

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	*	Case No. 19-MJ-531 (CLP)
	*	
	*	Brooklyn, New York
	*	June 7, 2010
v.	*	
	*	
ASHIQUL ALAM,	*	
	*	
Defendant.	*	
	*	
* * * * *		

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT  
BEFORE THE HONORABLE CHERYL L. POLLAK  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	JONATHAN ALGOR, ESQ. DAVID K. KESSLER, ESQ. MICHAEL T. KEILTY, ESQ. Asst. United States Attorney United States Attorney's Office 271 Cadman Plaza Brooklyn, NY 11201
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For the Defendant:	JAMES DARROW, ESQ. Federal Defenders of New York, Inc. One Pierrepont Plaza, 16th fl. Brooklyn, NY 11201
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Proceedings recorded by electronic sound recording,  
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1 (Proceedings commenced at 3:11 p.m.)

2 THE CLERK: Criminal cause for an arraignment.

3 It's 19-M-531, United States vs. Ashiqua Alam.

4 Counsel, state your appearances, please.

5 MR. ALGOR: Good afternoon, Your Honor.

6 Jonathan Algor, David Kessler and Michael Keilty

7 for the United States.

8 THE COURT: Good afternoon.

9 MR. DARROW: Good afternoon. James Darrow, Federal  
10 Defenders of New York, for Mr. Alam. Also present at the bar  
11 is Ashley Brooks, a legal intern in my office.

12 THE COURT: Mr. Alam, I take it that you understand  
13 English?

14 THE DEFENDANT: Yes.

15 THE COURT: If at any point something is said that  
16 you don't understand, please let me know. Okay? Yes?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You have to answer me orally because  
19 we're recording the session.

20 THE DEFENDANT: Yes.

21 THE COURT: The purpose of this proceeding this  
22 afternoon is to make sure you understand the crime you've  
23 been charged with, to make sure that you understand that you  
24 have the right to be represented by an attorney and to decide  
25 whether you would be released on bail, or held in jail until

1 your trial on these charges.

2 You don't have to say anything here today. If you  
3 start to say something, you can stop at any time. But what  
4 you must understand is that anything you do say, except what  
5 you say to Mr. Darrow, your attorney, anything else can be  
6 used against you.

7 Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Have you seen a copy of the  
10 complaint ?

11 THE DEFENDANT: Yeah.

12 THE COURT: Yes?

13 THE DEFENDANT: Yeah.

14 THE COURT: You understand that you've been charged  
15 with knowingly and intentionally possessing and receiving  
16 firearms, specifically, two Glock 19 9-millimeter semi-  
17 automatic pistols which have the manufacturer's serial  
18 numbers removed.

19 Do you understand what you've been charged with?

20 THE DEFENDANT: Yeah.

21 THE COURT: Okay. Now the court has appointed Mr.  
22 Darrow to represent you for purposes of these proceedings  
23 today and all other proceedings in connection with these  
24 charges.

25 You have the right to be represented by an attorney

1 from this point forward.

2 Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay.

5 Mr. Darrow, have you reviewed the complaint with  
6 your client and advised him of his rights?

7 MR. DARROW: Yes, Your Honor.

8 THE COURT: And what's the government's position  
9 with respect to bail for Mr. Alam?

10 MR. DARROW: Your Honor, it's the government's  
11 position that there is no condition or combination of  
12 conditions that can address the defendant's danger to the  
13 community and risk of flight and we're seeking a permanent  
14 order of detention.

15 And we have filed a detention memorandum to that  
16 effect. It's currently under seal, per the court's order,  
17 but I'm ready further to address our position.

18 THE COURT: Well, Mr. Darrow, have you seen the  
19 government's letter?

20 MR. DARROW: I have, Your Honor.

21 THE COURT: And have you reviewed it with your  
22 client?

23 MR. DARROW: We've discussed it.

24 THE COURT: Okay. How do you want to proceed at  
25 this moment?

1 MR. DARROW: Well, Your Honor, we do have a bail  
2 package to present. Whether a formal detention hearing is  
3 necessary I think we can talk about.

4 Just so Your Honor knows we are requesting that my  
5 client be released on a \$200,000 secured bond to be signed by  
6 both of his parents, who are here in court today, both of  
7 whom were interviewed by Pretrial Services.

