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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 12-CR-60298-SCOLA/MATTHEWMAN

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WEST PALM BEACH, FLORIDA
DECEMBER 18, 2012

RAEES ALAM QAZI
& SHEHERYAR ALAM QAZI,

Defendants.

TRANSCRIPT OF PRETRIAL DETENTION HEARING
BEFORE THE HONORABLE WILLIAM MATTHEWMAN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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1 (Call to order of the court)

2 THE COURT: All right.

3 THE CLERK: Calling case 12-60298, U.S.A. versus Raees
4 Alam Qazi.

5 THE COURT: All right. If we could have appearances
6 from counsel, please.

7 MS. GILBERT: Good morning, Your Honor. Karen Gilbert
8 and Jed Dwyer on behalf of the United States.

9 THE COURT: Ms. Gilbert and Mr. Dwyer, how are you
10 doing today?

11 MR. DWYER: Good, Your Honor.

12 MS. GILBERT: Good, Judge. Thank you, sir.

13 MR. ECARIUS: Good morning, Your Honor. Assistant
14 Federal Public Defender Daniel Ecarius and D'Arsey Houlihan on
15 behalf of Mr. Qazi.

16 THE COURT: Okay. All right. Mr. Ecarius and
17 Mr. Houlihan, how are you doing today?

18 MR. HOULIHAN: Good morning, Your Honor.

19 MR. ECARIUS: Good. Thank you. Good morning.

20 THE COURT: All right. This matter is down for a
21 pretrial detention hearing in the case of Raees Alam Qazi.

22 Where are we on this matter?

23 MS. GILBERT: Your Honor, the government is seeking
24 detention, and I do not believe there will be a stipulation.
25 So I think we need to conduct a hearing.

1 THE COURT: All right. And what is the basis that the
2 government is seeking detention on?

3 MS. GILBERT: We are seeking detention based on both
4 risk of flight and danger to the community, and a presumption
5 does apply that no condition or combination of conditions would
6 assure the appearance or the safety of this community under
7 3142.

8 THE COURT: All right. So you are seeking pretrial
9 detention. So you are seeking to have Mr. is it Qazi?

10 MR. ECARIUS: Qazi, Your Honor.

11 THE COURT: Qazi. All right. You are seeking to have
12 Mr. Qazi held with no bond pretrial detention based on the
13 allegations of risk of flight and danger to the community?

14 MS. GILBERT: Yes, sir.

15 THE COURT: And where is the rebuttal presumption
16 found in this case?

17 MS. GILBERT: It is under 18, U.S.C. 3142 under
18 Section D, Detention, Section 3. If you are in the 2012 book,
19 it is page 1071

20 THE COURT: All right. 3142.

21 MS. GILBERT: (e)(3). It is "subject to rebuttal by
22 the person, it shall be presumed." Do you see that, Your
23 Honor.

24 THE COURT: I do. "Subject to rebuttal by the person,
25 it shall be presumed that no condition or combination of

1 conditions will reasonably assure the appearance of the person
2 as required, and the safety of the community if the judicial
3 officer finds that there is probable cause to believe that the
4 person has "committed.

5 MS. GILBERT: And then if you turn to Subsection C,
6 "An offense listed in 2332 little b (g)(5)(b), that includes,
7 that list under that section and it includes the use of weapons
8 of mass destruction.

9 THE COURT: Okay. All right. So under (e)(3)(c) of
10 3142 of Title 18, the government's position is that there is a
11 rebuttal presumption in favor of detention because of the
12 nature of the charge, and that there is a maximum term of
13 imprisonment of 10 year or more; is that right?

14 MS. GILBERT: Yes, sir.

15 THE COURT: All right. Very well. And is the defense
16 ready to proceed today?

17 MR. ECARIUS: Yes, Your Honor.

18 THE COURT: All right. Is the government ready to
19 proceed today?

20 MS. GILBERT: Yes, Your Honor.

21 THE COURT: And do you have an agent available?

22 MS. GILBERT: I do, sir.

23 THE COURT: All right. Excellent. If you would like
24 to go ahead and then proceed, Ms. Gilbert.

25 MS. GILBERT: Yes, Your Honor. I will proceed by

1 proffer. The agent will be Special Agent Kristine Holden of
2 the Federal Bureau of Investigation.

3 THE COURT: Kristine Holden.

4 MS. GILBERT: H-o-l-d-e-n. Kristine with a K.

5 THE COURT: All right. And, yes, the court will
6 permit the government to proceed by proffer.

7 MS. GILBERT: Your Honor, this investigation revealed
8 a plan by this defendant and his co-defendant to conspire to
9 use a weapon of mass destruction and to provide material
10 support to terrorists who were then going to use a weapon of
11 mass destruction.

12 This investigation included many recordings from
13 cooperating sources, telephone recordings and other audio
14 recordings.

15 Beginning in August of this year, this defendant's
16 co-defendant his brother, Sheheryar Qazi, told an individual
17 that this defendant, Raess Qazi, had connections to Al-Qaeda,
18 and he had interest and desire to carry out an attack; that
19 this defendant believed that he was being watched by law
20 enforcement.

21 The investigation continued to an additional recording
22 later in the month of August where the co-defendant was having
23 a conversation with his wife.

24 They were complaining about bills not being paid, and
25 the wife said to her husband, the co-defendant in this case, in

1 summary, "It is fine if he is going to do Jihad, but for now he
2 has to work and help out with the expenses."

3 And for the court's benefit, this is the reference to
4 violent Jihad, a violent attack, not other types of non-violent
5 Jihad.

6 THE COURT: All right. And when you started out, you
7 indicated that the co-defendant is his brother Sheheryar Alam
8 Qazi?

9 MS. GILBERT: Correct.

10 THE COURT: And you indicated that he had
11 conversations with a confidential informant?

12 MS. GILBERT: Yes, sir.

13 THE COURT: All right. And then the other
14 conversations you are referring to are between the co-defendant
15 brother and his wife?

16 MS. GILBERT: Correct.

17 THE COURT: And those were recorded?

18 MS. GILBERT: Yes, sir.

19 THE COURT: All right. I am sorry. Go ahead.

20 MS. GILBERT: And just for the court's benefit, I
21 don't know whether you looked at the docket or not, but we did
22 file a notice of intent to use evidence obtained under FISA,
23 the Foreign Intelligence Surveillance Act. So there are
24 recordings that we will be referring to.

25 THE COURT: I did see that. I did see that notice

1 that was filed. And what is the intent of that notice?

2 What is the purpose of that notice on behalf of the
3 government?

4 MS. GILBERT: Well, it is very similar to in a Title
5 III where you give inventory or notice of interception, and it
6 is basically the corollary under FISA that we must give notice
7 before we intend to offer as evidence in any hearing evidence
8 that was obtained through that act.

