

EXHIBIT 5

**To Plaintiffs' Statement of Undisputed and Disputed Material Facts
Relevant to Defendants' Motion for Final Summary Judgment**

Declaration of Former U.S. Senator Bob Graham

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-61735-Civ-Zloch

BROWARD BULLDOG, INC., a Florida)
Corporation not for profit, and DAN)
CHRISTENSEN, founder, operator and editor)
of the BrowardBulldog.com website,)
)
Plaintiffs,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE, 950)
Pennsylvania Avenue, NW Washington, DC)
20530, and FEDERAL BUREAU OF)
INVESTIGATION, 935 Pennsylvania Avenue,)
NW Washington, DC 20535,)
)
Defendants.)
)

Declaration of D. Robert Graham

D. Robert Graham, pursuant to 28 U. S. C. § 1746, hereby declares under penalty of perjury as follows:

1. My full name is Daniel Robert “Bob” Graham.
2. I have personal knowledge of the facts set forth in this declaration.
3. From 1966 through 1970, I served as a member of the Florida State House of Representatives and from 1970 through 1978, as a Member of the Florida State Senate. Between 1979 and 1987, I served as Governor of the State of Florida.
4. From January 3, 1987 to January 3, 2005, I served as a United States Senator for the State of Florida. During my tenure as a United States Senator, I served on the Senate Select

Committee on Intelligence for ten (10) years, and as Chairman of that Committee between June 6, 2001 and January 3, 2003.

5. In my capacity as Chairman of the Senate Select Committee on Intelligence, I co-chaired the Joint Inquiry of the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence into intelligence community activities before and after the terrorist attacks of September 11, 2001 (the "Joint Inquiry").

6. Following my retirement from the Senate, I served for one year as a senior fellow at the Kennedy School of Government. Thereafter, from May 2008 to February 2010, I served as Chairman of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, whose mandate was to build on the work of the National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission").

7. I also served as a Commissioner on the Financial Crisis Inquiry Commission, established by Congress in May 2009 to examine the global and domestic causes of the financial crisis. On May 21, 2010, President Barack Obama appointed me as Co-Chair of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.

8. From 2010-2012, I have served as a member of the Central Intelligence Agency External Advisory Board.

9. I am the Chair of the Board of Overseers of the Graham Center for Public Service at the University of Florida, and the author of numerous books and articles, including *Intelligence Matters: The CIA, the FBI, Saudi Arabia and the Failure of America's War on Terror* (Random House, 2004).

10. I submit this declaration on behalf of the Plaintiffs, based on my experiences as a long-time Member of the Senate Select Committee on Intelligence and Co-Chair of the Joint

Inquiry, descriptions of activities in the Final Report of the 911 Commission and other reports and published materials.

11. In February 2002, the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence agreed to conduct a Joint Inquiry into the activities of the U.S. intelligence community in connection with the terrorist attacks perpetrated against our nation on September 11, 2001. The Committees' decision was unprecedented in congressional history: for the first time, two permanent committees, one from the House and one from the Senate, would join together to conduct a single, unified inquiry.

12. The three principal goals of the Joint Inquiry were to:

- Conduct a factual review of what the intelligence community knew or should have known prior to September 11, 2001, regarding the international terrorist threat to the United States, to include the scope and nature of any possible international terrorist attacks against the United States and its interests;
- Identify and examine any systemic problems that may have impeded the intelligence community in learning of or preventing these attacks in advance; and
- Make recommendations to improve the intelligence community's ability to identify and prevent future international terrorist attacks.

13. The Joint Inquiry had the specific charter to review the activities of the Intelligence Community and was limited to approximately one year's duration. The Joint Inquiry completed its work with the submission of a Final Report to Congress on December 20, 2002. A copy of the declassified version of the Final Report is attached as Exhibit A.

14. At the beginning of the investigation in February 2002, each of the intelligence agencies, including the FBI was asked to provide all information that the agencies possessed.

15. During the course of the Joint Inquiry, the Committees held nine public hearings and thirteen closed sessions in which classified information was considered. In addition, the Joint

Inquiry Staff has reviewed almost 500,000 pages of relevant documents from the Intelligence Community agencies and other sources, of which about 100,000 pages were selected for incorporation into the Joint Inquiry's records.

