

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 11-20331-CR-JORDAN/O’SULLIVAN

UNITED STATES OF AMERICA

vs.

HAFIZ MUHAMMAD SHER ALI KHAN, et al.,

Defendants.

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANTS’ MOTIONS FOR
REVOCATION OF DETENTION ORDERS FOR HAFIZ KHAN AND IZHAR KHAN**

The United States, through undersigned counsel, hereby opposes defendants Hafiz Khan’s and Izhar Khan’s motions for revocation of their pretrial detention orders (DE 42, 43).

Magistrate Judge Garber ordered both defendants detained prior to trial pursuant to 18 U.S.C. § 3142 (DE 27). For the reasons stated below, Magistrate Judge Garber’s decision – made after a detailed hearing which included cross-examination of a government witness, testimony by a defense witness, as well as a proffer of testimony by the defense – is well-founded, consistent with the statutory presumption favoring detention in terrorist support cases, and fully justified by the record.¹ This Court should not release these defendants into the community.

Procedural History

Defendant Hafiz Khan (“Hafiz”) and his son, co-defendant Izhar Khan (“Izhar”), were

¹This consolidated response addresses both defendants’ motions. Although the defendants are entitled to individualized consideration, this is a conspiracy case, and the evidence against Hafiz Khan cannot be analyzed without also taking into account the evidence against his co-conspirator Izhar – and vice versa. Moreover, as discussed below, Izhar has access to the same network of contacts and funding sources in Pakistan that makes his father a danger and risk of flight.

arrested on May 14, 2011. Another of Hafiz's sons, Irfan, was also arrested in Los Angeles on the same day. These three men, along with three associates in Pakistan, are charged with conspiring to provide, and providing, material support to a conspiracy to murder, kidnap, and maim persons overseas, in violation of 18 U.S.C. § 2339A; and with conspiring to provide material support to a foreign terrorist organization (FTO), in violation of 18 U.S.C. § 2339B. Hafiz is additionally charged in Count 4 with providing material support to an FTO, in violation of § 2339B.

On May 23, 2011, Magistrate Judge Garber conducted a hearing on the government's request to detain Hafiz Khan and Izhar Khan pending trial.² During that hearing, the government proffered evidence that the defendants, along with conspirators in the United States and in Pakistan, provided financial assistance and other material support to the Pakistani Taliban, a designated FTO that has engaged in repeated acts of terrorism and violence. The court subsequently allowed the defendants to cross-examine one of the case agents from the Federal Bureau of Investigation. The court also received testimony from a witness on behalf of Hafiz, and a proffer of testimony on behalf of Izhar. The court then allowed argument from the parties. After hearing argument, the court announced its decision that both Hafiz and Izhar should be detained through trial. On May 25, 2011, the Court entered a written order memorializing its decision, *see* Ex.1 (DE 27), finding that the defendants posed both a danger to the community and a risk of flight.

Specifically, the Court concluded "by clear and convincing evidence, that the defendants pose a danger to the community," and further concluded that "the defendants present a serious risk of flight, which is supported by a preponderance of the evidence." DE 27 at 3. The court

²On May 19, 2011, co-defendant Irfan Khan was ordered detained pending trial after a detention hearing in Los Angeles. Irfan is now in Miami and was arraigned on June 8, 2011.

found that:

[T]he government's evidence against these defendants, including recordings obtained under the Foreign Intelligence Surveillance Act, is compelling. As stated by this Court on the record at the hearing, Hafiz Khan was extremely active in Pakistani Taliban matters, using his extensive contacts and financial resources to play a leadership role in the offense and threatening death to Americans. Izhar Khan also participated in the offense. . . . The pertinent history and characteristics of the defendants, as set forth in the pre-trial services reports and addressed at the hearing, likewise provide evidence of both defendants' danger to the community and their incentive, and ability, to flee.

Id. As this passage makes clear, contrary to Izhar's claim in his motion, the court did in fact make particularized findings regarding Izhar, separate and apart from those regarding Hafiz.

According to the court, Izhar:

played an important, if more narrow, role in facilitating these offenses. Izhar collected money in the United States that was intended for mujahideen in Pakistan, sent money to Pakistan to a Pakistani Taliban sympathizer, and gave money himself to the mujahideen while traveling in Pakistan in 2009 (a trip not disclosed in his pre-trial services report).

Id.

Summary of the Evidence of Danger and Risk of Flight

This case is about individuals in South Florida who, along with associates in Pakistan, provided precisely the kind of support that the Pakistani Taliban requires to continue its campaign of violence and terror. These defendants did not plot to carry out attacks here in America. But the money and assistance they provided to their Pakistani Taliban contacts made, and makes, such attacks possible.

That group has made no secret of its intent to attack targets in Pakistan and the United States. A month ago, after the killing of Osama Bin Laden, the Pakistani Taliban threatened the United States, saying that the President of Pakistan and the Pakistani Army would be its first targets, and America would be its second target. When asked how the Pakistani Taliban would

take revenge on America, a Taliban spokesman said, “We already have our people in America, and we are sending more there.” *See* Ex. 3. Subsequently, the Pakistani Taliban attacked a convoy from the American consulate in Peshawar, Pakistan, killing and wounding an unknown number of people barely 50 miles from where these defendants sent their money. Since the release of the statement by the Pakistani Taliban spokesman, additional violent attacks have occurred in Pakistan, killing and injuring many people. Paragraphs 2 through 6 of the Indictment lay out more of the group’s violence, including its murder of American soldiers and the attempted bombing of New York’s Times Square last May.

Hafiz Khan and other co-conspirators enthusiastically endorsed this violence. For example, upon learning that four American soldiers were killed in Afghanistan, Hafiz declared his wish that 400,000 more Americans were killed, and prayed that the American Army be destroyed. Khan later stated, “May God kill 50,000 more of them” after hearing that seven American troops had died in a helicopter crash. Hafiz has also praised al Qaeda and called for a global jihad, and in what he thought were secret conversations with a source, praised the Times Square bomber, and expressed his wish that the bomber had succeeded. When it came to the Pakistani government, Army, and its civilian sympathizers, Hafiz was particularly brutal and profane, calling for the most extreme violence, including suicide attacks, and for blood to spill in the streets. *See* Ex. 2 at 12-14.

The evidence shows the defendants’ knowing and intentional support for the Pakistani Taliban’s campaign, through financial transfers to Pakistani Taliban militants and contacts. As set forth in the indictment, Hafiz and his sons collected and sent money for the Pakistani Taliban, which was then received and distributed by co-conspirators in Pakistan (including Islamist fighters, or mujahideen). The indictment identifies as overt acts some, but not all, of those

transactions. The transfers began no later than 2008 and continued into 2010, past the official designation of the Pakistani Taliban as an FTO in August 2010.

Hafiz maintains bank accounts in the United States and multiple accounts in Pakistan and has sent money in a variety of ways, assisted by his sons and other co-conspirators. He has stated in recordings that he uses complicated methods of sending money precisely in order to avoid detection, and there is evidence that all defendants who sent money structured their transactions with intent to avoid suspicion. Hafiz is also in charge of a madrassa he founded when he lived in northwest Pakistan prior to coming to the United States. A madrassa is an Islamic school. The madrassa was shut down by the Pakistani Army in mid-2009 when the Army launched a military offensive to displace the Taliban. Hafiz acknowledged in recorded calls that Taliban militants were staying at his madrassa, and that Taliban fighters stayed at the madrassa in the past. Hafiz also claimed, in one recording, that children went from his madrassa to train under the Pakistani Taliban leader Fazlullah to learn to kill Americans in Afghanistan.

Hafiz was the linchpin of this network of trusted recipients and intermediaries. Other conspirators played an essential role, however, including Izhar. Izhar, who like his father is an Imam at a South Florida mosque, was more cautious on the phone. Nonetheless, he played an important part in facilitating the conspiracy. For example, in July 2009, Hafiz asked Izhar to collect money that was being donated by a local woman for the mujahideen. Izhar did so and Hafiz subsequently deposited it into the U.S. bank account from which he sent money to Pakistan. Around the same time, Izhar sent \$900 dollars to co-defendant Amina Khan. Amina is Izhar's sister and co-conspirator, and has been identified in multiple recordings as a Pakistani Taliban supporter, and indeed in the calls is identified as the main conduit for money to go from America to a mujahideen.

Additionally, as proffered at the detention hearing, a mujahideen in Karachi, Pakistan named Noor Muhammad told a source in 2010 to thank Izhar for Izhar's support of the Taliban for the past five years, and singled out a payment of 10,000 rupees by Izhar to Muhammad for that purpose. Travel records confirm that Izhar was indeed in Karachi in Spring 2009. Muhammad is an injured Taliban fighter in hiding who preaches for the mujahideen.³

Legal Standards

Under 18 U.S.C. § 3145, a defendant may seek the district court's review of a Magistrate Judge's detention order. That review is *de novo*. See *United States v. King*, 849 F.2d 485, 489-90 (11th Cir. 1987). However, where appropriate, such as in this matter, it is sufficient for the court to sustain the Magistrate Judge's order simply by adopting his findings of fact and conclusions of law. See *id.*⁴

Detention is proper when the government has shown *either* that the defendant, if released, would pose a danger to the community, *or* that he would pose a risk of flight. 18 U.S.C. §

³ This is only a summary of the government's evidence which was proffered and established through testimony at the detention hearing.

⁴ As the Eleventh Circuit has explained, the district court has essentially three options to affirm a Magistrate Judge's detention order. One, "the district court may determine that the magistrate's factual findings are supported and that the magistrate's legal conclusions are correct. The court may then explicitly adopt the magistrate's pretrial detention order. *King*, 849 F.2d at 490. Two, "if the district court . . . agrees with the magistrate's recommendation that pretrial detention is necessary, yet finds that some of the magistrate's legal conclusions are incorrect or that certain of the magistrate's factual findings are not clearly supported, the court should so state in writing." *Id.* Three, if the Court "determines that additional evidence is necessary or that factual issues remain unresolved, the court may conduct an evidentiary hearing for these purposes. In this instance, the district court must enter written factual findings and written reasons supporting its decision. Of course, if the district court concludes that the additional evidence does not affect the validity of the magistrate's findings and conclusions, the court may state the reasons therefor and then explicitly adopt the magistrate's pretrial detention order." *Id.* at 490-91. Here, Hafiz and Izhar's "additional" evidence either was effectively presented to, and considered already by, the Magistrate Judge, or does not affect the validity of his order. *Id.* at 491.

3142(e)(1). Of critical importance, the analysis of dangerousness and risk of flight in this case takes place against the backdrop of a statutory presumption that detention is warranted. Section 3142(e) creates a statutory presumption in cases where a person is charged with certain terrorism offenses that no condition or combination of conditions of bond will reasonably assure the appearance of the defendant or the safety of the community. 18 U.S.C. § 3142(e); *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010) (applying this presumption in terrorism case and reversing district court’s decision to release the defendants after a magistrate judge had ordered them detained). That presumption applies here.⁵ The presumption does not ultimately shift the burden of persuasion, but does remain a fact militating against release, which must be weighed with the other relevant factors set forth in Section 3142(g). *See Stone*, 608 F.3d 945-46. As the Sixth Circuit wrote recently in similar circumstances, “[t]he presumption remains as a factor because it is not simply an evidentiary tool designed for the courts. Instead, the presumption reflects Congress’s substantive judgment that particular classes of offenders should ordinarily be detained prior to trial.” *Id.*

A defendant must be held on grounds of danger when the government shows by clear and

⁵Section 3142(e) provides in pertinent part:

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed . . . an offense listed in section 2332b(g)(5)(B) of Title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed

18 U.S.C. § 3142(e). Offenses listed under section 2332b(g)(5)(B) include §§ 2339A, which prohibits conspiring to provide and providing material support to terrorists, and 2339B, which prohibits conspiring to provide and providing material support to a foreign terrorist organization. Each of those counts carries a 15 year maximum. Accordingly, the presumption applies here.

convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of the community. *United States v. Rodriguez*, 897 F. Supp. 1461, 1463 (S.D. Fla. 1995). The issue is whether releasing the defendant would pose a danger to the community that would not exist if the defendant were detained. *Id.* The community in question is not merely the Southern District of Florida; it is everyone, whether in the United States or in Pakistan or elsewhere, who may be in jeopardy if the defendants were released and thereby effectively allowed to continue their material support for violence. *See United States v. Hir*, 517 F.3d 1081, 1089 (9th Cir. 2008) (“where a defendant is charged with committing a crime under United States law that had a substantial harmful effect on a community overseas, we hold that a court should consider the danger that would be posed to that community if the defendant were released pending trial”).

Alternatively, a defendant may be detained if the government shows, by a preponderance of the evidence, that no condition or combination of conditions will reasonably assure the appearance of the defendant as required. 18 U.S.C. § 3142(e)(1).

Aside from the statutory presumption, the factors the Court must consider in determining whether the defendant poses a danger to the community or risk of flight are:

- (1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of evidence against the person;
- (3) the history and characteristics of the person, including--

(A) the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and [. . .]

- (4) the nature and seriousness of the danger to any person or the community that

would be posed by the person's release.

18 U.S.C. § 3142(g).

The factors set forth in section 3142(g) show undeniably, as Magistrate Judge Garber found, that Hafiz and Izhar must be detained pending trial.

Argument

1. The Nature and Circumstances of these Offenses Support Detention.

As set forth above, the charges and potential penalties in this case are serious, among the *most* serious in federal law. All of the charges carry a 15 year maximum sentence, and the defendants' Sentencing Guidelines, with the terrorism enhancement under USSG § 3A1.4, would be at or near that maximum. These charges, on their face, indicate a strong threat to society, and create a powerful incentive for the defendants to flee.

2. The Weight of the Evidence, Especially Regarding the Defendants' Threat to the Community if Released, Supports Detention.

The evidence against Hafiz and Izhar, particularly regarding their potential danger, is strong. Magistrate Judge Garber properly characterized that proof as "compelling" (DE27 at 3), and the summary provided earlier in this motion reinforces that conclusion. The defendants do nothing but nitpick at the government's proffer, completely failing to cast doubt on the evidence.

Rather than confront the proof against them, the defendants raise a host of issues that do not mitigate the danger they pose. We address those issues, as we understand them, below.

