

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

UNITED STATES OF AMERICA

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v.

Case No. 8:03-cr-77-T-30TBM

SAMEEH HAMMOUDEH

UNITED STATES' MOTION TO STRIKE,  
OR IN THE ALTERNATIVE, OPPOSITION  
TO DEFENDANT HAMMOUDEH'S MEMORANDUM  
IN SUPPORT OF APPEAL OF MAGISTRATE ORDER

The United States of America by Paul I. Perez, United States Attorney, Middle District of Florida, submits the following Motion to Strike, or in the Alternative, Opposition to Defendant Hammoudeh's Memorandum in Support of Appeal of Magistrate Order:

The United States moves to strike defendant Hammoudeh's Memorandum in Support of Appeal of Magistrate Order, D-315, because the memorandum appears to be in violation of the Local Rules. In the alternative, should this court be inclined to consider the defendant's Memorandum, the United States opposes the Memorandum and the court's detention order should be upheld for the reasons discussed below.

Case Summary<sup>1</sup>

Defendant Hammoudeh, like his co-defendants, is charged with being a member of the Palestinian Islamic Jihad Shiqaqi Faction (PIJ), an international terrorist organization. D-74 at 3. The PIJ rejects any peaceful solution to the Palestinian

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<sup>1</sup>This case summary is substantially based upon Magistrate Pizzo's April 10, 2003, detention order. D-74.

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question and, instead, advocates the destruction of Israel, the elimination of Western influence, and the creation of an Islamic state. Id. To accomplish its goals, the PIJ relies upon acts of terror – the murder of innocent people in public places – in an attempt to instill fear in the Israeli people and instability in the Israeli government. Id. at 3-4, 5-8.

In Tampa, PIJ activity was conducted under academic cover provided by the University of South Florida (USF) where Hammoudeh and other co-conspirators were students or teachers; at the Islamic Concern Project (ICP), allegedly a charitable organization, and the World and Islam Studies Enterprise, Inc. (WISE), a think tank for Islamic issues (both corporations were set up by co-defendant Sami Al-Arian); and at the Islamic Academy of Florida, Inc. (IAF), a private Muslim school for children. D-74 at 5. Hammoudeh is a Ph.D candidate as well as an adjunct professor at USF, was employed by WISE, and was involved as an officer and assistant principal at IAF. Id. Hammoudeh is not a United States citizen but is a legal resident who faces deportation. Id. at 22-23.

Magistrate Pizzo found that the United States presented evidence of Hammoudeh's longstanding association and involvement with the PIJ. D-74 at 13. For example, members of the Shura Council<sup>2</sup> agreed to pay Hammoudeh \$1,000 a month for his services, an act which confirms Hammoudeh's association with and value to the

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<sup>2</sup>The "Secretary General" and the Shura Council, a ten-member managing board of directors, run the PIJ. Fathi Shiqaqi acted as the PIJ's Secretary General from its beginning until his death in October 1995. Ramadan Abdullah Shallah, a co-defendant and former USF instructor and Director of WISE, is now the "Secretary General" for the PIJ. Sami Al-Arian served on the Shura Council.

organization. Id.; D-63 at 13, 50. In April 1994, after conversation between co-defendant Al-Arian and Bashir Nafi, Fathi Shiqaqi wired over \$19,984 to Hammoudeh's bank account in Beirut. D-74 at 14. Hammoudeh also sent substantial sums of money back to the Middle East from 2000 until the return of the indictment. Id. at 14 n.18. Hammoudeh claims that this money was sent to charity but evidence presented at the detention hearing refutes that claim. Id.

While Hammoudeh does not have a criminal record, is well-educated, and has the public persona of being a peace-loving, tolerant, model of civic involvement, Magistrate Pizzo determined that evidence presented during the detention hearing refutes this public persona. D-74 at 19-20. This evidence includes Hammoudeh's March 2000 perjured declaration that he never associated with or assisted any terrorist organization, id. at 20, while being telephonically intercepted discussing and promoting PIJ violence.

### *Motion to Strike*

Pursuant to Middle District of Florida Local Rules, Rule 3.01(c), briefs or legal memoranda may not exceed twenty pages in length absent prior permission of the court. The defendants's Memorandum is fifty pages long, well over the twenty-page limit. A review of the docket sheet does not reveal that the defendant sought and received permission from the court to exceed the page limit established by the Local Rules.

Accordingly, the United States recommends that the district court strike the defendant's Memorandum in Support of Appeal and permit him to file a version that is in compliance with Rule 3.01(c) or face dismissal of his appeal. Should the court be

inclined to consider the defendant's Memorandum at its present length, the United States opposes the Memorandum for the reasons discussed below.