9 THE COURT: All right. And there were recordings that
10 were obtained through that act?

11 MS. GILBERT: Yes, sir.

12 THE COURT: All right. Thank you.

13 MS. GILBERT: Okay. Continuing to late August, a
14 computer was sold to this defendant and to his brother which
15 this defendant used to help in his planning and his research
16 for this attack, and you will hear, as the proffer goes on,
17 about different things that he researched involving the use of
18 making explosives and targeting and helping him proceed in his
19 plan.

20 THE COURT: When you say "he," you are referring to
21 this defendant?

22 MS. GILBERT: Yes, Your Honor. In very simple terms,
23 this defendant was going to be the actor.

24 This defendant was the individual who was going to
25 carry out the attack through an explosive either on his person

1 or through a remote detonation.

2 His brother, the co-defendant, was supporting him in
3 doing this; paying the bills, providing computers, providing
4 cell phones and things like that for his use.

5 So when I refer to the research on the computer, it
6 was done by this defendant.

7 THE COURT: Okay.

8 MS. GILBERT: On August 30th, when the computer was
9 purchased by the co-defendant, the co-defendant brother
10 described this defendant, when talking about his intent and his
11 motive as a lone wolf, like the Times Square bomber, and he
12 made a comparison between his brother, this defendant, and
13 Faisal Shahzad, the individual who parked the car in Times
14 Square, detonated it, but then it never went off, and he was
15 arrested a few days later.

16 So the brother was making a comparison that his
17 brother is like a lone wolf operating but like Shahzad from New
18 York.

19 Later, in September there were more discussions where
20 the brother again was talking about his brother's intention
21 that he wasn't going to be in this world long; that he
22 shouldn't work to take away from his path of God or of Allah.

23 THE COURT: Who made those statements?

24 MS. GILBERT: The brother. The co-defendant.

25 THE COURT: Okay.

1 MS. GILBERT: Again, he would have no idea that he was
2 being recorded.

3 The brother also said that when this defendant gets
4 his first chance, he will do it; that he has taken his covenant
5 and has written down his life in the name of their God, Allah.

6 Further, this defendant researched on the computer the
7 legality of martyrdom and self-sacrificial operations.

8 In a later conversation in later October, this
9 defendant was recorded talking to other individuals about, "If
10 you're going to do something, keep it in your head. Don't tell
11 anyone. That's how the FBI and the CIA learn about you. Keep
12 it all in your head."

13 This defendant then traveled to New York on November
14 23rd in order to carry out an attack.

15 Just prior to his leaving for New York, he did
16 computer searches on PETN, the explosive that was used in the
17 shoe bomber incident and the Christmas Day bombing incident and
18 in the cargo print cartridges.

19 THE COURT: Let me ask you a couple of questions. You
20 say the defendant traveled to New York from where?

21 MS. GILBERT: From here in South Florida.

22 THE COURT: From Fort Lauderdale?

23 MS. GILBERT: Yes, sir. He lives in Oakland Park.

24 Throughout the pendency of this investigation, he was living in
25 Oakland Park with his brother, but he traveled to New York on

1 Friday, November 23rd.

2 THE COURT: Of 2012?

3 MS. GILBERT: Yes, sir.

4 THE COURT: All right. And you said that before that
5 he did some sort of searches?

6 MS. GILBERT: Yes, sir.

7 THE COURT: Would you explain that a little bit more?

8 MS. GILBERT: Yes. He was researching the different
9 types of ingredients in detonation on a bomb, and also he
10 searched for basically the pure form of PETN, and when you put
11 together the combination of the searches, it was basically all
12 the steps he would need to construct a bomb.

13 He then traveled to New York on the 23rd and shaved
14 while he was traveling. During the entire investigation, I
15 believe since this defendant began to grow facial hair, he
16 never shaved his beard, and he shaved while traveling to New
17 York.

18 Surveillance picks him up in New York, and then a call
19 is recorded that indicates on the 27th of November that this
20 defendant is returning to Miami; that he traveled to New York,
21 and his brother asks him when he says, "We were worried about
22 you," this defendant says, "I was with my friend, right. I
23 went to do the task, if you understand what I am saying."

24 His brother asked, "Did you achieve anything?" This
25 defendant says, "No. I haven't achieved anything yet because

1 like" -- there is something unintelligible -- "half a week. I
2 haven't been assigned a task, and when I do get one, it is too
3 expensive. I don't that have that much time." Excuse me. "I
4 don't have that much money with me."

5 They begin to talk about the brother basically
6 convinces him, "Come back to Miami. Continue to practice. We
7 can raise money and then you can return to carry out your
8 attack."

9 This defendant traveled from New York on a Greyhound
10 bus arriving in Ft. Lauderdale on Thursday, the 29th, and he
11 was arrested at that time.

12 THE COURT: The conversations that you refer to that
13 were recorded, what language are those in?

14 MS. GILBERT: It is some English and some Pashto.
15 They have been listened to by Pashto translators. We do not
16 have full summaries. We have drafts at the moment, but it was
17 a linguist certified in that language.

18 THE COURT: Okay. Thank you.

19 MS. GILBERT: He returns to Fort Lauderdale, and he is
20 arrested.

21 During his post arrest statement, although he
22 initially denies anything, he basically confesses to what he
23 did and he tells the FBI that he was from Peshawar, Pakistan,
24 and that he routinely travels back to the region.

25 When he returned most recently, and travel records

1 indicate that that was in July of 2011, that he began his path
2 of research, planning and practicing in preparation for an
3 attack in the United States.

4 His motivation of the attack was to avenge the
5 innocent people who had been killed in Afghanistan as well as
6 all of those people killed by U.S. drone strikes.

7 This defendant felt that an attack by him in New York
8 City in the manner in which he planned would clearly send a
9 message to the world that he had avenged the innocent people
10 who had been killed by the U.S.

11 He talked about his intention to return to New York
12 after raising more money. He further admitted to reaching out
13 to Al-Qaeda.

14 He admitted to watching many Anwar Al-Awiaki videos,
15 and Anwar Al-Awiaki was an English speaking individual who
16 promoted, until his death in September of 2011, he promoted
17 violent Jihad.

18 This defendant also admitted to reading Inspire
19 Magazine which was an on line publication of Al-Qaeda or
20 Al-Qaeda in the Arabian Peninsula of Samir Khan, and Al-Awiaki
21 is tied to that.

22 He also wrote a brief handwritten statement during his
23 post arrest statement that says --

24 THE COURT: Was that in English or some other
25 language?

1 MS. GILBERT: It is written in English, Your Honor.

2 THE COURT: Okay.

3 MS. GILBERT: Your Honor, this defendant came to the
4 United States when he was 8 and went through school here. He
5 graduated from Northeast High School here in Fort Lauderdale.
6 So he is fluent in English.

7 THE COURT: All right. And what is his citizenship
8 status?

9 MS. GILBERT: He is a naturalized United States
10 citizen.

11 THE COURT: All right. Thank you.

12 MS. GILBERT: The statement reads, "I, Raess Qazi,
13 went to New York based on my own plans to conduct an attack on
14 an unspecified target. I was not able to conduct the attack
15 and had a change of heart at the end of my trip."

