AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Western District of New York

United States of America
v.

EMANUEL L. LUTCHMAN

Defendant(s)

Case No. 15-MJ- 4212

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of December 25 through 30, 2015 in the county of Monroe in the Western District of New York, the defendant(s) violated:

Code Section	*Offense Description*
Title 18, United States Code, Section 2339B(a)(1).	Attempt to provide material support and resources, namely, himself as personnel and services,to a designated foreign terrorist organization, namely, the Islamic State of Iraq and the Levant (ISIL), knowing that ISIL was a designated foreign terrorist organization, and that ISIL had engaged in and was engaging in terrorist activity and terrorism.

This criminal complaint is based on these facts:

See attached affidavit.

☑ Continued on the attached sheet.

Timothy J. Klapec
Complainant's signature

FBI Special Agent Timothy J. Klapec
Printed name and title

Sworn to before me and signed in my presence.

Date: 12/30/2015

Marian W Payson
Judge's signature

City and state: Rochester, New York

Hon. Marian W. Payson, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

State of New York)
County of Monroe) SS:
City of Rochester)

15-mj-4212

I, TIMOTHY J. KLAPEC, being duly sworn, depose and state the following:

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), and have served in this capacity for over 11 years. I am currently assigned to the Joint Terrorism Task Force (JTTF), Buffalo Division, in Rochester, New York. At the JTTF, I work with a team of federal, state, and local law enforcement agents and officers on investigations relating to domestic and international terrorism. As a result of my training and experience, I am familiar with tactics, methods, and techniques used by terrorist organizations and their members, and by individuals seeking to join or engage in acts on behalf of terrorist organizations. I have also conferred with other FBI Special Agents who have expertise and experience in counterterrorism investigations.

2. This affidavit is submitted for the limited purpose of establishing probable cause to support a criminal complaint charging EMANUEL L. LUTCHMAN with attempting to provide material support and resources to a designated foreign terrorist organization, that is, the Islamic State of Iraq and the Levant (ISIL), in violation of Title 18, United States Code, Section 2339B(a)(1). This affidavit does not include each and every fact known to me concerning this investigation. I have set forth facts that I believe are necessary to establish probable cause to believe that LUTCHMAN has committed the offense alleged in the complaint.

3. The information contained in this affidavit is based on, among other things, my personal participation in the investigation of LUTCHMAN, information provided by reliable confidential human sources (CS-1 and CS-2), online communications between the confidential

human sources and LUTCHMAN, consensual recordings of conversations between the confidential human sources and LUTCHMAN,[1] , discussions I have had with other members of the investigative team, and my review of documentary evidence gathered during this investigation. At various points in this affidavit, I offer my interpretations of certain communications and statements of LUTCHMAN in brackets or parentheses. These interpretations – which include translations or definitions of certain Arabic words and phrases – are based on, inter alia, my knowledge of the investigation, my review of prior and subsequent communications and statements of LUTCHMAN, and information from CS-1 and CS-2. Additionally, it should be noted that any direct quotations from the consensual recordings contained in this affidavit are based primarily on my review of draft transcripts of the recordings and, therefore, are preliminary.

II. PROBABLE CAUSE

The Islamic State of Iraq and the Levant

4. On October 15, 2004, the United States Secretary of State designated al-Qa'ida in Iraq ("AQI"), then known as Jam'at al Tawhid wa'al-Jihad, as a Foreign Terrorist Organization ("FTO") under Section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist under section 1(b) of Executive Order 13224.

5. On May 15, 2014, the Secretary of State amended the designation of AQI as an FTO under Section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist entity under section 1(b) of Executive Order 13224 to add the alias Islamic State of Iraq and the Levant (ISIL) as its primary name. The Secretary also added the following aliases to the ISIL listing: the Islamic State of Iraq and al-Sham (ISIS), the Islamic State of Iraq and Syria

[1] Unless otherwise indicated, all of the telephone and face-to-face conversations summarized in this affidavit were recorded and those recordings were made with the consent of the confidential human sources.

(ISIS), ad-Dawla al-Islamiyya fi al-'Iraq wa-sh-Sham, Daesh, Dawla al Islamiya, and Al-Furqan Establishment for Media Production. Although the group has never called itself "Al-Qaeda in Iraq (AQI)," this name has frequently been used to describe it through its history. To date, ISIL remains a designated FTO. In an audio recording publicly released on June 29, 2014, ISIL announced a formal change of its name to Islamic State (IS). On or about September 21, 2014, ISIL spokesman Abu Muhammad al-Adnani called for attacks against citizens—military or civilian—of the countries participating in the United States-led coalition against ISIL.