A. Confrontation

Hafiz Khan complains that he did not receive “true confrontation” of the FISA recordings of telephone conversations which comprise some, but not all, of the evidence in this matter.⁶ There is absolutely no requirement that, in order to detain a defendant, the government must produce at the pretrial detention stage the transcripts implicating him. Such a rule would be wholly impractical as well as contrary to the well-settled principle that a detention hearing cannot be turned into a mini-trial under the guise of disputing weight of the evidence. *See, e.g., Stone*, 608 F.3d at 948 (observing that “[t]his factor goes to the weight of the evidence of dangerousness, not the weight of the evidence of the defendant's guilt,” and citing other decisions for the rule that § 3142(g) “neither requires nor permits a pretrial determination of guilt”); *United States v. Martir*, 782 F.2d 1141, 1145 (2nd Cir. 1986) (“[A] detention hearing is not to serve as a mini-trial . . . or as a discovery tool for the defendant. Accordingly, a government proffer need not always spell out in precise detail how the government will prove its case at trial, nor specify exactly what sources it will use.”). Moreover, in a detention hearing, it is well-established that hearsay is admissible and the defendant has no right of confrontation. *See, e.g.,* 18 U.S.C. § 3142(f); *Pennsylvania v. Ritchie*, 480 U.S. 39, 41 (1987) (“The right of confrontation is a trial right”); *United States v. Hernandez*, 2011 WL 1516482, at *8-15 (D.N.M. April 20, 2011) (holding that the Confrontation Clause does not apply to detention hearings, extensively citing to pre-*Crawford* and post-*Crawford* law).

Here, Judge Garber provided more latitude than required to these defendants, allowing them fulsome cross-examination of the case agent about the content of the calls. The agent also

⁶While FISA recordings comprise much of the evidence in this case, there are additional substantial sources of evidence, such as confidential source recordings and financial documentation.

confirmed under oath – in response to direct questioning from the court – that the government’s proffer was a correct and accurate summary of the transcripts. Ex. 2 at 28.⁶ The defense will have the opportunity to “confront” the FISA recordings during trial. The pre-trial detention hearing is an inappropriate forum for that exercise, and Khan’s purported inability to receive and address the transcripts in this case at such a hearing is no basis for release.

B. Translations

Hafiz argues that certain words in the Pashto language (which is used by defendants in the FISA recordings) can have multiple meanings which may vary depending on their context. This argument again does nothing for his cause. Khan put this proposition to the agent during cross-examination, and the agent explained that the recorded statements upon which the government’s case is built do not have ambiguous meanings. Ex. 2 at 30. The agent also rejected Khan’s suggestion that, because Taliban can mean “students,” perhaps Hafiz was only ever really discussing the children at his madrassa in Pakistan. This suggestion is particularly unfounded because Khan often used the term mujahideen or another word for militants besides Taliban. Moreover, Khan referred to the Taliban in contexts that had absolutely nothing to do with the legitimate activities of school children, such as praising the murder of American soldiers or the bombing of Pakistani Army soldiers and the rape of their wives. And of course, if Khan were merely referring to children at his madrassa, he would hardly have placed such an emphasis on secrecy, or exclaimed in one conversation, which he thought was private, that a terrorist

⁶Judge Garber would have been well within his discretion to not even allow cross-examination of a government agent for purposes of the detention hearing. *See, e.g., United States v. Gaviria*, 828 F.2d 667, 670 (11th Cir. 1987). As the Court is aware, the FISA calls remain classified and/or subject to anticipated protective orders that are not yet in place.

complaint should be filed against him.

C. Madrassa

Hafiz next contends that the government's case is weak because Khan's madrassa in Pakistan mainly educated young girls. This argument ignores the fact that the Indictment does not revolve solely around Khan's madrassa, but arises out of the broader financial support that he, Izhar and others provided directly to Taliban contacts and go-betweens. *See, e.g.*, Indictment ¶ 16a-e. It also ignores Khan's stark admission that children from his madrassa trained to kill Americans. Ex. 2 at 16-17. In any event, it is clear from the record that not all of the students are female, as Hafiz knows full well. *See* Ex. 2 at 33.

D. Openness of Transfers

Hafiz next asserts that he could not have been doing anything wrong because he sent money openly to Pakistan. That argument is wrong. Contrary to his claim, Hafiz did not send funds for the Pakistani Taliban openly. Rather, he and his co-defendants frequently discussed covert methods for sending money to avoid detection, whether it was structuring payments or sending money through intermediaries who would deliver money to the ultimate Pakistani Taliban recipients in accordance with his instructions. *See* Ex. 2 at 37. To highlight just a few examples, while co-defendant Amina is Hafiz's daughter and Izhar's sister, she was also identified in recordings as the conduit for providing money to the Taliban in lieu of sending money directly and openly to the mujahideen. Likewise, in July 2010, Hafiz Khan stated in a recorded conversation that when sending money for guns, a person cannot do so in the name of the Taliban. Instead, money must be sent through a loyal person over there, who will take the money and buy guns, although you are not supposed to say it. *See* Ex. 2 at 15-16. Some (by no means all) of Hafiz's transfer dealings may have been open, but only in the sense that records for

them exist. The true purpose and use of the funds he sent was not.

E. First Amendment

Hafiz suggests that his activity was protected by the First Amendment. The First Amendment protects pure speech, but does not protect criminal *acts*. The Indictment accuses Hafiz, Izhar and their co-defendants with specific action meant to further the Pakistani Taliban's violence, including financial assistance and other material support. The defendants' statements not only provide evidence of their intent to support violence, but include specific instructions and directions regarding the distribution of funds to militants. The First Amendment certainly does not provide a cloak for active terrorist support.⁷

F. Tracing Funds to Taliban

Hafiz asserts that the government failed to show whether and how funds were actually used by the Pakistani Taliban. This claim not only ignores legal elements of a conspiracy (which does not require any completed conduct), but fundamentally misunderstands the proof. It is the words of Hafiz Khan and his associates, on the recordings, that confirm the defendants' scheme to funnel money to the Taliban. For example, as was stated in the proffer, Hafiz Khan sent

⁷See *United States v. Rahman*, 189 F.3d 88, 117 (2nd Cir. 1999) (“Notwithstanding that political speech and religious exercise are among the activities most jealously guarded by the First Amendment, one is not immunized from prosecution for such speech-based offenses merely because one commits them through the medium of political speech or religious preaching.”); see also *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010) (upholding § 2339B against First Amendment challenge); *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156, 165 (D.C. Cir. 2003) (noting that “the law is well established that there is no constitutional right to fund terrorism”); *People’s Mojahedin Organization of Iran v. Department of State*, 327 F.3d 1238, 1244-45 (D.C. Cir. 2003); *Boim v. Quranic Literacy Institute*, 291 F.3d 1000, 1026 (7th Cir. 2002); *United States v. Lindh*, 212 F.Supp.2d 541, 579 (E.D. Va. 2002) (“The First Amendment’s guarantee of associational freedom is no license to supply terrorist organizations with resources or material support in any form, including services as a combatant. Those who choose to furnish such material support to terrorists cannot hide or shield their conduct behind the First Amendment.”).

thousands of dollars to co-defendant Ali Rehman; Khan himself identified Rehman as the man who takes money from Hafiz's bank accounts for the purchase of guns for the Taliban. *See* Ex. 2 at 14. We know that the defendants sent money and other resources to the Taliban not only because bank records and other documents confirm these transactions, but also because the defendants themselves said so – repeatedly and unambiguously, in a wide variety of settings. That is more than enough to establish criminal liability.

G. Proof Against Izhar

Izhar makes the additional argument that the Magistrate Judge did not consider the proof against him individually. As discussed above, the premise of that argument is wrong, because Judge Garber plainly did exactly what Izhar says he did not, *supra* at 3. Izhar's argument is particularly faulty because he omits significant portions of the government's proffer regarding his misconduct. Izhar contends in his motion that the only evidence against him was (1) that he sent a \$900 transfer to Amina; and (2) that Hafiz asked Izhar to pick up a \$300 check that Izhar knew was approved for the mujahideen.⁸ Notably, however, Izhar neglects to mention the government's evidence that a mujahideen named Noor Muhammad told a government source in 2010 that Izhar had supported the Taliban financially for the last five years, and asked the source to thank Izhar for giving him 10,000 rupees the last time Izhar was in Karachi. *See* Ex. 2 at 18.

H. FTO Designation Date

Izhar also contends (as does his father) that the Pakistani Taliban was not formally

⁸Even if these were the only acts, they would be sufficient to convict Izhar on all counts against him, including the conspiracy. Amina, as noted, has been identified multiple times in the recordings as a Taliban supporter and sympathizer, as well as the main conduit to distribute money to a mujahideen. As for the \$300 check, Izhar collected that item despite knowing its purpose, and ensured that it was deposited into Hafiz Khan's U.S. bank account from which money was sent to Pakistan.

designated as an FTO until mid 2010. This argument does nothing to lessen their dangerousness. In any event, as the government pointed out during the detention hearing, the FTO designation is not even an element of Counts 1 and 3, which charges these defendants and others with providing material support to a conspiracy to murder, kidnap and maim persons overseas, in violation of § 2339A. Section 2339B (which is charged in Counts 2 and 4) does not require proof that the defendants knew about the designation itself, but instead simply requires proof that they knew the organization “has engaged or engages in terrorist activity.” 18 U.S.C. § 2339B(a)(1).

In sum, the weight of the evidence against these defendants is strong, certainly for the limited purpose of evaluating the defendants’ request for release. It also reinforces the danger to the community posed by these defendants if they were released – we do not believe that this Court should take such a chance on this record.

3. The History and Characteristics of these Defendants Support Detention.

The history and characteristics of these defendants, as Judge Garber found, support their detention. They have demonstrated a willingness to fund and support terrorism despite knowing of the Pakistani Taliban’s violence. The broader perspective reinforces the danger posed should Hafiz and Izhar be released. These defendants actively supported the Pakistani Taliban, which three times in the past month has threatened to do, through its people in America, what it attempted to do in Times Square last year. Hafiz Khan was an enthusiastic advocate of this kind of violence. It is not merely the immediate risk of harm, however, but also the ongoing threat of public safety that would result if the defendants were released and thereby allowed to continue their funding and support for this terrorist organization. Simply put, if Hafiz Khan and Izhar are not detained, there is effectively no way to stop them from communicating and continuing to

support and finance terrorism.

Moreover, specific characteristics of each defendant establish a serious risk of flight. Both Hafiz and Izhar have a powerful incentive to flee, as already discussed, in light of the serious charges they are facing. Even proof of a single instance of conspiring to provide, or providing, material support would subject the defendants to up to a 15-year sentence. The only question as to flight is whether these defendants can get outside the jurisdiction of the Court, wherever it may be. Living in the Southern District of Florida, it does not take much effort or any length of time to get outside the jurisdiction of this country.

Both Hafiz and Izhar have extensive contacts in Pakistan, including family and friends, many of whom are Taliban supporters. Prior to learning of the charges against him, Hafiz had already specifically discussed his desire to leave the United States permanently to go live in Pakistan, and encouraged Izhar to join him. *See* Exhibit 2, at 21. This desire can only have escalated in light of the prison time they face if convicted of the serious charges against them.

Additionally, Hafiz frequently talked about creating false travel documents to sponsor family and potential Taliban contacts, including Izhar's wife/fiancée, to come to the United States, resorting to bribery of government officials to accomplish such fraudulent goals. *See* Ex. 2 at 23. Deception is second nature to Hafiz, who stated that he would lie to support his goal, and discussed extensively in the calls methods of sending money to the Pakistani Taliban without detection.

Izhar, meanwhile, was misleading at best to Pretrial Services about multiple material facts, including a visa application for his wife/fiancée.

- First, regarding travel outside the United States, Izhar only divulged that he went

to Saudi Arabia in 2009. However, he actually went to Pakistan in 2009, a trip which he completely failed to acknowledge to Pretrial Services. *See* Ex. 2 at 25. Notably, on that trip, Izhar went to Karachi, home of his co-conspirator Noor Muhammad. Izhar also failed to disclose his 2010 Saudi Arabia trip as well as two recent trips to Canada. *Id.*

- Second, Izhar told Pretrial Services that he was residing in North Lauderdale, Florida, when in fact he was spending virtually every day and night living at the mosque where he was arrested early in the morning of May 14. *Id.* Izhar had actually been renting out his North Lauderdale residence for a year, *id.*, which leads to a further misleading statement made to Pretrial Services. Izhar was receiving \$800 per month in cash from this rental income, which he failed to disclose. *Id.*

- As to his relationships, Izhar told Pretrial Services that he was not married, nor did he mention a fiancée. *Id.* at 26. However, according to marriage certificates found during post-arrest searches as well as telephone calls, Izhar is married. *Id.* This matters because he has a pending application with U.S. immigration to obtain for her a K-1 visa, which is only applicable for fiancées, not spouses. *Id.* These misleading statements hardly inspire confidence that Izhar would fulfill any promises to this Court regarding bond.

Defendants do little to counter these facts about their history and characteristics. Hafiz argues that he has only traveled once in recent years, but in recordings he repeatedly expressed his desire and intent to leave the United States. Izhar, of course, cannot even make such an argument, as he has traveled extensively and is certainly familiar with exit procedures; indeed, at the time of arrest, his passport was in the glove compartment of his car.

Hafiz also suggests that he has limited funds. This argument is particularly unconvincing,

given that he has multiple bank accounts (including several U.S. dollar bank accounts in Pakistan) and sent at least \$200,000 to Pakistan since 2003. While we do not allege that all of this money went to the Pakistani Taliban, it certainly undermines any claim that Hafiz does not have access to large quantities of money. To the contrary, Hafiz has demonstrated an impressive ability to raise and distribute substantial sums, which are easily accessible to his sons as well, who assist their father in sending money overseas. Additionally, in the calls, Hafiz discusses his vast land holdings and stores in Pakistan from which he earns additional income. *See Ex. 2 at 21-22.* Those resources are available to support him, and Izhar, should they flee.

Hafiz also highlights his age, but a terrorist financier can be any age – Omar Abdel-Rahman, the “Blind Sheikh,” was in his 60s when he directed the violent Islamist conspiracy that led to his conviction. So too is Ayman al-Zawahiri. Age was never an impediment for Hafiz to commit these crimes, nor would it be an impediment to him should he be released. He would simply continue to support terrorists as he has done so in the past, with a phone, his contacts, and his bank accounts, and there would be no way to stop him from doing so.

