

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Cause No. 1:19-cr-0229-RLY-KMB
)	
MOYAD DANNON,)	-02
)	
<i>Defendant.</i>)	

GOVERNMENT’S RESPONSE TO DEFENDANT’S SENTENCING MEMORANDUM

Comes now the United States of America, by counsel, Zachary A. Myers, United States Attorney for the Southern District of Indiana, and Matthew J. Rinka, Assistant United States Attorney, and respectfully submits this Response to Moyad Dannon’s Sentencing Memorandum in the captioned cause.

I. Clarifications of Applicable Law

On December 10, 2023, MOYAD Dannon, through counsel, submitted a Sentencing Memo. (Docket No. 177.) Consistent with his objection to the PSIR, MOYAD’s sentencing memorandum likewise contests the application of U.S.S.G. § 3A1.4 and argues that MOYAD was solely motivated by money, thus lacking the specific intent to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. (Docket No. 177 at 6.) In making that argument, MOYAD continues to conflate (and distort) his personal motivations with the calculated, obvious, and intentional *effect* of supplying machineguns to ISIS.

As applicable case law makes clear, establishing that a defendant’s actions were calculated to influence, affect, or retaliate against government does *not* require proof of a

defendant's particular motive. *United States v. Rahim*, 860 Fed. Appx. 47, 57-58 (5th Cir. 2021), (citing *United States v. Awan*, 607 F.3d 306, 317 (2d Cir. 2010)). Instead, as the government demonstrated in its sentencing memorandum, the word "calculated" in the definition is concerned with the *object* that the actor seeks to achieve through planning or contrivance, so the appropriate focus is not on the defendant, but on his offense, asking whether it was calculated, i.e., planned—whatever the motive—to achieve the stated object. *Id.* "A hired assassin who kills a political leader at the behest of a terrorist organization can hardly disclaim that his crime was calculated to influence the conduct of government simply because he was motivated by greed rather than politics." *Id.* Simply put, a defendant's personal *motive* is not relevant in this context, when his *intent* was to supply arms to a terrorist organization that targeted the United States. *Arcila-Ramirez* at 854 (citing *United States v. Jayyousi*, 657 F.3d 1085, 1115 (11th Cir. 2011)).

Beyond being legally misplaced, though, MOYAD's assertion is factually incorrect. It is apparent from the evidence gathered during the FBI investigation that MOYAD Dannon was *actually* and *specifically* motivated to support the cause of ISIS against various governments, both by supplying them with weapons to use on the battlefield and traveling to Syria to provide planning and military support in person. On that score, the government would call the Court's attention to another incident outlined in the criminal complaint.

On or about March 18, 2019, MOYAD sent an audio file to an FBI Online Covert Employee ("OCE") whom MOYAD believed was in Syria fighting with ISIS. (Docket No. 2 at ¶145.) That audio file was entitled the Al-Furqan Media Foundation presents: An audio speech by the official spokesman of the Islamic State (Al-Sheikh Al-Mujahid Abu al-Hassan al-Muhajir)

under the title: He was sincere toward Allah and Allah fulfilled his wish. Moyad told the OCE that it was very important for the OCE to listen to the audio speech. (*Id.*)

Open-source research by the FBI reveals the Al-Furqan Media Foundation is a media arm of ISIS. The speech contained in the audio file is approximately 44 minutes long and was translated and summarized by an FBI Arabic Language Specialist. In the speech, Abu al-Hassan al-Muhajir: (1) states that fighters of the Islamic State need to know their worth with Allah and they need to put their trust in Allah and keep on going with the jihad; (2) explains the virtues of jihad and quotes the hadith related to a newly-converted companion who wanted to die as a martyr on the battlefield; (3) compares the fighters in Al-Baghuz to the companion that wanted to achieve martyrdom; (4) references certain American and foreign leaders and confirms that the Islamic State is far from being defeated and [the Islamic State] can recapture cities if America retreats from Iraq and Syria; and (5) praises the [Islamic State] fighters in Al-Baghuz and speaks about the successful Islamic State guerilla campaign against the Syrian Defense Forces (“SDF”) in several provinces. Toward the end of the speech, Abu al-Hassan al-Muhajir also warns the Sunni tribal leaders in the Eastern Euphrates region: “Don’t let your sons become pawns in the Kurdish nationalistic army,” which is a reference to the SDF. (Docket No. 2 at 47, fn. 40.)

In light of the overwhelming evidence to the contrary, MOYAD’s contention that he lacked the intent to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct is simply not credible. His conduct was both intended and calculated to do just that.

II. Factual Inaccuracies

A few of the factual recitations contained in that submission warrant clarification.