16. The Staff also conducted approximately 300 interviews, and participated in numerous briefings and panel discussions, that involved almost 600 individuals from the Intelligence Community agencies, other U.S. Government organizations, state and local entities, and representatives of the private sector and foreign governments.

17. As part of the Joint Inquiry, the Inquiry staff conducted an intensive investigation into the details of the 9/11 plot, the activities of the 19 hijackers, and the existence of a network of support that allowed them to carry out the September 11, 2001, attacks.

18. The Joint Inquiry considered testimony from many witnesses from the FBI including Director Robert Mueller; Deputy Assistant Director for Counterterrorism and Counterintelligence James Caruso; Financial Review Group Section Chief Dennis Lorme; Special Agent Michael Rolince; Deputy General Counsel M.E. Bowman; Former Director Louis Freeh; and Executive Assistant Director Pasquale D'Amoro.

19. In addition, the Joint Inquiry heard from or interviewed numerous FBI employees and agents throughout the United States and the world.

20. To the best of my knowledge and belief, none of the FBI employees or agents with whom the Joint Inquiry had contact advised the Joint Inquiry that the FBI had conducted any investigation of the persons living at 4224 Escondito Circle in a gated community known as Prestancia in Sarasota, Florida or specifically of Abdulaziz al-Hijji, his wife Anoud, or his father-in-law and mother-in-law Esam and Deborah Ghazzawi.

21. I initially learned that the FBI had conducted such an investigation when Anthony Summers and Dan Christensen contacted me on Sunday, September 4, 2011 to let me know that they were planning to publish a report about the FBI investigation that had commenced soon after the September 11, 2001 attacks. I was surprised to learn of this FBI investigation because the Joint Inquiry had instructed the FBI to provide it with all information relative to the 9/11 tragedy. Mr. Christensen's comments were the first time that I was made aware of a 9/11 related investigation in Sarasota.

22. Mr. Summers and Mr. Christensen advised me that they had learned that a neighbor of the al-Hijjis, Patrick Gallagher, had sent an email to the FBI on September 11, 2001, expressing his suspicions concerning the al-Hijjis, and that agents quickly arrived and conducted a comprehensive investigation. According to Mr. Christensen, Jone Weist, president of the group that managed Prestancia, confirmed the arrival of the FBI and said that the FBI had requested copies of the al-Hijjis' financial transactions involving the home at 4224 Escondido Circle. Mr. Christensen also advised me that Larry Berberich, senior administrator and security officer of the gated community known as Prestancia and an adviser to the Sarasota County sheriff, reported to law enforcement that the al-Hijjis left the home at 4224 Escondido Circle on or about August 30, 2001, apparently abandoning the home; all of its contents including food, clothing, and furnishings; and three recently registered vehicles. Mr. Christensen further said that agents apparently found phone records and Prestancia gate records linking the house on Escondido Circle to the September 11 hijackers.

23. I told Mr. Christensen that at the beginning the Joint Inquiry's investigation in February 2002, each of the intelligence agencies, including the FBI, was asked to provide all information that the agency possessed in relation to 9/11. I also told him that FBI's failure to tell

the Inquiry about the Sarasota investigation was similar to its failure to provide information linking the September 11 hijackers to other Saudis in California. Investigators from the Joint Inquiry themselves discovered the California relationship.

24. The 28-page section of the Inquiry's Final Report dealing with "sources of foreign support for some of the Sept. 11 hijackers," remains classified to this day even though declassification would not, in my opinion, endanger national security.

25. The Joint Inquiry turned over the records it had accumulated to the National Commission on Terrorist Attacks Upon the United States ("the 9/11 Commission") which was created by Congress and the President on November 27, 2002.

26. The 9/11 Commission completed its work on July 22, 2004 with the completion of "The 9/11 Commission Report." A copy of the report is attached as Exhibit B. The 9/11 Commission Report stated that the 9/11 Commission had "found no evidence that the Saudi government as an institution or senior Saudi officials individually funded al Qaeda. (This conclusion does not exclude the likelihood that charities or commercial entities with significant Saudi government sponsorship or less than senior Saudi officials individually diverted funds to al Qaeda.)" Exhibit B at 171. This statement from the report underscores that the 9/11 Commission was not provided with the information regarding the FBI's Sarasota investigation.