16 He also told agents that he had left a letter for his
17 family explaining his absence before he went, and during the
18 search executed of the family apartment where he resided, they
19 did, in fact, find a letter where this brother basically tells
20 the brother, "Take care of this. Give this back."

21 The importance or the significant part of this
22 evidence letter is he says in Arabic, the translation is, "May
23 God reward you or bless you," or what is commonly used is,
24 "Thank you," and it reads, "For everything. I cannot pay you
25 back for the help you have given me, but Allah can. In Shahla.

1 God willing."

2 He then writes down at the bottom in parenthesis,
3 "Don't panic. Just keep it cool, especially when someone
4 asks."

5 The computer where the defendant made most of these
6 searches has been seized pursuant to a search warrant, and the
7 search is ongoing.

8 There is an indictment already in this case. We
9 believe that these facts do support danger. Obviously, this
10 defendant fully intended to explode either himself or some
11 other device here in the United States.

12 And risk of flight, Your Honor. He has significant
13 family in Pakistan. He has traveled himself to Pakistan. He
14 holds a valid U.S. passport, although it is in law enforcement
15 custody now.

16 He owns no real estate. He has no business. No
17 children in school, and effectively, Your Honor, if he were to
18 be able to travel, there is no extradition treaty with
19 Pakistan.

20 Weapons of mass destruction in support of terrorists
21 and support of terrorists is not on the enumerated list of
22 offenses for which they would even consider it if they would.

23 We believe, based on all of that, Your Honor, that he
24 is a danger and a risk of flight, and we would request
25 detention.

1 THE COURT: Okay. Let me ask you a few questions
2 before I turn to the defense.

3 What is it that the government alleges that this
4 defendant was going to do in New York?

5 MS. GILBERT: Gather the final things that he needs in
6 order to explode and cause mass casualties.

7 THE COURT: Okay. And how many trips were there to
8 New York?

9 MS. GILBERT: Just this one that we are aware of in
10 late November.

11 THE COURT: Okay. And on the computer, you indicated
12 that that was purchased by who?

13 MS. GILBERT: It was bought by this defendant and his
14 brother. They asked another individual for a computer. It was
15 delivered to the brother.

16 The brother guaranteed payment for it, and then it was
17 used by both of them, but it was used mostly by this defendant
18 to do his research and planning.

19 THE COURT: Okay. And the government has the computer
20 in custody and you are analyzing it at this time?

21 MS. GILBERT: Yes, sir.

22 THE COURT: And approximately how many recordings are
23 there that captured this defendant's voice, if you know?

24 MS. GILBERT: I wouldn't be able to tell you based on
25 all of the various types of recordings.

1 THE COURT: Okay. But would it be safe to say that
2 there is a number of them? I mean, is it more than 10 or 20?

3 MS. GILBERT: Oh, absolutely.

4 THE COURT: And what is the period of time that this
5 investigation was ongoing, approximately?

6 MS. GILBERT: The first recording that I described to
7 you was August the 13th.

8 THE COURT: Of?

9 MS. GILBERT: Of this year. So at least as early as
10 August of this year.

11 THE COURT: Okay. And I noted that in Count I he is
12 charged with conspiring between July of 2011 and through
13 November 29th of 2012, and the same is as in Count II.

14 Is that the government's allegation, that the period
15 of the conspiracy and both conspiracies charged in Count I and
16 Count II cover that time frame?

17 MS. GILBERT: Yes, sir. And why it is July of 2011,
18 that's when he traveled back to the United States from Pakistan
19 most recently.

20 THE COURT: I see. And you say the government has his
21 passport?

22 MS. GILBERT: I believe it was seized in the search
23 warrant. I would have to verify it. I am not positive.

24 THE COURT: Okay. Does the passport reflect that
25 travel?

1 MS. GILBERT: I have not seen it, Your Honor. I am
2 sorry. I don't know.

3 THE COURT: That's okay. And do you know if this
4 defendant has any dual citizenship with any other country?

5 MS. GILBERT: I do not know.

6 THE COURT: Okay. Is there anything else that you
7 want to present on behalf of the government?

8 MS. GILBERT: Not as to risk of flight or danger, no,
9 sir.

10 THE COURT: All right. And I will, for the record,
11 find that I do have the indictment here.

12 I will take judicial notice of the indictment, and I
13 also have the Pretrial Services report here, and I will take
14 judicial notice of the Pretrial Services report.

15 And before I turn to the defense, could you all just
16 give me just a minute or two to read through the Pretrial
17 Services report? Thank you.

18 Ms. Gilbert, in looking at the Pretrial Services
19 report, it indicates that there is no prior criminal record as
20 to this defendant.

21 Is that accurate, to the government's knowledge?

22 MS. GILBERT: Yes, sir.

23 THE COURT: All right. I will go ahead now and turn
24 to Mr. Ecarius and the defense and ask you how do you wish to
25 proceed?

1 MR. ECARIUS: Your Honor, may we question the agent?

2 THE COURT: Yes, you may.

3 MS. GILBERT: I call Kristine Holden.

4 THE COURT: Please.

5 THE CLERK: Please raise your right hand.

6 WHEREUPON THE WITNESS, KRISTINE HOLDEN, GOVERNMENT'S

7 WITNESS, SWORN.

8 THE CLERK: Please state your name and spell your last
9 name for the record.

10 THE WITNESS: Kristine Holden. H-o-l-d-e-n.

11 THE COURT: All right. Ms. Holden, how are you
12 employed?

13 THE WITNESS: I am a special agent with the FBI.

14 THE COURT: All right, Agent Holden. Thank you very
15 much. You may proceed counsel.

16 CROSS EXAMINATION

17 BY MR. ECARIUS:

18 Q. Good morning, Agent Holden.

19 A. Good morning.

20 Q. Agent Holden, you heard the prosecutor refer to recorded
21 telephone conversations that had Mr. Raees Qazi as one of the
22 people in the conversation?

23 A. Yes.

24 Q. She referred to one conversation where he referred to the
25 task or a task related to his trip to New York.

1 Are there any other conversations that make a specific
2 reference to a task or anything else connected to the charges
3 in this case?

4 A. Not that I can remember.

5 Q. And there is approximately 20 conversations with Mr. Raees
6 Qazi?

7 A. I didn't listen to all of the conversations; the recorded
8 conversations.

9 Q. Okay. You are not aware of any other conversations that
10 have anything related to the charges?

11 A. No, that's not accurate. I did read a transcript; a
12 summary transcript from the last conversations that the AUSA
13 mentioned.

14 Q. And the word that was used "task," was that translated or
15 was that in English?

16 A. I wouldn't know. I am not a translator or a Pashto
17 speaker.

18 Q. Well, do you know? Is that a translated word or is that a
19 word that was actually used in English?

20 A. You know, I don't know. I can't say because I didn't
21 listen to the recording. I just read the summary, and the
22 summary said the word "task."