First, Moyad’s sentencing memo represents that in early 2018, the FBI focused its attention on Mahde Dannon, and that “intercepted” jail calls between Mahde and his father piqued the government’s interest. (Docket No. 177 at 11.) Then, without context¹, it recites that when Moyad returned to Indiana from Jordan “that year,” he was subjected to secondary inspection, detained for several hours, and was subjected to a search of his person, luggage, and electronics. *Id.*

The omitted context is clearly set out in the criminal complaint in this cause. (*See*, Docket No. 2.) Specifically, Mahde was arrested on an outstanding theft warrant on March 21, 2018, and was initially held at the Hamilton County Jail (“HCJ”) pending transport to Lake County where his theft case was pending. (Docket No. 2 at ¶30.) While Mahde was at the HCJ, he made a number of recorded jail phone calls to his father, which raised the suspicions of the FBI. For example, Mahde called his father on March 22 and March 26, and during both phone calls, they discussed ways to delete material from Mahde’s phone, which had been seized as evidence when he was arrested. (Docket No. 2 at ¶¶32-33.) On March 27, 2018, Mahde again called his father and the two discussed the fact that Moyad would be returning to Indiana from Jordan on March 30, 2018. During that call, Mahde was told Moyad (who was traveling in Jordan) had been calling and asking about Mahde every day. (Docket No. 2 at ¶34.) Moyad had also been asking if Mahde had taken any pictures of Moyad’s room with Mahde’s phone and if Mahde had any pictures on his phone of Mahde and Moyad holding anything. (*Id.*) Mahde

¹ The memo appears to suggest that Moyad being singled out for secondary inspection upon entering the United States was somehow motivated by racial animus.

replied “no” to both questions. (*Id.*) On March 29, 2018, Mahde placed another call to his father, and once again the two discussed Moyad’s concern that Mahde had used his phone to take pictures of “certain things”. (Docket No. 2 at ¶36.) Mahde replied that there was nothing on the phone for Moyad to be concerned about. (*Id.*)

Then, on March 30, 2018, Mahde placed a call to his father, who was worried that Moyad was being given a “hard time” upon his arrival at the airport and expressed concern that Moyad had things on his phone. (Docket No. 2 at ¶40.) Mahde told his father not to discuss such things on the recorded phone line, and assured his father that Moyad knew what he was doing and would have deleted everything before he (Moyad) arrived. (*Id.*) In a second call on March 30, 2018, Mahde’s father told Mahde he did not want Mahde and Moyad talking on the recorded jail phone line because Mahde would want to know what happened to Moyad at the airport. (Docket No. 2 at ¶41.) Additionally, Mahde’s father noted that Moyad was a rude person and he wondered if Moyad had been rude to airport police or security personnel. (*Id.*)

It is clear, even to the casual observer, that in the short time between Mahde’s arrest and Moyad’s return to the United States in March of 2018 that the Dannons were so concerned about information contained on both Moyad and Mahde’s phones that they were talking about that concern, and deleting the contents of the phones, on recorded jail calls. Under the circumstances, it is understandable that the FBI was concerned about those phone calls.

Second, MOYAD’s sentencing memo represents that in April of 2018, an FBI CHS met Mahde at a mall kiosk where he was working and discussed purchasing firearms from Mahde, whom the FBI knew to be a prohibited person. (Docket No. 177 at 11.) That is not accurate.

As is outlined in the criminal complaint, the CHS did meet with Mahde at a mall kiosk in April of 2018, however purchasing firearms was not discussed during that meeting. (Docket No.

2 at ¶50.) Instead, during that first meeting the CHS and Mahde talked about the CHS's business and Mahde's interest in potentially working for the CHS as a salesman. (*Id.*) It should be noted that the meeting between the CHS and Mahde at the mall kiosk only occurred after the FBI obtained information that Mahde and Moyad visited a gun range and purchased ammunition on April 9, 2018, the same day Mahde posted bail in his felony case and was released pending trial from the Lake County Jail. (Docket No. 2 at 48-49.)

After that initial meeting at the mall kiosk, Mahde stayed in contact with the CHS and at some point expressed that he owned guns and enjoyed shooting at gun ranges. (Docket No. 2 at ¶51.) Indeed, it was not until June 11, 2018, when Mahde and the CHS met for lunch that the pair discussed Mahde purchasing firearms for the CHS. During that meeting, the CHS told Mahde he was a felon and could not buy guns himself. (Docket No. 2 at ¶55.) Mahde told the CHS it would be easy for him to obtain "dirty guns" to sell to the CHS. (*Id.*) Four days later, in the middle of the night and without warning or further coordination with CHS, Mahde called CHS to tell him he was driving back from Chicago with guns for the CHS. Docket No. 2 at ¶¶57-60.)