Hafiz also asserts his need for medications and specific dietary restrictions as a reason for release; however, the Bureau of Prisons (BOP) is more than adequately equipped to handle his needs, as it has for other aging defendants or defendants with dietary concerns.⁹ To date, this Office has not been contacted regarding any issues pertaining to Hafiz’s confinement. If they

⁹Hafiz’s list of purportedly necessary medications is at odds with the information he provided to Pretrial Services. In that interview, Hafiz described his health as “fair,” and listed two types of medication, not seven. Moreover, in recorded calls as recently as October 2010, Hafiz stated that he has done well and has not had too many health issues. The Court should not take at face value Hafiz’s claim of dire medical needs; whatever the truth, however, BOP is well-equipped to handle any issues, and those needs cannot be used as an excuse to put the public in jeopardy.

should come up, we will work with the defense and BOP to come to a resolution, as is the procedure in every case. As to the defendants' placement in the Special Housing Unit (SHU), that is a determination made by BOP, to protect other inmates, prison employees and the defendants themselves. *See Defreitas v. Lindsay*, 2008 WL 4850195, at *2 (E.D.N.Y. 2008).

Finally, both Hafiz and Izhar reference family in the United States, presumably as evidence of ties to the community. Hafiz emphasizes that prior to his arrest he lived with his wife and son, suggesting that he could remain in that home with his family. Aside from the fact that the defendants' contacts overseas are far deeper and more extensive than here, what the defendants fail to mention is that Hafiz's son, Ikram Khan, has been reported in Pakistani papers as being a confirmed member of the Pakistani Taliban, *see* Exhibit 4, the very terrorist organization this indictment charges Hafiz, Izhar and Irfan with supporting. Additionally, these newspapers report that Ikram Khan is wanted by the Pakistani police in five separate cases of terrorism, including attacking and murdering police, security forces, and civilians in Pakistan. *See* Ex. 4. The danger of allowing Hafiz or Izhar to have access to family members such as Ikram, an individual identified by Pakistani newspapers as a member of the Pakistani Taliban who has actively engaged in conducting terrorist attacks, is glaring. Any suggestion that Hafiz be released and allowed to live with this son is impossible in light of the overt danger presented by such a situation. The history and characteristics of these defendants fully warrant detention.

4. The Nature and Seriousness of the Danger Posed by these Defendants If Released Is Extremely Serious and Further Supports Detention.

As set forth above, these defendants pose a serious risk to the community – here and in Pakistan – and no conditions can be fashioned that would ensure an end to their covert support for violence. *United States v. Hir*, 517 F.3d 1081, 1092 (9th Cir. 2008), a recent terrorism

prosecution, is instructive. There, the defendants suggested a variety of detailed, restrictive release conditions such as banning communications with anyone overseas, GPS monitoring, banning the provision of money or packages overseas, and banning the use of false names. The court found these suggestions insufficient to warrant release, noting that “[a]lthough these proposed conditions of release are strict, they contain one critical flaw. In order to be effective, they depend on [the defendant’s] good faith compliance.” *Id.* Similarly, in *United States v. Tortora*, 922 F.2d 880 (1st Cir. 1990), the First Circuit reversed the district court’s order of release under a similar set of apparently strict conditions, finding that any extensive set of conditions had “an Achilles’ heel . . . their success depends largely on the defendant’s good faith or lack of it. They can be too easily circumvented or manipulated.” *Id.* at 886-87. As the Ninth Circuit put it in *Hir*, certain crimes, such as terrorist support, that “involve communications and that are therefore not readily susceptible to effective monitoring” cannot feasibly be prevented by restrictive bond conditions. 517 F.3d at 1093; *see also United States v. Goba*, 240 F. Supp.2d 242, 258 (W.D.N.Y. 2003) (denying motions to revoke pretrial detention of suspected terrorism supporters and recognizing that home detention and electronic monitoring does not provide sufficient protection to the public).¹⁰

Conclusion

For all of these reasons, the defendants’ motion for release pending trial should be denied

¹⁰Both Hafiz and Izhar discuss their lack of prior criminal history as a factor for release. However, as explained by the Ninth Circuit in *Hir*, a defendant’s “history as a law-abiding citizen and his significant ties to the local community do not outweigh the extremely serious nature of the offenses with which he is charged, including his willingness to provide dangerous materials for use against civilians, while attempting to disguise his role in the affair, the weight of the evidence against him, and the nature and gravity of the danger that would be posed by his release.” 517 F.3d at 1091.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2011, I electronically filed the foregoing with the Clerk of the Court using CM/ECF for electronic delivery to all counsel of record.

/s/ Sivashree Sundaram
Sivashree Sundaram
Assistant United States Attorney

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20331-CR-JORDAN/O'SULLIVAN

UNITED STATES OF AMERICA

v.

HAFIZ MUHAMMAD SHER ALI KHAN,
ALI REHMAN,
 a/k/a Faisal Ali Rehman,
IRFAN KHAN,
IZHAR KHAN,
ALAM ZEB, and
AMINA KHAN,
 a/k/a Amina Bibi,

Defendants.

DETENTION ORDER

On May 23, 2011, this Court conducted a hearing pursuant to Title 18 U.S.C. § 3142(f) in order to determine whether defendants Hafiz Muhammad Sher Ali Khan (“Hafiz Khan”) and Izhar Khan should be detained prior to trial.

Having considered the evidence presented at the pre-trial hearing, the pre-trial services reports, the indictment, and the factors enumerated in 18 U.S.C. § 3142(g), this Court finds that no condition or combination of conditions will reasonably assure the appearance of the defendants as required and protect the safety of the community. Therefore, this Court orders the detention of defendants Hafiz Khan and Izhar Khan prior to trial and until the conclusion of the trial.

In accordance with the provisions of 18 U.S.C. § 3142(i)(1), this Court makes the following findings of fact and statement of reasons for detention:

1. The defendants have been charged by indictment with conspiring to provide, and providing, material support to a conspiracy to murder, kidnap and maim persons overseas, in violation of 18 U.S.C. § 2339A; and with conspiring to provide material support to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B. Defendant Hafiz Khan is additionally charged with providing material support to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B. The charges are serious and each carries a maximum sentence of 15 years' imprisonment.

2. The presumption in favor of detention, as set forth in 18 U.S.C. § 3142(e), applies to these defendants by virtue of the charges against them under 18 U.S.C. §§ 2339A and B.

3. The government proffered evidence that the defendants, along with associates in the United States and in Pakistan, provided financial assistance and other material support to the Pakistani Taliban, a designated foreign terrorist organization that has engaged in repeated acts of terrorism and violence. The Court subsequently allowed the defendants to cross-examine one of the case agents from the Federal Bureau of Investigation. The Court also received testimony from a witness on behalf of defendant Hafiz Khan, and a proffer of testimony on behalf of defendant Izhar Khan.

4. According to the government's proffer, Hafiz Khan enthusiastically endorsed the Pakistani Taliban's violence, declaring his wish that Americans be killed and calling for a violent jihad against the Pakistani government and its perceived allies. Despite knowing that group's violent means, Khan and his sons collected and sent money to Pakistan for the Pakistani Taliban, where it was received and distributed by co-conspirators. Khan sent his own money as well as money given by others for the Pakistani Taliban cause. In addition to specific transfers corroborated by bank records, there are many instances where Khan discussed sending, or having sent, money to the

Pakistani Taliban. Khan also supported the Pakistani Taliban through a madrassa in Pakistan, from which, Khan claimed in one recording, children went to learn to kill Americans.

5. Also according to the government's proffer, Izhar Khan played an important, if more narrow, role in facilitating these offenses. Izhar collected money in the United States that was intended for mujahideen in Pakistan, sent money to Pakistan to a Pakistani Taliban sympathizer, and gave money himself to the mujahideen while traveling in Pakistan in 2009 (a trip not disclosed in his pre-trial services report).

6. The government's evidence against these defendants, including recordings obtained under the Foreign Intelligence Surveillance Act, is compelling. As stated by this Court on the record at the hearing, Hafiz Khan was extremely active in Pakistani Taliban matters, using his extensive contacts and financial resources to play a leadership role in the offense and threatening death to Americans. Izhar Khan also participated in the offense. The government also presented evidence regarding Hafiz Khan's role in creating false travel documents and his extensive financial ties inside and outside the United States. The pertinent history and characteristics of the defendants, as set forth in the pre-trial services reports and addressed at the hearing, likewise provide evidence of both defendants' danger to the community and their incentive, and ability, to flee.

5. Based upon the above findings of fact, this Court concludes, by clear and convincing evidence, that the defendants pose a danger to the community. The Court further concludes that the defendants present a serious risk of flight, which is supported by a preponderance of the evidence.

6. Therefore, the Court hereby directs that:

- a. Defendants Hafiz Muhammad Sher Ali Khan and Izhar Khan be detained without bond;
- b. The defendants be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practical, from

- persons awaiting or serving sentences or being held in custody pending appeal;
- c. The defendants be afforded reasonable opportunity for private consultation with their counsel;
- d. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which the defendants are confined, deliver the defendants to a United States Marshal for the purpose of appearance in connection with court proceedings.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of May, 2011.



BARRY L. GARBER
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 11-CR-20331-JORDAN/GARBER

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIAMI, FLORIDA
MAY 23, 2011

HAFIZ MUHAMMAD SHER ALI KHAN,
IZHAR KHAN,
IRFAN KHAN,
ALI REHMAN,
also known as
FAISAL ALI REHMAN
& AMINA KHAN,

Defendants.

TRANSCRIPT OF ARRAIGNMENT AND PRETRIAL DETENTION HEARING
BEFORE THE HONORABLE BARRY L. GARBER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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(Proceedings interpreted in Arabic for the defendant Hafiz Muhammad Sher Ali Khan)

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1 (Call to order of the court)

2 THE CLERK: All rise. The United States District
3 Court for the Southern District of Florida is now in session;
4 the Honorable Barry L. Garber presiding.

5 THE COURT: Good morning. Be seated, please.

6 MS. SUNDARAM: Good morning, Your Honor.

7 THE COURT: I note that we have a full house, so to
8 speak. So in order to expedite this proceeding, I am going to
9 insist on absolute quiet.

10 Any breach of that requirement will result in your
11 being excluded from the courtroom.

12 All right. Will you call the case, please.

13 THE CLERK: Yes, Judge. The United States of America
14 versus Hafiz Muhammad Sher Ali Khan and Izhar Khan, case number
15 11-20331-Criminal-Jordan.

16 Would counsel please state their appearances for the
17 record.

18 MR. SHIPLEY: Good morning, Your Honor. John Shipley
19 and Sivashree Sundaram for the United States. Good morning.

20 THE COURT: Okay.

21 MR. WAHID: Good morning, Your Honor. Khurram Wahid
22 for Hafiz Khan.

23 MR. ROSENBAUM: Good morning, Your Honor. Joe
24 Rosenbaum on behalf of Izhar Khan.

25 THE COURT: All right. Mr. Wahid, have you entered a

1 permanent appearance?

2 MR. WAHID: I did this morning enter a permanent
3 appearance.

4 THE COURT: All right. Very well. And,
5 Mr. Rosenbaum, how much time do you need to determine if you
6 will be permanent?

7 MR. ROSENBAUM: A week would be fine.

8 THE COURT: One week from today report re: counsel as
9 to the defendant Izhar Khan.

10 Can we proceed with the arraignment of Hafiz Muhammad
11 Sher Ali Khan at this time?

12 MR. WAHID: Yes, Your Honor. At this time Mr. Hafiz
13 Khan enters a plea of not guilty, request a standing discovery
14 order and trial by jury.

15 THE COURT: All right. Do you waive reading of the
16 indictment?

17 MR. WAHID: Yes, Your Honor.

18 THE COURT: All right. The standing discovery order
19 will be entered and the trial date will be set by Judge
20 Jordan's chambers.

21 MR. WAHID: And, also, Your Honor, I would request
22 that, as to time-wise, this case be deemed complex

23 THE COURT: Well, I think it speaks for itself on the
24 face of the indictment. All right?

25 MR. WAHID: Thank you.

1 THE COURT: Mr. Rosenbaum, at your appearance one week
2 from today we will take the arraignment of your client as well.

3 MR. ROSENBAUM: That will be fine, Your Honor. Thank
4 you.

5 THE COURT: All right. Now, we are here for a
6 pretrial detention hearing as to both defendants.

7 The court wants counsel to understand that this is not
8 a discovery proceeding. We are limiting the testimony, as
9 required by law, to anything regarding risk of flight or danger
10 in the community if either of these defendants should be
11 released on bond. Is that understood?

12 MR. WAHID: Yes, Your Honor.

13 MR. ROSENBAUM: Yes, Your Honor.

14 THE COURT: All right. Government, you can proceed
15 initially by proffer, if you would. You have a witness, I
16 assume?

17 MR. SHIPLEY: Good morning, Your Honor. Yes, I do.

18 THE COURT: All right.

19 MR. SHIPLEY: I do have an agent available.

20 THE COURT: All right, sir. Would you proceed by
21 proffer.

22 MR. SHIPLEY: Yes, Your Honor.

23 Just a couple of initial matters. First of all, in
24 terms of what my argument and presentation will be this
25 morning, I am going to make a brief introduction.

1 I will proffer a summary of the facts. Obviously, as
2 the court is aware, this is an indicted case, and then address
3 the risk of flight and the dangerousness factors.

4 THE COURT: All right.

5 MR. SHIPLEY: I would also advise the court that on
6 Thursday of last week the third defendant in the case, Irfan
7 Khan, had a detention hearing in Los Angeles and was detained
8 in that proceeding as well.

9 THE COURT: Of course I am not bound by that. You
10 understand that.

11 MR. SHIPLEY: Absolutely, Your Honor.

12 THE COURT: All right.

13 MR. SHIPLEY: I just wanted the court to be aware of
14 that fact.

15 Your Honor, 3 weeks ago, after the killing of Osama
16 bin Laden, the Pakistani Taliban, a designated foreign
17 terrorist organization and a group supported by these
18 defendants, threatened the United States of America, saying
19 that, "The president of Pakistan and the Pakistani Army would
20 be our first targets and America will be our second targets."

21 The next day, when asked how the Pakistani Taliban
22 would take revenge on America, a Taliban spokesman said, "We
23 already have our people in America, and we are sending more
24 there."

