

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MINNESOTA  
Crim. No. 09-242 (JMR/SRN)

~~FILED UNDER 0041~~

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 v. )  
 MAHAMUD SAID OMAR, )  
 a/k/a "Mohamud Said Omar," )  
 a/k/a "Sharif Omar," )  
 Defendant. )

AFFIDAVIT IN SUPPORT OF  
REQUEST FOR EXTRADITION

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I, William Anders Folk, being duly sworn, depose and state:

1. I am a citizen of the United States, residing in Minneapolis, Minnesota.

2. From October, 2005, until the present, I have been employed by the United States Department of Justice as an Assistant United States Attorney for the District of Minnesota.

3. As an Assistant U.S. Attorney, I am responsible for the preparation and prosecution of criminal cases. In the course of my duties I have become familiar with the charges and the evidence in the case of United States v. Mahamud Said Omar, Criminal Number 09-242 (JMR/SRN).

4. An investigation by the Federal Bureau of Investigation ("FBI") revealed that the subject of this extradition request

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NOV 24 2009  
U.S. DISTRICT COURT ST. PAUL  
FILED NOV 20 2009  
RICHARD D. SLEETER, CLERK  
MINNESOTA DISTRICT

Mahamud Said Omar ("Omar"), provided material support and conspired to provide material support to foreign terrorists and a foreign terrorist organization in 2007 and 2008. Among other actions undertaken by Omar, he provided financial support and encouragement to young men traveling from Minneapolis, Minnesota, to Somalia to fight against Ethiopian troops and to fight on behalf of the terrorist group al-Shabaab. Further, while in Somalia, Omar provided money for the purchase of AK-47 assault rifles to be used by young men for training and fighting on behalf of al-Shabaab. The young men were trained in the use of AK-47 assault rifles by al-Shabaab and ultimately brought these weapons to an al-Shabaab training camp in Southern Somalia. During the time that Omar was involved in his criminal activities, the United States Secretary of State designated al-Shabaab a foreign terrorist organization.

- a. By way of background,<sup>1</sup> between September 2007 and December 2008, approximately 20 young and (with one exception) ethnic Somali men left the Minneapolis, Minnesota area and traveled to Somalia, where they trained with al-Shabaab. Many of them ultimately fought with al-Shabaab

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<sup>1</sup> For additional details, please see the affidavit of FBI Special Agent Kiann Vandover, attached as Exhibit 1.

against Ethiopian forces, African Union troops and the internationally-supported Transitional Federal Government ("TFG").

- b. The first group of six men traveled to Somalia in December 2007. Prior to their departure, Omar provided money to members of the conspiracy to facilitate their travel to Somalia and told the men that he would support them financially in Somalia.
- c. In January 2008, Omar traveled from Minnesota to Somalia. Following his arrival in Somalia, during 2008, Omar visited several of the Minnesota travelers at an al-Shabaab safehouse, where they were staying with members of al-Shabaab. Omar stayed at the al-Shabaab safehouse for a number of days. While at the safehouse, Omar provided money to purchase AK-47 assault rifles and provided a co-conspirator and member of al-Shabaab with money to support the operation of the safehouse. Omar also discussed with the men training and fighting for al-Shabaab.
- d. On February 25, 2008, another ethnic Somali man from Minneapolis traveled to Somalia, joined al-

Shabaab, and trained at an al-Shabaab training camp.

- e. On February 26, 2008, al-Shabaab was designated as a foreign terrorist organization by the U.S. Department of State. The designation became effective on March 18, 2008.
- f. In April 2008, Omar returned to the United States.
- g. In August 2008, two more young men from Minneapolis traveled to Somalia and joined al-Shabaab. In the days before those two travelers left, Omar accompanied them to the airport. During this time period, Omar communicated with other members of the conspiracy, explaining that two additional young men from Minneapolis left for Somalia.
- h. On October 29, 2008, one of the travelers who left Minnesota in December 2007, and stayed at the same al-Shabaab safehouse as Omar, took part in one of five simultaneous suicide attacks on targets in northern Somalia that appeared to have been coordinated. Shirwa Mohamud Ahmed ("Shirwa") drove an explosive-laden Toyota truck

into an office of the Puntland Intelligence Service in Bossasso, Puntland; other targets included a second Puntland Intelligence Service Office in Bossasso, and the Presidential Palace, United Nations Development Program office, and Ethiopian Trade Mission in Hargeisa. Including the suicide bombers, approximately 20 people were killed in the attacks.

