

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	NO. 1-11cr561
)	
SYED GHULAM NABI FAI)	
)	

GOVERNMENT’S RESPONSE TO DEFENDANT’S OPPOSITION

On March 10, 2014, The United States of America moved this Court, pursuant to Fed.R.Crim.P. 36, to correct the judgment to reflect the terms of supervision that the Court imposed at sentencing. On March 24, 2014, this Court amended the judgment to reflect the Court’s sentence as originally imposed. Specifically, the Court amended Special Condition of Supervision #4 to state that:

The defendant shall have no contact with any agent, employee, or representative of the ISI or the Government of Pakistan or any individual that the defendant has identified to the FBI as supported by or in regular contact with the Government of Pakistan.

In his opposition motion (filed March 31, 2014), defendant raises two grounds: first, that the original judgment accurately reflected the sentence that the Court imposed at sentencing; and second, that the government’s requested special condition is not reasonably related to deterrence and rehabilitation, and violates defendant’s First Amendment right of free association.¹

¹ Since the United States has already stated the discrepancy between the oral and written sentence in its Rule 36 Motion to amend the judgment, this reply is limited to defendant’s First Amendment argument.

Argument

Defendant raises, for the first time,² a First Amendment challenge to the term of supervision, and in doing so argues that the United States has failed to show under 18 U.S.C. § 3583(d) that this condition involves no greater deprivation of liberty than is reasonably necessary to serve the goals of deterrence, protection of the public, and/or defendant rehabilitation. Defendant cited *United States v. Hendricks*, 69 F. App'x 592, 597 (4th Cir. 2003) for the statement that a special condition of supervised release may restrict constitutional rights, including a defendant's right to free association, when the special condition is narrowly tailored and advances the statutory goals of 18 U.S.C. § 3583(d). *Hendricks* cited a string of cases, including *Malone*, a Ninth Circuit case, for the proposition that "probation conditions may seek to prevent reversion into a former crime-inducing lifestyle by barring contact with old haunts and associates, even though the activities may be legal." *Id.*, at 597 (citing references omitted).

Courts have imposed even greater restrictions on defendants' First Amendment rights of associations than that which the Court imposed in this case, where the defendants' crimes arose from ideological motivation. Those courts have limited contact not only with co-conspirators, but with similar political groups or situations that would likely cause the defendant to relapse into crime during probation or supervised release. For example, in *Malone*, (*Malone v. United States*, 502 F.2d 554, 556-57, (9th Cir. 1974)), defendant was convicted of unlawfully exporting firearms from the United States to the United Kingdom. The Court banned Malone from association not only with former conspirators, but from participating in any American Irish Republican

² Although the United States asked for this condition in its sentencing memorandum (Dckt. #58, p. 9, n. 4) and again at sentencing (Transcript, p. 15-16, lines 23-25), defendant has not opposed this condition until now.

movement, or any Irish organizations (including Irish Catholic organizations), from visiting Irish pubs, or from accepting any employment, either directly or indirectly with any Irish organization. The Court found that this extensive limitation of Malone's First Amendment rights, was reasonably tailored to prevent recidivism, because Malone did not export arms out of profit or malice, but out of a "tremendous emotional involvement" for the Irish Republican movement. *See also United States v. Schave*, 186 F.3d 839, 843-44 (7th Cir. 1999) (upholding special condition that defendant not associate either directly or indirectly with any member of an organization that espouses violence or the supremacy of the white race where defendant was convicted of providing weapons and explosives to a particular group); *United States v. Turner*, 44 F.3d 900, 903 (10th Cir. 1995) (restricting abortion protestor convicted of obstructing a federal court order from political protest at any abortion clinics as a condition of her probation where defendant's deep ideological opposition to abortion could encourage her to break the law during probation).

At sentencing, this Court noted that defendant's crime arose from his political motivation, and even at sentencing, defendant still believed that even though he knew what he did was unlawful, that what he did on behalf of Kashmir justified the means that he used. Tr. p. 26, lines 16-22; p. 28 lines 4-10. The special condition which the Court has entered is neither an overbroad limitation of defendant's First Amendment Rights, nor is it even as broad as defendant states in his brief in opposition. Defendant can, and indeed has continued to without objection, to work for a non-profit that advances the Kashmiri cause as the Secretary General of World Kashmir Awareness, to speak at conferences, and to meet with representatives of think tanks and with academics. However, absent this special condition, defendant has admitted that he has every

intention of continuing to meet with persons involved with Pakistan's intelligence service (Def. Mot., Dkt. 79, p. 6). It is defendant's long involvement with such individuals, coupled with his zealotry to his cause that led to his conviction in the first place. Thus, the special condition as reflected in the judgment today, is not a broad and impermissible infringement of defendant's First Amendment right of association, but is reasonably tailored to deter the defendant from future criminal conduct.

Respectfully submitted,

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Acting United States Attorney

April 1, 2014

By: _____ /s/

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2014, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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