Third, MOYAD's sentencing memo states that MOYAD was introduced to the CHS in late June of 2018, (Docket No. 177 at 12), and incorrectly asserts that the government does not allege that MOYAD participated in selling stolen firearms to the CHS. (Docket No. 177 at 27.) In fact, Mahde first introduced MOYAD to the CHS at a gun range on July 24, 2018. (Docket No. 2 at ¶¶75-76.) During that meeting, the trio discussed a plan to work with a friend of the CHS, who was also "dirty," to produce ghost guns. (*Id.*) During that same meeting, in the parking lot of the gun range, Mahde and MOYAD sold a stolen .30 caliber M1 rifle to the CHS. (*Id.*) This meeting is significant because both Mahde and MOYAD were present for the sale of

the M1 rifle, the rifle had been transported to the gun range in a vehicle driven and used by MOYAD, and during the conversation about the M1 rifle, in MOYAD's presence, Mahde alerted the CHS that he (Mahde) believed the firearm was stolen.² (*Id.*) The FBI subsequently recovered a video from Mahde's iCloud account, recorded on July 24, 2018, which appears to show Mahde in the passenger seat of a moving vehicle counting out money resembling the bills given him by the CHS in exchange for the M1 rifle. (Docket No. 2 at fn. 18.) Thus, to be clear, the government *does* allege that Moyad participated in the sale of stolen firearms to the CHS, and Count 4 of the Indictment in this cause reflects that. (*See*, Docket No. 28 at 3.)

Fourth, MOYAD's sentencing memo correctly points out that while firearms parts could be legally purchased online and assembled into functioning semi-automatic firearms at the time of this investigation, it was illegal to arrange to sell multiple un-serialized firearms to another person for profit, and it was illegal for Mahde to possess the newly assembled firearms because he was charged by felony information in a pending case in Lake County. (Docket 177 at 12.) Importantly, however, at the time they transferred the first semi-automatic rifles to the CHS and UCE, Mahde and MOYAD believed both the CHS and UCE were also prohibited from possessing firearms due to their criminal histories. In fact, Mahde and MOYAD were alerted to that status on at least three occasions. (*See*, Docket No. 2 at ¶¶ 55, 62, 76, 79-81, 89.) Transferring a firearm to a person you know or have reason to believe is a convicted felon is also illegal. *See* 18 U.S.C. §922(d)(1).

It is also worth noting that evidence the FBI was uncovering during its investigation supported Mahde's early statements to the CHS that he and MOYAD had built "ghost guns" before. As outlined in the criminal complaint, Mahde told the CHS that MOYAD had built an

² FBI database checks revealed the firearm was reported stolen in North Carolina. (Docket 2 at ¶75.)

AR-15 rifle in the past, (Docket No. 2 at ¶63), and business records obtained by the FBI indicate that MOYAD purchased an 80% frame for a Glock handgun on or about November 22, 2017. (Docket No. 2 at fn. 21). While those acts, without more, might be perfectly legal and not warrant much consideration, in the context of what was unfolding in front of the FBI, however—two brothers knowingly selling firearms (including stolen firearms) to convicted felons—those actions had much more nefarious undertones that warranted investigation.

III. Clarification from Government’s Sentencing Memorandum

Page 21 of the government’s sentencing memorandum contains the following passage:

While it is abundantly clear from evidence gathered during this investigation, including the contents of his electronic devices, that MOYAD Dannon was drawn to the barbarity of ISIS and sought to contribute to it by supplying them with untraceable automatic weapons. That kind of allegiance to ISIS, and committed willingness of foreign nationals like MOYAD and MAHDE Dannon to support their jihad, are essential to ISIS advancing its goals. *See Wood, What ISIS Really Wants.*

Docket 179 at 21. Lest there be any confusion, the “foreign nationals” the government refers to in the second sentence are non-citizens of Syria, Iraq, or other countries where ISIS was actively engaged militarily, who travel to fight, send money, procure weapons, recruit others, or otherwise provide material support to ISIS from their home countries. The government is not calling into question the citizenship of Mahde and MOYAD Dannon.

IV. Conclusion

For the foregoing reasons, the United States maintains that the only sentence that will accomplish the statutory goals of sentencing in this case is a sentence of 240 months of imprisonment, followed by a lifetime term of supervised release. Such a sentence will take into consideration the need for the sentence to reflect the grave nature of the offense, provide general and specific deterrence, and protect the public from future crimes of the defendant.

Accordingly, the government asks the Court to impose a sentence of 240 months of imprisonment, followed by a lifetime term of supervised release.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2023, a copy of the foregoing Government's Response to Defendant's Sentencing Memorandum was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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