

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
) No. 09 CR 849
)
 v.) Magistrate Judge Nan R. Nolan
)
TAHAWWUR HUSSAIN RANA)

**GOVERNMENT'S SECOND MEMORANDUM IN SUPPORT OF
MOTION FOR DETENTION PENDING TRIAL**

The UNITED STATES OF AMERICA, by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, states as follows in further support of its motion to detain defendant Rana pending trial:

PROCEDURAL BACKGROUND

The defendant is charged in a two-count complaint with (1) conspiring to provide material support to a conspiracy, the object of which was to commit the terrorist acts of murder and maiming overseas, and (2) providing material support to that same conspiracy, in violation of Title 18, United States Code, Section 2339A. As detailed in the affidavit in support of the criminal complaint, Rana is charged with providing material support to a conspiracy to commit multiple overseas attacks, including an attack on the facilities of the *Jyllands-Posten* newspaper in Denmark responsible for the publication of cartoons depicting the Prophet Muhammed.

Defendant has argued in his Memorandum in Support of Pretrial Services Recommendation for Secured Release that USSG § 3A1.4 (the terrorism enhancement) would be inapplicable if Rana were convicted of violations of Title 18, U.S.C., § 2339A. Rana argues that an attack on a newspaper would not qualify as involving or promoting a crime of terrorism, which is defined as an offense that “is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S. C. § 2332b(g)(5).

As the government pointed out in its filing earlier this week, the crimes charged in the complaint meet this definition. As discussed more extensively in the prior filing, Rana was recorded discussing with Headley an attack on the National Defense College in India – plainly an attack directed at the conduct of the Indian government. Thus, on that basis alone, if Rana were convicted of providing material support to a conspiracy to conduct attacks which included a direct attack against an Indian government facility, the enhancement clearly would apply.

In that earlier filing, the government asked leave of Court to make a further submission concerning the reasons why the planned attack in Denmark would also support application of the terrorism enhancement. This submission follows.

The Copenhagen Plot Was Intended to Retaliate Against the Government of Denmark, and to Intimidate and Coerce Governments

As set forth more fully below, the circumstances of the plot to attack the *Jyllands Posten* newspaper, or its cartoonist and editor, make clear that the conspirators – and Rana – viewed the Copenhagen attack as a response to a provocation by the country of Denmark. It also is clear that any successful attack would serve as a warning to any other country that would allow its press to print the cartoons. Finally, it is clear that any attack on the newspaper was anticipated to involve a firefight with the Danish military – plainly an act of “coercion” against the Danish government. Accordingly, it is quite clear that the planned Copenhagen attack “involved” and was “intended to promote” a crime of terrorism.

A. *The Planned Attack in Copenhagen Was Intended as Retaliation Against Denmark*

The most compelling proof of how the attack against the newspaper or its employees would be viewed as an attack against Denmark by those who would carry out the attack or facilitate it is a video entitled “Bombing of Denmark Embassy.” That video was contained on a DVD recovered from the living room of defendant Rana’s home on October 18, 2009. The DVD was produced by As Sahab Media, commonly acknowledged to be the media wing

of al Qaeda.^{1/} The video is narrated by Abu Yahya al-Libi, an al Qaeda spokesman who reportedly escaped from American custody in Afghanistan. Mustafa Abu al-Yazid, the third ranking al Qaeda member, also appears on the video. The video is fifty-four minutes in length and is focused principally on the controversy involving the *Jyllands-Posten* cartoons, explicitly calling for violent action to retaliate against Denmark.

Early in the video, footage of then Danish Prime Minister Anders Fogh Rasmussen is featured prominently. He is quoted as defending the cartoons as an expression of freedom of speech, and stating that Denmark will soon send troops to Afghanistan to assist the United States and the United Kingdom in the war against terror. Kurt Westergaard, the cartoonist, is also shown, quoted as stating that the cartoons were a way to fight extremists and that he did not regret their publication. Strong comments then followed from the narrators, condemning the United States, Denmark and Jewish people, among others, for a litany of perceived outrages. The video also featured footage of a full-screen Danish flag set against a background of flames.

