

of money intending the money to be transferred to, and used in support of, Abdullah Ramo Pazara, and others known and unknown to the Grand Jury, who were fighting in Syria, Iraq, and elsewhere in support of the designated FTOs.” R. 2, p. 5, ¶5. She is also alleged to have contributed her personal money, intending that it be “transferred to, and used in support of, Abdullah Ramo Pazara” and others. R. 2, p. 5-6, ¶6.

The indictment further alleges that Ms. Salkicevic and her co-defendants “knew that Abdullah Ramo Pazara and others known and unknown to the Grand Jury were fighting in Syria, Iraq and elsewhere and that said individuals received materials, money, and supplies provided by the defendants while Abdullah Ramo Pazara and others were engaged in violent activities overseas, including conspiring to murder and maim persons, and further knew and intended that the materials money, supplies, and property that were provided to said Abdullah Ramo Pazara and others ... would be used to support said individuals who were fighting with, and in support of the designated FTOs.” R. 2, p. 7, ¶11.

Specifically, as part of the conspiracy, Ms. Salkicevic is alleged to have collected money in August and October 2013, and again in January 2014, and sent that money to co-defendant Siki Ramiz Hodzic, in St. Louis, Missouri. On August 10 and 12, Ms. Salkicevic is alleged to have sent a total of \$1,500 to Siki Ramiz Hodzic. On October 6 and 10, 2013, Ms. Salkicevic is alleged to have sent \$1,200 to Siki Ramiz Hodzic, who was still in St. Louis, Missouri. On January 4, 2014, Ms. Salkicevic is alleged to have sent \$1,062 to Siki Ramiz Hodzic, again in St. Louis. R.

2, pp. 9-13, ¶¶18, 27, and 36. Ms. Salkicevic is not alleged to have sent any of that money overseas, herself, or to have intended that the money be used for purchases attributed to Siki Ramiz Hodzic as alleged in the indictment, as opposed to the purchase of non-lethal aid consistent with her work for Bosnian women and children through Sadaka Teslic.

Count III alleges that Ms. Salkicevic and her co-defendants did knowingly and willfully provide, and attempt to provide, material supplies and resources, knowing and intending that such support was to be used in preparation for, and in carrying out, conspiracy to commit at places outside the United States acts that would constitute the offenses of murder and maiming if committed within the United States.

As will be discussed below, in addition to the lack of specific intent that any murder be committed, and the insufficient factual basis to defend against a conspiracy to commit murder, the indictment fails in two additional ways: (1) to allege sufficient facts to defend against the claim that Abdullah Pazara fought with, or in support of, foreign terrorist organizations, as opposed to fighting *against* Bashar al-Asad and his military forces that were being used against civilians, political opponents, and insurgents; and (2) insufficient facts are alleged to justify the application of Title 18, United States Code, Section 956(a) to combat action in the context of a civil war in which the United States also was providing support to groups who were fighting against the military led by Bashar al-Asad

- B. Abdullah Pazara is alleged to have fought in Syria with foreign terrorist organizations, but is not alleged to have committed particular acts of murder or maiming.

The only named individual who is alleged to have received support from alleged co-conspirators is Abdullah Pazara who is alleged to have “traveled to, and fought in, Syria, Iraq and elsewhere” and to have fought “with, and in support of: Al’Qa’ida in Iraq, Al-Nusrah Front, the Islamic State of Iraq and the Levant, and the Islamic State of Iraq and Syria.” R. 2, p. 3, ¶12. The indictment does not allege any specific acts committed by Abdullah Pazara with, or in support of, any of the named organizations.

An unnamed individual is alleged to have told the Grand Jury that in March 2014, Abdullah Paraza told this unnamed individual that Pazara “had just returned from a mission where they captured a large area, killed eleven individuals, captured one, and added that they intended to slaughter the prisoner the follow [sic] day. Abdullah Pazara added that most of a FTO which he identified had joined another FTO and they were making progress, with the Islamic State spreading every day.” R.2, p. 13, ¶39.

Without additional facts it is not possible to defend against this allegation, because (1) Abdullah Pazara is dead and unavailable for interview or cross-examination; (2) the on-the-ground reality in Syria involves over a thousand different organizations and thousands of individuals who were drawn to Syria to fight against Bashar Al-Asad, rather than *for* any particular organization or group, whether or not such group is designated as an FTO; and (3) the FTOs named in the

indictment existed separately, in opposition to one another, or not at all, depending on the time period alleged. Insufficient facts are alleged to defend against the claim that Ms. Salkicevic and her alleged co-conspirators “knew” and “intended” that money and property be used to support a terrorist or an FTO.

C. United States foreign policy toward the civil war in Syria in 2013-2014 also supported the fight against Syrian leader Bashar Al-Asad.