25 Just 3 days ago that group attacked a convoy from the

1 American Consulate in Peshawar, Pakistan, wounding an unknown
2 number of people about 50 miles from where these defendants
3 have sent their money. Of course, there is more news this
4 morning about the violence of that group.

5 This case is about individuals in South Florida who,
6 along with associates in Pakistan, have provided precisely the
7 kind of support that the Pakistani Taliban and groups like it
8 require to continue their campaign of violence and terror.

9 These defendants did not plot to carry out attacks
10 here in America, but the money and the assistance they provided
11 to the Pakistani Taliban and their contacts in Pakistan made
12 and continues to make such attacks possible.

13 For these reasons, and the reasons I will discuss
14 more, we ask that the defendants be detained on both the basis
15 of danger and risk of flight.

16 Let me start by reminding the court of several
17 indisputable facts here.

18 First, there is a presumption in this case that the
19 defendants must be detained under 18, U.S.C. 3142(e). This
20 court is certainly familiar with how the presumption works.

21 And, as a general matter, it not only affects the
22 order of proof, but remains a factor throughout the proceeding
23 and has weight as evidence because it reflects Congress'
24 substantive judgment that a particular class of offenders
25 should ordinarily be detained prior to trial, and I am actually

1 quoting that from a case of the United States versus Stone, 608
2 F.3d at 945, a 2010 opinion from the 6th Circuit, reversing a
3 decision by other judges refusing to grant detention to
4 defendants in the terrorism case. So we start here with that
5 presumption.

6 Second, as I mentioned, this is an indicted case.

7 THE COURT: Let me interrupt you.

8 MR. SHIPLEY: Yes, Your Honor.

9 THE COURT: Is it your understanding that the burden
10 of proof is less than what it is in an ordinary application for
11 a pretrial detention?

12 MR. SHIPLEY: Your Honor, I don't think the burden of
13 proof is ultimately different. I think under the statute it is
14 still clear and convincing evidence for dangerousness and
15 burden of persuasion on risk of flight.

16 However, the only point I wanted to make to the court
17 was that, as the 6th Circuit has recognized, particularly in
18 the terrorism context, the presumption does not just go away.

19 It doesn't just shift the initial burden of
20 presentation. It is something that the court needs to take
21 into account, and the 6th Circuit actually used the word as
22 evidence in the court making its determination. So it doesn't
23 ultimately shift the burden once we get past the initial
24 presentation.

25 THE COURT: All right. Thank you.

1 MR. SHIPLEY: Yes, Your Honor.

2 So, as I was saying, secondly, this is an indicted
3 case. We are prepared to make a proffer of the facts relative
4 to detention, but the grand jury, by its indictment, has
5 already found probable cause for these charges.

6 Third, these charges and the penalties they carry are
7 extremely serious. They are more among the most serious in
8 federal law.

9 They all carry a 15 year maximum sentence on each
10 count, and the defendants' guidelines, with the terrorism
11 enhancement, which we believe would apply in this case, will be
12 at or about that maximum.

13 Given the severity of those charges, they certainly
14 have every incentive to flee as this goes forward.

15 So, with those three facts in mind, let me provide the
16 court with a brief summary of what this case is about.

17 The evidence against these defendants is substantial.
18 It is the defendants' own words, along with financial records,
19 that underlie their guilt.

20 These words, some of which are paraphrased in the
21 indictment, and some of which I will be summarizing today,
22 appear in recorded telephone conversations which have been
23 translated into English.

24 The defendants have been given notice that some of
25 these recordings are pursuant to the Foreign Intelligence

1 Surveillance Act. Others were recorded by a confidential human
2 source.

3 On that front, Your Honor, let me be clear. Despite
4 the involvement of a source for a limited period of time, the
5 defendants transfers to Pakistan, their financial transfers
6 were always at their own initiative, and the source had no
7 involvement in any of the transactions identified in the
8 indictment.

9 It is those transfers and the defendants plans to send
10 money on many other occasions that underlie these charges of
11 conspiracy and substantive material support.

12 So what do those records and the financial records
13 show in this case? First, they show the defendants support for
14 the Pakistani Taliban and its violent campaign against the
15 Pakistani Government and its perceived allies of the United
16 States.

17 The indictment in the initial paragraphs lays out some
18 of the Pakistani Taliban's violence, including its murder of
19 American soldiers and the attempted bombing of Times Square
20 last May.

21 The defendant, Hafiz Khan, who I may refer to
22 sometimes simply as "Khan" for shorthand, enthusiastically
23 endorsed this violence.

24 For example, in a recorded conversation, upon learning
25 that four American soldiers were killed in Afghanistan, Khan

1 declared his wish that 400,000 more were killed and prayed that
2 the American army would be destroyed.

3 THE COURT: Where was that statement obtained?

4 MR. SHIPLEY: That was a recorded conversation, Your
5 Honor.

6 THE COURT: All right.

7 MR. SHIPLEY: And, unless I specify otherwise, all of
8 these are recorded conversations in this case that I am
9 summarizing for the court and have been translated from their
10 original language, Pashto or Urdu.

11 Khan later stated, in another recorded conversation,
12 "May God kill 50,000 more of them," after hearing that 7
13 American troops had died in a helicopter crash.

14 Khan also in the recordings praised al-Qaeda, called
15 for a global jihad in what he thought were secret conversations
16 with the source and praised the Times Square bombing and
17 expressed the wish that he had succeeded.

18 These are the defendant's words, Your Honor, in
19 recorded conversations.

20 When it came to the Pakistani government, Khan was
21 particularly brutal and profane, typical as the conversation
22 from July of 2009.

23 In that conversation, Khan learned that an attack in a
24 area of Swat, which had resulted in the death of many Pakistani
25 army soldiers, upon hearing that information, Khan exclaimed,

1 "As long as the soldiers have died in the infidel way" --
2 that's a phrase that he used -- "as a result of it, then it is
3 good."

4 He then wished that not just soldiers, but also their
5 officers had died in the infidel way and exclaimed, "F-their
6 wives."

7 When an associate pointed out that one of the dead
8 was, indeed, an officer, Khan exclaimed, "Oh, Allah, thanks to
9 you, thanks to you, may God drown all of these leaders in the
10 ocean. May God bring a revolution like Kohmani that their
11 blood is shed in this land."

12 Khan's support for violence was not limited to
13 Pakistani officials and soldiers. He called for attacks on
14 civilian supporters for the government and believed that
15 innocent casualties were an inevitable byproduct of the Taliban
16 mission.

17 In one recorded conversation, Khan actually
18 complained, "Doesn't one of them have the guts to do a suicide
19 attack so they can teach them a lesson?"

20 Khan's violence creeds are praised in the recordings
21 by his co-conspirators who recount the same acts of violence.

22 In addition to those statements of intent and purpose,
23 Your Honor, we have the defendants knowing and intentional
24 support for the Pakistani Taliban through financial transfers
25 to militants and contacts.

1 As set forth in the indictment, Khan and his sons
2 collected and sent money for the Taliban which was then
3 received and distributed by co-conspirators in Pakistan.

4 Khan sent his own money, as well as money given by
5 others for the Taliban cause.

6 The indictment identifies as overt acts some but not
7 all of those transactions.

8 Just to highlight a few examples, of which there are
9 many, Khan has sent tens of thousands of dollars to
10 co-defendant Ali Rehman, who is in Pakistan who Khan himself
11 identified in recorded conversations as the man who buys guns
12 from his accounts for the Taliban.

13 In August of 2009, Khan sent approximately \$1,000 to a
14 contact in Peshawar, Pakistan where there was additional
15 violence in just the last several days, intending that money
16 for the delivery to the Mujahideen. These are from recorded
17 conversations.

18 The money transfers continued into 2010 and continued
19 past the official designation of the Pakistani Taliban as a
20 foreign terrorist organization.

21 In addition to the specific transfers reflected in the
22 recordings and corroborated I would say, Your Honor, by bank
23 records, there are many instances where Khan discusses sending
24 or having sent money to the Taliban.

25 In December of 2009, Khan asked an associate whether

1 Taliban commanders in a Swat village had received his money.

2 Subsequent comments clarify that, indeed, he was
3 inquiring about whether that money had reached the fighters.

4 In another call his son, Izhar Khan, reminded Khan
5 that, "When we have sent money for the Taliban, we have sent it
6 through you."

7 And in still another call, Khan and co-defendant
8 Irfan, who is in Los Angeles, discussed when they would next
9 send money to the Sharia people. Sharia being the strict form
10 of Islamic law that groups like the Pakistani Taliban seek to
11 establish.

12 Throughout this process Khan provided advice. He has
13 provided contacts and sought to avoid detection.

14 It should come as no surprise to anyone here that
15 people may not have known about the extent of Khan's support
16 for violence and terrorism overseas.

17 There has not been an individual convicted of material
18 support in this country from José Padilla and Adam Hussein to
19 the Times Square Bomber who openly proclaimed their support and
20 their activity on behalf of a violent group.

21 In fact, in July of 2010, Khan told the source, in
22 what he thought was a private conversation, that, "When sending
23 money for guns, you cannot do so in the name of the Taliban.

24 Instead, a person will be over there. You send him
25 the money and you give it to him for guns, but you are not

1 supposed to say it," and Khan's funding must also be
2 understood, in context in Pakistan's Northwest frontier where
3 he is originally from, weapons are widely available and can
4 cost next to nothing.

5 In fact, in recorded conversations, Khan actually
6 discusses the different types of weapons that are available in
7 the gun markets of the Pakistan-Afghanistan border, referring
8 to the availability of Chinese counterfeit weapons, Russian
9 weapons left over from the war in the 1980's, and even new
10 American ones.

11 Let me focus a little more on the individual
12 defendants here and first add just a few more facts about
13 defendant Hafiz Khan.

14 In addition to being the Imam of the Flagler Mosque
15 here in Miami, he is in charge of a madrassa or an Islamic
16 school that he founded in Northwest Pakistan.

17 The madrassa was shut down by the Pakistani Army in
18 mid 2009 when the army launched an offensive to remove the
19 Taliban out of the Swat Valley.

20 Khan acknowledged in recorded calls that Taliban
21 militants have stayed at his mosque and later admitted to the
22 source the Taliban fighters have stayed in madrassa in the
23 past.

24 He also claimed in one recording that children from
25 his madrassa went to train under the Taliban leader Fasula to

1 learn to kill Americans in Afghanistan.

2 These are recorded conversations, Your Honor. These
3 are not the government's imaginings.

4 Khan maintains bank accounts in the United States and
5 multiple accounts in Pakistan and has sent money in a variety
6 of ways, assisted by his sons and by co-conspirators.

7 He has stated in recordings that he uses complicated
8 methods of sending money precisely to avoid detection. And
9 dispute some speculation about Khan's wealth, let's be clear:

10 He has at least three U.S. dollar bank accounts in
11 Pakistan and has sent over \$100,000, far in excess of his
12 salary to Pakistan since 2008 in or about when the conspiracy
13 began, and over 200,000 going back to 2005.

14 Now, we do not allege that all of that money was for
15 militancy, but there should be no doubt and no illusions about
16 the access of this man to a significant amount of money.

17 He was the linchpin of a network of trusted recipients
18 and intermediaries, and at one point, indeed, Khan actually
19 exclaimed, in a recorded conversation, "Why don't they file a
20 terrorist complaint against me? I am the one who has done this
21 work," only to be told not to discuss such things over the
22 phone.

23 Now, the defendant Izhar, who is also an imam, was
24 more careful than his father on the telephone. Nevertheless,
25 he played an important role in facilitating the conspiracy.

1 For example, in July of 2009, his father asked him to
2 collect money that was being donated by a local woman for the
3 Mujahideen. His words.

4 Izhar did so, and Khan subsequently deposited into his
5 U.S. bank account, his father's U.S. bank account for which the
6 money went to Pakistan.

7 Around the same time, Izhar sent \$900 to co-defendant
8 Amina Khan. Amina is Izhar's sister and has been identified in
9 multiple recordings as a Taliban supporter, and we know from
10 calls that she was the main conduit for money to go from
11 America to a particular Mujahideen.

12 We know as well that another Mujahideen in Karachi,
13 Pakistan, named Nor Muhammad, told the source in 2010 to thank
14 Izhar for Izhar's support of the Taliban for the past 5 years,
15 and singled out payment of 10,000 rubies by Izhar for that
16 purpose when Izhar was in Karachi.

17 We know from travel records that Izhar was, indeed, in
18 Karachi in the spring of 2009. Nor Muhammad is an injured
19 Taliban fighter in hiding who was about to embark on a
20 preaching tour for the Mujahideen.

21 Against this backdrop, Your Honor, let me talk
22 specifically about danger and about risk of flight.

23 As I mentioned at the outset, these defendants
24 actively supported the Pakistani Taliban which left no
25 ambiguity about its intent to continue its campaign of violence

1 in Pakistan and also in the United States.

2 Networks of violence and terror do not just require
3 people willing to commit suicide attacks. They need people to
4 provide money. They need people to provide context.

5 That is the role of these individuals as they
6 characteristically would be in a material support case.

7 We know that Hafiz Khan was an advocate for violence
8 in secret, in terms that I am certain that would shock anyone
9 in this courtroom.

10 Izhar, too, was perfectly prepared to finance the
11 Mujahideen.

12 Now, that they have been indicted and the Pakistani
13 Taliban is under threat, we don't know what will occur, but
14 more pointedly, Your Honor, unless these defendants are
15 detained, there is no way for this court to insure that they
16 are not continuing to send money to Pakistan to support
17 terrorism.

18 The concern is not just people here in this community,
19 in South Florida, but people in Pakistan.

20 Many courts, including the 9th Circuit in a case
21 called Jere, had made clear that in a detention hearing the
22 court needs to consider the danger, not just to the immediate
23 community, but to the community as well as overseas.

24 And if Your Honor wants a citation, I am happy to
25 provide it to you, but I think that's a very fairly well-known

1 proposition. And let's be clear, Your Honor.

2 Neither Hafiz Khan's age nor his condition has been an
3 impediment to support for Taliban violence. He has committed
4 these crimes with as little sometimes as a phone, his contacts
5 and his bank accounts. Age is no limitation to that support.

6 It has been no limitation and would not be a
7 limitation for him to continuing to do so without detention.

8 His kind of support can be conducted at any age. The
9 blind sheik was in his 60's. Ayman al-Zawahri is in his 60's.

10 Age is not a limitation for an individual who is
11 prepared to support terrorism through violence and his
12 contacts.