Subject of the Investigation

6. EMANUEL L. LUTCHMAN is a 25-year old United States citizen, who currently resides in Rochester, New York. He is a self-professed Muslim convert with a criminal history dating back to approximately 2006 (which includes a New York state conviction for Robbery 2° from 2006, for which he served approximately 5 years in prison), as well as previous state Mental Hygiene arrests. As detailed below, LUTCHMAN has attempted to provide material support and resources, namely, himself as personnel and services, to ISIL. LUTCHMAN, claiming to have received direction from an overseas ISIL member, attempted to commit an armed attack against a civilian(s) at a restaurant/bar located in the Rochester area on New Year's Eve on behalf of ISIL and in furtherance of his plan to join ISIL overseas.

LUTCHMAN's Plot to Kill A Civilian

7. In November and December 2015, LUTCHMAN had several electronic and telephonic communications with CS-1.[2] In these communications, LUTCHMAN made numerous

[2] CS-1 has been cooperating with the FBI for over a year, and has been paid approximately $19,784 as of approximately December 2015. The information provided by CS-1 has been corroborated by the JTTF through independent investigation, information provided by other law enforcement agencies, consensual recordings of conversations between CS-1 and LUTCHMAN, screen shots of electronic communications

statements expressing his strong support of ISIL (which he frequently referred to as "dawla" or "dawlatul," which are terms commonly used to refer to ISIL) and his desire to travel overseas to join ISIL in Syria.

8. In late December 2015, LUTCHMAN told CS-1 that he had been in contact with an Overseas Individual, who identified himself as an ISIL member located in Syria. LUTCHMAN forwarded to CS-1 screenshots of the communications that he had with the Overseas Individual. In sum and substance, those screenshots contain the following information. On or about December 25 and 26, 2015, LUTCHMAN communicated with the Overseas Individual, who identified himself as a "brother" with ISIL. In those communications, LUTCHMAN asked what it was like in ISIL. The Overseas Individual described being with ISIL as "a dream come true." LUTCHMAN expressed his hatred for everything in America and his intention to make hijra[3] and leave America, which he referred to as the land of the kuffar.[4] LUTCHMAN asked the Overseas Individual what he should do if he cannot make hijra. The Overseas Individual stated that the Syrian borders were currently closed, but should open in a few months, and asked if LUTCHMAN had someone to vouch for him. The Overseas Individual then stated that, if LUTCHMAN did not have someone within ISIL to vouch for him, then he (LUTCHMAN) would have to prove himself and prove that he was one of them. LUTCHMAN asked how he could prove himself and he (LUTCHMAN) confirmed that he was one of them (meaning ISIL). The Overseas Individual responded, among other things, that LUTCHMAN would have to pray regularly, the Overseas Individual would have

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between CS-1 and LUTCHMAN, and consensual recording of conversations between CS-2 and LUTCHMAN. The information provided by CS-1 has been found to be accurate and reliable.

[3] "Hijra" is an Arabic word that means migration or journey. In the context of this case, LUTCHMAN is using the word "hijra" to refer to his migration to join ISIL in Syria.

[4] "Kuffar" is an Arabic word that means non-believer or infidel. It is a derogatory term used to refer to a person who does not adhere to the tenets of Islam. In the context of this case, LUTCHMAN uses the word "kuffar" to refer to Americans.

to get to know LUTCHMAN, and LUTCHMAN would have to prove to ISIL that he (LUTCHMAN) supports ISIL. LUTCHMAN stated that he was thinking a lot lately about "starting to organize [his] brothers that [he] know[s] to do operation for the sake of Allaah." When the Overseas Individual asked what was stopping LUTCHMAN from undertaking such an operation, LUTCHMAN responded that he did not want to go back to prison. The Overseas Individual responded that LUTCHMAN can make sure that he does not go back to prison, and told LUTCHMAN to carry around a weapon and "something happens kill them all." LUTCHMAN responded that he was arranging an operation with a "brother." The Overseas Individual advised LUTCHMAN to write something before the operation and give it to another to post it for the benefit of other Muslims and to announce LUTCHMAN's bayah[5] to ISIL. LUTCHMAN stated that he does not have the funds to obtain weapons, but such funds would be coming "real soon." The Overseas Individual told LUTCHMAN that all he has to do is plan an "operation" on New Year's or whenever he (LUTCHMAN) can, and kill "1000000s of kuffar." The Overseas Individual emphasized that LUTCHMAN is "behind enemy lines" and that he (LUTCHMAN) was the closest person to their most hated enemy (meaning the United States). The Overseas Individual told LUTCHMAN that whatever he (LUTCHMAN) sends ISIL, they (meaning ISIL) would keep it until the operation was completed and then they (ISIL) would post it (meaning publicize the attack on the Internet). The Overseas Individual emphasized that LUTCHMAN has the chance to do things that they (ISIL) wish they could do and that he (the Overseas Individual) would love to come to the United States to commit an operation. LUTCHMAN ultimately told the Overseas Individual that he (LUTCHMAN) has a couple of "brothers" that want to make hijra and plan for an operation. The Overseas Individual encouraged LUTCHMAN to complete an operation and stated that, if the Syrian borders open and the operation does not succeed, he (the Overseas Individual)