- i. In November 2008, Omar spoke with one of the men he had visited and to whom he provided money while in Somalia. The man with whom Omar spoke had attended an al-Shabaab training camp after seeing Omar in Somalia but before returning to the United States. Omar and the man discussed, among other things, their desire to return to Somalia, the fact that al-Shabaab had captured a city in Somalia, and the recent suicide bombing carried out by Shirwa.
- j. In November 2008, Omar hosted a gathering for several of the men who left Minnesota for Somalia. In the following days, another six young men, including several who attended the gathering with Omar, left Minnesota to join al-

Shabaab.

k. Omar left the United States for a second time in November 2008, with a return ticket purchased for December 2008. Despite having purchased a return ticket, Omar never returned to the United States.

5. On August 20, 2009, a federal grand jury, sitting in the District of Minnesota, returned a criminal indictment charging Mahamud Said Omar with violating Title 18, United States Code, Sections 2, 956(a)(1), 2339A(a), and 2339B. An indictment is a formal accusation or charging document issued by a grand jury, which is a part of the judicial branch of the U.S. government. A grand jury consists of 16 to 23 citizens impaneled to review evidence of crimes presented to it by United States law enforcement authorities. Each member of the grand jury must review the evidence presented and determine whether there is probable cause to believe that a crime has been committed and that it is likely that the defendant committed the crime. The grand jury may return an indictment charging the defendant with a crime when at least 12 grand jurors determine that it is more likely than not that the defendant committed the crime. After an indictment is returned, the court will normally issue a warrant for the arrest of the defendant.

6. I have obtained a true and accurate copy of this indictment from the Clerk of Courts, and attached it to this affidavit as Exhibit 2. On August 20, 2009, United States District Judge James M. Rosenbaum signed a warrant for the arrest of Mahamud Said Omar for the offenses charged in the indictment. I have obtained a true and accurate copy of that arrest warrant from the Clerk of Courts, and attached it to this affidavit as Exhibit 3.

7. The statutes cited in the indictment and those applicable to this case are Title 18, United States Code, Sections 2, 956, 2339A(a) and 2339B. A violation of any of these statutes is a felony under United States law. Each of these statutes was the duly enacted law of the United States at the time that the offenses were committed, at the time the indictment was filed, and is now in effect. Copies of the applicable portions of these statutes are attached as Exhibit 4.

8. Omar is charged in an indictment that includes five counts. Counts 1, 3, and 5 charge Omar with conspiracies to commit substantive crimes. Count 1 charges Omar with conspiracy to provide material support to terrorists. Count 3 charges Omar with conspiracy to provide material support to a foreign terrorist organization. Count 5 charges Omar with conspiracy to kill, kidnap, maim, and injure.

9. Under United States law, a conspiracy is defined as an agreement among two or more individuals to commit one or more criminal offenses. The agreement on which the conspiracy is based need not be expressed in writing or in words, but may be simply a tacit understanding by two or more persons to do something illegal. Conspirators enter into a partnership for a criminal purpose in which each member or participant becomes a partner or agent of every other member. A person may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or the identities of all the other members of the conspiracy. If a person has an understanding of the unlawful nature of a plan and knowingly and willfully agrees to it, by joining in the plan he is guilty of committing a conspiracy even though he did not necessarily participate in every action, was not present at the beginning of the conspiracy, and may play only a minor part.

10. United States law dictates that a conspirator can be held criminally responsible for all reasonably foreseeable actions undertaken by other conspirators in furtherance of the criminal partnership. Moreover, because of this partnership, statements made by a conspirator in the course of and while he is a member of the criminal conspiracy are admissible as evidence not only against that conspirator, but also against all



other members of the conspiracy. This occurs because, as stated earlier, a conspirator acts as an agent or representative of the other conspirators when he is acting in furtherance of their illegal scheme. Therefore, statements of conspirators made in furtherance of the conspiracy may be deemed to be the statements of each conspirator.

