

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,
Plaintiff,
- against -
HAMZA AHMED, et al.,
Defendants.

MOTION TO SEVER DEFENDANT
HAMZA AHMED
15-CR-49 (MJD/FLN)

Hamza Ahmed, through his attorney, respectfully moves the Court for an Order severing his case for trial from that of his co-defendants.

FACTS

Mr. Ahmed is charged in four counts of an eight-count superseding indictment filed on May 18, 2015. [ECF 65] Count One charges all Defendants with conspiracy “to provide material support and resources, including personnel, as that term is defined in title 18 United States Code, Section 2339A(b)(1), to a foreign terrorist organization, namely Islamic State in Iraq and the Levant,” from March 2014 through to the present, knowing such organization was a designated terrorist organization, that had engaged in or was engaging in terrorist activity and terrorism, in violation of § 2339B(a)(1). *Id.* Count three charges Mr. Ahmed with attempt “to provide material support and resources, including personnel, to a foreign terrorist organization, namely Islamic State in Iraq and the Levant,” on November 8, 2014, knowing such organization was a designated terrorist organization, that had engaged in or was engaging in terrorist activity and terrorism, in violation of § 2339B(a)(1). *Id.* Count five charges him with making a false statement, in violation of 18 U.S.C. § 1001. Count seven charges him with financial aid fraud, in violation of 20 § 1097(a).

A. Complaint Against Hamza Ahmed

Mr. Ahmed was arrested on February 4, 2015, and arraigned on a complaint charging him with making false statements to FBI agents (the “Complaint”). The Complaint alleged that on November 8, 2014, then 19 year-old Mr. Ahmed had been removed from a flight bound from JFK International Airport in New York for Istanbul, Turkey, with a forwarding ticket to Madrid, Spain. *Id.*, ¶ 7. Prior to his detention, JFK officials prevented three other 19 and 20 year-old Minneapolis residents – later identified as Defendants Mohamed Farah, Hanad Musse and Zacharia Abdurahman – from boarding flights to Istanbul, Sofia, Bulgaria, and Athens, Greece, respectively. *Id.*, ¶¶ 6, 7. Questioned first by US Customs and Border Officers, and then by FBI agents, Mr. Ahmed allegedly stated that he was traveling alone; did not know two of the other individuals apprehended earlier by JFK officials; and had funded his trip with his own money. *Id.*, ¶ 7. After this interview, Ahmed and three other individuals took a bus back to Minneapolis, arriving on November 9, 2014. *Id.*, ¶ 8. Upon his arrival, Mr. Ahmed was interviewed again by FBI agents, and he allegedly reiterated that he had been traveling alone and had planned to vacation in Madrid for four days. *Id.*

The Complaint noted that video footage from the Minneapolis bus station indicated that Mr. Ahmed was travelling with one of the other individuals denied departure at JFK on November 8, 2014. *Id.*, ¶ 10. In addition, transaction records from Greyhound indicated that the two had purchased their bus tickets within 25 minutes of each other. *Id.*

Mr. Ahmed returned to his studies at Minneapolis Community and Technical College. There were no allegations in the complaint – and indeed, nothing has been provided in discovery – to suggest that after November 8, 2014, Mr. Ahmed entertained any intention of leaving the country again.

B. The Complaint Against the Other Six Defendants

On April 20, 2015, an additional six Defendants were charged by complaint with conspiring to provide material support to ISIL (“Complaint II”).

Complaint II recounted that Guled Omar had allegedly planned to leave the US “to join ISIL” in May 2014, but later abandoned the plan under parental pressure. *Id.*, ¶ 29-30. It further recounted how Mohamed Farah, Hanad Musse, Zacharia Abudrahman and Hamza Ahmed “attempted to leave the United States and make their way to Syria to join, and fight with, ISIL,” between November 6 and November 8, 2014. *Id.*, ¶ 35. Omar attempted to fly from Minneapolis to San Diego but was not permitted to board by the FBI. *Id.*, ¶ 37. On November 5 and 6, Mohamed Farah, Abdurahman, Musse and Ahmed traveled by Greyhound bus to New York City, and on November 8, purchased plane tickets to various destinations in southeastern Europe. *Id.*, ¶¶ 37, 38. All four were prevented from traveling by federal agents at JFK. *Id.*, ¶ 38. In subsequent interviews, the four stated they were traveling alone for vacation. *Id.*, ¶ 43.