23 Q. Okay. There are a number of conversations that are
24 recorded that are with the brother; is that correct?

25 A. Yes. There are conversations between the two brothers.

1 Q. Between the two brothers?

2 A. Yes.

3 Q. Okay. And most of those conversations, are those while
4 Mr. Raees Qazi was in New York City?

5 A. No. Not all of them.

6 Q. The confidential source in this case, there are
7 confidential informants in this case, correct?

8 A. Correct.

9 Q. How were they introduced to the defense in this case? Do
10 you know?

11 MS. GILBERT: Objection to the relevance as to whether
12 it is a danger or a risk of flight.

13 THE COURT: I will give him a little bit of leeway.
14 This is a serious hearing here today.

15 I will give you just a little bit of leeway, counsel,
16 and you are referring to a C.I. individually or plural, C.I.'s?

17 MR. ECARIUS: Yes. They referred to a number of
18 C.I.'s.

19 BY MR. ECARIUS:

20 Q. Do know how many C.I.'s were involved in the case?

21 A. There were two.

22 MS. GILBERT: Objection to the number, Your Honor.

23 THE COURT: Overruled.

24 BY MR. ECARIUS:

25 Q. Do you know how many number of C.I.'s were involved in the

1 case?

2 A. Yes. There were two.

3 Q. And how were they integrated? How were they introduced to
4 the brothers in this case?

5 A. One of the informants, I am not sure, actually. I am
6 sorry. I don't know, and then the other one, I believe he may
7 have bumped into him.

8 Q. Bumped into who?

9 A. To Mr. Raess Qazi.

10 Q. Okay. And there are conversations between the C.I.'s and
11 Mr. Qazi?

12 A. Yes, there are.

13 Q. During those recordings, is there anything specific as
14 specifically references of a plan to carry out an attack or
15 anything like that?

16 A. Since I haven't listened to the recordings, I can't say. I
17 haven't listened to all of them.

18 Q. Are you aware that Mr. Qazi's residence was searched in
19 this case?

20 A. Yes.

21 Q. His residence was searched as well as his sister's
22 residence, right?

23 A. I am not sure, no. The sister's garage, they signed a
24 consent for search for that.

25 Q. Okay. So his residence was searched and the sister's

1 garage was searched?

2 A. Yes.

3 Q. And was there anything recovered as far as materials for or
4 ingredients for explosives?

5 A. Yes. There were materials recovered from Mr. Qazi's house.

6 Q. And what were those?

7 A. I am not sure to all of the materials, but I know of one
8 where some Christmas lights were recovered. Batteries taped
9 together. Those were two items that I can remember that were
10 recovered from the search.

11 Q. Now, the Christmas lights, they were the type of Christmas
12 lights that typically would go on a Christmas tree, or
13 something like that?

14 A. Yes.

15 Q. And the batteries, were they regular like 9-volt batteries,
16 or something?

17 A. I am not sure of the type or size, but there was two
18 batteries taped together.

19 Q. Was there anything else recovered that may be connected to
20 and to explosive materials, or anything like that?

21 A. I believe there was some peroxide at a high level.

22 Q. I am sorry. When you say "peroxide at a high level," do
23 you mean of high qualify?

24 A. Not the normal peroxide that you can buy. It was the kind
25 for coloring hair that was at a higher level. I am not a bomb

1 expert or a bomb tech, so I can't speak to that.

2 Q. What kind of quantity are you referring to?

3 A. I am not sure.

4 Q. Any other chemicals or ingredients?

5 A. Not that I can remember.

6 Q. Are you aware of Mr. Qazi's resources?

7 A. What do you mean by "resources?"

8 Q. Generally, are you aware of whether he has a bank account
9 or access to a bank account?

10 A. I don't think he has a bank account. I know that his main
11 resource was through his brother Sheheryar Qazi for finances.
12 Telephone. Car.

13 Q. Okay. But his brother was working as a cab driver; is that
14 correct?

15 A. Yes.

16 Q. Okay. And you are saying but Mr. Raees Qazi did not have a
17 car of his own, right?

18 A. No, he did not.

19 Q. And, as far as you know, he didn't have a bank account?

20 A. Not that I am aware of.

21 Q. And he also does not have a credit card as far as you know?

22 A. Not that I am aware of.

23 Q. Mr. Qazi does have or you have investigated him. You know
24 that he does have a work history here in South Florida, right?

25 A. I am not aware of his full work history, no.

1 Q. Were you aware that he was on Craig's list buying and
2 selling bicycles?

3 A. Oh, yes, yes, yes. I am aware of selling and buying
4 bicycles, but that is recent.

5 Q. And before that he also was working at the Swap Shop where
6 he was buying and selling goods?

7 A. Yes. Yes.

8 Q. And he also worked as a maintenance man at a local mosque.
9 Were you aware of that position?

10 A. Oh, yes. Yes.

11 Q. Okay. Do you know of any access that he has to cash or
12 other resources?

13 A. Do I know of any assets? No.

14 Q. Any access.

15 A. Access?

16 Q. Other than his employment. You indicated his brother, but
17 does he have any access to cash or any other resources?

18 A. Not outside of what you mentioned.

19 Q. The government was recording him when he was in New York.

20 Are you aware that he did not have enough money to
21 come back to South Florida; that he had to have money wired
22 from his brother to come back, to return back to South Florida
23 and to get a bus ticket to return to South Florida?

24 A. Yes. The conversation that the AUSA mentioned or the
25 summary of it mentioned that his brother was going to have to

1 send money to him in New York in order to buy a bus ticket and
2 come home.

3 Q. So as far as the government is concerned, he didn't have
4 any resources when he was in New York?

5 A. Well, he went up there to obtain a job, and he was looking
6 for a job in order to support himself and to be able to buy
7 explosives so he could build an explosive.

8 Q. Is there any surveillance or anything that supports that
9 what he was doing in New York, that he was looking for a job
10 with a purpose of being able to buy explosives?

11 A. He told us in his post 302 arrest statement that he went up
12 there to obtain a job, and the proceeds from the job he said
13 were going to support him and also go towards acquiring things
14 to build an explosive.

15 Q. Is there anything that the government has obtained that
16 would corroborate that information, the statement that he made?

17 MS. GILBERT: Objection to the form of the question.

18 MR. ECARIUS: I am sorry.

19 THE COURT: Yes. Would you restate it, please.

20 BY MR. ECARIUS:

21 Q. Is there any investigation that the government has of him
22 while he was in New York of his activities when he was in New
23 York? Any information related to that, other than what he told
24 you?