8 The bond would be secured by the apartment where my  
9 client lives with his parents. My understanding, Your Honor,  
10 is that there is \$200,000 in equity in the home. That's  
11 based on discussions with my clients parents, who are both  
12 the deed holders.

13 In addition, Your Honor, we would ask that my  
14 client be on home confinement for the duration of the case.

15 We would ask that he have an ankle monitor affixed  
16 because as Your Honor knows as -- from the Pretrial report,  
17 he's a rising senior at John Jay College and he works two  
18 jobs. We would like for him to continue doing that.

19 I'll note, Your Honor, that when you sort of strip  
20 away the things that the press reports have been focused on  
21 in this case, what we have and what the government has  
22 undertaken to charge in this case is a zero to five gun  
23 charge.

24 And, therefore, it's not a presumption case. It's  
25 not a crime of violence. My client is an LPR who's lived

1 here with his mother and father for 12 years, Your Honor.

2 The only international travel I'm aware of was  
3 travel that he undertook with his family to Bangladesh twice  
4 during school breaks. He is a student who works two jobs. He  
5 has no criminal history of any kind.

6 So it's our view, Your Honor, that that package is  
7 sufficient to deal with any risk of flight. If the  
8 passport's an issue, we can arrange, I'm sure, to get it back  
9 to Pretrial Services.

10 My understanding is it's an expired Bangladeshi  
11 passport, but I'm happy to go myself and get it and bring it  
12 back, if necessary.

13 And as to any dangerousness, I mean, the fact of  
14 the matter is the man will be locked in his home with an  
15 ankle bracelet on and I'm happy to -- I'm open to other  
16 conditions as necessary, as the court feels is necessary.

17 But as alleged, this is a transaction that occurred  
18 between my client to law enforcement agents. So there's no  
19 allegation that he is talking to strangers about these sorts  
20 of things, or talking to anybody else who's not fully aware  
21 on the government's side of what exactly is going on.

22 So it's for that reason, Your Honor, that we're  
23 proposing this bail package.

24 MR. KESSLER: Your Honor, if I --

25 THE COURT: Let me just -- so you requested an

1 order sealing the government's letter --

2 MR. DARROW: Yes, Your Honor.

3 THE COURT: -- in order to respond to your bail  
4 application I believe they have to state some of the facts as  
5 set forth in the letter.

6 MR. DARROW: Of course they do, Your Honor. That  
7 makes sense.

8 THE COURT: Okay. So I'm going to permit them to  
9 respond.

10 MR. DARROW: Yes, Your Honor.

11 THE COURT: Okay. Because you put forward a  
12 package. I think we need to address the concerns that the  
13 government raised as to why this package is not sufficient.

14 MR. KESSLER: Agreed. So, Your Honor, briefly,  
15 under the Bail Reform Act, the nature and circumstances of  
16 this offense are extremely serious. It's not a gun charge.  
17 The defendant attempted to purchase two semi-automatic  
18 firearms with obliterated serial numbers. The only reason you  
19 would want a serial number obliterated is because you didn't  
20 want the gun traced to you.

21 He attempted to purchase a silencer. He expressed  
22 interest in a silencer again. That's a disturbing fact.

23 And then more broadly than simply the purchase of  
24 the weapons on the date alleged in the complaint, the  
25 defendant has taken specific steps to plan an attack in New

1 York City.

2 So as detailed in the complaint and as in our  
3 detention memo, the defendant developed a specific plan to  
4 attack Times Square. He researched firearms and explosive  
5 devices.

6 He talked about how to construct explosive devices.  
7 He conducted multiple reconnaissance trips, including  
8 videotaping potential target area.

9 He had Lasik eye surgery, and as he explained it be  
10 able to shoot more accurately. That's my paraphrase.  
11 And then he went and actually took the step of trying to  
12 acquire two different firearms.

13 So the nature and circumstances of this offense are  
14 extremely serious.

15 Second of all, the weight of the case is absolutely  
16 overwhelming. The purchase of the firearms is on video and  
17 the defendant's other interactions, as detailed in the  
18 complaint, are recorded in some form or another. So the  
19 weight is overwhelming.