**Opposition to Defendant Hammoudeh's Memorandum in Support of Appeal**

The Bail Reform Act requires the court to consider certain factors when deciding whether conditions of release can be reasonably set to ensure a defendant's presence as required and the safety of other persons and the community. These factors are:

(1) the nature and circumstances of the charge, including whether the offense is a crime of violence; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or the community posed by the defendant's release. See 18 U.S.C. § 3142(g); United States v. Arredondo, 1996 WL 521396 (M.D. Fla., Sept. 11, 1996).

The United States must show the defendant is a serious flight risk by a preponderance of the evidence and dangerousness by clear and convincing evidence. See 18 U.S.C. § 3164(f); United States v. Quartermaine, 913 F.2d 910, 915-17 (11<sup>th</sup> Cir. 1990).

Recently, the Western District of New York held that the charge of providing material support or resources to a foreign terrorist organization (both the conspiracy and substantive offenses) constitutes a "crime of violence" under the Bail Reform Act, 18 U.S.C. §3156(a)(4)(B). See United States v. Goba, 220 F.Supp.2d 182, 249-251 (W.D. N.Y., Oct. 8, 2002); United States v. Goba, 240 F.Supp.2d 242, (W.D.N.Y. Jan. 16, 2003) (same); see also United States v. Lindh, 212 F.Supp.2d 541, 580 (E.D.Va. 2002); 18 U.S.C. §3156(a)(4)(B) (the term "crime of violence" means any offense that is a felony and that by its nature involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense).

Section 3142 provides that if after a detention hearing pursuant to Section 3142(f), a judicial officer finds that no condition or a combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. Because Hammoudeh is charged with conspiracy to kill, maim, or injure persons in a foreign country (18 U.S.C. § 956(a)(1), Count 2), a rebuttable presumption exists that he is a flight risk and danger to the community. Therefore, Hammoudeh bears the burden of production to come forward with evidence to rebut the presumption. Quartermaine, 913 F.2d at 916; Arredondo, 1996 WL 521396 at \*2 (citing Quartermaine). The mere presentation of some evidence by a defendant contrary to the presumption in section 3142(e) does not completely rebut the presumption. United States v. Reuben, 974 F.2d 580, 586 (5<sup>th</sup> Cir. 1992)

*Dangerousness to the community and flight risk considerations*

In determining that Hammoudeh was a danger to the community, Magistrate Pizzo found that Hammoudeh had participated in PIJ activities for more than ten years and that he repeatedly committed acts supporting the PIJ. D-74 at 21. The court further found that Hammoudeh fit the “classic recidivist model” and that the United States presented clear and convincing evidence that Hammoudeh posed a danger to the community. Id. at 22.

As noted in the order, a finding of dangerousness alone is enough to detain Hammoudeh. D-74 at 22; Arredondo, 1996 WL 521396 at \*3 citing United States v. King, 849 F.2d 485, 488 (11<sup>th</sup> Cir. 1988). Magistrate Pizzo, in anticipation of an appeal of his detention order, also addressed the risk of flight prong. The court

conducted his flight analysis under three factors: (1) the defendant is presumed to be a flight risk; (2) risk of flight is directly related to the weight of the evidence; and (3) trust that a defendant will appear when required. *Id.* at 23-24. After careful analysis, Magistrate Pizzo found that Hammoudeh, who is not a United States citizen, was a serious risk to flee due to his continued involvement with the PIJ and his willingness to lose all for the PIJ goals. *Id.* at 24-25. Indeed, the magistrate found that Hammoudeh sees Palestine as his home which would make a decision to flee the United States even easier. Those facts, coupled with Hammoudeh's possible deportation, caused Magistrate Pizzo to find, by a preponderance of the evidence, that no condition or combination of conditions would assure Hammoudeh's presence. See United States v. Hernandez, 2002 WL 1377911 at \*3 (E.D. Tenn. Feb. 27, 2002) (fact that defendant is not a citizen establishes an increased risk that he might flee to avoid the serious pending criminal charges).