25 A. I am sorry. What again?

1 Q. Is there any information to support what you say he told
2 you in a statement regarding his activities in New York?

3 A. The recorded conversation corroborates what he told us in
4 the post arrest interview as well.

5 Q. Is his statement, the interview that you are referring to,
6 was that recorded?

7 A. No.

8 Q. And why was that?

9 A. The FBI does not record interviews.

10 Q. Okay. And only part of the statement was written; is that
11 correct?

12 A. I am sorry. The handwritten statement --

13 Q. Yes.

14 A. -- that he signed.

15 Q. Yes.

16 A. And then there is the 302.

17 Q. Was the statement that was handwritten, was that written
18 out by him or written out by an FBI agent?

19 A. It was written out by an FBI agent.

20 Q. Okay. And the situation where he was questioned, he was
21 questioned for several hours, right?

22 A. Yes.

23 Q. The computer that was given to Mr. Qazi, that was an FBI
24 computer?

25 A. Yes.

1 Q. Was that equipped with any type of special surveillance
2 equipment?

3 MS. GILBERT: Objection, Your Honor. It doesn't go to
4 whether he is a risk of flight or danger.

5 THE COURT: I will sustain it.

6 BY MR. ECARIUS:

7 Q. What evidence did you obtain from the computer other than a
8 history of searches?

9 MS. GILBERT: Objection, Your Honor, unless he means
10 during the course of the investigation or the search, but the
11 search has not been conducted yet post seizure.

12 THE COURT: Okay. I will sustain it. If you could
13 rephrase it.

14 BY MR. ECARIUS:

15 Q. How is the government aware of searches that Mr. Raees Qazi
16 did on his computer?

17 A. Through technical coverage, the searches were conducted on
18 how to make a bomb, bomb explosive material, and in the post
19 arrest interview, Mr. Qazi also said the same thing; that he
20 researched how to get ammonium nitrate from cold packs on
21 laptops. So he corroborated everything that we were seeing via
22 technical coverage.

23 Q. And when you say "via technical coverage," do you mean like
24 his Internet search provider?

25 A. I am sorry?

1 Q. What are you referring to as to technical coverage? Is
2 that through technical coverage? We know what his searches
3 were. Is that what you said?

4 MS. GILBERT: Your Honor, I would just object. As I
5 indicated to the court, we do have a notice that we do have
6 some FISA information, but this question gets into other areas
7 that have not yet been litigated and will be handled by CIPA
8 litigation later on down the road.

9 THE COURT: All right. I will sustain that objection.

10 BY MR. ECARIUS:

11 Q. Are you aware of anyone other than Mr. Qazi's brother who
12 was involved in the conspiracy to use or obtain a weapon of
13 mass destruction?

14 MS. GILBERT: Objection, Your Honor. An ongoing
15 investigation wouldn't determine whether this defendant is
16 going to appear for his court appearances.

17 THE COURT: Sustained.

18 BY MR. ECARIUS:

19 Q. Are you aware of any plans for any specific attack in New
20 York City?

21 A. Mr. Qazi said in his post arrest statement that he was
22 riding around on his bike in New York looking for targets, but
23 he never specifically picked one.

24 Q. So as far as your investigation goes, as far as this went,
25 the government's position is that he went and he was riding

1 around on his bicycle looking for targets when he was in New
2 York. Were there any other steps towards actually carrying out
3 an attack?

4 A. According to Mr. Qazi, he would have went ahead and
5 completed the attack. However, he ran out of resources.
6 That's why he decided to return home in order for him to get
7 more resources. Money. Equipment, and he was going to
8 practice at home before he returned back to New York.

9 Q. Was there any equipment that was recovered in your searches
10 other than the Christmas lights and the batteries?

11 A. Like I said, the peroxide, and I am sorry. I can't recall
12 at this time.

13 Q. You said that his brother was the source of or you believe
14 that his brother was supporting him; is that correct?

15 A. Yes.

16 Q. So are you aware of any other resources that he had other
17 than his brother?

18 A. Like you said earlier, he had some income from selling some
19 bikes at the Swap Shop, and I believe something at the mosque.

20 Q. The brother, are you aware whether the brother has any
21 resources other than from driving a cab?

22 A. No. That's his main source of income.

23 MR. ECARIUS: If I can just have one moment, please?

24 THE COURT: Sure. Take your time if you need to
25 consult with your client or with co-counsel.

1 BY MR. ECARIUS:

2 Q. Are you aware if Mr. Raees Qazi had any contacts with
3 people or contacts when he was in New York City when he went to
4 New York City?

5 MS. GILBERT: I am sorry. I object to the form of
6 the question.

7 THE COURT: If you could rephrase it, please.

8 BY MR. ECARIUS:

9 Q. Is the government aware of any associates that Mr. Qazi had
10 in New York City when he went there for the weekend?

11 MS. GILBERT: Again, I would object to anything about
12 another investigation or other contacts. That does not go to
13 the purpose of this hearing.

14 THE COURT: All right. That will be sustained.

15 MR. ECARIUS: Your Honor, just briefly, this goes to
16 the strength of the government's case, and they have already
17 testified about surveilling him when he was in New York.

18 So I am just trying to find out whether there was any
19 contacts that he had with any individuals in New York that
20 would help explain the charges.

21 THE COURT: Why don't you ask him what they observed
22 him doing when he was being surveilled in New York City, and to
23 the extent that there are any contacts without mentioning any
24 names, the agent could testify as to whether there were any
25 contacts, but I don't want any names mentioned.

1 Do you understand, agent?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: All right.

4 BY MR. ECARIUS:

5 Q. Was there any contact with anyone other than his brother in
6 New York that you are aware of while you were surveilling him?

7 A. Not that I am aware of. I believe in his post arrest 302,
8 the only contact he had was with the individual that gave him a
9 ride to New York.

10 He may have tried to contact someone while he was up
11 there, but I am not sure.

12 Q. And when you say that the individual gave him a ride to New
13 York, can you explain it?

14 A. There was an individual here in South Florida that was
15 going to New York, and he got a ride with that individual.

16 Q. When he was arrested, how much money did Mr. Raees Qazi
17 have on him?

18 A. I don't know.

19 Q. Are you aware of how long he was in New York?

20 A. He was there from November 23rd. No. He left November
21 23rd. He got to New York on the 24th. He returned to South
22 Florida on the 27th.

23 Q. Are you aware of where he was staying when he was in New
24 York?

25 A. According to Mr. Qazi, I think one night he slept in a

1 restaurant; maybe on public transit and maybe at a mosque. I
2 think that is what he said in his post arrest statement.

3 Q. Again, there is no surveillance of him while he was in New
4 York; is that correct?

5 A. No. I don't think that's correct. I am not sure. I
6 haven't read any of the information that we have from New York,
7 but there was some surveillance because when he got his bus
8 ticket and was on the bus, there was surveillance at that time.
9 I am not sure about prior.

10 Q. Is there any other surveillance that you are aware of other
11 than him getting on a bus?

12 A. No.

13 THE COURT: Let me just clarify that.

14 Are you saying that there may be others. You are just
15 not aware of it?

16 THE WITNESS: I am not sure when the surveillance
17 started. Maybe at the bus station. I am not sure when it
18 started.

19 THE COURT: Okay. That's fine.

20 BY MR. ECARIUS:

21 Q. The prosecutor as part of her proffer said that Mr. Qazi
22 had traveled to Pakistan prior to the trip to New York. Are
23 you aware of those trips?

24 A. I have heard about the trips, yes.

25 Q. Do you have any information as to what Mr. Qazi did when he

1 was in Pakistan?

