

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 14-426
HAYATULLAH DAWARI	:	

ORDER

AND NOW, this day of August, 2014, upon consideration of the arguments of counsel for the government and the defendant, IT IS HEREBY ORDERED that the Defendant's Motion for Revocation of Magistrate's Pretrial Detention Order is DENIED.

The Court further finds that:

- (a) the government has proved by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required; and
- (b) the government has proved by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community, as required by Title 18, United States Code, Section 3142(e).

BY THE COURT:

HONORABLE STEWART DALZELL
Judge, United States District Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
v. : **CRIMINAL NO. 14-426**
 :
HAYATULLAH DAWARI :

**GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION FOR REVOCATION OF PRETRIAL DETENTION ORDER**

On August 5, 2014, a grand jury sitting in the Eastern District of Pennsylvania returned an indictment charging Hayatullah Dawari with immigration fraud, stemming from his failure to disclose his affiliation with Hezb-e-Islami Gulbuddin (“HIG”) on his N-400 Application for Naturalization. HIG is a virulently anti-western insurgent group active in Afghanistan and Pakistan. HIG has long-established ties with al-Qaida, and it has claimed responsibility for many attacks against U.S. and coalition forces in its effort to rid the west from Afghanistan. HIG founder Gulbuddin Hikmatyar has been named a Specifically Designated Global Terrorist by the U.S. Treasury Department.

Investigation has revealed that Dawari’s fraudulent omission was not only knowing and intentional, but that he poses both a risk of flight and a threat to our national security because of his HIG contacts:

- As an Afghan citizen who still owns property in Afghanistan and retains many contacts in Afghanistan and Pakistan, Dawari poses a great flight risk should he be released from detention.
- In recent months, Dawari has been in touch with a HIG associate in Pakistan about urgent shipments of books from Pakistan to the U.S. In

one such shipment, a book was found to have two pages glued together, with a note secreted inside. The note appears to contain a coded message with directions for some urgent action.

- Both shipments of books were accompanied by instructions to forward select books to other individuals, including a known HIG associate located in Philadelphia. A search of that associate's home revealed a handwritten sheet that appeared to be a cypher, containing a list of numbers and cryptic words.

On August 8, 2014, the government filed a Motion for Pretrial Detention pursuant to 18 U.S.C. §§ 3142(e) and (f), arguing that no condition or combination of conditions could reasonably assure the defendant's appearance as required and/or the safety of the community. After hearing arguments from counsel, United States Magistrate Judge Lynn A. Sitarski granted the government's motion on both grounds and ordered the defendant detained pending trial.

Pending before this Court is the defendant's Motion for Revocation of Magistrate's Pretrial Detention Order. For the reasons set forth below, the defendant's motion should be denied.

I. THE FACTS

The government makes the following representations and proposed findings of fact:

A. The Evidence In This Case is Strong.

1. There is probable cause to believe that the defendant has violated Title 18, United States Code, Sections 1425(a) and 1546, as charged in the indictment filed on August 5, 2014.

2. The evidence in this case is strong:

a. On his N-400 Application for Naturalization, the defendant certified “under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct.”

b. Question 8a on the defendant’s N-400 Application asked, “Have you **ever** been a member of or associated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place?” The defendant responded to this question by placing an “X” in the box marked “No.” The defendant submitted this form to the United States Citizenship and Immigration Services.

c. Contrary to his answer to N-400 question 8a, the defendant was a member of HIG while he lived in Afghanistan and Pakistan. The defendant confirmed this in a telephone call that occurred within weeks of his submission of his N-400 Application.

d. In addition, in the months surrounding his N-400 submission, the defendant received two packages of books from a HIG associate in Pakistan, including one containing a hidden coded message.

B. The Defendant Poses a Severe Flight Risk.

1. The total maximum penalty defendant faces is 20 years' imprisonment, as well as a \$500,000 fine, giving him a substantial incentive to flee.

2. The defendant is a citizen of Afghanistan. Further, he retains strong ties in both Afghanistan and Pakistan, countries from which it would be difficult, if not impossible, for the government to locate the defendant and secure extradition should the defendant choose to flee. He still owns property in Afghanistan, and he has numerous friends and associates who could hide him in those countries (including the associate who shipped him the books from Pakistan). In fact, shortly after arriving in the United States as a lawful permanent resident, the defendant returned to Afghanistan and Pakistan and remained there for seven months.

3. The defendant also has family and associates in various locations around the United States (including New York, Washington, and California), who could help hide him should he choose to flee.

4. As an Afghan citizen, the defendant faces deportation upon conviction, increasing the risk that he will not appear as required by the Court. Immigration authorities have filed a detainer on the defendant.

C. The Defendant Poses a Serious Risk of Danger to the Community.

1. Investigation has revealed that the defendant has ties with HIG, a violent, anti-western insurgent group active in Afghanistan and Pakistan. HIG is affiliated with al-Qaida, and it has claimed responsibility for many attacks against U.S. and coalition forces in its effort to rid the west from Afghanistan. HIG founder Gulbuddin Hikmatyar has been named a Specifically Designated Global Terrorist by the U.S. Treasury Department

2. In recent months, Dawari has been in touch with a HIG associate in Pakistan about urgent shipments of books from Pakistan to the U.S. One such shipment arrived at Dawari's home address in October 2013, and another arrived at Dawari's home address in January 2014.

3. The January shipment of books was intercepted by the FBI. In one book, two pages were found to be glued together, with a note secreted inside. The note, when translated from Pashto to English, appears to contain a coded message directing some urgent action. For example, the note included the following lines:

1. Please, utilize the sentence number [#]¹ for the time being.
3. Please, utilization of the sentence number [#] is required now.
4. Please, wait to receive other books for sentences number [#].

4. Both shipments of books were accompanied by instructions to forward select books to other individuals, including a known HIG associate located in Philadelphia. A search of that associate's home revealed another sheet that appeared to be a cypher, containing a list of numbers and cryptic words.

II. CONCLUSION

When all these factors are viewed in light of the substantial sentence defendant faces if convicted, it is clear that no condition or combination of conditions will reasonably assure the presence of the defendant as required and/or the safety of the community.

¹ The numbers, as well as the remaining text of the note, have been omitted from this document for security purposes.

WHEREFORE, the government respectfully submits that Defendant's Motion for Revocation of Magistrate's Pretrial Detention Order should be denied.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney



JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

Dated: August 12, 2014

CERTIFICATE OF SERVICE

I certify that a copy of the Government's Response in Opposition to Defendant's Motion for Revocation of Pretrial Detention Order was served by e-mail on the following defense counsel:

Nino V. Tinari, Esq.
1528 Walnut Street
Suite #1212
Philadelphia, PA 19102



JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

Date: August 12, 2014