[5] "Bayah" is an Arabic word that means an oath of allegiance to a leader. In the context of this case, LUTCHMAN uses this word to refer to his oath of allegiance to ISIL and its leader, Abu Bakr al-Baghdadi.

would help LUTCHMAN and his "brothers" make hijra. The Overseas Individual told LUTCHMAN to show them (ISIL) how serious he is, stating, "New years [sic] is here soon. Do operations and kill some kuffar." LUTCHMAN told the Overseas Individual that he hates it in the United States, that he wants to join the ranks of ISIL, and that he is ready to "give everything up" to be in Syria with ISIL. The Overseas Individual told LUTCHMAN, "For now do wat u can over there."

9. On or about December 27, 2015, LUTCHMAN sent a message to another confidential source (CS-3). Attached to the message was an audio recording of LUTCHMAN swearing bayah to ISIL and its leader, Abu Bakr al-Baghdadi.

10. In the morning on or about December 28, 2015, LUTCHMAN met with CS-2 for the first time.[6] CS-1, in a series of communications with LUTCHMAN, had arranged for CS-2 to meet with LUTCHMAN. During the meeting, LUTCHMAN mentioned that the Overseas Individual migrated to ISIL (referring to ISIL as "Dawla"). LUTCHMAN confirmed that he was in contact with the Overseas Individual and recounted some of his communications with the Overseas Individual. Specifically, LUTCHMAN stated that the Overseas Individual told him the borders (in Syria) are closed, and that LUTCHMAN should "find the places where the most population, take as many as possible out." LUTCHMAN stated that the Overseas Individual told him, that, because the borders are closed, they (meaning LUTCHMAN and his associates) should conduct an

[6] CS-2 began cooperating with the FBI in or about November 2013. As of December 2015, the FBI has paid CS-2 a total of approximately $7,400 in exchange for his cooperation in an unrelated investigation. CS-2 has a prior felony conviction for Attempted Criminal Sale of a Controlled Substance 3° from Monroe County Court from 2003, for which he was sentenced to one (1) year in jail, and a prior misdemeanor conviction for Criminal Possession of a Controlled Substance 7° from Rochester City Court from 2004. CS-2 continues to cooperate with the FBI in anticipation of receiving additional monetary compensation. The information provided by CS-2 has been corroborated by the JTTF through independent investigation, physical surveillance, public records, information provided by other law enforcement agencies, consensual recordings of conversations between CS-2 and LUTCHMAN, and consensual recordings of conversations between CS-1 and LUTCHMAN. The information provided by CS-2 has been found to be accurate and reliable.

operation on New Year's and afterward it could help the process of them making hijra to ISIL. LUTCHMAN stated that he had been communicating with another individual – who, unbeknownst to LUTCHMAN, was CS-3 – about the operation. According to LUTCHMAN, CS-3 was supposed to have all of the information they need to execute the plan because CS-3 has the necessary knowledge.[7] LUTCHMAN also stated that his "real intention is to do an act, to get to hijra." LUTCHMAN discussed with CS-2 doing assassinations and using a pressure cooker bomb. LUTCHMAN said that he wanted to execute the plan so they could be "in and out," noting that they should make it "quiet and simple" so they can go about doing what they need to do to make hijra. He also said that, after the operation, "they're going to be hunting for us," meaning that law enforcement authorities would be seeking to capture them. CS-2 asked LUTCHMAN if they would use a knife in the event they could not use a pressure cooker bomb or firearm(s). LUTCHMAN responded that he has a "brother" who has a machete. LUTCHMAN said, "that's what my plan, that's on my mind, that's all I been thinking about. 'Cause I'm getting amped up, to accept the fact that's what I gotta do, 'cause I want to make hijra." LUTCHMAN said that he hates this land (meaning the United States) and that he wants to live under the caliphate. LUTCHMAN also said that "the connection with Dawla [meaning ISIL] is already established. It's just that, we just gotta show our allegiance. I'm ready to lose my family."