Defendant Hammoudeh challenges Magistrate Pizzo's detention order on two fronts: (A) the indictment and (B) the tapes. At the onset, the defendant claims that the United States failed to present any "actual" evidence and relied solely upon a proffer. D-315 at 2 (emphasis in original). As the court ruled at the detention hearing, this is entirely proper. D-86 at 7. The Eleventh Circuit has held that the government, as well as the defense, may proceed by proffering evidence subject to the discretion of the judicial officer presiding at the detention hearing. United States v. Gavia, 828 F.2d 667, 669 (11<sup>th</sup> Cir. 1987). Indeed, both the government and defendant's counsel proffered at the hearing. See D-86 at 165. Other circuits have, likewise, determined that the government may proceed by way of proffer at a detention hearing. In Goba, 240

F.Supp.2d at 247, the court noted the “informal nature” of detention proceedings and the “desire to keep them from morphing into ‘mini-trials,’” while considering the court’s obligation of ensure the reliability of proffered information. Id. Consequently, courts are vested with considerable discretion to determine the appropriate method by which the government must present its case. Id.; see also United States v. El-Hage, 213 F.3d 74, 82 (2<sup>nd</sup> Cir.) (while defendant may present his own witnesses and cross-examine any witnesses that the government calls, either party may proceed by proffer and the rules of evidence do not apply), cert. denied, 531 U.S. 881 (2000); United States v. Cabrera-Ortigoza, 196 F.R.D. 571, 574 (S.D. Cal. 2000) (circuit courts which have made it clear that the government may proceed by proffer at a detention hearing).

At Part A defendant Hammoudeh claims that a review of the tapes reveals that inaccurate assumptions were made in the indictment. D-315 at 2-8. The defendant also contends that the overt acts alleging his involvement in money transactions were firmly rebutted by witnesses, affidavits and evidence presented at the detention hearing. Id. at 2-3. Notably, however, the defendant fails to cite to the portions in the record which support his claims regarding such witness testimony, affidavits and evidence. Rather, the defendant claims that his lack of computer skills, “insufficient knowledge of Palestinian culture”, “family” was code for the Palestinian Islamic Jihad (PIJ), and other blanket claims are evidence of incorrect “assumptions”. Many of the “inaccurate assumptions” now being claimed by the defendant were brought to the attention of Magistrate Pizzo at the detention hearing. See D-86 at 169 (British passport, not being in the United States in April 1992, and lack of computer skills); id. at 170 (no evidence that Hammoudeh received facsimiles, no evidence that Hammoudeh was more than a student at USF who worked at WISE to

pay for his education, and no evidence that Hammoudeh was a party to numerous conversations alleged in the indictment); id. at 171-72 (entire transfer of \$19,984 to Hammoudeh was not for his benefit as \$16,000 went back to WISE).

Likewise, the defendant ignores the law that when involved in a conspiracy, he is responsible for the actions of his co-conspirators which were taken to advance the goals of the conspiracy, whether he is aware of and concurred with such actions or not. Accordingly, while the defendant may not have specifically sent or received a facsimile or participated in a recorded conversation, this does not mean he was not an important player in the conspiracy.

Part B of the defendant's memorandum addresses the tapes. D-315 at 8-44. The defendant claims that the language used in the intercepted conversations is a Palestinian dialect that is different from classic Arabic, that no dictionary exists for such dialect, and that for "optimum accuracy" the translator needs to be a Palestinian "who has lived in Palestine and knows the daily language and culture to be able to correctly translate." D-315 at 8. The defendant further contends that the various regions of Palestine have differing pronunciation, usage and meaning of words, all which raise questions regarding the accuracy of the government's translations. Id.

The defendant cites to numerous overt acts which he claims support his detention hearing defense -- that he supports non-violence, cooperation, and negotiation to end terror attacks. Many of these overt acts were contested by the defendant at the detention hearing (indeed, most were contested for reasons similar to those now being advanced by the defendant). See D-86 at 171 (Overt Act 31 contested because the money was not for the defendant); id. at 173 (Overt Act 103

contested because the defendant was not have part of the conversation); *id.* at 176-79 (Overt Act 210, affidavit of defendant's mother stating that the meetings have nothing to do with political or covert activities); *id.* at 179-181 (Overt Act 211, affidavit of defendant's sister claiming that her conversation with the defendant involved whether an individual from Chicago would give the defendant money for a down payment for a house); *id.* at 182 (Overt Act 214, defendant introduced evidence regarding receipts to a legitimate charity); *id.* at 182-83 (Overt Act 216, money discussed was for a personal investment in his own family); *id.* at 184 (Overt Act 218, defendant was complaining about his IAF salary); *id.* at 184-86 (Overt Act 220, defendant's contact with Nafi was for purely academic purposes); *id.* at 186 (Overt Act 231, conversation discussed recent collections and payment, not supporting or fundraising for terrorist organizations); *id.* at 187 (Overt Act 232, discussion regarding a fundraiser at IAF); *id.* at 187 (Overt Act 235, nothing illegal about suggesting that the caller make her contribution for Palestinians to IAF); *id.* at 187 (Overt Acts 246, 248, conversations deal with IAF, not any illegal activities).

