the Chief Warrant Officer's rifle and fired at
10 the American interview team.

11 In support of the latter finding, the district court
12 highlighted testimony regarding various anti-American
13 statements Siddiqui made while in custody. In the court's
14 estimation, these statements demonstrated Siddiqui's intent
15 to retaliate against the United States government.

16 Siddiqui argues that the district court erred in applying
17 the enhancement. She claims that application of both the
18 terrorism enhancement and the Guidelines' official victim
19 enhancement resulted in impermissible double counting. She
20 also contends that her conduct was not "calculated," as
21 required by the plain language of the enhancement.
22 According to Siddiqui, long-term planning is a necessary

1 condition to finding that a defendant's offense was
2 "calculated."

3 Siddiqui's contention that the district court committed
4 error in applying both the official victim enhancement and
5 the terrorism enhancement is devoid of merit. "[A] district
6 court calculating a Guidelines sentence may apply multiple
7 [enhancements] based on the same underlying conduct,"
8 especially where "each of the multiple [enhancements] . . .
9 serves a distinct purpose or represents a discrete harm."
10 *United States v. Maloney*, 406 F.3d 149, 152, 153 (2d Cir.
11 2005). The terrorism and official victim enhancements both
12 address discrete harms resulting from Siddiqui's conduct—the
13 official victim enhancement "deals with the selection of
14 victims based on their status as government employees," and
15 the terrorism enhancement addresses those acts that are
16 calculated to influence government conduct or to retaliate
17 against a government. *In re Terrorism Bombings of U.S.*
18 *Embassies in East Africa*, 552 F.3d 93, 153 (2d Cir. 2008).
19 Accordingly, application of both the terrorism and official
20 victim enhancements does not constitute impermissible double
21 counting. *See id.*

1 Resolution of Siddiqui's challenge to the district
2 court's finding that her offense was "calculated" merits
3 more discussion. As previously noted, for the terrorism
4 enhancement to apply, the defendant's offense must be
5 "*calculated* to influence or affect the conduct of government
6 by intimidation or coercion, or to retaliate against
7 government conduct." 18 U.S.C. § 2332b(g)(5)(A) (emphasis
8 added). When we interpret the Guidelines, we "giv[e] the
9 words used their common meaning." *United States v. Stewart*,
10 590 F.3d 93, 137 (2d Cir. 2009). "Calculated" means
11 "planned-for whatever reason or motive-to achieve the stated
12 object." *Awan*, 607 F.3d at 317; see *Stewart*, 590 F.3d at
13 137 ("The conventional meaning of 'calculated' is 'devised
14 with forethought.'").

15 Many courts (including this one) interpret "calculated"
16 as nearly synonymous with intentional. See *Stewart*, 590
17 F.3d at 137; see also *United States v. Chandia*, 675 F.3d
18 329, 333 n.3 (4th Cir. 2012); *United States v. El-Mezain*,
19 664 F.3d 467, 571 (5th Cir. 2011); *United States v.*
20 *Jayyousi*, 657 F.3d 1085, 1115 (11th Cir. 2011). Thus, "if a
21 defendant's *purpose* in committing an offense is to
22 'influence or affect the conduct of government by

1 intimidation or coercion, or to retaliate against government
2 conduct,'" application of the terrorism enhancement is
3 warranted. See *Stewart*, 590 F.3d at 137 (emphasis added)
4 (quoting 18 U.S.C. § 2332b(g)(5)(A)). Where, however,
5 "there is no evidence that the defendant sought to influence
6 or affect the conduct of the government," the enhancement is
7 inapplicable. *Id.* (internal quotation marks omitted).

8 Most cases applying the terrorism enhancement have
9 involved conduct that spanned a significantly greater length
10 of time than the conduct here. See, e.g., *Awan*, 607 F.3d at
11 310-11; *United States v. Salim*, 549 F.3d 67, 70-71 (2d Cir.
12 2008); *In re Terrorist Bombings*, 552 F.3d at 103-05 (2d Cir.
13 2008); *United States v. Meskini*, 319 F.3d 88, 90-91 (2d Cir.
14 2003). Relying on this observation, Siddiqui argues that
15 "calculation," as used in the enhancement, incorporates a
16 long-term planning requirement. We disagree. That long-
17 term planning is present in many of the cases applying the
18 terrorism enhancement does not make it a condition necessary
19 to finding that a defendant's offense was calculated to
20 influence government conduct or to retaliate against a
21 government. Instead, the terrorism enhancement is
22 applicable where a defendant acts according to a

1 plan-whether developed over a long period of time or
2 developed in a span of seconds-with the object of
3 influencing government conduct or retaliating against a
4 government.

5 The day before the shooting incident here, Siddiqui
6 repeatedly implored Afghan police officials not to turn her
7 over to American forces. Siddiqui gained control of an M-4
8 rifle and fired on the American interview team attempting to
9 take her into United States custody the following day.

10 Under these circumstances, the district court did not
11 clearly err¹⁴ in its determination that Siddiqui's offense
12 was calculated to influence government conduct-i.e, the
13 United States' attempts to take Siddiqui into custody-by
14 intimidation or coercion.

15 We also find that the district court did not clearly
16 err in determining that Siddiqui's offense was calculated to
17 retaliate against the United States. While in Afghan
18 custody prior to the shooting incident, Siddiqui referred to
19 the United States as invaders, and when queried about the
20 bomb-making documents found in her possession, Siddiqui

¹⁴We decline Siddiqui's invitation to apply a searching *de novo* review here. Because the district court's finding on this score is factual, clear error review is appropriate. See *Salim*, 549 F.3d at 79; see also *El-Mezain*, 664 F.3d at 571.

1 indicated that the target of those bombs were "the
2 foreigners." See JA 3022. What's more, shortly after
3 firing on the American interview team, Siddiqui stated: "I
4 am going to kill all you Americans. You are going to die by
5 my blood"; "death to America"; and "I will kill all you
6 motherfuckers." Taken as a whole, this evidence provides a
7 sufficient factual basis for the district court's conclusion
8 that Siddiqui's offense was calculated to retaliate against
9 the United States.

10 Accordingly, the district court did not err in applying
11 the terrorism enhancement.

12 **III. CONCLUSION**

13 For the foregoing reasons, and for the reasons provided
14 in the accompanying summary order, Siddiqui's convictions
15 and sentence are hereby affirmed.