

JHK:BWB

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

AHMAD WAIS AFZALI,
Defendant.

FILED UNDER SEAL

COMPLAINT & AFFIDAVIT IN
SUPPORT OF ARREST WARRANT

(T. 18, U.S.C., § 1001
(a)(2))

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EASTERN DISTRICT OF NEW YORK, SS:

FARBOD AZAD, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), duly appointed according to law and acting as such.

Upon information and belief, on or about and between September 10, 2009 and September 18, 2009, both dates being approximate and inclusive, within the Eastern District of New York, the defendant AHMAD WAIS AFZALI did knowingly and willfully make materially false, fictitious and fraudulent statements and representations, in a matter involving international and domestic terrorism, within the jurisdiction of the executive branch of the Government of the United States.

(Title 18, United States Code, Section 1001(a)(2))

The source of your deponent's information and the grounds for his belief are as follows:^{1/}

^{1/} Because the purpose of this affidavit is merely to establish probable cause, I have not set forth all of the facts and

1. I have been a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the New York Joint Terrorism Task Force ("JTTF"), for approximately one and a half years. As a Special Agent, I have investigated numerous matters during the course of which I have conducted physical surveillance, executed court-authorized search warrants and used other investigative techniques to secure relevant information.

2. As a result of my personal participation in this investigation and analysis of reports submitted by the FBI and other federal, state and local law enforcement personnel, I am familiar with all aspects of this investigation. All of the statements set forth below are provided only in part and in sum and substance.

BACKGROUND

3. At all times relevant to this complaint, the FBI has been investigating several individuals in the United States, Pakistan and elsewhere, relating to a plot to detonate improvised explosive devices inside the United States, in violation of Title 18, United States Code 2332a(a)(2).

4. Customs and Border Protection ("CBP") records reflect that on August 28, 2008, an individual known to law enforcement ("Individual A") traveled to Peshawar, Pakistan from Newark International Airport via Geneva, Switzerland and Doha,

circumstances of which I am aware.

Qatar. CBP records further reflect that Individual A traveled from Peshawar to John F. Kennedy International Airport ("JFK") on or about January 15, 2009.

5. Peshawar is located in the Northwest Frontier Province ("NWFP") region of Pakistan. During the course of this investigation, I have learned that Al Qaeda maintains training facilities and safe houses within the NWFP, specifically the Federally Administered Tribal Areas, or "FATA," of Pakistan. The FATA encompasses approximately 27,500 square kilometers and is located on the border between the NWFP and southern Afghanistan. The Center for Strategic and International Studies describes the FATA as "ground zero in the U.S. Jihadist war . . . [and] home to many Al Qaeda operatives, especially the numerous foreigners from the Arab world, Central Asia Muslim areas of the Far East, and even Europe who flock to this war zone for training, indoctrination, and sometimes respite from repression at home." Nawaz, Shuja, "Fata-A Most Dangerous Place," Center for Strategic and International Studies Press, January 2009, pp. vi, 1.

6. On or about September 9, 2009, FBI agents conducting surveillance observed Individual A depart his residence in Aurora, Colorado (the "Colorado Residence"), in a rented car. Individual A drove from Colorado to New York, arriving in New York City on September 10, 2009. Individual A

spent the night of September 10, 2009, at a residence in Flushing, Queens (the "Queens Residence").

7. On September 10, 2009, detectives from the New York City Police Department ("NYPD") met with the defendant AHMAD WAIS AFZALI, whom the NYPD has utilized as a source for information in the past. During the September 10 meeting, detectives met with AFZALI to obtain information about Individual A and others. Among other things, detectives showed AFZALI photographs of Individual A and others. AFZALI told detectives that he recognized several of the men, including Individual A.

8. On or about September 11, 2009, pursuant to legally-authorized electronic surveillance, FBI agents intercepted a telephone conversation between Individual A and Individual A's father. During this conversation, the father advised Individual A that the defendant AHMAD WAIS AFZALI called him and told him that "they" had showed AFZALI photographs of Individual A and others, including individuals identified herein as Individual B and Individual C. During the conversation, the father told Individual A that he should speak with AFZALI as soon as possible.

9. In the midst of this phone call, Individual A received a call from the defendant AHMAD WAIS AFZALI on the other line. Individual A ended the call with his father and began speaking with AFZALI. According to a draft summary

transcription, AFZALI and Individual A discussed the following, among other things, in English.

a. AFZALI told Individual A that he had just spoken to Individual A's father. AFZALI said he did not want Individual A to get nervous because "all this stuff is going on." AFZALI then asked Individual A for telephone numbers for Individual B and Individual C. AFZALI then stated:

I want to speak with you about something . . . I want a meeting with you, [another individual, referred to herein as Individual D], [Individual B] and [Individual C] . . . You probably know why I'm calling you for this meeting . . . I was exposed to something yesterday from the authorities. And they came to ask me about your characters. They asked me about you guys. . . .

I'm not sure if somebody complained about you. I'm not sure what happened. And I don't want to know . . . They [the authorities] said, 'Please, we need to know who they are . . . what they're all about.' . . . And I told them that they are innocent, law abiding. . .

b. AFZALI asked Individual A the date when he last traveled to Pakistan. Individual A said it was eight months ago, and AFZALI responded, "You went to visit your wife, right?" Individual A answered, "Yeah." AFZALI also explained to Individual A that "They [the police] came to the masjid to ask for help. That is a good sign. Trust me that is a good sign. The bad sign is for them coming to you guys and picking you up automatically."

c. AFZALI advised Individual A, "Don't get involved in Afghanistan garbage, Iraq garbage," and added, "Listen, our phone call is being monitored."