13 So, Your Honor, on both of those regards, especially
14 taking into account the presumption, we believe there is a
15 powerful danger to the community, not just here, but also in
16 Pakistan as well.

17 As for flight, Your Honor, that's a risk posed by both
18 defendants.

19 On the issues of flight, let me first talk about Hafiz
20 Khan. I am sure the defense will say, and I think we have all
21 read comments to this effect, "Well, he is an older man. What
22 risk does he pose going anywhere?"

23 It is nonsense, Your Honor. The only question for
24 risk of flight is can this individual, or his co-defendant, get
25 outside the jurisdiction of this court, wherever that may be;

1 whether it is Pakistan, whether it is in the Bahamas, it don't
2 matter.

3 We live in Miami. It doesn't take much to get outside
4 of this court's reach.

5 This defendant has a powerful incentive to flee,
6 particularly given his age, and even a single instance of
7 conviction, a single instance of material support or a
8 conviction on the conspiracy charge subjects him up to 15 years
9 which he will be at by virtue of the terrorism enhancement.

10 Okay. And so it is clear, we have alleged much more
11 than that, but the court needs to bear in mind a conviction on
12 even a single count would subject him to that punishment.

13 Khan has said, in recorded conversations, that he is
14 not happy in what he has called retched America, and at least
15 prior to indictment has said he planned to return to Pakistan
16 once his work here is complete.

17 As recently as last year, he indicated that he has no
18 plans to stay in this country and, in fact, that's why he would
19 not buy a house in this country, and he told his co-defendant
20 Izhar to leave the United States as well.

21 Once outside of the United States, the defendant has
22 an extensive network in Pakistan to fund him wherever he may
23 be.

24 We know from the calls and other information that he
25 has land holdings and business income in Pakistan itself,

1 including multiple shops and land.

2 We know, as I mentioned, that he has multiple U.S.
3 dollar bank accounts that he keeps in Pakistan and, of course,
4 he has his family and co-defendants and a vast number of
5 contacts who are over in Pakistan.

6 This is a continuing investigation, Your Honor, and
7 the defendant would do what it takes to escape these charges.

8 It is not just the obvious facts, though, of the
9 nature of this case. Deception is second nature to this
10 individual.

11 Khan was especially careful in his dealings about the
12 Taliban around the mosque. At the Flagler mosque. In fact,
13 there are recorded conversations where he says he cannot talk
14 about these things openly because, if found out, there would be
15 trouble.

16 More than that, he has said in the recordings that he
17 would definitely tell a lie to support the Taliban cause.

18 He did this in a conversation right after saying he
19 would never acknowledge his activities to these filthy people,
20 referring in context to American law enforcement or Americans.

21 He was absolutely clear, in furtherance of his goal,
22 he would tell a lie. In fact, his last comments were, "I would
23 definitely for my goal tell a lie. For those you work for, God
24 will forgive you."

25 In that conversation they then proceeded to talk about

1 the Taliban context.

2 Above and beyond that, Your Honor, Khan has discussed
3 immigration related fraud repeatedly in the recordings.

4 A bond or a restriction on flight, even house arrest,
5 Your Honor, is only as effective as a person seeks to leave in
6 their true name with their true identity.

7 In fact, Khan frequently discusses creating false
8 documents to deceive Pakistani authorities and to secure entry
9 into the United States for family members and potential Taliban
10 contacts.

11 In December of 2009, for example, Khan told a
12 co-defendant that he knows special discreet individuals in the
13 embassy, presumably referring to the U.S. Embassy in Islamabad,
14 that take care of false documents for visitor visas to the U.S.
15 because bribery is such a thing that sometimes it works right
16 in the open, other times it does not.

17 Likewise, in October of 2010, Khan plotted with a
18 co-conspirator to create false birth certificates, stating that
19 he knows a Pakistani government employee who can perform this
20 task, and that money is not an issue. "I will send money to
21 get it done."

22 Those facts are relevant not only to danger, in terms
23 of the ability of these defendants to bring people to the
24 United States, but also, of course, to risk of flight.

25 And we know, as I proffered earlier, that the

1 defendant has not been honest in collecting money for people.

2 There are numerous instances where he has solicited
3 money for one cause. In fact, that money has been designated
4 for other purposes, including Mujahideen.

5 So that is the United States' argument regarding risk
6 of flight. In addition to danger, again, there is the
7 presumption.

8 As to defendant Izhar Khan, he has traveled outside
9 the United States three times since the fall of 2010,
10 travelling to Saudi Arabia and twice to Canada.

11 In addition, in 2009, he went to Pakistan. He has the
12 same contacts in Pakistan as his father and access to the same
13 resources and the same money.

14 In fact, when this defendant was arrested, his U.S.
15 passport was found in the glove compartment of his car.

16 It is not where I keep mine or I suspect Your Honor
17 keeps yours. You do that when you are prepared to leave the
18 country.

19 He also had his Pakistani identification card in his
20 wallet. That's all he needed to leave the United States.

21 His travel brings up a related issue. His statements
22 to Pretrial Services, Your Honor, were misleading, at best, as
23 they are reflected on the Pretrial Services report.

24 I don't know whether that report has changed since
25 last week. I haven't reviewed it this morning. We brought it

1 back to the court, but let me speak to a few matters that he
2 raised in that report.

3 His travel. The only travel indicated was a trip to
4 Saudi Arabia in 2009. In fact, he went to Pakistan in 2009,
5 which is where he met the Taliban militant preacher Nor
6 Muhammad and provided him money in Karachi.

7 He totally failed to disclose his travel last year,
8 including his three recent trips outside of the United States,
9 through misleading, at best, regarding his travel.

10 He was misleading regarding his residence. He said to
11 Pretrial Services and this court that he was residing at a home
12 in North Lauderdale, Florida.

13 In fact, he has been spending virtually every day and
14 every night living at the mosque where he was arrested on the
15 morning of May 14th where his personal effects are, including a
16 sleeping bag.

17 That is because, Your Honor, he is actually renting
18 out his house in North Lauderdale to a family for \$800 a month
19 in cash and has been doing so for approximately a year, keeping
20 only a space in the garage.

21 In that regard as well, Your Honor, the Pretrial
22 Services report, even on as fundamental an issue as where he is
23 living is misleading, at best.

24 He is also misleading, at best, about his income which
25 is otherwise substantial but not does not reveal his rental

1 income of \$800 a month in cash, and finally he was misleading,
2 at best, about his relationships.

3 He told Pretrial Services that he is not married.
4 According to documents found during searches, and also from the
5 recordings, it turns out that he is married, based on those
6 documents.

7 Why does this matter? In addition, to the falsehood,
8 it turns out the defendant has an application, Izhar Khan,
9 pending with immigration for a K-1 visa for his fiancée.

10 That visa, which some believe is easier to obtain, is
11 only available if you are legally free to marry and you plan to
12 marry an individual here in the United States.

13 The point is, Your Honor, these statements hardly
14 inspire confidence that this defendant will follow through on
15 any assurances he may give to this court.

16 He has the financial means to flee. He has the income
17 to flee and he has just as powerful an incentive as his
18 co-defendant to do so in the face of these charges.

19 Your Honor, the question is whether this court can be
20 sure that neither these defendants nor their money will leave
21 the Southern District of Florida.

22 There is no way for this court to say, in the face of
23 presumption, in the face of this indictment, that that will be
24 the case.

25 So, Your Honor, I respectfully request the court to

1 detain these defendants pending trial.

2 THE COURT: All right, sir.

3 MR. SHIPLEY: Thank you.

4 THE COURT: Would you call your first witness.

5 MR. SHIPLEY: Your Honor, I have Mike Ferlazzo, a
6 special agent with the FBI available.

7 THE COURT: All right. Fine.

8 THE CLERK: Right up here, please. Please raise your
9 right hand.

10 THE COURT: Will you swear the witness, please.

11 THE CLERK: Please raise your right hand.

12 MICHAEL FERLAZZO, GOVERNMENT'S WITNESS, SWORN.

13 THE CLERK: Thank you. Please have a seat. Please
14 state and spell your name for the record.

15 THE WITNESS: Michael Ferlazzo. F-e-r-l-a-z-z-o.

16 THE CLERK: Thank you.

17 THE COURT: Mr. Ferlazzo, what agency are you with?

18 THE WITNESS: The Federal Bureau of Investigation,
19 Your Honor.

20 THE COURT: All right. Counsel for the defendant Ali
21 Khan may proceed. Again, keep in mind the limitations I have
22 placed on this questioning.

23 CROSS EXAMINATION

24 BY MR. WAHID:

25 Q. Agent, have you already the phone recordings that the

1 prosecutor just talked about?

2 A. I have heard some of them.

3 Q. Have you heard all of them?

4 A. No, I have not.

5 Q. Have you heard the ones that were mentioned today?

6 A. No.

7 Q. So you are not able to testify firsthand as to any content
8 of those discussions that the prosecutor talked about today?

9 A. We rely on our FBI trained linguists.

10 Q. Okay. Have you heard the translations of those
11 discussions?

12 A. I am familiar with the transcripts, yes.

13 Q. You have reviewed all of the transcripts?

14 A. Yes, I have.

15 THE COURT: Let me ask you, you have heard the proffer
16 made by the government, have you not?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: With regard to those transcripts that you
19 have read, were they consistent with what the government has
20 told us were in them?

21 THE WITNESS: Yes, Your Honor. Consistent and
22 factual.

23 THE COURT: All right. Go ahead.

24 BY MR. WAHID:

25 Q. Agent, are you aware that the Pakistani Taliban is

1 currently a designated foreign terrorist organization?

2 A. Yes.

3 Q. Are you aware that that happened, that that designation was
4 on August 12th of 2010?

5 A. Yes. It was formally designated by the State Department in
6 August of 2010.

7 Q. And would it be fair to say that the majority of financial
8 transactions that are alleged in this particular indictment are
9 prior to August 12th of 2010?

10 A. There are a portion before and a portion after.

11 Q. Would it be fair to say that based on the indictment, only
12 two transactions are after August 12th of 2010?

13 A. That's correct.

14 Q. All right. And all of the other alleged transactions were
15 prior to the Pakistan Taliban being designated or the public
16 essentially be placed on notice that they are being designated
17 as a foreign terrorist organization?

18 A. Yes. They were before then, and it was their actions that
19 led to that designation. It was not that their actions began
20 with the designation.

21 Q. All right. But there was no public notice that they were
22 designated as a terrorist organization prior to them actually
23 being designed, correct?

24 A. The State Department notice was in August of 2010, yes.

25 Q. All right. Now, as I have not been able to hear the phone

1 calls or any of the actual evidence, I will ask you.

2 Are you aware that some of the conversations were
3 specifically about a madrassa in Northern Pakistan?

4 A. Those are not the conversations that Mr. Shipley spoke
5 about.

6 Q. All right. Are you aware that there are conversations
7 about the madrassa in Northern Pakistan?

8 A. Yes.

9 Q. All right. And do you know that madrassa means school?

10 A. Yes.

11 Q. All right. And are you aware that in some of those
12 conversations the term "Taliban" was used?

13 A. Yes.

14 Q. And are you aware that Taliban is also another, is Pashto
15 for students?

16 A. I am aware of that, and the Taliban references were clearly
17 in context that the militants are not students.

18 Q. And that's your testimony as to all of the conversations?

19 A. No. Not all.

20 Q. How many?

21 A. I don't have that number of which were references to
22 Taliban militants versus the students, but he definitely spoke
23 of his school.

24 Q. And he spoke of the students in the school?

25 A. He did.

1 Q. And he used the term "Taliban" when he did that?

2 MR. SHIPLEY: Objection, Your Honor, both to the form
3 of the question and relevance. We are really getting into
4 discovery.

5 THE COURT: I will sustain the objection as to form.
6 The objection is sustained as to form. Rephrase your question.

7 BY MR. WAHID:

8 Q. Are you aware if he used the term "Taliban" when he had the
9 conversations about the madrassa?

10 A. Yes.

11 Q. Okay. Now, Mr. Shipley mentioned that there were three
12 U.S. dollar bank accounts in Pakistan, correct?

13 A. That's correct.

14 Q. And do you have any evidence of any wire transfers from
15 here to those bank accounts?

16 A. Yes.

17 Q. All right. Have you yourself filled out any reports in
18 this case?

19 A. I have not.

20 Q. The wire transfers that you have seen, who were they to?

21 MR. SHIPLEY: Your Honor, I am going to object. This
22 is discovery.

23 THE COURT: I will sustain the objection.

24 MR. WAHID: All right.

25 THE COURT: You are outside the bounds of what we

1 discussed earlier.

2 BY MR. WAHID:

3 Q. The prosecutor had said in his proffer that these wire
4 transfers were or some were for purposes other than to support
5 the Pakistan Taliban, but he said the bulk of it was for
6 supporting the Pakistan Taliban; is that correct?

7 {MR._STPHAO}: Actually, Your Honor, may I object?

8 That was not the prosecutor's statement, in fact.

9 THE COURT: All right. Sustained.

10 MR. SHIPLEY: He can ask a question.

11 THE COURT: Rephrase your if you wish.

12 MR. WAHID: Sure.

13 BY MR. WAHID:

14 Q. Were any of the funds in your opinion, based on your review
15 of the phone calls and the wire transfers, for things other
16 than allegedly supporting the Pakistan Taliban?

17 A. Yes. We are not stating that every single dollar sent
18 overseas was for the Taliban.

19 Q. All right. And the funds that were alleged for the
20 Pakistan Taliban versus the ones that were not, were they all
21 going through those same three bank accounts?

22 MR. SHIPLEY: Objection, Your Honor. Again, this is
23 discovery.

24 THE COURT: I will sustain the objection.

25 BY MR. WAHID:

1 Q. Prosecutor has said on many occasions here that the funds
2 were designated for the Pakistan Taliban. How do you know
3 that?

4 A. From the defendant's own words identifying these
5 individuals and the roles that they played.

6 Q. And do you know if any of those funds actually made it to
7 the Pakistan Taliban?

8 A. There are some instances where we can.

9 Q. And how do you know that?

10 A. Through the recorded conversations.

11 Q. So, again, based on the statements made by the defendant or
12 the co-defendants in the phone calls?

13 A. That's correct.

14 Q. All right. Do you have any independent evidence to suggest
15 that the Pakistan Taliban actually received funds in Pakistan?

