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 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 support of its motion to detain defendant Rana pending trial:

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, the plan was to conduct attacks, including an attack on the facilities of the *Jyllands-Posten* newspaper in Denmark and, in particular, murder two of its employees – an editor and a cartoonist who were responsible for the publication of cartoons depicting the Prophet Muhammed.

The planners of this attack included at least one member of Lashkar e Taiba, a foreign terrorist organization that has been so designated by the Department of State since December 2001, and Ilyas Kashmiri, who is affiliated with Al Qaeda, another terrorist organization that has been so designated since 1999.

Recorded conversations involving the defendant, emails and other documentary evidence demonstrate that the defendant conspired to provide, and did provide, material support to the conspiracy. Defendant Rana was aware of the object of the conspiracy and the ongoing efforts to further the plot. For example, on September 7, 2009, defendant and another individual, David Headley, actively discussed the efforts to communicate with Kashmiri. As described in paragraph 92 of the complaint affidavit, Rana and Headley discussed the need to get Headley's "reports" and "notes" to Kashmiri. In doing so, Rana was neither laughing nor ridiculing Headley, as suggested by the defendant during oral argument. In the same conversation (discussed in paragraph 93), Headley and Rana discussed Denmark and other targets, including the National Defense College in India – Rana, in fact, used the word English word "target" in this discussion. Once again, there is nothing to suggest that Rana was merely ridiculing Headley. Rana was an active participant in this conversation.

Beyond knowing and discussing that Denmark was a “target,” the evidence demonstrates that Rana actively participated in furthering the efforts of the conspirators. In particular, Rana provided a cover story for David Headley, who performed extensive video surveillance of the *Jyllands-Posten* facility, video that was recovered during Headley’s arrest. Headley gained access into the *Jyllands-Posten* facility by acting as a representative of defendant Rana’s business. Based on email communications from Headley, defendant Rana was fully aware of the true purpose of Headley’s travel to Denmark, and the false pretenses that Headley used to gain entry into the facility. As discussed in paragraph 52 of the criminal complaint, on or about January 29, 2009, defendant Rana even posed as Headley to communicate with a representative of the newspaper and thereby maintain Headley’s cover story. Also, as discussed in paragraph 107 of the complaint affidavit, Rana misled a government official, the Pakistani Consulate in Chicago, to obtain a visa for Headley to facilitate his prospective overseas travel.

Once again, there is nothing to suggest that Rana was “duped” by Headley or somehow unaware of the illicit nature of their efforts. To the contrary, in numerous conversations, Rana and Headley engaged in coded exchanges to hide the true nature of their communications. To facilitate these coded exchanges, as described in paragraph 31 of the complaint

affidavit, Rana even advised Headley of a newly-created email account for their use, carefully hiding the name of the account within other text. Further, as described in paragraph 33 of the complaint affidavit, shortly before Headley was once again to travel overseas, Rana and Headley agreed upon the use of additional email accounts to communicate while Headley was overseas and, in particular, a mathematical formula so that they could routinely change the names of the accounts and further avoid detection.

ARGUMENT

I. Defendant Rana Has Failed to Rebut the Presumption that There are no Conditions that will Reasonably Assure the Appearance of the Defendant or the Safety of the Community

The Bail Reform Act applies a presumption, rebuttable by the defendant who is seeking bail, in cases alleging a violation of Title 18, United States Code, Section 2339A, that there is no condition, or combination of conditions, that will reasonably assure the defendant's appearance or the safety of the community. 18 U.S.C. § 3142(e)(3)(C). That presumption does not dissipate merely because a defendant proffers evidence to rebut it; rather it continues to operate as a factor militating against release, to be considered along with other statutory factors in the Court's determination of whether pretrial detention is appropriate. *United States v. Cook*, 880 F.2d 1158, 1160 (10th Cir. 1989); *United States v. Perez-Franco*, 839 F.2d 867, 870 (1st Cir.

1986); *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986). Here, the presumption and the other statutory factors strongly support detention of defendant Rana.

A. <u>The Nature and Circumstances of the Offense</u>

The Bail Reform Act directs this Court to consider the nature and circumstances of the offense, "including whether the offense is . . . a Federal crime of terrorism." 18 U.S.C. §3142(g)(1). Thus, the Act singles out this particular offense for consideration by this Court. However, even without the specific mention of this crime in that provision, there can be no argument as to whether the alleged violation in this case is a very serious offense being committed by members of some of the most sophisticated, violent terrorist organizations that exist. The object of the underlying conspiracy was the attack on an entire building in Denmark and the murder and maiming of at least two individuals.

In cases involving crimes of terrorism, especially those involving organizations to whom defendant has ties, the danger to the community is clear. For example, the district court in *United States v. Al-Arian* 280 F.Supp.2d 1345 (M.D. Fla. 2003), detained two individuals based on the danger presented to the community despite the fact that the defendants in that case had no criminal history and were not alleged to have plotted

attacks, but simply to have supported them. In addressing danger to the community, the court noted:

> In the overwhelming majority of cases prosecuted in federal court, the charged offense impacts no more than a few victims. For some cases, like serious drug crimes or organized criminal rings, the breadth of the affected might extend to a neighborhood or the local community. And almost always, the prospect of economic gain drives the conduct. This case is different. The breadth of the affected here extends to nations and world regions.