20 The defendant's circumstances, he does have family  
21 in another country. That gives him a place to flee.

22 As the Pretrial Services report lays out, he has  
23 unexplained assets. I'll note that the recommendation in  
24 that report is that the defendant should be detained.

25 And finally with respect to the conditions sought



1 by the defendant, you know, an ankle monitor and a locked  
2 door do not adequately address the kind of danger we're  
3 talking about in a case like this.

4 So I'm happy to detail more of the facts that are  
5 laid out in the detention memorandum. I think at this point  
6 the memorandum should be unsealed generally because we're  
7 relying on all the facts in there and the facts I laid out.  
8 But that's our position.

9 Certainly, this bail package does not address these  
10 concerns, but it's the government's position that there is no  
11 set of conditions that would address them.

12 THE COURT: All right. Mr. Darrow, anything to  
13 respond to --

14 MR. DARROW: Yes, yes. I mean, look. The fact of  
15 the matter is this case is charged the way it is. It's  
16 charged as a zero to five firearm charge. I understand that  
17 the government's allegation is that there is this specific  
18 plan of an attack, but he's not charged with terrorism. He's  
19 not charged with the terrorism type allegations that are set  
20 forth in the memorandum. He is charged with what he is  
21 charged with. And so that's what I'm directing my arguments  
22 to.

23 What I would request, Your Honor, is that if Your  
24 Honor's inclined to make a finding of dangerousness based on  
25 these non-firearm related allegations, I think what we need

1 is a formal detention hearing where evidence can be presented  
2 as to his dangerousness in that regard. Because insofar as  
3 this going of the actual complaint and relying on other  
4 things, I think there needs to be a formal finding based on  
5 evidence in that regard.

6 I will notice -- just noted, Your Honor, in terms  
7 of these unexplained assets, I'm not entirely sure what that  
8 was referring to. I will note though, Your Honor, that my  
9 client does work two jobs and he is extremely hard working  
10 and he saved a bunch of money.

11 So I'm not sure that that is a factor here. My  
12 client couldn't flee if he wanted to. The fact that he was  
13 born in another country is not something that he can help.  
14 He has a green card and, therefore, a right to bail.

15 So it's not the case if you're born in a foreign  
16 country and have some family there you're automatically  
17 denied bail. I didn't understand the government to be saying  
18 that.

19 So I guess what I'm saying, Your Honor, is we think  
20 our package is sufficient as to these charges. But to the  
21 extent that these other larger terrors and related  
22 allegations are what the government's going to be relying on  
23 are germane to Your Honor, what I would request is that we  
24 put this over for an actual formal detention hearing where  
25 evidence can be presented in that regard.

1 THE COURT: I guess I was a little confused because  
2 I thought I heard you say that these were not things that are  
3 alleged in the complaint. That they actually are --

4 MR. DARROW: I meant -- when I said complaint -- I  
5 mean, look. I think there are -- some of these allegations  
6 are set forth in the complaint. Others of them are set forth  
7 and were detailed in the detention memo that was filed before  
8 Your Honor.

9 But I think what the government is doing is  
10 alluding to them to present a picture of dangerousness that  
11 is outside what is strictly relevant for consideration of the  
12 charge, which is receipt of, as alleged, two firearms with  
13 obliterated serial numbers.

14 That has nothing to do with a planned attack on  
15 Times Square or anything else that's been the subject of  
16 press reports, et cetera.

17 So my point, Your Honor, is that to the extent that  
18 that is the basis of the detention that is being sought, it  
19 should take the form of an actual hearing with evidence  
20 presented for showing of dangerousness, if the government can  
21 do that.

22 MR. KESSLER: So the Bail Reform Act does not, you  
23 know, say read the statute and then whatever the words in the  
24 statute are, that's how you do the bail analysis.

25 The question is what are the nature and

1 circumstance of this offense. The nature and circumstances  
2 of this offense are the ones laid out in the complaint and  
3 they're far broader than just the receipt of a gun, whether  
4 you call them terrorism charges or something -- terrorism or  
5 something else.

6 The point is the events alleged in the complaint  
7 are as they're alleged, you know, to have happened. And all  
8 of those are in front of the court to consider in terms of  
9 determining whether the defendant poses a danger to the  
10 community.