2 A. No.

3 MR. ECARIUS: No further questions, Your Honor.

4 THE COURT: All right. Let me just follow-up with a
5 few questions.

6 Agent, you had talked about the post arrest statement
7 of this defendant. Do you recall that testimony?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Was that done in English?

10 THE WITNESS: Yes, sir.

11 THE COURT: And do you know if Miranda warnings were
12 read to the defendant prior to the statement?

13 THE WITNESS: Yes. Well, yes, Miranda was read.
14 There were some imminent threats. We did ask him some
15 questions about quarrels related questions prior, and then
16 Miranda began after that.

17 THE COURT: Okay. So Miranda was read. Was there a
18 signed written waiver of Miranda, or was it just oral? Do you
19 know?

20 THE WITNESS: It was a signed written waiver.

21 THE COURT: Okay. All right. And counsel asked
22 questions about New York. Was this New York City?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Was there any specific area of New York
25 City that was targeted, or was it just New York City in

1 general?

2 THE WITNESS: I believe in his post arrest statement
3 he said Manhattan was where he rode his bike and was looking
4 for targets.

5 THE COURT: Okay. And this most recent activity
6 occurred during the week of Thanksgiving of 2012?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: All right. Mr. Ecarius, if you want to
9 follow-up on anything, you can, otherwise I will turn to
10 Ms. Gilbert.

11 BY MR. ECARIUS:

12 Q. Was there anything more specific than Manhattan as far as
13 the possible targets?

14 A. There were recorded conversations where Mr. Qazi asked
15 about how large the crowds were at Times Square.

16 He asked about Wall Street and theaters in Manhattan.
17 He asked about several different places.

18 Q. And when you say he asked about, was this that he asked the
19 confidential source?

20 A. No. He asked the individual.

21 Q. Who is that individual?

22 MS. GILBERT: Objection.

23 THE COURT: Sustained.

24 MR. ECARIUS: No further questions.

25 THE COURT: All right. Thank you. Ms. Gilbert, do

1 you have any questions?

2 MS. GILBERT: Yes. Let's clear up the significance of
3 the Christmas tree lights, agent.

4 REDIRECT EXAMINATION

5 BY MS. GILBERT:

6 Q. Agent, you indicated that the search of this defendant's
7 apartment revealed Christmas tree lights and some batteries.

8 Were any part of the Christmas tree lights strands cut
9 off and separated from a larger strand of Christmas lights?

10 A. Yes. In Mr. Qazi's room, he had a separate portion of the
11 Christmas lights in his room.

12 Q. Okay. And was that compared to or made relevant by any
13 computer searches that this defendant had done just before he
14 left for New York?

15 A. Yes, there is. In the Al-Qaeda Inspire Magazine, one of
16 the components for making a home-made bomb is with Christmas
17 lights.

18 Q. Okay. Are you familiar with Inspire issue 1 of the
19 article, "Make a bomb in the kitchen of your mom?"

20 A. I have heard of it, yes.

21 Q. Okay. And is that the article that talks about using
22 Christmas tree lights and batteries to make an explosive?

23 A. Yes.

24 Q. Okay. So the Christmas tree lights were not seized as
25 evidence because they were Christmas tree lights. It was

1 because of something that he had researched on the computer?

2 A. Yes.

3 Q. And then also in his post arrest statement, was he asked
4 about the Christmas tree bulbs?

5 A. Yes. He stated that he had made an explosive device at
6 home, but it did not work, and he used Christmas tree lights.

7 Q. And where had he found the information on how to use
8 Christmas tree lights with an explosive?

9 A. He found that in Al-Qaeda's Inspire Magazine.

10 Q. You were also asked a number of questions about things that
11 were searched in addition to the apartment.

12 Are you familiar with remote control car parts that
13 were found?

14 A. Yes.

15 Q. Why is that significant?

16 A. For remote detonation of an explosive device.

17 Q. And during the course of this investigation, did this
18 defendant, in fact, create a remote device to help him his
19 brother in his cab business?

20 A. Yes. He created a device for his brother to remotely take
21 cab calls from inside his home from the cab sitting outside.

22 Q. Were there also other electronics seized from the apartment
23 like bowel beaters and things like that?

24 A. Yes.

25 Q. And multiple wires and other items that would be needed to

1 make the things that he was researching on the computer?

2 A. Yes.

3 MS. GILBERT: Nothing further, Your Honor.

4 THE COURT: All right. Thank you. And, Mr. Ecarius,
5 did you have any follow-up on any of that?

6 RECCROSS EXAMINATION

7 BY MR. ECARIUS:

8 Q. When you referred to other items that were seized, you said
9 there were wires?

10 A. Yes.

11 Q. What other items were seized?

12 A. Being not a top bomb tech, it is really hard for me to
13 articulate. I don't have my notes in front of me, but various
14 wires; pieces from a remote controlled car.

15 From the pictures that I saw, the car was taken apart,
16 but not all of the pieces were there. And like I said earlier,
17 the peroxide and the batteries and the Christmas tree lights.

18 Q. Are you aware of whether any of this stuff was recovered
19 from him when he returned from New York?

20 A. No. We found it in a search of the residence.

21 Q. When he was arrested, were there any materials that were
22 recovered from his person?

23 A. No. Do you mean bomb making materials?

24 Q. Yes.

25 A. No.

1 MR. ECARIUS: No further questions, Your Honor.

2 THE COURT: All right. Thank you.

3 Ms. Gilbert, did you have any follow-up questions?

4 MS. GILBERT: No, sir. Thank you.

5 THE COURT: All right. And, Mr. Ecarius, does the
6 defense have anything else that they wish to present at this
7 hearing here today?

8 MR. ECARIUS: Your Honor, just argument.

9 THE COURT: All right. Let me turn to the government.
10 Does the government have anything else that they wish to
11 present here today?

12 MS. GILBERT: No, sir.

13 THE COURT: All right. Agent, thank you very much.
14 You can step down.

15 THE WITNESS: Thank you, Your Honor.

16 [The witness was excused].

17 THE COURT: Now, let me ask defense counsel a few
18 questions. Mr. Qazi is 20 years old?

19 MR. ECARIUS: Yes, Your Honor.

20 THE COURT: And he was born in Pakistan; is that
21 right?

22 MR. ECARIUS: Yes.

23 THE COURT: He has a valid passport, but the
24 government has it; is that correct?

25 MR. ECARIUS: Yes, Your Honor.

1 THE COURT: And where does he reside? Does he reside
2 with his brother and his brother's wife, or does he reside
3 somewhere else?

4 MR. ECARIUS: Your Honor, he resides at 2341 Northwest
5 33rd Street in Oakland Park, and that would be with his father
6 and his brother and his brother's wife.

7 THE COURT: 2341 Northwest 33rd Street?

8 MR. ECARIUS: Yes. That's the address on the Pretrial
9 Services report.

10 THE COURT: And that's in?

11 MR. ECARIUS: Oakland Park, Florida,

12 THE COURT: Oakland Park, Florida. And you say he
13 resides there with his brother, his brother's wife and his
14 father?