Id. At 1347. The seriousness of the conduct in which the defendant engaged, and the purpose for which the attacks would be carried out, underscore the danger to the community presented in this case.[1/]

The Court must also consider the nature of the offense in considering whether any combination of conditions could reasonably assure the defendant's appearance. The penalties applicable to this violation are appropriately serious, and thus provide an incentive to flee. Based on the two counts that the defendant faces, there is a total statutory maximum of 30 years' imprisonment. Further, the Guideline provisions applicable to this case provide for a base offense level of 33 (USSG §2A1.5) and a terrorism enhancement of 12 levels (USSG §3A1.4), for a total offense level of 45. This

---

[1/] The government notes that the defendant has argued in its filing of today that no government was targeted, and thus the enhancement for a Federal crime of terrorism should not apply. This argument overlooks the true purpose of the planned attacks from the perspective of those organizations who plan and carry them out, and the government would request leave to address the point in a supplemental filing.

same enhancement automatically moves the defendant into Category VI, thus resulting in an advisory guideline range of "life." Considering the age of the defendant, he faces the very real prospect of spending the rest of his life in prison.

B. The Weight of the Evidence

The evidence against defendant Rana is strong. As summarized above and as detailed in the complaint affidavit, the evidence against Rana includes recorded conversations involving the defendant, email exchanges and documentary evidence, all of which demonstrate active steps being taken by defendant Rana personally to further the conspiracy, as well as active steps to conceal the nature of their planning and communications. The defendant's own words, including his use of the word "target," and his use of coded messages, belie the notion that Rana was a "dupe" or somehow finding humor in the discussion of working with well-known, violent terrorists to carry out an attack on a newspaper facility or a National Defense College, among other targets.

C. The History and Characteristics of the Defendant

1. Employment and Financial Resources

As outlined in the pretrial services report, the defendant is not a United States citizen, and maintains a residence in Canada. Further, Rana

maintains a number of foreign bank accounts, to which he would have access should he chose to flee. This is not the typical defendant who lacks the knowledge and means to travel internationally and avoid facing these charges. In addition to the fact that Rana personally has engaged in recent, frequent international travel, Rana is fluent in the documents necessary for immigration and border crossing through his operation of First World Immigration. Based on a review of intercepted communications, including emails, Rana does not shy from using that knowledge to assist others in immigration fraud.

For example, in late 2008, the defendant and the individual identified in the complaint affidavit as Individual B, who is affiliated with Lashkar e Taiba, had discussed a "loophole" to get individuals into the United States under false pretenses. On or about December 3, 2008, Individual B sent Rana an email, asking "if anybody only wants to land there and use student visas as toll, what u say about that." Rana responded the same day, suggesting to Individual B a different "loophole." Before answering Individual B's question, however, Rana first instructed: "[d]elete this email after reading. Go and delete the sent mail from the 'Sent Mail' folders." Rana then continued:

> If everyone coming to US does not go to school, obviously our business will be looked at closely leading to arrests, etc.

* * *

> These days school reports to immigration on a hot line that students are missing and immigration at 5 am is at their place of residence or work where ever they can pick them up. Then they offer them a deal and ask them to tell how they came. How they paid, what amount whom, who did what.

* * *

> Whenever you find easy way to come to US immediately think there is a catch to it. **Only one loophole is business which they believe is OK** and intelligence can play a role.

(Emphasis supplied). As recently as September 4, 2009, Individual B and Rana discussed the "business" loophole. On that date, Individual B and Rana spoke by telephone. After greeting each other, the two discussed obtaining immigration status for an individual. After Individual B noted that this person's degree was in "textiles" and thus his work did not fall into one of the 38 categories of "occupations," Rana stated as follows:

> But, it – it is not necessary that it should fall in there. . . . Make him a cook.

* * *

> Tell him that he has a diploma for a two-year, four-year, it can even be from some food stand – which, but it must confirm that "yes, I'm a cook." And he should learn something. The whole purpose is immigration, right.

That same day (on or about September 4, 2009), Rana had a telephone conversation with a third party regarding the employment history of an

individual seeking immigration status. After the third party explained that this individual's employment history had overlapping information, Rana noted that this would be a problem. The third party then suggested that, to address that issue, he could back-date a letter from an employer to a date in 1983. Careful to avoid detection, Rana then noted that he would have to use a typewriter, reminding the third party that there were no laser printers in 1983. Further, after this third party also informed Rana that the employer would be a fictitious business, Rana advised him to use a letter from a company that was real, even if it did not exist anymore. Rana further advised that, in preparing this fictitious letter, he should add that the applicant had left that employment on his own accord.

These examples demonstrate not only Rana's knowledge and ability to engage in immigration fraud, but also his willingness to do so. Considering the presumption, the nature and seriousness of the offense with which he is charged, including the penalties that he faces; his history and characteristics, including his foreign residence and access to foreign accounts, and his ability and willingness to engage in immigration fraud, this Court should detain defendant Rana.

CONCLUSION

An analysis of the factors outlined in 18 U.S.C. § 3142(g) demonstrate

that there are no set of conditions that will reasonably assure the appearance of the defendant. For the foregoing reasons, this Court should detain defendant Rana pending trial.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: s/ Daniel J. Collins
DANIEL J. COLLINS
Assistant United States Attorney
219 South Dearborn Street,5th Floor
Chicago, Illinois 60604
(312) 886-3482