10. On or about September 11, 2009, FBI agents legally intercepted a telephone conversation between the defendant AHMAD WAIS AFZALI and Individual A. Individual A told AFZALI that his rental car had been stolen and that he feared he was being "watched." Individual A told AFZALI that the people watching him took his car. AFZALI asked Individual A if there was any "evidence in his car" and Individual A said no.

11. On or about September 11, 2009, FBI agents conducted a legally-authorized search of Individual A's rental car, which was parked near the Queens Residence. During the search of the car, a laptop computer was found containing jpeg images of multiple pages of handwritten notes. The notes contain formulations and instructions regarding the manufacture and handling of initiating explosives, main explosives charges, explosives detonators and components of a fuzing system. A physical scientist with the FBI laboratory has opined that the notes include the steps necessary to produce an effective explosive charge.

12. Rental records reflect that Individual A was supposed to return his rental car in New York on September 14,

2009. However, on September 12, 2009, Individual A flew from La Guardia Airport in Queens, New York to Denver, Colorado.

13. On or about September 17 and 18, 2009, Individual A was interviewed by the FBI in Denver, Colorado pursuant to a proffer agreement that allows for the derivative use of the information he provided during the interview. Individual A admitted that during his 2008 trip to Pakistan, he attended courses at an Al Qaeda training facility in the FATA region of Pakistan. Individual A admitted that he received instruction from Al Qaeda operatives on subjects such as weapons and explosives.

AFZALI's FALSE STATEMENTS

14. On or about September 17, 2009, the defendant AHMAD WAIS AFZALI was interviewed by members of the JTTF at the United States Attorney's Office in the Eastern District of New York. AFZALI was advised of his Miranda rights and he signed a Miranda waiver form indicating that he understood his rights and agreed to waive them in English, which he understood. During this interview, AFZALI was questioned about, among several other topics, his conversations with Individual A and Individual A's father. AFZALI wrote a statement detailing his activity. In this statement, AFZALI asserts that on September 10, 2009, he met with NYPD detectives who showed him photographs of four men and asked him questions about these men. AFZALI states that "[w]hen

I was presented with their pictures, I believed [sic] may be some crime." AFZALI stated that he received a call from Individual A's father. Specifically, in his written statement AFZALI stated:

[Individual A's father] calls asking who I am what I want [with Individual A]. Then I told him not to worry I am from the mosque. When realized and find out who I am I he calmed down. Where's you son I want to talked to him. How he said why? Then I said just talk. He said is everything ok? I said yes. Then he tells me my son is in NY on business trip he would call. I gave him my phone number.

15. In his written statement, the defendant AHMAD WAIS AFZALI claimed that he received a telephone call from Individual A approximately five or six minutes after he finished his telephone call with Individual A's father

16. During the September 17, 2009 interview, the defendant AHMAD WAIS AFZALI was asked whether he told Individual A or Individual A's father that the authorities had approached AFZALI and asked him about Individual A. AFZALI said that he did not. AFZALI was asked whether he told Individual A that they were being monitored while talking on the telephone, AFZALI answered that he had not. Further, in his written statement AFZALI stated:

[Individual A] called me saying after Islamic greeting how are? Surprise that I want speak to him. What's going? I said just want say hello. where you been what's going? Then he said I've been moved to CO with my family I'm working full time. Then I said you want to

meet for Friday prayer? He said no because I am leaving I have a flight at 2:00 for to back to CO. He told me that he's in NY. Then I said you meet to break you fast he said no. Then I said can have [Individual C]'s phone number he said ok. I asked where you have been, etc. Then he said Pakistan about 8 months ago. He tells me is everything ok because they also come to my house. Then I said who come to your house? He said the authorities come. Then he said I just to Pakistan I didn't do any wrong. Then I said that's fine.

17. In his written statement, the defendant AHMAD WAIS AFZALI described additional calls he received from Individual A. AFZALI does not admit that he asked Individual A whether he had any "evidence" in his car. Specifically, AFZALI wrote:

[Individual A] calls that my car is missing/stealing. I told him call 911 report a stealing car. He said I am going do that. Then he calls back. He tells the car is not stolen then I told him how does he know his car is not stolen, check for signs towing zone etc. He tells no. Ever other car is here except mine. I told go to 109 pct file a report. Then he called back again saying the pct told him go back to same spot wait for the cops. . . . then tells me I know who did it I said who? He said its them they been following me all day. I am going knock on the window they have my car. I told him do not be idiot call the cops. If some something happens it's rental car report. He said I call the rental co.

WHEREFORE, your deponent respectfully requests that the defendant AHMAD WAIS AFZALI be dealt with according to law and, given the nature of this defendant and the investigation, that

the arrest warrant and affidavit be sealed until the defendant has been arrested.



Farbod Azad
Special Agent
Federal Bureau of Investigation

Sworn to before me this
19th day of September, 2009

HONORABLE THOMAS E. BOYLE
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

has been returned.

Farbod Azad

Farbod Azad
Special Agent
Federal Bureau of Investigation

Sworn to before me this
20th day of September, 2009

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[Signature]

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

[REDACTED]