11 You know, it could be in another situation, someone  
12 charged with the same charge might not be a danger to the  
13 community, or there might be a set of conditions that could  
14 address that danger. But that's not the case here.

15 So with respect to a hearing, you know, the  
16 government is entitled to proceed by proffer of evidence.  
17 We've preferred the evidence, the evidence as laid out in the  
18 complaint. And as I said, the evidence is almost entirely  
19 from recordings.

20 So we don't even think a hearing is necessary to  
21 address a finding of dangerousness. Certainly, not for  
22 purposes of today.

23 Well, let me say this. I've read the complaint very  
24 carefully and relying just on the allegations in the  
25 complaint and not any extraneous statements in the

1 government's letter that might not have been included  
2 specifically in the complaint, I find that regardless of what  
3 the charge before the court is here, which is, as you say,  
4 limited at this moment to the receipt of two semi-automatic  
5 pistols which, by the way, with their serial numbers  
6 obliterated is a pretty serious offense in and of itself.

7 I find that based on all of the other circumstances  
8 under which he purchased the guns and his stated intent,  
9 which as the government indicates seems to be on recorded  
10 conversations. So, therefore, something that is pretty well  
11 established or will be in terms of the recordings. I assume  
12 they're all -- when they're quoted in the complaint, that  
13 means they're recorded somewhere, correct?

14 So based on all of that and my consideration of you  
15 bail package, which had this been any other set of  
16 circumstances, simply the purchase of these firearms without  
17 all of the background information, I might find it  
18 sufficient.

19 But at this point I'm finding that he is a danger  
20 to the community and I'm going to order him permanently  
21 detained.

22 I also find that even with the bail package he's a  
23 risk of flight. These are serious charges. The government's  
24 allegations are serious as well and he has ties to  
25 Bangladesh. He's gone back there. He is a citizen, I take it,

1 of Bangladesh. So there is a risk of flight as well.

2 But basically I'm relying on the dangerousness  
3 element, which I find the government has proved by clear and  
4 convincing evidence.

5 So I'm going to order him detained. I guess the  
6 question that remains is whether or not you want me to set a  
7 date for the indictment.

8 MR. DARROW: I do, Your Honor. We request a  
9 preliminary hearing.

10 THE CLERK: So June 21st at 11 a.m.

11 MR. DARROW: Thank you.

12 THE CLERK: You're welcome.

13 THE COURT: Anything else --

14 MR. DARROW: No, Your Honor.

15 THE COURT: Okay.

16 MR. KESSLER: Your Honor, two additional things  
17 very briefly.

18 First, just for the record, counselor notification  
19 has been made.

20 THE COURT: Okay. Thank you.

21 MR. KESSLER: Second of all, with respect to the  
22 detention letter that was filed, I understand it's still  
23 under seal and we're not asking the court, unless the court  
24 is already inclined to unseal it at this moment.

25 However, we'll note that detention memoranda like

1 that one are judicial documents for which there's a  
2 presumptive right of public access.

3 And it will be the government's position that the  
4 document should be unsealed subject to any, you know,  
5 narrowly tailored redactions necessary to protect personal  
6 information or for that sort of consideration.

7 THE COURT: Well, in that regard what I'm going to  
8 ask Mr. Darrow to do is confer with you about anything  
9 specific in the detention letter that should be redacted and  
10 present them to me. Once I see that I will order the letter  
11 unsealed.

12 MR. KESSLER: Thank you.

13 MR. DARROW: I'd be happy to do that, Your Honor.  
14 I just wanted to note in that regard, you know, Local Rule  
15 23.1 doesn't require that the government can publish any  
16 information subject only to private information being  
17 redacted. It's really a much broader rule. So that's going  
18 to be the subject of our discussions. And if we have any  
19 dispute in that regard, we'll raise them with Your Honor.

20 THE COURT: (Indiscernible).

21 MR. DARROW: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. KESSLER: Thank you.

24 THE COURT: Anything else?

25 MR. DARROW: No, Your Honor.

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THE COURT: Thank you.

MR. KESSLER: Thank you.

(Proceedings concluded at 3:28 p.m. )

I, CHRISTINE FIORE, Certified Electronic Court Reporter and Transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



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June 8, 2019

Christine Fiore, CERT