11. The crime of conspiracy is an independent offense, separate and distinct from the commission of any specific "substantive crimes." Consequently, a conspirator can be found guilty of the crime of conspiracy to commit an offense even where the substantive crime that was the purpose of the conspiracy is not committed. The Congress of the United States has deemed it appropriate to make conspiracy, standing alone, a separate crime, even if the conspiracy is not successful, because collective criminal planning often poses a greater threat to the public safety and welfare than individual conduct and increases the likelihood of success of a particular criminal venture.

Count 1 - Conspiracy to provide material support to terrorists, 18 U.S.C. § 2339A(a)

To satisfy its burden of proof and convict Omar of conspiring to provide material support to terrorists, the United States must establish two elements beyond a reasonable doubt.

First, the United States must prove that there was an agreement between two or more persons to provide material support or resources, knowing or intending that such support or resources would be used in preparation for or in carrying out a conspiracy to kill, kidnap, maim or injure persons in a foreign country, in violation of 18 U.S.C. § 956(a)(1).

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

The term "material support or resources" means any property, tangible or intangible, or service, including currency, lodging, training, expert advice or assistance, safe-houses, weapons, personnel, and transportation, except medicine or religious materials.

Thus, to be guilty of Count 1, the United States must establish that Omar agreed with at least one other person to provide material support to terrorists to effectuate the larger plan to kill, kidnap, or injure persons in a foreign country, and that Omar knew of that plan and intended to help accomplish it.

Count 3 - Conspiracy to provide material support to a Foreign Terrorist Organization, 18 U.S.C. § 2339B.

To prove at trial that Omar conspired to provide material support to a foreign terrorist organization, the United States must prove four elements beyond a reasonable doubt.

First, there was an agreement between two or more persons to provide material support or resources to a foreign terrorist organization.

Second, that the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

Third, the defendant knew that the organization was a designated foreign terrorist organization, or that it is or has engaged in terrorist activities or terrorism.

Fourth, the defendant is a lawful permanent resident of the United States.

Thus, to prove that Omar is guilty of conspiracy to provide material support to a foreign terrorist organization, the United States must establish that Omar entered an agreement to provide material support to a foreign terrorist organization and knew that the goal was to support the foreign terrorist organization. Moreover, the United States must establish that Omar knew that al-Shabaab was a designated foreign terrorist organization, or

that al-Shabaab had engaged in terrorist activities, and that Omar is a lawful permanent resident of the United States.

Count 5 - Conspiracy to kill, kidnap, maim, and injure, 18 U.S.C. § 956 (a)(1).

To satisfy its burden of proof, the Government must prove the following elements beyond a reasonable doubt.

First, that the defendant agreed with one or more other persons to murder, kidnap, or maim another person at a place outside the United States, as those terms are defined below.

Second, that the defendant willfully joined the agreement with the intent to further its purpose.

Third, that the defendant was within the jurisdiction of the United States when he conspired.

Fourth, that, during the existence of the agreement, one of the conspirators committed at least one overt act within the jurisdiction of the United States to effect any object of the agreement. To satisfy its burden of proof, the United States must prove beyond a reasonable doubt that the defendant entered into an agreement with at least one other person to murder, kidnap, or maim another person at a place outside the United States. Murder is the unlawful killing of a human being with malice aforethought. To "kidnap" means to unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away and hold

for ransom or reward or otherwise any person against his will. To "maim" means to intentionally deprive of the use of some part of the body or to mutilate, disfigure, or disable. The term "outside the United States" means any place outside the States of the United States, the District of Columbia, and the territories and possessions of the United States.

To commit an overt act in furtherance of an object of a conspiracy, a participant need not undertake a course of action that is certain or even likely to result in the success of the conspiracy. The law does not require that the act in question be likely to yield an illegal result, or that the act in question even be prohibited by law. Instead, the jury would need only to find beyond a reasonable doubt that a participant in the conspiracy undertook some action for the purpose of furthering an object of the illegal agreement.