11. In the evening on or about December 28, 2015, LUTCHMAN met with CS-2. During the meeting, LUTCHMAN indicated that he wanted to target a club/bar, suggesting that they could sneak a bomb into the club/bar and plant the bomb inside. LUTCHMAN proposed that

[7] In the morning on or about December 29, 2015, CS-3, acting at the direction of the investigative team, informed LUTCHMAN that he (CS-3) would not be participating in the operation and ceased communications with LUTCHMAN. Later that day, LUTCHMAN exchanged text messages with CS-2 in which he informed CS-2 that CS-3 would not be participating in the operation. LUTCHMAN also told CS-2, "In a way I [LUTCHMAN] was thinking about stopping the operation cuz I was trusting [CS-3] and at the last of our moment he decided to pull out." CS-2 responded that he would see LUTCHMAN later and told LUTCHMAN not to let CS-3's backing out of the operation upset him. As detailed in this affidavit, LUTCHMAN continued to plan the operation after these communications with CS-2.

they kidnap a couple of people and kill them. LUTCHMAN stated that they would need to wear masks during the operation so they would not get caught by law enforcement authorities, noting that he had a "brother" who would sell the masks for $5. At one point during the meeting, they drove by a restaurant/bar in Rochester, New York. As they drove by that location, LUTCHMAN identified it as a potential target of the attack. LUTCHMAN said that he does not have any funds. LUTCHMAN then said, "I will take a life, I don't have a problem with that." Ultimately, LUTCHMAN stated that they would use knives during the attack, noting that he knew someone with a machete and that his wife has a dagger.

12. On or about December 29, 2015, LUTCHMAN had a telephone conversation with CS-1. During the conversation, LUTCHMAN discussed the fact that CS-3 pulled out of the operation. Specifically, LUTCHMAN said that he was trying to get CS-3 to send money for the operation. LUTCHMAN told CS-1 that he was about to call his "friend" (meaning CS-2) so they could go and pick up the machete. CS-1 stated that there were only two days until New Year's and LUTCHMAN responded that they needed to get gloves, masks, and zip ties. LUTCHMAN told CS-1 that they had already selected a target location. LUTCHMAN also said that they needed the zip ties, which are plastic hand restraints, in case they kidnap somebody.

13. In the evening on or about December 29, 2015, LUTCHMAN met with CS-2. During the meeting, LUTCHMAN and CS-2 went to a Walmart store on Hudson Avenue in Rochester, New York, to purchase supplies for the operation. While there, they purchased 2 black ski masks, zip-ties, 2 knives, a machete, duct tape, ammonia and latex gloves.[8] Due to the fact that LUTCHMAN did not have any funds with him at the store, CS-2 paid approximately $40 for these

[8] Regarding the items purchased at Walmart, LUTCHMAN independently picked out the zip ties without input from CS-2. CS-2 asked LUTCHMAN questions on other items to purchase based on the conversation CS-2 had with LUTCHMAN on the evening of December 28, 2015, during which LUTCHMAN identified some of the items he wished to obtain for the attack. LUTCHMAN answered affirmatively to CS-2's questions.

items. Later, LUTCHMAN and CS-2 discussed the operation. LUTCHMAN stated, "It's going to get real after this. It's just you, me and the Lord. We gotta do this, we gotta do this precise." LUTCHMAN stated that, "If we grab somebody, they can't live. They may identify the vehicle. They can't live." LUTCHMAN confirmed that the target of the operation would be the restaurant/bar that he had previously identified and discussed in general terms how they would select and abduct a victim. LUTCHMAN stated, "The operation is a go. We just gotta do it man. We got the knives, we got the gloves, we got the ammonia, so whatever the case may be." LUTCHMAN and CS-2 also discussed making a video before the operation, in which they would explain their rationale for the attack (to take the offensive against the kuffar) and swear bayah to the leader of ISIL, Abu Bakr al-Baghdadi. LUTCHMAN stated that he planned to release the video after they complete the operation.

14. On December 30, 2015, members of the Rochester JTTF arrested LUTCHMAN, who was in a vehicle with CS-2 at the time. Prior to the arrest, LUTCHMAN made a video, which was recorded on his mobile telephone by CS-2. In the video, LUTCHMAN swore bayah to ISIL and its leader, Abu Bakr al-Baghdadi, and claimed responsibility for the planned attack in Rochester.

III. CONCLUSION

15. Based on the foregoing, there is probable cause to believe that EMANUEL L. LUTCHMAN has attempted to provide material support and resources, namely, himself as personnel and services, to a designated terrorist organization, namely, the Islamic State of Iraq and the Levant (ISIL), in violation of Title 18, United States Code, Section 2339B(a)(1).

Dated: Rochester, New York
December 30, 2015

Timothy J. Klapec

TIMOTHY J. KLAPEC
Special Agent
Federal Bureau of Investigation
Joint Terrorism Task Force

Subscribed and sworn to before me
this 30 day of December, 2015.

Marian W Payson

HONORABLE MARIAN W. PAYSON
United States Magistrate Judge
Western District of New York