The video prominently features the martyrdom video of the man who carried out a suicide car bombing of the Danish Embassy in Islamabad,

^{1/} According to international media reports, As Sahab regularly releases videos of Usama Bin Laden as well as other al Qaeda leaders, including Ayman al Zawahiri (the number two in al Qaeda) and al Qaeda spokespersons.

Pakistan, on June 2, 2008. (According to numerous international news reports, the car bomb killed at least six persons, injured 27 and left a crater at the front of the embassy.). The bomber was filmed speaking while wearing what appears to be a suicide vest, and he posed outside the white car which was evidently used to carry out the attack. The bomber talked about his desire to be a martyr for Islam, and ended his remarks with a warning of more attacks against the people of Denmark whom he vowed would be wiped off the face of the earth.^{2/} A sophisticated computer-generated simulation of the June 2008 attack on the Danish embassy then followed, showing the white car being driven into the Danish embassy, followed by an explosion. Immediately following the video simulation is news film footage of the actual carnage in the aftermath of the bombing, as well as scenes of the Danish flag being burned.

The June 2008 bombing came just six weeks after al Qaeda's second in command, Ayman al-Zawahiri, issued a videotaped message calling upon Muslims to retaliate against the state of Denmark for the caricatures of the Prophet: "Denmark has done its utmost to demonstrate its hostility to

^{2/}CBS News quoted the English translation as follows: "My final message to the worshippers of the cross in Denmark, I tell them this is not the last retaliation, and God permitting Sheikh Osama bin Laden will not forget about you. God willing, we will wipe you off the face of the earth."

Muslims by repeatedly (sic) dishonour the Prophet, may Allah bless him and grant him salvation. I call on all Muslim, who has the possibility, to (sic) detriment Denmark for the honour to show your support for our Prophet.”^{3/}

Three days after the June 2008 attack on the Danish Embassy, al Qaeda took responsibility for the attack in an on-line posting on a jihadist website, in which the bombing was described as “retaliation for what the infidels of the so-called State of Denmark has published: the degrading cartoons of the Prophet Mohammed – which they refuse to apologize for the publication.” The on-line posting, attributed to Mustafa Abu al-Yazid -- the same al Qaeda leader appearing on videos recovered in Rana’s home^{4/} -- went on to warn other countries as follows: “This should serve as a warning to the infidel countries, in terms of crimes against the Prophet Muhammed, peace

^{3/} Osama bin Laden also called for retaliation against European interests as a result of the cartoons. In an on-line posting addressing the European Union, he described the cartoons as part of a “new crusade in which the Pope of the Vatican had a significant role – a confirmation from you that the war continues.” He goes on to tell members of the EU that they are “testing Muslims...the answer will be what you shall see and not what you hear.” (Reuters, March 20, 2008)

^{4/} In addition to the Denmark video, a second DVD found in Rana’s home, also a production of As Sahab Media, is a testimonial to four jihadi “martyrs.” The video begins with a speech by Osama bin Laden, and profiles the lives and deaths of four men who were described as having died in the fight on behalf of Islam. The video also included remarks by Musfafa Abu al Yazid, who appeared on the Denmark video. Because neither video is in English, the government does not intend to play them during the detention hearing, but both are available for inspection upon request by the court and defense counsel.

be with him. They must immediately apologize, otherwise this will only be the first step in the fight.”

The June 2008 attack was not the first violence to occur in relation to the publication of the cartoons. In the weeks following the first publication of the cartoons in 2005, there were a number of protests in various countries, some of which escalated into violence. Violent riots occurred in countries as varied as Nigeria, Libya, Pakistan and Afghanistan resulting in reports of more than 100 deaths. The Danish Embassies in Syria, Lebanon and Iran were set on fire, and the Danish flag, among others, was desecrated in Gaza City.^{5/} When a plot was foiled in Denmark in February 2008 to kill the cartoonist and his editor, the newspaper republished one of the cartoons as a demonstration of freedom of speech. The al Qaeda threat video followed in April 2008 and shortly thereafter the June 2008 deadly bombing. In October 2008, the Taliban declared that Danish troops in Afghanistan would be a primary target because of the cartoons. As set forth in the complaint, the conspiracy Rana is charged with supporting began in Pakistan in “late 2008.”