15 MR. ECARIUS: Yes.

16 THE COURT: All right. And do you agree with the
17 government's analysis that there is a rebuttal presumption that
18 applies in this case pursuant to the statute?

19 MR. ECARIUS: Yes, Your Honor, I do.

20 THE COURT: Okay. All right. I am sorry. I just
21 wanted to clarify a few issues.

22 Go ahead. You can proceed.

23 MR. ECARIUS: Your Honor, as to risk of flight, Your
24 Honor, I believe that his risk of flight is minimal in this
25 case, given the fact that he does have strong ties to this

1 community.

2 He has been here for the last 10 years. He attended
3 high school here, elementary school and middle school. Both of
4 his immediate family is here.

5 His mother and his father are here in Broward County.
6 They are nearby. As I told you earlier, he lives with his
7 brother and his father and the brother's wife.

8 He has a work history in this community. He is only
9 20, so he has really only been working for two years, but he
10 was working at the Swap shop. He works on line buying and
11 selling bicycles.

12 As I said, he does have strong ties here. He has no
13 criminal history. He has never been arrested as far as we can
14 tell.

15 There is no information that he was ever arrested when
16 he was overseas or has done anything that would cause him to be
17 arrested.

18 I do think that there is a combination of conditions
19 that could be set to insure his appearance in court.

20 I do understand the court has concerns with this case.
21 However, given the fact that there is no criminal history and
22 the fact that most of the case, I believe that the government's
23 case mostly relies on a statement that was obtained from him.

24 There are recordings, but the gist of the charges,
25 which is making or trying to use a weapon of mass destruction,

1 all of that information seems to come from a statement that he
2 made that's not recorded; that even though the FBI certainly
3 had the capability to do so does not record statements.

4 There appears to be no corroboration of what his
5 activities were in New York other than his statement.

6 There appears to be a number of statements to
7 confidential sources by his brother, but actually the
8 statements that Mr. Raees Qazi made seems to be very limited.

9 I believe there was one statement that he allegedly
10 made referring to a task, and I am not sure if that task was in
11 English or was a translation as to what that was because my
12 understanding is that he was going to New York to work, and
13 that is a task.

14 So a lot of the things that the government has
15 presented can be interpreted in various ways, and so I think
16 that the objective evidence in this case is somewhat limited,
17 and the Court should consider that in setting a bond in this
18 case, but because he does have such strong ties to this
19 community, and because he could be monitored electronically and
20 confined to his home, he can do home detention.

21 They can know if he is leaving his home, but I am
22 going to ask the court to consider some kind of a bond in the
23 case that would allow him to be out and in home detention and
24 to deal with the case out of custody.

25 This case is a case that is going to require a lot of

1 meetings with counsel and a lot of work, and it would
2 definitely aid the situation if he were able to be out on bond,
3 and I think that he could be confined to his home.

4 THE COURT: Mr. Ecarius, how do you respond to the
5 government's argument that says that he has had recent travel
6 to Pakistan; that he is from Pakistan, and that there is no
7 extradition treaty with Pakistan?

8 If he were to flee to Pakistan, there would be no way
9 to bring him back to this country.

10 MR. ECARIUS: Your Honor, first of all, if he is
11 confined to his home with an electronic monitor, he would not
12 be able to leave.

13 Also, if his travel documents are taken, he is not
14 going to be able to travel out of the country. He cannot
15 secure another passport. His passport is taken.

16 They also are able to put information. If there is
17 any indication that he broke the monitoring, then they could
18 certainly put that information at the airport and he would not
19 be able to fly out of the country.

20 My understanding is that he has only been to Pakistan
21 to visit relatives that are in Pakistan and has traveled there,
22 but certainly I think that if he is confined to his home and if
23 his travel documents are taken, that that would not be a
24 concern.

25 THE COURT: The government is making the argument that

1 he is a danger to the community, and I would imagine that part
2 of their argument is that since he allegedly committed some of
3 these acts in his home, if he were on home confinement he could
4 still continue to commit certain acts, such as trying to make
5 explosive devices or engage in other types of conduct that the
6 government is alleging. How do you respond to that?

7 MR. ECARIUS: Well, the government appears to have
8 taken the Christmas lights and whatever wires that he had at
9 the apartment, and certainly he could be restricted from
10 obtaining any electronic devices, and his home could be
11 searched by Pretrial Services as a condition of bond for
12 anything that may be interpreted as bond making materials.

13 He also could be with his Internet use so he couldn't
14 be on the Internet researching anything.

15 The other family members could be instructed also that
16 nothing could be brought into the house that is not approved by
17 Pretrial Services.

18 THE COURT: And your proposal that he be living there
19 with his brother, his brother's wife and his father; is that
20 right?

21 MR. ECARIUS: Yes.

22 THE COURT: And are there any members of his family in
23 court on his behalf here today?

24 MR. ECARIUS: His sister is here. If she can stand
25 up. Ms. Robbiah is here.

1 THE COURT: Good afternoon, ma'am.

2 MR. ECARIUS: She is also willing to co-sign on a
3 bond. She has a 9 month old child, but they are very close.

4 THE COURT: All right. Anything else that the defense
5 wishes to present? If you need a chance to talk to your client
6 or to co-counsel, feel free to do so.

7 MR. ECARIUS: Oh, Your Honor. You were concerned
8 earlier about him possibly flying to Pakistan. He has been on
9 a no fly list for sometime. So he cannot actually fly to
10 Pakistan.

11 THE COURT: So what you are saying is there would be
12 sufficient safeguards if he were on home confinement; that he
13 would not be able to flee to Pakistan?

14 MR. ECARIUS: Yes.

15 THE COURT: All right. Anything else that the defense
16 wishes to argue or to present?

17 MR. ECARIUS: No, Your Honor.

18 THE COURT: All right. Thank you, Mr. Ecarius.

19 Let me turn to the government, Ms. Gilbert, and I want
20 to hear the government's rebuttal and your position on this.

21 MS. GILBERT: Your Honor, unfortunately, as we all
22 know and have experienced, home confinement and community
23 control just doesn't work that well, and the fact that we have
24 a passport doesn't mean that he cannot go fly and get them or
25 go by fake documents anywhere.

1 If he were able to travel either into Mexico or
2 Canada, he would be able to leave from those countries.

3 He is a danger to the community. He fully intended to
4 blow himself up and dozens of other people or remotely detonate
5 a bomb and cause mass casualties on behalf of Al-Qaeda.

6 That is what he told us, and Mr. Ecarius characterizes
7 the evidence as not that great, and based on his statement, I
8 don't believe there is true, Your Honor.

9 He was doing the research necessary in order to make a
10 bomb and to carry out an attack. He was reaching out to
11 Al-Qaeda. He was reading their material. He was reading
12 Inspire Magazine. He was a follower of Anwar Al-Awiaki.

13 He wanted to avenge the deaths of individuals killed
14 by drone strikes. He is a danger to this community any where
15 he would go.