Complaint II details how Omar, the Farah brothers, Musse, Abdurahman and Daud allegedly planned another attempt to leave the U.S. for Syria. Some of their conversations were recorded by a confidential human source. *Id.*, ¶ 51. In these recorded conversations, Defendants described their previous efforts to leave the United States, *id.*, ¶¶ 52-55, and a future effort using fake passports obtained in Mexico. *Id.*, ¶¶ 56-61. They also recounted conversations with Abdi Nur, an individual the government believes was fighting with ISIL in Syria, *id.*, ¶ 67, and who the government believes attempted to “encourage and assist [Defendants] in traveling from the United States to Syria to join ISIL.” *Id.*, ¶ 20.

Hamza Ahmed is not alleged to have participated in any plans post-November 2014 to travel outside the United States. There is no evidence that Mr. Ahmed attempted to leave the United States before. There is no evidence that he was ever in contact with Abdi Nur. Indeed, there is no evidence that he had any further communication with his co-defendants after November 8, 2014.

ARGUMENT

I. Legal Standard

Rule 14(a) of the Federal Rules of Criminal Procedure states: “If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trials, or provide any other relief that justice requires.” Fed. R. Crim. P. 14(a).

Interpreting Rule 14(a), courts hold, “a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” *Zafiro v. United States*, 506 U.S. 534, 539 (1993). Severance is “allowed upon a showing of real prejudice to an individual defendant.” *United States v. Sandstrom*, 594 F.3d 634, 644 (8th Cir. 2010) (quoting *United States v. Bostic*, 713 F.3d 401, 403 (8th Cir. 1983)). “A defendant can show real prejudice either by showing that his defense is irreconcilable with the defense of his codefendant . . . or that the jury will be unable to compartmentalize the evidence as it relates to separate defendants.” *Sandstrom*, 594 F.2d at 644 (quoting *United States v. Shivers*, 66 F.3d 938, 940 (8th Cir. 1995)).

II. The Court Should Sever Mr. Ahmed's Case As the Jury will be Unable to Compartmentalize the Evidence as it Relates to Mr. Ahmed

All defendants are charged with conspiracy to provide material support to a foreign terrorist organization and with attempt to provide material support to a foreign terrorist organization. Notably, however, Mr. Ahmed is only alleged by the government to have tried to fly to Syria once. When removed from his flight to Turkey, there is no allegation or evidence that he attempted to fly again. Thus, unlike the wealth of evidence suggesting that his co-defendants continued to plan alleged departures to Syria – despite the thwarting of their own first efforts, and the arrests of Abdullahi Yusuf on November 25, 2014, and Mr. Ahmed on February 4, 2015 – Mr. Ahmed's connection to this offense was short-lived. The spillover effect of the evidence against the co-defendants will be highly and unfairly prejudicial to Mr. Ahmed. The evidence will subvert Mr. Ahmed's presumption of innocence. The cure for this is simple and necessary. Mr. Ahmed's trial should be severed from that of his co-defendants.

III. Failure to Sever Will Lead to a Violation of Mr. Ahmed's Sixth-Amendment Rights.

It appears the United States will offer into evidence statements by Mr. Ahmed's co-defendants, including extensive recordings with a confidential source. Some of these statements may implicate Mr. Ahmed. Admitting these statements while those co-defendants are joined in this case would violate his Sixth-Amendment right "to be confronted with the witnesses against him" because those witnesses have the right to not testify. U.S. Const. Amend. VI; *Bruton v. United States*, 391 U.S. 123 (1968).

Accordingly, this Court should sever Defendant Ahmed's case for trial to vindicate his Sixth Amendment right of confrontation.

CONCLUSION

For the foregoing reasons, Mr. Ahmed respectfully requests that his trial be severed from his co-defendants.

Dated: August 7, 2015

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