12. Omar is also charged with two substantive crimes. Count 2 charges Omar with the substantive crime of providing material support to terrorists. Count 4 charges Omar with the substantive crime of providing material support to a foreign terrorist organization.

Count 2 - Providing material support to terrorists, 18 U.S.C. § 2339A(a).

To satisfy its burden of proof and convict Omar of the substantive crime of providing material support to terrorists, the United States must establish two elements.

First, that the defendant provided material support or resources.

Second, that the defendant did so knowing or intending that such support or resources would be used in preparation for or in carrying out a conspiracy to kill, kidnap, maim or injure persons in a foreign country, in violation of 18 U.S.C. § 956(a)(1).

Thus, the United States must establish that Omar provided material support, such as financial support, personnel or lodging, with the intent that the financial support, personnel or lodging, would be used to carry out a conspiracy to kill, kidnap, maim, or injure a person.

Count 4 - Providing material support to a Foreign Terrorist Organization, 18 U.S.C. § 2339B

To establish a substantive violation of 18 U.S.C. § 2339B, the Government must prove the following.

First, that Omar knowingly provided material support or resources to a foreign terrorist organization.

Second, that Omar knew that the organization was a

designated foreign terrorist organization or that it is or has engaged in terrorist activities or terrorism.

Third, that Omar is a lawful permanent resident of the United States.

Thus, to prove that Omar committed the offense of providing material support to a foreign terrorist organization, the United States must establish that Omar provided material support, such as money or lodging, to a designated terrorist organization, such as al-Shabaab, and that Omar is a lawful permanent resident of the United States.

13. The statute of limitations for prosecuting these offenses is found in Title 18, United States Code, Section 3286, which provides an extension of the statute of limitations for certain terrorism offenses to eight years. Section 3286 states:

Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any noncapital offense involving a violation of any provision listed in section 2332b(g)(5)(B), . . . , unless the indictment is found or the information is instituted within 8 years after the offense was committed.

To come within the scope of Section 3286, an offense must qualify as a federal crime of terrorism. Title 18, United States Code, Section 2332b(g)(5)(B) defines the term "Federal crime of terrorism" to include violations of Title 18, United

States Code, Sections 956(a)(1), 2339A and 2339B, which are the charges in the indictment. Since the applicable statute of limitations is eight years, the indictment dated August 20, 2009, which charges criminal violations beginning in September 2007 and continuing to August 20, 2009, was filed within the prescribed time.

14. Omar was born on January 1, 1966, in Somalia. He is a citizen of Somalia and was granted status as a Lawful Permanent Resident of the United States in 1994. Pursuant to Title 18, United States Code, Section 2339B, there is extraterritorial jurisdiction over this offense if the offender is an alien lawfully admitted for permanent residence in the United States. Attached to this document as Exhibit 1 is the affidavit of FBI Special Agent Kiann Vandenoever. Special Agent Vandenoever's affidavit further details the evidence against Omar and provides additional information regarding the identification of Omar.



15. Each of these affidavits was sworn to before a United States Magistrate Judge, legally authorized to administer an oath for this purpose. I have thoroughly reviewed these affidavits and the attachments to them, and attest that this evidence indicates that Omar is guilty of the offenses charged in the indictment.

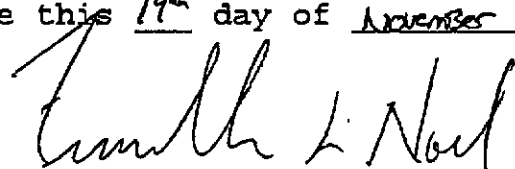
Respectfully submitted,

B. Todd Jones,  
United States Attorney,  
District of Minnesota



BY: W. ANDERS FOLK  
Assistant U.S. Attorney  
District of Minnesota

Signed and sworn to before me this 19<sup>th</sup> day of November, 2009,  
in Minneapolis, Minnesota.



The Honorable Franklin L. Noel  
United States Magistrate Judge