The Syrian uprising began during the “Arab Spring” of 2011. What began as peaceful civilian protests turned violent as the Syrian state used military force to quell protests and destroy its opposition. From the beginning a “broad spectrum of opposition actors who initially demanded varying degrees of political change coalesced around their shared demands for the ouster of President Bashar al-Asad. At the same time, some Islamist Activists and armed groups insisted on wholesale, systemic change in the governance of the country and acted to assert their prerogatives in areas under their control. An influx of foreign fighters *on both sides* of the conflict amplified underlying tensions.”¹

In fact, by February 2014 – after the last money transfer alleged against Ms. Salkicevic – the U.S. Director of National Intelligence reported that there were “somewhere between 75,00 or 80,000 or up to 110,000 to 115,000 insurgents,” who were organized “into more than 1,500 groups of widely varying political leanings.”² This number included approximately 25,000 foreign fighters from more than 100 countries. Since 2012, the United States, along with Iran, Turkey, the Arab Gulf

¹ Blanchard, Christopher, Carla E. Humud, and Nikitin, Mary Beth D., “Armed Conflict in Syria: Overview and U.S. Response,” Congressional Research Service (October 9, 2015), at 9.

² *Id.*

³ Benjamin Hall, *Inside ISIS: The Brutal Rise of a Terrorist Army* [Hachette Book Group, NY

states, and Russia have provided funding, weaponry, political support, and personnel to different groups and individuals. Both Jabhat al Nusra and the Islamic State organization are among the anti-Asad forces, but each as a separate entity.

Opposition groups may be identifiable by the regions they control. For example, Southern Front forces, aligned with the Free Syrian Army movement, receive assistance from centers in Jordan – a U.S. ally in the region. This group gained control of Northwest Syria, along the border with Jordan in 2014. Groups aligned with Southern front forces have been filmed using U.S. weaponry against Assad's forces. These forces usually do not fight with al Nusra. The Islamic Movement of the Free Men of the Levant [ASIM] fight against Assad, but also against the Islamic State. The Army of Islam also fights against Asad and IS in the southern and western areas of Syria, and controls the eastern area of Damascus. This group is supported by Saudi Arabia – another U.S. ally.

Contrary to the government's assertion, Jabhat al Nusra is not Al-Qa'ida, but has at times aligned itself with Al-Qa'-ida. This group fights against Assad, and at least one of its leaders also opposes the IS and the United States. The Islamic State now controls the Euphrates river valley, east and south from Aleppo to the border with Iraq. It began in 2010 in Iraq when al-Baghdadi became the leader of Al-Qa'ida in Iraq.³ Eventually, al-Baghdadi developed his own organization, ISI, which did not become ISIS until 2013. ISIS did not come to the forefront of public

³ Benjamin Hall, *Inside ISIS: The Brutal Rise of a Terrorist Army* [Hachette Book Group, NY 2015], p. 27.

attention until the end of June 2014 – well after the time period alleged in the indictment – when al-Baghdadi declared the creation of the caliphate and declared himself the Caliph.⁴

A number of Kurdish and other opposition also recruit foreign fighters in the struggle against Assad.

The United States began calling for Assad to step down in 2012 and publicly claimed that there is no military solution to the civil war in Syria. Since mid-2014, however, the Obama administration has advocated “overt intervention in the conflict”, has received funding for training and equipping Syrians to counter the Islamic State and other extremist groups, and has provided covert lethal and non-lethal aid to opponents of IS and of President Assad.

While Congress did not approve the use of military force in response to Assad’s use of chemical weapons against his own people in August 2013 – an action that provoked an international humanitarian response – including the provision of funds for refugees and victims of this action – the United States has been providing both non-lethal and lethal aid to various opposition groups in Syria since 2011. Covert lethal support has been going to opposition groups in Syria, via Turkey and other allies, at least since 2013.⁵

Opposition groups form and disband according to conditions on the ground, leaving U.S. origin weaponry to fall into the hands of those not intended to have the support of the United States. Timing, geographical regions, and practical reality

⁴ *Id.* at 62.

⁵ *Ibid, supra*, note 1, at 20-24.

may dictate with whom any foreign fighter may be fighting at any given time. The government's failure to allege specific conduct, identify specific groups in a coherent and accurate way, and identify what any individual specifically knew, or intended, make it virtually impossible to defend against its charges.

Furthermore, without additional information about who the United States was supporting during the time period alleged in the indictment, it is not yet possible to determine whether this case suffers the same defect found in the recent disintegration of the British prosecution of a Swedish foreign fighter, Bherlin Gildo, who was alleged to have been fighting in Syria during 2012-2013, and supporting Jabahat Al-Nusra. The prosecution collapsed because the British government was engaged in the covert supply of arms to the opposition to Assad and was supporting the same groups that Mr. Gildo was accused of supporting.⁶

The information alleged in paragraphs 12 and 13 of the indictment is incomplete and, according to readily available public sources of information, incorrect. Without additional or more specific information the indictment is defective and must be dismissed.