27. It appears to me that the FBI was not forthcoming with the Joint Inquiry regarding its Sarasota investigation.

28. Mr. Christensen advised me on Saturday, September 10, 2011, that on Friday, September 9, 2011, FBI Special Agent Michael D. Leverock in Miami had issued a public statement confirming the existence of its Sarasota investigation, that the investigation was resolved and determined not to be related to any threat nor connected to the 9/11 plot, and that all

of the documentation pertaining to the 9/11 investigation was made available to the 9/11 Commission and the Joint Inquiry.

29. This assertion by the FBI was not credible because no one who I had spoken to with the Joint Inquiry said that the Inquiry had received any information on the FBI's Sarasota investigation. See Paragraphs 42 and 43 regarding my further research on this point.

30. I told Mr. Christensen the FBI's recent statement was further evidence that the U.S. government is concealing information about possible Saudi involvement in the September 11 attacks.

31. In September 2011, I personally asked John Brennan, the President's Chief of Counterterrorism, to ask the President to look into the FBI's Sarasota investigation. An assistant to Mr. Brennan, David Turk, responded to my request with an e-mail indicating that Mr. Brennan had asked the FBI about my inquiry and was told that the 9/11 Commission was well aware of the Sarasota house/occupants and chose not to include it in the final 9/11 Commission report because it didn't stick to the wall. I was disappointed and somewhat surprised. The White House accepted, without independent verification, what the FBI said in spite of the FBI's reputation for not being as transparent as it should be in areas where there are no national security concerns.

32. Mr. Christensen advised me that on Thursday, September 15, 2011, Stephen E. Ibison, FBI special agent in charge of the Tampa Field Office, issued this further statement:

In order to address allegations reported in a September Miami Herald article, Link to 9/11 hijackers found in Sarasota, the FBI is furnishing the following statement to correct the public record. The FBI did follow up on the information about suspicions surrounding the referenced Sarasota home and family. Family members were subsequently located and interviewed. At no time did the FBI develop evidence that connected the family members to any of the 9/11 hijackers as suggested in the article, and there was no connection found to the 9/11 plot. The anonymous "counterterrorism officer" cited in the article apparently was not

an FBI agent and had no access to the facts and circumstances pertaining to the resolution of this lead, otherwise this person would know this matter was resolved without any nexus to the 9/11 plot. Finally, all of the documentation regarding the 9/11 investigation was made available to the 9/11 Commission and the JICI.

33. The files compiled by the Joint Inquiry are maintained by the United States Senate. Soon after learning that the FBI apparently claimed to have turned over the files regarding its Sarasota investigation to the Joint Inquiry, I asked James A. Wolfe, security director for the Senate Intelligence Committee and the custodian of the records of the Joint Inquiry, to let me know whether the Joint Inquiry's files contained any records that the FBI had given the Joint Inquiry concerning its Sarasota investigation.

34. Mr. Wolfe advised me that he contacted the FBI to request file numbers and dates for the FBI files regarding the Sarasota investigation, that he obtained file numbers and dates from the FBI, that he reviewed the identified Joint Inquiry files, and that he concluded that those Joint Inquiry files did not in fact contain records regarding the FBI's Sarasota investigation.

35. Mr. Wolfe also advised me, however, that the FBI then provided to him two files, one dated April 16, 2002, and the other dated September 16, 2002, both of which were five pages or less, which did reflect information concerning the FBI's Sarasota investigation. Mr. Wolfe had not requested these specific files from the FBI. Instead, he had asked for direction that would facilitate his locating information which was already in the files of the Joint Inquiry.

36. I reviewed those documents and concluded that they contradicted the FBI's public statements concerning its Sarasota investigation. To me, the documents reflected that the investigation was not a robust inquiry concerning suspicions related to Saudi nationals who resided in Sarasota before September 11, 2001, that an important investigative lead was not pursued, and that unsubstantiated statements were accepted as true. One of the documents

reflected that an FBI agent suggested that another federal agency should be asked to join the investigation, but that the idea was rejected.

37. I shared this information with the White House which responded by setting up a meeting between me and FBI Deputy Director Sean Joyce during the week of Thanksgiving, 2011.