16 A. We also have our source, and our source was in Pakistan,
17 and he reported that, that they received it directly.

18 THE COURT: Anything further?

19 MR. WAHID: Yes, Your.

20 BY MR. WAHID:

21 Q. Are you aware that the madrassa actually had, the majority
22 of the students in that madrassa are young girls?

23 A. Yes. I am aware of that.

24 Q. Okay. And you are aware that the age group tends to be
25 between about 8 to 12 years old for the most part?

1 A. I am not aware of the age range.

2 Q. All right. They are younger children. Minors?

3 A. That's my understanding.

4 Q. All right. And are you aware that the Taliban does not
5 take girls as fighters?

6 A. Yes.

7 Q. All right. Agent, are you aware of the specifics as to
8 what property Mr. Khan owns?

9 A. I am familiar with it through the course of the
10 investigation, yes.

11 Q. All right. So you are aware that he owns one home in here
12 in Miami?

13 A. From our records and the property records, I do not believe
14 that that is the same Hafiz Khan, if that's what you are
15 referring to.

16 Q. Do you know if he has a property on 162nd Place?

17 A. No, I do not. From our review of the records this morning
18 that is a different date of birth.

19 Q. Do you know that Mr. Khan has a wife here in Miami?

20 A. I do.

21 Q. You are also aware that he has been living and working in
22 South Florida since 1996?

23 A. Yes.

24 Q. You are also aware that his trip to Saudi Arabia was for a
25 religious pilgrimage known as Hodge?

1 A. Yes. I believe in 2005.

2 Q. And that he has made no other trips abroad since he has
3 been in the United States?

4 A. Yes.

5 Q. You are aware that that there was an offensive that the
6 Pakistani Government had against the Taliban in December of
7 2009?

8 A. Yes. I am familiar with that offensive.

9 Q. And that that offensive ended up closing down all of the
10 madrassas in the Swat Valley area, correct?

11 A. That's outside the scope of my knowledge.

12 Q. All right. Mr. Shipley had pointed out that this
13 particular madrassa was shut down by the Pakistan Government.
14 Do you recall that?

15 A. Yes. I am aware that Hafiz Khan's mosque was shut down.

16 Q. All right. And are you aware that that was not the only
17 madrassa that was shut down? That it was not specifically
18 targeted?

19 A. I am aware that there are multiple madrassas, yes.

20 Q. And that it had to do with safety of people in the region
21 because of the uprising, correct?

22 MR. SHIPLEY: Objection to foundation, Your Honor.

23 THE COURT: Sustained.

24 MR. WAHID: One moment, Your Honor.

25 BY MR. WAHID:

1 Q. Agent, have you looked at what funds Mr. Khan has in his
2 bank accounts here in the United States that he has access to?

3 A. Yes. We have bank accounts for his accounts here.

4 Q. All right. Would it be accurate to say it is no more than
5 \$2,700?

6 MR. SHIPLEY: Your Honor, I object. Just for a time
7 frame.

8 THE COURT: Yes. What period of time are you talking
9 about?

10 MR. WAHID: Currently. As of the time of his arrest.

11 THE WITNESS: That sounds feasible. I don't have the
12 actual records from that time frame.

13 MR. WAHID: Nothing else, Judge. All right.
14 Mr. Rosenbaum.

15 MR. ROSENBAUM: Thank you, Your Honor.

16 CROSS EXAMINATION

17 THE COURT: Again, keep in mind the limitations of
18 your examination.

19 MR. ROSENBAUM: Yes, sir.

20 CROSS EXAMINATION

21 Q. Agent Ferlazzo?

22 A. Yes.

23 Q. Good morning.

24 A. Good morning.

25 Q. Okay. I am going to ask you questions just about Izhar

1 Khan, my client.

2 A. Yes.

3 Q. You are familiar with the indictment, correct?

4 A. I am.

5 Q. And there are two things in the indictment that the
6 government alleges. One was that on July 16, 2009, Izhar
7 caused \$900 to be sent by a wire transfer to Amina in Pakistan?

8 A. That's correct.

9 Q. Amina is his sister?

10 A. Is his sister and co-defendant, and just before that
11 transaction was identified in a recorded conversation as
12 someone who can provide money to a Taliban militant.

13 Q. Okay. You are talking about Amina?

14 A. Amina.

15 Q. Okay. But as far as Izhar goes, the relationship as far as
16 familial is, that is his sister?

17 A. That's correct.

18 Q. All right. And he sent \$900 to her?

19 A. That's correct.

20 Q. And the money went to her?

21 A. As far as Western Union transactions.

22 Q. Okay. It was a Western Union that was done here to his
23 sister in Pakistan?

24 A. That's correct.

25 Q. And it was easy to follow, right?

1 A. Yes.

2 Q. It was not concealed. It was not disguised?

3 A. No.

4 MR. SHIPLEY: Well, objection, Your Honor, to the form
5 of the question.

6 THE COURT: Overruled. You can answer.

7 BY MR. WAHID:

8 Q. It wasn't concealed or disguised?

9 A. No. It was sent through Western Union.

10 Q. Okay. And do you know or do you know why Izhar sent the
11 money to Amina based upon any recordings that you have?

12 A. As I said, just before that transaction Hafiz Khan
13 identified Amina to Izhar Khan in a recorded conversation as
14 the one who was providing support to a Taliban militant.

15 Q. You don't know what that \$900 was used for, do you?

16 A. Based on that call, I would assume.

17 Q. Not assuming. Let's take that word out of this courtroom.

18 Not assuming. Do you know that that \$900 went for personal
19 benefit, for the school or for any other activity?

20 A. My knowledge on that transaction is from that recorded
21 call.

22 Q. Okay. But you don't know what happened to the \$900?

23 A. No.

24 Q. Do you agree with the prosecutor who stated that Hafiz
25 Khan, the co-defendant, is not always honest when he is

1 soliciting money?

2 A. Yes.

3 Q. Let's go to the other act in the indictment which deals
4 with Izhar. This is on July 11, 2009.

5 Khan asked Izhar to collect from a donor in the U.S.
6 money that Khan told Izhar had been approved for the
7 Mujahideen.

8 Are you familiar with that? Was that a recording?

9 A. Yes.

10 Q. And that was a phone call between Khan and Izhar?

11 A. Yes.

12 Q. And you have listened to the translations?

13 A. I have read the transcript.

14 Q. You have read the transcript. And was there any other
15 discussion in that transcript about getting that money?

16 A. Khan asked him to pick it up and say that it was -- he said
17 that was approved to the Mujahideen.

18 Q. And that money, was it picked up?

19 A. It was.

20 Q. Okay. And how much was it?

21 A. It was a check for \$300.00.

22 Q. And that check was deposited into whose account?

23 A. Hafiz Khan's.

24 Q. And do you know where that \$300.00 eventually went?

25 A. No, I do not.

1 Q. Now, are you familiar with the travel that Izhar has done
2 recently?

3 A. Yes.

4 Q. Okay. And it was mentioned that he went to Saudi Arabia?

5 A. That's correct.

6 Q. Okay. Do you know that he went there to attend the holy
7 Hodge?

8 A. That's correct.

9 Q. And he went to Pakistan?

10 A. I am aware of a trip to Pakistan in 2009, yes.

11 Q. And that's when he became engaged to his current fiancée?

12 A. I am not aware of that.

13 Q. And you know that he is not legally married?

14 A. From paperwork that I have seen, I have seen a marriage
15 certificate.

16 Q. Is it a religious or a civil certificate?

17 A. I am not sure.

18 Q. And he has processed the form with the United States
19 Government in order to bring her to this country, correct?

20 A. He has requested a K-1 fiancée visa.

21 Q. A fiancée visa. And are you familiar with his trip to
22 Canada?

23 A. Yes.

24 Q. And do you know he went there to give a religious seminar?

25 A. I am familiar that he has contacts there, yes.

1 Q. And you know he has been in this country since he has been
2 8 years old, correct?

3 A. Correct.

4 Q. And that he attended public school here in the South
5 Florida area until he was about 12 or 13 years old?

6 A. I don't have specific knowledge of that.

7 Q. And that he then went to school up in Buffalo, New York
8 until he finished his studies?

9 A. I am familiar with his studies at the Islamic University in
10 Buffalo.

11 Q. And that he continuously remained in the United States from
12 when he entered this country when he was 8 years old until just
13 a couple of years ago when he went to the Hodge, the Canadian
14 business trip and to get engaged with his fiancée in Pakistan?

15 A. I am aware of that travel.

16 Q. Are you aware that he is, besides being a very religious
17 man, that he is very active in his community?

18 A. Define "active."

19 Q. Raises money for the mosque.

20 A. Yes.

21 Q. Have you in your interview, and I am sure you have
22 interviewed members of his mosque, there is no teachings or
23 preachings by Izhar regarding any political viewpoints against
24 the United States or Pakistan?

25 A. No, not that I am aware of.

1 Q. And the Pakistani Taliban didn't become a foreign terrorist
2 organization until August of 2010?

3 A. That's correct. It was designated in August.

4 Q. And the two dates in the indictment for Izhar Khan are in
5 2009?

6 MR. SHIPLEY: Your Honor, I object only for
7 clarification. Those are two overt acts in the indictment.
8 They are not the date of the charges.

9 THE COURT: Repeat your objection.

10 MR. SHIPLEY: To the form of the question, Your Honor,
11 to define the acts in the indictment. What he is talking about
12 are two overt acts.

13 THE COURT: All right.

14 MR. SHIPLEY: That's not the time frame of the
15 charges.

16 THE COURT: All right. I will sustain it. Rephrase
17 your question, counsel.

18 BY MR. ROSENBAUM:

19 Q. As to the overt acts, the only overt acts charged in the
20 indictment are those that occurred prior to the Pakistani
21 Taliban being declared a foreign terrorist organization?

22 A. That's correct.

23 Q. Do you know of any other funds that Izhar sent to Pakistan
24 after the one we just talked about that occurred in July of
25 2009?

1 A. No.

2 MR. ROSENBAUM: I have no other questions, Your Honor.

3 THE COURT: All right. Is the government offering any
4 other testimony?

5 MR. SHIPLEY: No, Your Honor. Thank you.

6 [The witness was excused].

7 THE COURT: All right. Is the defense offering any
8 testimony in this matter?

9 MR. WAHID: Yes, Your Honor.

10 THE COURT: All right.

11 MR. WAHID: I would like to call a witness, Doctor
12 Amir Abdel Zaher.

13 THE COURT: Would you proffer initially what his
14 testimony would be about.

15 MR. WAHID: It goes to the character of my client and
16 statements he has made and teachings that he has done in terms
17 of not being in any sort of violence; nothing about bringing
18 down the government of the United States or Pakistan. Nothing
19 about sending money to support the Pakistan Taliban.

20 THE COURT: Those facts are limited to this witness'
21 knowledge?

22 MR. WAHID: The thing is the interaction of them with
23 my client.

24 THE COURT: Mr. Shipley, do you have an objection?

25 MR. SHIPLEY: Your Honor, I do. If what the defense

1 wants to proffer is that there are individuals who would come
2 into court and say that they are not familiar with Khan having
3 spoken to the Pakistan Taliban, with Khan having sent this
4 money, that is entirely consistent with what the United States
5 has alleged in this case.

6 So I don't know what specifically he wants to elicit,
7 but I wouldn't dispute that fact.

8 In fact, I believe I proffered it to the court.
9 That's the very essence of a material support crime and
10 concealment.

11 So Your Honor can proceed however the court sees fit,
12 obviously, but I think that's going to be a waste of time
13 because there is no dispute from this side that there are going
14 to be people, probably a large number of people who the defense
15 could bring in to say, "He never talked about that with us. He
16 didn't preach openly about it," because that's the reality of
17 this case.

18 THE COURT: All right. Would you agree with that,
19 counsel?

20 MR. WAHID: Well, I would agree that there are a large
21 number of people who would say that, yes.

22 THE COURT: All right. Is that what your proposed
23 witness would say?

24 MR. WAHID: Well, absolutely, and it also goes to the
25 idea that or it goes to spending a lot of time with him, and

1 both publicly and privately they have never heard him say.

2 THE COURT: All right. Call the witness forward to be
3 sworn.

4 MR. SHIPLEY: Your Honor, I don't mean to be
5 disrespectful of the court. May I speak to the agent for one
6 moment --

7 THE COURT: All right.

8 MR. SHIPLEY: -- while the testimony proceeds?

9 THE COURT: All right.

10 MR. WAHID: We have to swear in the witness, right?

11 THE CLERK: Yes.

12 MR. WAHID: Can you state your name? Oh. I am sorry.

13 THE CLERK: Please raise your right hand.

14 Please have a seat. Please state and spell your name,
15 for the record.

16 THE WITNESS: Amir Abdel Zaher. The last name is
17 Abdel, A-b-d-e-l. Z-a-h --

18 THE CLERK: Excuse me. A-b-d?

19 THE WITNESS: A-b-d-e-l. Z-a-h-e-r.

20 THE CLERK: Abdel Zaher.

21 THE COURT: All right. Proceed, counsel.

22 MR. WAHID: Thank you.

23 DIRECT EXAMINATION

24 BY MR. WAHID:

25 Q. Mr. Abdel Zaher, what do you do for a living?

1 A. I am a researcher at the University of Miami.

2 Q. Do you know Imam Hafiz Khan?

3 A. Yes.

4 Q. How long have you known him?

5 A. I would say at least 5 years.

6 Q. And what kind of interaction? Like what is the reason you
7 interact with him?

8 A. I often seek his counsel and his guidance. I have heard
9 him instruct the community many times.

10 I recall even times when I took him to his physician
11 in Broward I got time to spend with him in the car and have
12 private conversations with him.

13 I spent many nights in the mosque as well, and I have
14 seen him there. I got to speak with him at times.

15 Q. And would you agree that you have spent a substantial
16 amount of time with him?

17 A. Yes.

18 Q. And would you agree that some of that was not in public?
19 Just you and him?

20 A. Definitely.

21 Q. Okay. Have you ever heard him talk about the overthrow of
22 the United States Government?

23 A. Never.

24 Q. Have you ever heard him talk about the overthrow of the
25 Pakistani Government?

1 A. No.

2 Q. Has he ever expressed to you any sort of willingness to use
3 violence to achieve any goals?

4 A. On the contrary. He is always speaking about how to treat
5 other people with kindness. Even non-Muslims.

6 On my trip with him to the physician, I was even
7 asking him about this question about, you know, some of my
8 relationships with some of my colleagues, et cetera, and he was
9 speaking only about how to treat them kindly and with respect.