The remaining overt acts discussed by the defendant were not addressed at the detention hearing and apparently were not relied upon by the court when it considered the detention issue. These acts are now being raised by the defendant to support his "general assertions" regarding the taped intercepts. These general assertions, however, can be refuted by a review of the detention hearing record. For example, the defendant states that he never had a conversation which favored violence or terrorism. D-315 at 40. At the detention hearing, however, the United States advised the court that "you don't see Mr. Hammoudeh on the telephones like you do the others because

it's – it's right into Al-Arian's ear." D-63 at 49. As an example to support this assertion, the government proffered that when Al-Arian learned that Shaqaqi had been killed, Al-Arian called and scheduled a meeting with Mazen Al-Najjar and Hammoudeh. *Id.* Most of the defendant's general assertions attempt to explain certain activities, conversations and actions in an effort to distance himself from PIJ activities and his co-defendants, especially Al-Arian. None of the information provided by the defendant, including his version of transcripts for numerous intercepted conversations, support the defendant contention that he is not a flight risk nor a threat to the community.

At a detention hearing, the United States must prove risk of flight by a preponderance of the evidence and dangerousness to any other person or the community by clear and convincing evidence. As noted by Magistrate Pizzo in his April 10, 2003, detention order, the United States clearly met its burden.

Defendant Hammoudeh attempts to negate the court's detention order findings by claiming that the intercepted conversations involving the defendant were conducted openly and do not support violence unless one "blindly accepts the principle" that any discussion involving money relates only to PIJ money. D-315 at 43. This claim appears to be based upon the defendant's translations of the intercepted conversations and his premise that the government translations are incorrect due to dialect and/or cultural differences. That determination, however, is for the jury to decide at trial -- each party may provide its own translations and let the jury decide which translation is correct. In addition, the defendant neglects the proffered testimony that he did not talk much on the telephone but rather preferred to meet with his co-defendants. The defendant also attempts to explain why there is a discrepancy between the defendant's

donations and his income, stating that although he donated money, the money considered by the government was donation money that belonged to others which he helped to distribute. This explanation, however, is somewhat contradicted by the intercepted conversation in which Hammoudeh complains about his salary. Last, the defendant contends that the detention order is not supported because Magistrate Pizzo mistakenly concluded that the January 22, 1994, conversation between Al-Arian and Awda occurred one month after Hammoudeh arrived in the United States, rather than thirteen months after Hammoudeh arrived. As noted by the judge, however, that conversation also includes discussion of payment of "a substantial amount of money" made by the PIJ to Hammoudeh and others in 1993, bolstering Magistrate Pizzo's finding that Hammoudeh has been involved with the PIJ for a lengthy period of time.

The defendant has offered nothing to negate Magistrate Pizzo's finding that the United States presented clear and convincing evidence that Hammoudeh is a danger to the community because he has participated in PIJ activities for more than ten years and that he repeatedly committed acts supporting the PIJ . D-74 at 21. Likewise, defendant Hammoudeh fails to offer proof to rebut Magistrate Pizzo's finding that he is a flight risk. The defendant's assertions that "[f]amily members, members of the mosque where the Defendant worships, and people associated with IAF, where the Defendant worked, all corroborate the Defendant's honest and peaceful character", D-315 at 47-48, and that "his community" is willing to post a considerable amount of collateral as bond, *id.* at 48-49, do not support reversing the detention order. See United States v. Benevolence Intern. Foundation, Inc., 222 F.Supp.2d 1005, 1007 (N.D. Ill., May 28, 2002) (since all property proposed to be posted as bond security is either

owned by BIF or members of the community, no financial harm would be incurred by defendant's family if he flees, creating significantly less incentive for the defendant to stay that if defendant or his family was to pose substantial security." Accordingly, Magistrate Pizzo's detention order is correct and should not be disturbed. See Goba, 240 F.Supp.2d 242; Benevolence, 222 F.Supp.2d at 1005 (defendant charged with perjury in connection with terrorism financing investigation posed a risk of flight, warranting his detention pending trial).

Therefore, the United States respectfully requests that this court strike defendant Hammoudeh's Memorandum in Support of Appeal of Magistrate Order, D-315, due to a violation of the Local Rules or, in the alternative deny the defendant's Memorandum in Support of Appeal for the reasons discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail this 27<sup>th</sup> day of October, 2003, to the following:

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