38. At that meeting, Joyce acknowledged that the FBI files that I had reviewed appeared to contradict the FBI's public statements concerning its Sarasota investigation, but he said that other FBI files would place those files in context and show that the FBI's public statements concerning the Sarasota investigation were correct.

39. I asked Joyce if I could review the other files that he referenced. He assured me that I would be shown those additional files. He asked a female FBI agent who was attending the meeting to provide those additional files to me.

40. In December 2011, the scheduled meeting at which I was to review the additional FBI files was canceled and I was told that I would be allowed no further access to FBI information about Sarasota.

41. I have learned that the FBI agent who was responsible for the Sarasota investigation has been transferred by the FBI to Honolulu, Hawaii. I called his office in Hawaii twice to attempt to ask him questions about the FBI's Sarasota investigation. On neither occasion was he available to speak with me. I left messages asking him to call me. He has not to date returned my calls. Mr. Joyce has advised me that he instructed the agent not to speak with me.

42. I have contacted the co-chairs of the 9/11 Commission, Republican Thomas Kean and Democrat Lee Hamilton and I have asked them if the 9/11 Commission ever learned of the

FBI's Sarasota investigation. Both advised me that they were unaware of it. Kean told me that if the 9/11 Commission had learned of the Sarasota investigation it would have worked it hard because it seemed implausible that the hijackers had completed the planning of the September 11 attacks alone. Phil Zelikow, the 9/11 Commission's executive director, also told me that the 9/11 Commission did not receive any documents from the FBI concerning the Sarasota investigation.

43. I also contacted Porter Goss, chairman of the U.S. House of Representative Permanent Select Committee on Intelligence in 2002 and co-chair with me of the Joint Inquiry, and Eleanor Hill, staff director of the Joint Inquiry to ask them if he ever had become aware of the FBI's Sarasota investigation. They said they had no awareness of that investigation.

44. I am troubled by what appears to me to be a persistent effort by the FBI to conceal from the American people information concerning possible Saudi support of the September 11 attacks.

45. I have been advised that the plaintiffs in this lawsuit submitted a Freedom of Information request to the FBI on October 27, 2011 requesting a search of the FBI's indices to the Central Records System and the filings system of the bureau's Tampa field office for information pertaining to an anti-terrorism investigation regarding activities at the residence at 4224 Escondito Circle, in the Prestancia development near Sarasota, Florida prior to 9/11/2001.

46. I have been further advised that the request specified that the activities involve apparent visits to that address by some of the deceased 9/11/hijackers, that the FBI investigation began in the fall of 2001 and continued into at least 2003, and that local FBI officials had said the investigation was closed. I also understand that the request sought copies of all FBI 302 reports about the matter as well as related investigative reports or FBI memos or correspondence – including the FBI's findings and conclusions as to what happened at that address, and reports,

information or summaries obtained about the matter from any foreign law enforcement organization or intelligence services, to include Saudi intelligence.

47. The two documents shown to me by the FBI dated April 16, 2002, and September 16, 2002, and referenced in paragraphs 35 and 36 above are responsive to the plaintiffs' FOIA request and they reflect that the FBI should have additional responsive documents to the plaintiffs' FOIA request.

48. By virtue of my service as co-chair of the Joint Inquiry and my many years of service in the United States Senate, I have become familiar with the nature of the documentation that the FBI creates in connection with investigations such as the Sarasota investigation described herein. An investigation of that type leads to the creation in the ordinary course of the operation of the FBI of numerous records showing the initial reports made to law enforcement agents, investigations conducted relating to the initial reports, field investigations of the reports, statements taken by witnesses, documents collected from witnesses, and analyses of the raw data and information that it collected. In light of this pattern and practice of the FBI, it is entirely implausible that the FBI did not create or would not now be able to locate documents of this type that are responsive to the plaintiffs' Freedom of Information Act request in this case.

49. I began preparation of this declaration at the request of the plaintiffs in January, 2013, after the defendants filed initial disclosures on January 9, 2013 (DE-12), stating that they "have not located any records responsive to the plaintiffs' [FOIA] request." Before I completed the declaration, plaintiffs advised me that on March 28, 2013, the Department of Justice advised them that, contrary to the initial disclosures, it had located 35 pages of documents responsive to their request, that it was withholding four pages of those documents, and that it was producing the remaining 31 pages, after certain information in them had been redacted.