II. ARGUMENT

Defendant Salkicevic adopts the arguments made by counsel for Nihad Rosic, Sedina Unkic Hodzic, and Armin Harcevic with respect to the failure of Counts I and III to allege the required specific intent to aid a terrorist act, and the failure of the

⁶ Richard Norton Taylor, "Terror Trial Collapses after Fears of Deep Embarrassment to Security Services," *The Guardian*, June 1, 2015. <http://www.theguardian.com/uk-news/2015/jun/01/trial-swedish-man-accused-terrorism-offences-collapse-bherlin-gildo>

indictment to allege sufficient facts in order for Ms. Salkicevic to defendant against the charge of conspiracy to commit murder abroad that is the object of the conspiracy alleged in Count I and the substantive charge alleged in Count III.

In addition to the arguments presented by co-counsel, defendant Salkicevic submits the following arguments:

- A. The Indictment Fails To Sufficiently Allege Facts Identifying Specific Support By Any Alleged Co-Conspirator For A Specific FTO During The Time Period Alleged.

The indictment broadly alleges that a single named conspirator, Abdullah Pazara, fought in unspecified areas of Syria and Iraq, “with and in support of: Al-Qa’ida in Iraq, Al-Nusrah Front, The Islamic State of Iraq and the Levant, and the Islamic State of Iraq and Syria.” R. 2., p. 3, ¶12. Paragraph 13 of the indictment claims that Al-Qa’ida in Iraq was known by aliases, including “al-Nusrah Front (ANF), Jabhat al-Nusrah, Jabhet al-Nusra, Islamic State of Iraq and the Levant, Islamic State of Iraq and al-Sham, and the Islamic State of Iraq and Syria. As discussed in Section I(C) above, these names do not all represent “aliases” of the same organization, but name different organizations that operate in different geographical regions and have existed during different periods of time. Jabhat al-Nusrah⁷ and ISIS were once united, but now fight each other, in addition to fighting against Assad.

Without more specific information about when, where, with whom, and under whose direction Abdullah Pazara fought, if, in fact, he did fight in Syria, it is not

⁷ Jabhat al-Nusra became the most successful fighting force in Syria and has the support of Gulf and Saudi money. Benjamin Hall, *Inside ISIS* [Hachette Book Group, NY 2015], p. 48. The Saudis are, of course, an important United States ally.

possible for Ms. Salkicevic – or any other defendant -- to determine how to defend against an allegation that giving money to a United States citizen in the United States constitutes the knowing and intentional support for a conspiracy to commit murder in Syria, in support of Foreign Terrorist Organizations – setting aside for the moment whether or not 18 U.S.C. §956(a) applies to the conduct of a civil war outside the jurisdiction of the United States, particularly when the United States, too, is supporting the insurgency with both non-lethal and lethal support, covertly and overtly.

B. The Indictment Fails To Allege Facts That Render 18 U.S.C. 956(A) Applicable To A Civil War On Foreign Soil.

Title 18, United States Code, Section 956(a)(1) provides:

(a) (1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

The statute has been challenged for vagueness and upheld based on the statutory definitions of murder, kidnapping, and maiming: murder is defined in 18 USCS § 1111(a), maiming is defined in 18 USCS § 114, and kidnapping is defined in 18 USCS § 1201. *United States v Awan* 459 F Supp 2d 167 (2006, ED NY).

The definition of murder found in Title 18, U.S.C. 1111(a) does not include a provision for killing on the battlefield in the context of a civil war. Rather, the definition is based on common law definitions:

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnaping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

[18 USCS § 1111](#). No provision is made for the intentional killing that occurs on the battlefield in the course of combat, whether offensively, or defensively, in an effort to protect oneself or others.

In accordance with Federal Rule of Criminal Procedure 7©(1), an “indictment . . . must be a plain, concise, and definite written statement of the essential facts constituting the offense charged . . . A count may incorporate by referenced an allegation made in another count . . . A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means.” No facts are alleged in the indictment to establish the involvement of any individual in an act of premeditated murder, much less that Ms. Salkicevic agreed to use the money she is alleged to have provided to Mr. Hodzic, in St. Louis, for this purpose, or its preparation.

Whether an individual’s actions are criminally prosecutable during a time of war, depends on whether or not the combatants are part of a military organization that operates under the laws of war. *United States v. Yunis*, 924 F.2d 1086 (D. C. 1991). In this case, insufficient facts are alleged to determine with whom Abdullah Pazara was operating at any relevant time, in order to determine whether he was

part of a military organization and acting under the orders of a superior. If he was operating as part of military organization that was fighting against Assad, and the United States policy at the time was to support the ouster of Assad, the provisions of Title 18, United States Code, 956(a), have no logical or legal application.

Mediha Salkicevic cannot be said to know about, much less agree to support or participate in, a conspiracy to commit murder in Syria, if the allegations are insufficiently clear about whether any specific murder or maiming conduct occurred, was planned to occur, or was being prepared to occur, who the participants were, or when and on whose behalf any such conduct did occur.

WHEREFORE, defendant MEDIHA SALKICEVIC respectfully requests that Counts I and III of the indictment be dismissed.

DATE: November 18, 2015 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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Kenneth R. Tihen, Esq.
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and I hereby certify that I have mailed by United State Postal Service, or hand-delivered the document to the following non-CM/ECF participants:

N/A.

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