10 Never. Very far from violence. More about how to
11 treat them with respect and kindness.

12 Q. And have you ever had any interaction with him where he has
13 in any way, you know, talked about the madrassa that he
14 supports in Pakistan?

15 A. No.

16 MR. WAHID: Okay. Thank you.

17 THE COURT: All right. Does the government have any
18 questions? If so, why?

19 MR. SHIPLEY: I have no questions, Your Honor.

20 THE COURT: Thank you. You may step down.

21 [The witness was excused].

22 THE COURT: All right. Any further testimony of any
23 witnesses, Mr. Rosenbaum?

24 MR. ROSENBAUM: I would like to call someone for the
25 same type of purpose, or I can proffer it to the court.

1 Whatever you would like.

2 THE COURT: All right. Would you make your proffer.

3 MR. ROSENBAUM: Okay. There are many individuals, but
4 the individual that I would call would be the president of the
5 Margate mosque who is Yacida Lee who is present in the
6 courtroom, and he would testify that Izhar is a man of peace;
7 that he has never breached or talked about violent overthrow of
8 the United States Government or the government of Pakistan.

9 He is not a political person. He is a preacher and
10 totally limits himself to religious studies. He does not
11 raise -- I misspoke before. He does not raise money for the
12 mosque. He does not raise money. That is done by the
13 president and the board of the mosque for the purposes of the
14 mosque.

15 Izhar's total being at that mosque is for religious
16 studies and to help other people. He has been in America most
17 of his life.

18 He belongs to a gym. He is a good athlete. He plays
19 badminton, cricket, and I understand he is the best basketball
20 player at the mosque. He is a rabid Heat fan.

21 He is an Americanized person. He has been here a long
22 time and loves this country, and everyone I spoke to from his
23 mosque up in Margate says it that way.

24 I understand the government's theory, but there is not
25 a scintilla from anybody I have talked to of all of the members

1 that say anything different. He is very respected. Very
2 religious and very main stream American.

3 THE COURT: All right. I think the government
4 acknowledges that a number of witnesses would so testify.
5 Isn't that correct, Mr. Shipley?

6 MR. SHIPLEY: In sum and in substance, Your Honor.

7 THE COURT: All right. Any further testimony to be
8 offered by either side?

9 MR. SHIPLEY: Not for the United States.

10 THE COURT: All right. The court will allow each side
11 ten minutes to make a closing statement with regard to your
12 respective positions. Government.

13 MR. SHIPLEY: Your Honor, would you like me to proceed
14 first? And maybe since I have made some of my presentation, I
15 can follow the court's preference.

16 THE COURT: No. You proceed first.

17 MR. SHIPLEY: Absolutely, Your Honor.

18 THE COURT: It is your motion.

19 MR. SHIPLEY: Sure. Your Honor, not having heard any
20 contrary arguments from the defense, I will respond to just a
21 couple of points from the questioning by way of proffer and
22 information.

23 There were a couple of questions put to the witness
24 about the designation date of the Pakistani Taliban as a
25 foreign terrorist organization.

1 The court may be familiar with these statutes already,
2 but, of course in the indictment, there are four counts in the
3 indictment.

4 Two deal with the Statute 18, U.S.C. 2339(b) which
5 deals simply with support for a foreign terrorist organization.

6 There is no requirement that an individual know the
7 group is designated as a foreign terrorist organization as long
8 as they know it engages in terrorist activity. That's the mens
9 rea requirement in the statute.

10 If I haven't persuaded the court that the government
11 has substantial evidence of that, then I haven't succeeded at
12 all in my arguments.

13 I would also point out that Counts I and III of the
14 indictment concern a different statute, 2339(a) which simply
15 deals with material support meant to further conspiracy to
16 murder, mame or kidnap.

17 It doesn't matter whether the group has been
18 designated or not. That was the primary statute in the Pedilla
19 case, for example. So I just wanted to clarify that for the
20 sake of the court as to that issue.

21 The only really two factual points as to the content
22 of the calls, Khan is explicit not only about the Taliban,
23 there are references to Taliban as students, but there are also
24 explicit references to the Taliban and many explicit references
25 to Mujahideen militants and other terms that are clearly

1 referring to militants. There is no confusion on that front.

2 In addition, as I proffered initially, there are
3 statements by the defendant, not from the United States, by the
4 defendant describing the fact that children from his madrassa
5 have gone from the madrassa to learn to train to kill
6 Americans, with the specific reference to the Pakistan Taliban
7 leader Fasula. So, again, these are references from the
8 defendants.

9 One other factual point, Your Honor, as to the issue
10 of marriage or fiancée, I don't want to overstate that, but
11 since it was referenced in the discussion, what it does show is
12 both an intent to, at a bear minimum, attempt to be misleading
13 with Pretrial Services and to fail to acknowledge a contact in
14 Pakistan.

15 I can tell the court that we have affidavits, civil
16 marriage certificates and actual letters with signatures of
17 family members indicating that this was a bona fide marriage.

18 So those documents are available, and those were
19 actually obtained through a search after the arrests.

20 Your Honor, I won't belabor the points that I made
21 earlier. The question before this court is whether, in the
22 face of the presumption, which is certainly rebuttal, but
23 reflects Congress' intent as to how cases like this should be
24 handled, the court is confident that these defendants will not
25 engage in any more activity which is harmful to the community

1 and will show up in court.

2 There is no basis on this record to say so, given the
3 severity of the charges. These are the defendants' words. The
4 evidence in this case is strong.

5 We know that they have the ability. They certainly
6 have the means to flee. They have the ability. They have
7 foreign travel.

8 Certainly Hafiz Khan has not traveled as much, but the
9 capability for him to do so is there and, of course, it is his
10 bank accounts, his family, his co-defendants and his resources
11 in Pakistan that can support him everywhere.

12 It is not just whether he will go to Pakistan. It is
13 whether he would go anywhere outside of the jurisdiction of the
14 United States. And because those are U.S. dollar bank
15 accounts, he would have no difficulty obtaining access to that
16 money and has, in fact, moved money here from the United States
17 to Pakistan by using those accounts specifically.

18 He also, of course, has bank accounts here in the
19 United States. But even putting that aside, even if the
20 defendant could not go anywhere, all it takes to provide the
21 kind of support that he has provided is a telephone. That's
22 it.

23 To give instructions for money to be moved from bank
24 accounts here, from bank accounts in Pakistan, to place calls,
25 be it the middle of the day here, the middle of the night in

1 Pakistan, or whatever the timing may be for individuals to pick
2 up that money at the bank branches in Pakistan and distribute
3 it, according to his instructions, I can tell the court that in
4 these recordings you see highly detailed directions about how
5 money is supposed to be delivered down to the dollar in terms
6 of different contacts and different purposes.

7 That ability cannot be monitored, cannot be foreclosed
8 by this court through a bond, and that danger exists to people
9 here and to people in Pakistan, especially when you have a
10 group like the Pakistani Taliban that has engaged in violence,
11 not only for years, but has now, and at least since last May
12 and as recently as two weeks ago, declared an intent to attack
13 American targets through individuals they have in the United
14 States, which is perfectly consistent with the kind of support
15 network that you see in place here.

16 It does not just take somebody to go blow themselves
17 up. It requires people to provide the money, the contacts, the
18 inspiration and the resources, and that is what you have in a
19 material support case.

20 Finally, Your Honor, specifically as to defendant
21 Izhar Khan, this is clearly a man who can travel. He is a man
22 who has travelled.

23 Whether or not in recent trips out of the country were
24 for benign purposes, he is clearly comfortable getting on an
25 airplane heading out of the United States.

1 He had his passport in the glove compartment of his
2 car, and he faces the same incentive to leave, of course, as
3 his father.

4 So if the court has any questions, I am happy to
5 address them, but the fact of the matter is with the
6 presumption in this case on the indictment, with a proffer made
7 by the United States, I would submit there is powerful
8 substantial and certainly sufficient evidence of both danger to
9 the community and risk of flight.

10 This court cannot and should not take the chance of
11 relying on the assurances of these defendants, especially when
12 one of the defendants has said in recordings that he
13 unambiguously would lie to support his cause, and another
14 defendant that we know has been misleading, at best, with
15 Pretrial Services.

16 Thank you, Your Honor.

17 THE COURT: All right.

18 MR. SHIPLEY: Unless the court has any questions.

19 THE COURT: No. Mr. Wahid.

20 MR. JONES: The prosecutor states that all I need is a
21 telephone to do something violent.

22 Well, the entire case is about being on the telephone.
23 We have actually not or I have never had an opportunity to see
24 any of these calls.

25 This is all just being stated by Mr. Shipley. We

1 don't have a sense of how many calls. We don't have a sense of
2 the context of these calls.

3 We all know that we have a First Amendment right to
4 speak about our politics. And if that is the sum and substance
5 of many of these conversations, those conversations should not
6 have a bearing on this proceeding.

7 We also know that the Pakistan Taliban, by the
8 government's own admission, was not actually designated until
9 August 12th of 2010, and in all but two transactions that they
10 have alleged in the indictment were prior to that date.

11 We also know that the evidence that the government
12 seems to have here includes some wire transfers, but they even
13 admit that that money was for multiple purposes.

14 There is a family there. There is a madrassa there.
15 There is no claim, actually, that that Madrassa is not pursuing
16 legitimate goals.

17 They are claiming that somehow also those students are
18 being trained to be fighters. We know by their own admission
19 that it is mostly young females. Females do not get brought
20 into the Taliban as fighters.

21 We know that there is potential translation and
22 context issues; that the word "Taliban" also means student.
23 That Madrassa is just a school, and conversations that might be
24 talking about students in the school could be the sum and
25 substance of many of this alleged support of the Pakistan

1 Taliban.

2 All we know about the actual, if there was any real
3 support to the Pakistan Taliban comes from potentially the
4 phone calls and the context of those phone calls, and they
5 claim to have a source in Pakistan who received funds directly,
6 and we don't know what those funds were actually used for.

7 That was not presented to us here today, but if people
8 have families back home and anyone who comes from an immigrant
9 family knows you are going to send money back to your village
10 to support the people in that village.

11 You are going to support the orphans in the village.
12 You are going to support charitable causes in the village, and
13 that is so far not really being rebutted by the government.

14 I would also point out that a lot of the conversations
15 that they are talking about as they go over a number of years
16 could be within the context of dealing with the politics of
17 Pakistan over the last number of years, which has been in the
18 news here as well, and we know that there is a constant, even
19 the United States is trying to always figure out who over there
20 is friend or foe, let alone the average citizen here in the
21 United States.

22 I would also point out that all of the discussions
23 that are on these calls, for the most part, are with family
24 members, and one is more likely to have a conversation with
25 family members about politics and things you are going to be

1 complaining about and you are more likely to be angry about
2 things, those should not be held against Mr. Khan in a criminal
3 manner.

4 I would also point out that so far that we have seen,
5 the wire transfers that they are talking about, none of them
6 seem to be directed to any Pakistan Taliban members. Nothing
7 like that has been presented here.

8 The claims seem to be that these transfers are to
9 family members, and that somehow the family members are turning
10 around and giving it to other parties.

11 Let me talk a little bit about risk of flight.
12 Mr. Khan has been in this community since 1996. He has only
13 been out of the country once for the purposes of a religious
14 pilgrimage to Saudi Arabia.

15 He has strong ties to the community. He is the
16 religious leader of the oldest mosque in South Florida.

17 He is somebody who is well-regarded and looked up to
18 by a large contingent of the South Florida Muslim American
19 community.

20 I believe he owns a home jointly with his son that
21 they rent out, and that he lives in an efficiency that he rents
22 out separately with his wife.

23 Obviously, his wife is here. His other family members
24 are here. He had a stable job up until this charge that he
25 would be able to potentially go back to if allowed back out.

1 He would be able to surrender all travel documents.
2 And, quite frankly, if it has not been obvious to the United
3 States Government thus far, it is probably obvious to the court
4 that with the publicity generated, it is unlikely that Mr. Khan
5 is going to get through an airport.

6 We would like to proffer a bond package to the court
7 that we are able to put together; a \$500,000 collateralized
8 corporate surety bond. I am sorry. A personal surety bond and
9 a \$150,000 collateralized corporate surety bond.

10 We would, obviously, surrender travel documents and
11 agree to electronic monitoring, home arrest, limiting his
12 movements only for attorney visits.

13 Finally, I would say to the court that in this
14 situation, so far what we have is a 76 year-old man who the
15 government is claiming essentially said a lot of angry stuff on
16 the telephone and sent money to his family.

17 That is, in sum and substance, what the United States
18 Government has been able to present. I think that there are
19 absolutely conditions, such as the ones that we have presented,
20 that would allow the safety of the community and would prevent
21 any risk of flight.

22 THE COURT: All right, sir. Thank you.
23 Mr. Rosenbaum.

24 MR. ROSENBAUM: Yes, sir. May it please the Court.
25 As to Izhar Khan, the evidence presented here and in

1 the four corners of the indictment are thin at best.

2 The two overt acts are not even connected to any
3 terrorist organization. You heard the agent on my
4 cross-examination. He wired \$900 to his sister. That is it.

5 Izhar is the religious leader of the Margate mosque, a
6 large and prosperous mosque in Margate, and he is a very good
7 one. He is one of the youngest ones in the country.

8 He has been in the United States since 1994 when he
9 arrived in South Florida. He attended public schools here
10 before he went to Buffalo for his religious training. That is
11 basically what we have, Judge.

12 The government made some comments about travel. He
13 can travel. Well, we all can travel. It is not hard these
14 days for anybody to travel, but he is not going to travel. He
15 is Americanized.

16 They have his passport. There are conditions of bail
17 that will insure that he is here for everything.

18 There are people that are willing to put up their
19 properties, not further encumber them. The properties have a
20 lot of equity in them, Your Honor, and they will sign off on a
21 personal surety bond and some type of corporate surety bond
22 with electronic monitoring in a case like this with very thin
23 evidence would insure his presence.

24 The government brought up the travel. It is in his
25 passport where he went. One was to a Hodge; the holy Hodge in

1 Saudi Arabia. He went to Pakistan for his fiancée.

2 He has got documents in there. He is not hiding it to
3 bring her over here as his fiancée. That's it. Three trips.
4 He has been here since 1994.