50. Plaintiffs provided me a copy of the 31 pages produced to them and I reviewed them. Only one of the two documents I have referenced in paragraphs 35 and 36, the document dated April 16, 2002, was included in the documents produced to the plaintiffs on March 28, 2013. That document is numbered SARASOTA-5-6. The September 16, 2002, document that the FBI showed me was not produced to the plaintiffs.

51. The documents that were produced on March 28, 2013, not only do not contain one of the documents shown to me by the FBI, they also do not appear to be the full record of the FBI investigation that was conducted. Once the FBI had found “many connections” between the persons under investigation and individuals associated with the September 11, 2001, terrorist attacks, see SARASOTA-5-6, the FBI should have taken statements from all persons who knew those persons, should have obtained the gatehouse records of the Prestancia subdivision where 4224 Escondito Circle is located, should have compared the license plates on vehicles that the FBI had reason to believe that the terrorists used with photographs that were taken of license tags of vehicles that passed through the Prestancia gatehouse, should have obtained financial records showing how homeowners association fees were paid, and should have created inventories of property taken from the home, at a minimum. On a matter of this magnitude and significance, my expectation is that the FBI would have hundreds or even thousands of pages of documents relating to the 4224 Escondito Circle investigation, and that those documents would be well indexed and easily retrievable to this day. As is apparent from the small number of documents released, this was not an investigation of run-of-the-mill criminal matters. It related to matters of paramount national importance.

52. The released documents bearing page numbers SARASOTA-5-6 and SARASOTA-34-35 state that the FBI found “many connections” between the persons under

investigation and “individuals associated with the terrorist attacks on 9/11/2001.” Any FBI investigative document making such an observation should have been provided immediately to the Joint Inquiry and called specifically to its attention, not left buried in a mountain of other documents. Documents of this type have a direct bearing on the critical issues of whether the 19 individuals who are known to have carried out the attacks on September 11, 2001, did so with the support of a significant network of others living in the United States and, if so, whether our law enforcement agencies have taken appropriate actions against those other persons and to prevent them from supporting other terrorist attacks in the future.

53. The FBI was aware that the Joint Inquiry had been charged with (1) conducting a factual review of what the intelligence community knew or should have known prior to September 11, 2001; (2) identifying and examining any systemic problems that may have impeded the intelligence community in learning of or preventing these attacks in advance; and (3) making recommendations to improve the intelligence community's ability to identify and prevent future international terrorist attacks. The FBI's failure to call documents finding “many connections” between Saudis living in the United States and individuals associated with the terrorist attacked to the attention of the Joint Inquiry interfered with the Inquiry's ability to complete its mission.

54. In a letter to Sen. Patrick Leahy of Vermont dated November 22, 2011, produced to the plaintiffs and marked as SARASOTA-3-4, the Department of Justice asserted that “records concerning the Sarasota matter . . . were . . . available to congressional investigators,” the “FBI is unable to ascertain whether these investigators reviewed records concerning the Sarasota family,” and the “FBI has not identified any specific requests made by the investigators concerning the Sarasota family.”

55. These statements are troubling and they raise many questions concerning why the FBI proceeded as it did. Most FBI records are theoretically “available” to congressional investigators, but as a practical matter records of an FBI investigation about which Congress has no knowledge are effectively concealed unless brought forward by the FBI because investigators lack information needed to formulate a specific request for them.

56. Public disclosure of all records of the FBI’s Sarasota investigation now would shed much light on why the FBI acted as it did and would allow the public to evaluate whether the FBI reacted appropriately to the important evidence that it found.

57. I am unaware of any national security interests that would be harmed by disclosure of the records of the investigation or of any other interests that would warrant maintaining the confidentiality of these records at this time. In fact, disclosures should serve our national security interests by showing what actions the FBI took or failed to take once it found connections between persons under investigation in Sarasota, Florida, and individuals associated with the September 11 attacks.

Declarant says nothing further. Executed in Hingham, Massachusetts on May 31, 2013.

s/ D. Robert Graham
D. Robert Graham