16 He certainly, in addition to that, is a risk of
17 flight. He could go anywhere and hide any where.

18 If he gets out of the country, we will never get him
19 back. He is a danger even if he leaves the country. I know
20 that's not this court's concern.

21 He wanted to carry out an attack, and if he is
22 released from custody, he will. That is why there is a
23 presumption when you are charged and indicted with weapons of
24 mass destruction.

25 THE COURT: How do you respond to Mr. Ecarius'

1 argument that if he is on home confinement with no computer
2 access and no electrical devices, that he is not a danger to
3 the community?

4 MS. GILBERT: He is, Your Honor. He could very easily
5 can continue to do his research; to talk to people to do
6 things.

7 There is no way that this individual is going to be
8 deterred by you telling him like, with all due respect, by this
9 court telling him that he is on home confinement.

10 "Don't do any more research on how to make a bomb."

11 He fully intended to do this and thankfully did not
12 have the money to get the things he needed, and he came home to
13 make more money to return.

14 He has not been deterred by this arrest. And,
15 unfortunately, very apparent from his research and his
16 activities that have been surveilled he was very intent on this
17 result.

18 He wants to avenge those deaths and kill people.
19 There is no way this court can assure the safety of the
20 community if he is not in custody.

21 THE COURT: All right. Is there anything else that
22 the government wishes to argue or present at this time?

23 MS. GILBERT: No, sir.

24 THE COURT: All right. Anything else from the defense
25 as far as rebuttal or any other argument?

1 MR. ECARIUS: No, Your Honor.

2 THE COURT: All right. Thank you.

3 First of all, I want to commend the attorneys on both
4 sides in this case. Ms. Gilbert, Mr. Ecarius, you both have
5 done an excellent job, and both of you, Ms. Gilbert, you
6 represent the government well and, Mr. Ecarius, you represent
7 your client very well.

8 These are difficult cases, and this specifically is a
9 difficult case.

10 First of all, we have a 20 year old young man. From
11 the evidence at this hearing he has absolutely no prior
12 criminal record at all.

13 He has never been arrested and never been convicted
14 for any crime, and he is a United States citizen. Those
15 factors certainly in my mind weigh in favor of his release.

16 On the other hand, you have a situation where the
17 defendant is charged by way of an indictment, I would add,
18 which is a return from a grand jury where a grand jury found
19 probable cause to believe that this defendant, first of all,
20 conspired to provide material support to terrorists, and then
21 in Count II conspired to use a weapon of mass destruction.

22 So there is a finding of probable cause by the grand
23 jury.

24 In reviewing the case, it appears that the
25 government's case at this point is made up of phone and

1 recorded telephone and personal conversations that were
2 surreptitiously recorded.

3 The second major component of the government's case
4 appears to be computer searches that this defendant allegedly
5 engaged in that establish his intent to engage in terrorist
6 activity.

7 Then finally, and what the court does find pretty
8 compelling is a post arrest statement. The post arrest
9 statement from what I have heard to this point is a very
10 inculpatory post arrest statement where the defendant admits to
11 the government much of what the government alleges.

12 Now, obviously the defense will have the ability to
13 challenge that statement down the road and to make whatever
14 motions need to be made, but for the purposes of this hearing,
15 even if the court were to accept the government's argument that
16 the phone conversations refer to vague matters, such as a task
17 and the computer searches are not that noteworthy, you do have
18 the situation of a post arrest statement where the defendant
19 specifically admits to the government what he intended to do,
20 and that was to explode something to cause damage in New York
21 City and to commit a terrorist offense.

22 Now, the Court takes the presumption of innocence
23 really very, very seriously, and this defendant is presumed
24 innocent, and in the Pretrial Detention Statutes under Section
25 18, 3142(j) the presumption of innocence remains and it states

1 that nothing in this section shall be construed as modifying or
2 limiting the presumption of innocence.

3 So the court really takes the presumption of innocence
4 very seriously, and so did Congress, obviously, when they
5 passed 18, U.S.C. 3142 because they noted that the presumption
6 of innocence still applies.

7 On the other hand, there is a rebuttable presumption
8 of detention in this case under 3142 (e)(3)(C) because of the
9 nature of the offense in this case, and Congress has said that
10 when there is a rebuttal presumption, the court has to look to
11 that rebuttal presumption and then look to the defense to see
12 if the presumption can be rebutted.

13 So really putting all of that together and considering
14 this case very carefully, and even understanding that this is a
15 20 year old young man with no prior convictions, no prior
16 arrests, who is a U.S. citizen, because of the charges, because
17 of the grand jury indictment, because of the proffer and the
18 evidence in this case and the testimony of the agent, the
19 court, notwithstanding the presumption of innocence, the court
20 is I believe required by the statute and required by federal
21 law to order this defendant to be held in pretrial detention in
22 this case.

23 The court does find based on what I have heard here
24 today that the defendant is a risk of flight in this case.

25 I understand. I have placed defendants on home

1 confinement before, and it is a very good least restrictive
2 means of release in certain cases, but if this defendant, if
3 Mr. Qazi were to leave his residence and somehow leave the
4 jurisdiction and were able to leave the country, there is an
5 excellent chance that he would never be brought to trial here
6 in this court, and he certainly has a right to that trial, and
7 who knows what will happen at trial, but he certainly has a
8 right to that, but the government also has a right to proceed
9 to trial and not have the defendant flee prior to trial.

10 So I do find that the defendant is a risk of flight,
11 and I find that the standard that needs to be met by the
12 government, which is a presumption, or rather a preponderance
13 of the evidence that he is a risk of flight has been met by the
14 government.

15 I also do find that the defendant is a danger to the
16 community, and I find the government has met that standard by
17 clear and convincing evidence, and I will so find.

18 I do not believe that the defense, even though you
19 have done a great job, and I think, Mr. Ecarius, this is a
20 difficult case and you have done an excellent job here today, I
21 do not believe that the defendant has sufficiently rebutted the
22 rebuttable presumption that Mr. Qazi is a danger to the
23 community and a risk of flight.

24 I do not do this lightly. I don't like detaining
25 somebody who has no priors, and I don't like detaining somebody

1 who is presumed innocent, but in this case under these facts,
2 based on what Ms. Gilbert has presented here, I really feel
3 that I am legally constrained to detain the defendant.

4 So I will enter an order of pretrial detention in this
5 case, and I will issue a written order later today or tomorrow.

6 That being said, Ms. Gilbert, is there anything else
7 that needs to come before the court as to this defendant here
8 today?

9 MS. GILBERT: No, sir.

10 THE COURT: All right. Thank you, ma'am. And,
11 Mr. Ecarius, is there anything else that needs to come before
12 the court today on behalf of Mr. Qazi?

13 MR. ECARIUS: No, Your Honor.

14 THE COURT: All right. Again, I want to thank both
15 counsel for doing such an excellent job here today, and the
16 hearing is now adjourned. Thank you.

17 (Whereupon the proceedings were concluded)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

DECEMBER 19, 2012

S/JERALD M. MEYERS

DATE

JERALD M. MEYERS, RPR-CM