5 You wouldn't want to look at my passport. I would
6 never get a bond. I have tons of trips.

7 The marriage thing. Let me be a distinction without a
8 difference. We don't know how it is handled over there or how
9 it is here.

10 My client maintains it is his fiancée. People send
11 money back to their families all of the time.

12 Just sitting here listening to everything, there was
13 very little or no evidence against Izhar Khan. It is very
14 thin, at best, in the light most favorable to the government.

15 Based upon that, Your Honor, he is not a danger and he
16 is surely not a risk of flight, and I think there is a
17 combination of conditions which would insure that he is present
18 for each and every proceeding in front of Judge Jordan.

19 THE COURT: All right. Thank you. All right. The
20 court is prepared to rule.

21 I have examined the indictment rather substantially.

22 I have reviewed the Pretrial Services reports, and I
23 have considered the proffer of the government, as well as the
24 examinations conducted by defense counsel in this case.

25 The defendant, Hafiz Muhammad Sher Ali Khan, the

1 evidence seems to show or the suggestion seems to show that he
2 is extremely active and has been extremely active in Taliban
3 matters; that he occupied a leadership role in that instance,
4 and that he had unlimited contacts and support, and he has
5 announced, as heard by the government through Title III
6 intercepts, that his goal was to kill Americans.

7 He is a risk of flight, the court finds, because he
8 has substantial ties inside and outside of the United States,
9 and he is facing, if convicted, as are both defendants,
10 substantial sentences; 15 years as to each count.

11 The court recalls testimony regarding a conversation
12 in which he claimed that there was no difficulty in getting
13 false travel documents which, of course, adds further to the
14 likelihood of fleeing from this jurisdiction.

15 The defendant Izhar Khan is similarly involved,
16 although not to the extent that the defendant Hafiz Khan is.

17 Although the court cannot overlook the purpose and
18 objects of the conspiracy as set forth in the indictment, the
19 court finds that these defendants, both of them, represent a
20 danger in the community and a risk of flight if released on
21 bond; the court further finding there is no condition or
22 combination of conditions I could set that would assure me of
23 their presence in future court proceedings, or minimize or
24 eliminate the danger in the community if released.

25 Accordingly, the court grants the government's motion

1 for pretrial detention as to both defendants on risk of flight
2 and danger in the community, finding there is no condition or
3 combination of conditions that I could set to minimize or
4 eliminate those.

5 Mr. Shipley, will you have a proposed order submitted
6 to my chambers by Wednesday morning; this Wednesday morning
7 setting forth the court's findings and the basis for those
8 findings as well?

9 MR. SHIPLEY: Yes, Your Honor.

10 THE COURT: All right. Thank you. Anything further?
11 Thank you all.

12 THE CLERK: All rise. Court is adjourned.

13 Mr. Shipley, the arraignment is going to be Tuesday at
14 10:00 o'clock. Next Monday is a holiday.

15 Mr. Rosenbaum, the arraignment and report re: counsel
16 is Tuesday at 10:00. Monday is a federal holiday; Memorial
17 Day. Tuesday, the 31st.

18 MR. ROSENBAUM: Karen, in front of Judge Garber or the
19 duty magistrate?

20 THE CLERK: The duty magistrate.

21 MR. ROSENBAUM: Thank you.

22 (Whereupon the proceedings were concluded)
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

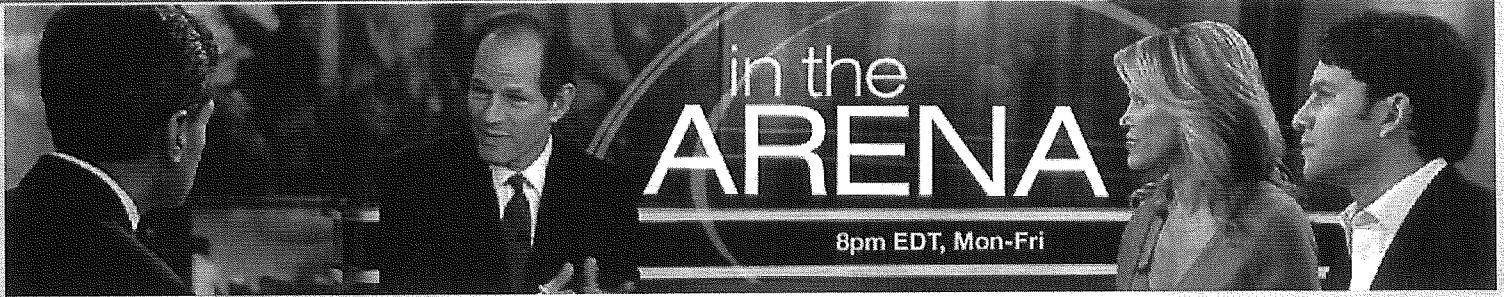
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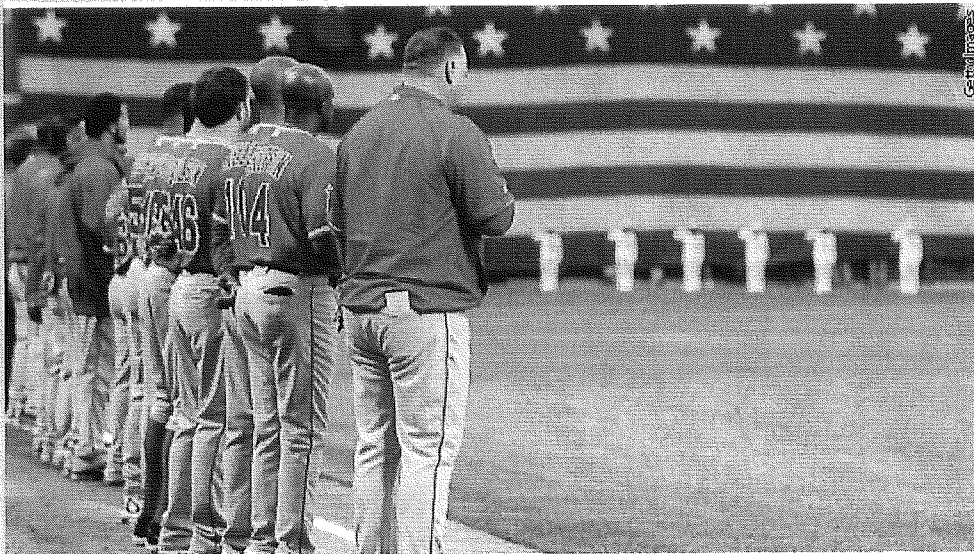
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The Los Angeles Angels line up on the baseline before the game to honor Americans who died in terrorist attacks, a day after U.S. President Barack Obama announced the death of Osama bin Laden, before their game against the Boston Red Sox on May 2, 2011 at Fenway Park in Boston.

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Andrew Breitbart: Rep. Weiner's behavior opened himself up to compromise or blackmail

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PAKISTANI TALIBAN SEND REVENGE THREATS - After a day of international exaltation over the death of Osama bin Laden, questions remain about **who might take over** his terrorist group and whether a trove of material gathered from bin Laden's compound might tip off U.S. officials to other al Qaeda leaders and plots. But already, at least one threat of revenge has surfaced against the United States, which carried out the mission to eliminate bin Laden.

"We are proud on the martyrdom of Osama," Ahsan Ullah Ahsan, spokesman for Tehrik-e-TalebanPakistan(TTP), said late Monday night. "We shall definitely take revenge (on) America as well as Pakistan, as they aided Americans in this operation. All the government functionaries are on our hit list. We shall never spare any one of them."

When asked how the Pakistani Taliban organization would carry out revenge on America, Ahsan said, "We already have our people in America, and we are sending more there."

DECADES OF DENIALS - Al Qaeda leader Osama bin Laden was killed by U.S. special forces on Sunday in the resort town of Abbottabad, just two hours from the Pakistani capital. This ended a nearly decade-long manhunt for the 9/11 mastermind as well as a decade of dubious denials from Pakistani leaders that he could possibly be in their country, reports **Foreign Policy**.

Meanwhile, in **The Washington Post**, Pres. Zardari writes that Pakistan did its part. "Although the events of Sunday were not a joint operation, a decade of cooperation and partnership between the United States and Pakistan led up to the elimination of Osama bin Laden as a continuing threat to the civilized world. And we in Pakistan take some satisfaction that our early assistance in identifying an al-Qaeda courier ultimately led to this day."

WILL ANY TIPSTER GET THAT \$27 MILLION REWARD? - The State Department's Rewards for Justice Program had a \$27 million bounty on bin Laden. At a news briefing, Secretary of State Hillary Clinton was circumspect about the case. "Given the importance of confidentiality to the Rewards for Justice program, I cannot comment at all on whether anyone has been nominated for a reward in this or any other case," she told reporters. The money has paid dividends in other cases, though.

According to **NPR**, the prospect of cash payments motivated an informant to go to the U.S. Embassy in Pakistan and turn in Ramzi Yousef back in 1995. He helped plan the first World Trade Center bombing. The program also helped the U.S. military find Saddam Hussein's sons. An unidentified source shared their location and after a four-hour firefight, both of them died.

But U.S. authorities have offered some reason to doubt whether the bin Laden reward will ever leave the bank. That's because investigators say they pieced together bin Laden's whereabouts from many different bits of information.

OBAMA HONORS TEACHER OF THE YEAR - Maryland teacher Michelle Shearer, the newly named 2011 Teacher of the Year, will be honored on Tuesday by President Obama at the White House along with state winners of the annual contest. According to **The Washington Post**, Shearer is a 14-year teaching veteran who now teaches chemistry at Urbana High School in Frederick, Maryland, and who used to teach at the Maryland School for the Deaf.

She was chosen for her passion for teaching and her ability to reach students, including many who have traditionally been underrepresented in the sciences, including minority students and those with special needs.

KATE'S FATHER-IN-LAW VISITS U.S. - Britain's Prince Charles, the heir to the throne, is coming to Washington, D.C., Tuesday, days after many in the United States were glued to the television watching the wedding of his elder son, William.

He is expected to meet with President Barack Obama during the **three-day visit**, according to a statement from his office. He is also expected to make several stops related to agriculture. Prince Charles is scheduled to deliver the keynote address at a conference on sustainable agriculture at Georgetown University, along with visiting a city farm that grows food for low-income residents in D.C.

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EXHIBIT 4

Terror aid suspect wanted by US arrested in Swat

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ISLAMABAD - Security forces on Monday arrested one Alamzeb and interrogated his mother Amna Bibi, both of whom – along with a third person named Ali Rehman – are wanted by the United States. As per details, a security forces team raided the house of Amna and questioned her in connection with US allegations. Amna's father Hafiz Sher Ali and his two sons Irfanul Haq and Izharul Haq have been arrested by US authorities and charged with giving around \$45,000 to the Taliban militants in Swat through Amna, Alamzeb and Ali Rehman. The security forces did not arrest Amna but took Alamzeb with them to an undisclosed location.

There is no information available about Ali Rehman, who according to Alamzeb runs a shop in Mingora Bazaar. Hafiz Sher Ali's third son, Ikramul Haq, who goes by the name of Ikram Khan, also lives in the US, but faces no criminal charges as yet. However, police record revealed that Ikram was wanted in five cases of terrorism registered with the Kabal police. These cases included attacking and killing police and other security forces personnel and civilians. Alamzeb told investigators that Ikram fled to the US during the military offensive in Swat in 2009. But the Immigration Department has no record whether Ikram was on the ECL.

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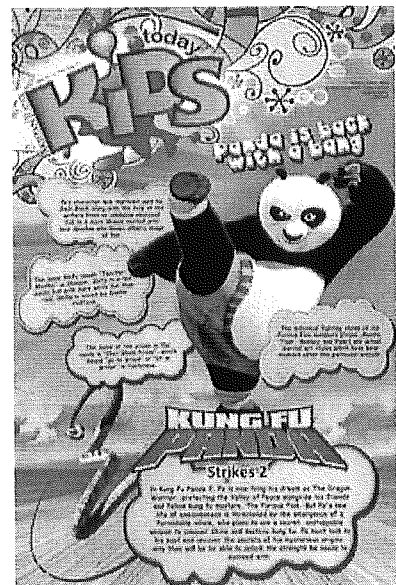
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PESHAWAR - Ikrumul Haq - son of Hafiz Sher Ali Khan, who was arrested along with two of his other sons, Izharul Haq and Irfanul Haq by the US law enforcement agencies on Saturday - is wanted by the Swat police since 2008 in multiple cases pertaining to terrorism, murder, attempt to murder and kidnapping for ransom. Hafiz Sher Ali is the Imam at the Miami Mosque, also known as the Flagler Mosque, while Izhar is the prayer leader at the Jamaat Al-Mu'mineen Mosque in Margate in Florida. The other three charged indicted by the US on Saturday - Ali Rehman, Alamzeb and Amna Bibi - are living in Pakistan. Amna is Hafiz Sher's daughter and Alamzeb is his grandson.

"Three of my maternal uncles, including Ikrumul Haq, are with my grandfather in the US," Alamzeb told Pakistan Today. He and his



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mother Amna contradicted all allegations leveled against them by US law enforcement agencies. Alamzeb, however, confirmed that Rehman was his grandfather's friend from Mingwara in Swat and owned a shop in the area.

The US accused Rehman of receiving money from Hafiz Sher and later handing it over to Amna, who is accused of transmitting the money to the Taliban.

Although Alamzeb denies the allegations against him and his family, officials at the Kabal Police Station told Pakistan Today that Ikramul Haq was wanted in two cases registered in the Kabal Police Station in 2008. "The first case was registered against him on January 12, 2008 under sections 324, 353, 427, 120B, 124A, 512 PPC and 7ATA, and the second case was registered on October 22, 2008 under sections 302, 353, 120B, 364, 434, 3/4Explosives Act, 324, 148, 149, 404 and 7ATA," they said, adding that the latter case pertains to an attack on a security forces' convoy on October 21, 2008.

Police officials also confirmed that Ikram was associated with the Tehreek Nifaz-e-Shariat-e-Muhammadi (TNSM) and later with the ITP headed by Mullah Fazalullah. They said that they were surprised to hear that Ikram had managed to reach the US despite being wanted in Pakistan in serious cases.

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Are Pakistan's charges an afterthought following the arrest of these individuals in the US?

Talk about being proactive in countering terrorism!

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