The video recovered from Rana’s living room leaves little doubt that those planning to exact retaliation for the publication of the cartoons viewed

^{5/} www.wikipedia.org/wiki/Jyllands-Posten_Muhammed_Cartoon_Controversy

publication of the cartoons as an act for which the government of Denmark was responsible.

In his post-arrest statement, Rana admitted, among other things, that he and Headley were upset about the cartoons published by the Danish newspaper. Moreover, Rana admitted that he and Headley had discussed Anders Fogh Rasmussen, the former Danish Prime Minister. And when discussing terrorist “targets” with Headley on September 7, 2009, Headley and Rana discussed one of them as “Denmark.”

B. The Planned Attack in Copenhagen Was Intended to Intimidate Other Foreign Governments

As set forth in the complaint, a key participant in the plot to kill the cartoonist and editor was Ilyas Kashmiri, listed fourth on Pakistan’s list of most wanted terrorists. Kashmiri openly proclaimed his association with al Qaeda as recently as one month ago.^{6/} In his post-arrest statement, Rana admitted that he knew that Headley had met in person with Kashmiri within the last year. Given that al Qaeda had openly called for attacks to avenge publication of the cartoons – and took responsibility for the June 2008 attack – any further retaliation for the cartoons would promote the al Qaeda agenda, as demonstrated by the video found in Rana’s home. And the attacks would

^{6/} “Ilyas Kashmiri Alive, lays out future terror strategy,” (Daily Times, October 14, 2009)

clearly further al Qaeda's express warning to other countries not to allow such cartoons to be published.

C. The Planned Attack in Copenhagen Anticipated the Use of Violent Force Against Danish Soldiers

The surveillance videos taken by Headley in August 2009, and seized incident to his arrest on October 3, 2009, prominently featured Danish troops stationed at a barracks near the *Jyllands-Posten* newspaper as well as a detachment of Danish troops that marched past the newspaper office each afternoon en route to a "changing of the guard." Any assault on the newspaper would no doubt have drawn a response from those troops as well as the Danish police. In a recorded conversation from August 2009, Headley advised an overseas conspirator that he had filmed the "parade" and the barracks where the soldiers lived and had engaged one of the officers in a conversation in which Headley verified that the soldiers' weapons were loaded with live ammunition. Headley and the overseas conspirator discussed the fact that when Headley asked a soldier why he carried live ammunition, the soldier responded to the effect "you never know..." During that August 2009 conversation, Headley stated that he had described his conversation with the Danish soldier with defendant Rana as well.

It thus is clear that Rana, Headley, and their coconspirators understood that an attack on the newspaper would likely involve a firefight with Danish troops. That violence would plainly constitute “coercion” to effect the ability of the Danish troops to respond to a terrorist attack in its country.

CONCLUSION

Rana’s participation in a discussion of one of the targets called “Denmark,” and his possession of propaganda video that clearly holds the State of Denmark responsible for the cartoons, are compelling evidence that Rana viewed the contemplated attack as retaliation against the Danish government. In addition, the video that Rana possessed makes clear that any attack on the newspaper would promote the agenda of al Qaeda in intimidating other countries that might consider whether to permit such cartoons to be published. Finally, Rana clearly understood from his conversation with Headley about the Danish troops carrying live ammunition that the plans to attack the newspaper specifically anticipated an armed confrontation with nearby Danish troops. For all three reasons, it is clear that the contemplated attack in Copenhagen Rana is charged with assisting would involve or promote a crime “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S. C. § 2332b(g)(5).

Accordingly, any conviction of Rana for his conduct supporting the terrorist plot against the Danish newspaper clearly would warrant the terrorism enhancement under Section 3A1.4. Likewise, any conviction of Rana for supporting efforts to carry out attacks against the other named target (the National Defense College of India) would clearly support application of the terrorism enhancement.

Respectfully submitted,

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