

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT FREE PRESS,)	
<u>et. al.</u> ,)	
Plaintiffs,)	
)	
v.)	Civil Action
)	No. 02-70339
DEPARTMENT OF JUSTICE,)	
)	Honorable Nancy G. Edmunds
Defendant.)	

DECLARATION OF DALE L. WATSON

I, Dale L. Watson, declare as follows:

1. I am the Executive Assistant Director for Counterterrorism and Counterintelligence of the Federal Bureau of Investigation. As part of my official duties, I am one of those responsible for coordinating and supervising DOJ's investigation into the September 11, 2001, attacks on the World Trade Center and Pentagon, and its investigation of related threats, conspiracies, and attempted terrorist attacks throughout the nation and the world. This declaration is based upon my personal knowledge and upon information provided to me in my official capacity.

BACKGROUND ON BREADTH OF GOVERNMENT INVESTIGATION

2. Following the events of September 11, 2001, the United States government launched an extensive, broad-based and worldwide investigation into those terrorist attacks and into threats, conspiracies, and attempts to perpetrate terrorist acts against United States citizens and interests. Since September 11, DOJ has actively been conducting the investigation in conjunction with other federal, state and local agencies. Thousands of FBI agents have been

engaged with their federal, state, local and international counterparts in an unprecedented worldwide effort to prevent further attacks by apprehending those responsible for the September 11 attacks and by detecting, disrupting, and dismantling terrorist organizations.

3. This is an open and ongoing investigation; the FBI is continuing to follow leads and conduct interviews at this time.

4. As a result of the investigation, there is a pending prosecution in the Eastern District of Virginia entitled *United States v. Moussaoui* directly related to the September 11, 2001 attacks. In addition, there is a pending terrorist prosecution entitled *United States v. John Walker Lindh* in the Eastern District of Virginia directly related to the terrorist groups involved in orchestrating the September 11, 2001 attacks as well as the United States' efforts in the war on terrorism.

5. The United States continues to investigate these terrorist groups as well as the attacks and other planned and/or potential attacks on the United States or United States interests abroad. For example, there is a pending prosecution in the District of Massachusetts entitled *United States v. Richard Reid* relating to a thwarted terrorist attempt to bomb an aircraft by an individual who is alleged to have trained in an Al Qaeda terrorist camp.

6. As part of this investigation, law enforcement has questioned thousands of individuals. Some interviews resulted in a decision to take individuals into custody. Those detainees fall into three general categories. First, some were arrested for alleged violations of federal criminal law. Second, those who have violated immigration laws have been detained by INS for immigration violations (and are hereafter referred to as the "INS detainees"). Third,

some individuals who were believed to have information material to the events of September 11 were taken into custody under material witness warrants pursuant to 18 U.S.C. § 3144.

7. Proceedings involving material witnesses being held pursuant to 18 U.S.C. § 3144 have been conducted under seal pursuant to federal court orders.

BACKGROUND ON INS DETAINEES' LINKS TO ONGOING INVESTIGATIONS

8. Although the INS detainees are being held by INS on immigration-related charges, they were originally questioned because there were indications that they might have connections with, or possess information pertaining to, terrorist activity against the United States including particularly the September 11 attacks and/or the individuals and organizations who perpetrated them. For example, they may have been questioned because they were identified as having interacted with the hijackers, or were believed to have information relating to other aspects of the investigation. Other INS detainees may have been questioned because of their association with an organization believed to be involved in providing material support to terrorist organizations operating domestically or abroad. In the course of questioning them, law enforcement agents determined, often from the subjects themselves, that they were in violation of federal immigration laws, and, in some instances, also determined that they had links to other facets of the investigation.

9. On September 21, 2001, ten days after the terrorist attacks on the World Trade Center and the Pentagon, Chief Immigration Judge Michael J. Creppy issued a directive closing the immigration cases relating to certain of these INS detainees. The cases encompassed by the directive have come to be referred to as "special interest" cases. Such cases are closed to the

public and docket information concerning them is not publicly available. Further, immigration courtroom personnel and contract interpreters are precluded from discussing the case.

10. As relates to those INS detainees for whom investigative concerns remained at the time they were taken into custody, efforts have continued to resolve those concerns, and in many instances the concerns have been resolved. It is only those INS detainees about whom concerns remain who are included in the the "special interest" category and for whose cases the Creppy directive is applied. There are a relatively limited number of INS detainees in the special interest category.

OPENING SPECIAL INTEREST INS DETENTION HEARINGS WOULD PUBLICLY REVEAL THE COURSE OF THE UNITED STATES' INVESTIGATION

11. As discussed below, opening "special interest cases" immigration hearings to the public could result in significant harm to the interests of the United States and could compromise the September 11 and other ongoing terrorism- related investigations.

12. Public hearings will reveal sources and methods of investigation. This will include information which, when assimilated with other information the United States may or may not have in hand, allows a terrorist organization to build a picture of the investigation. Terrorist organizations that have the sophistication necessary to engage in multiple, simultaneous attacks are involved in gathering intelligence concerning the activities of the U.S. Government and its law enforcement agencies. Bits and pieces of information that may appear innocuous in isolation can be fit into a bigger picture by terrorist groups in order to thwart the Government's efforts to investigate and prevent terrorism. For example:

- Information about what evidence led to the detention of each individual may not, taken alone, appear significant. However, information about numerous detainees and why they were originally detained would allow the terrorist organization to discern patterns and methods of investigation.
- Information about how any given individual entered the country (from where, when, and how) may not divulge significant information that would reveal sources and methods of investigation. However, putting entry information into the public realm regarding all "special interest cases" would allow the terrorist organization to see patterns of entry, what works and what doesn't. It may allow them to have the information they need to alter methods of entry into the United States for terrorist members.
- Information about what evidence the United States has against members of a particular cell collectively will inform the terrorist organization as to what cells to use and which not to use for further plots and attacks.

13. Further, selective disclosure of evidence about particular detainees, even evidence that does not tie directly to terrorism, would be harmful because it reveals what information the United States *may not* possess about a particular detainee. For example, the United States may disclose in a public hearing certain evidence it possesses about a member of a terrorist organization. It may be that the detainee is actually involved in a planned attack. Opening the hearing may allow the terrorist organization to know (or believe) that the United States is not yet aware of the attack based on what is presented at the open hearing.

14. A detainee with a minor or supporting role in a terrorist cell may not realize the import of the information revealed in his hearing, whereas the leader of that operation, learning that information from a media or other report of the hearing, may recognize and act on its significance.

15. Opening immigration hearings for the "special interest cases" would outline the direction and progress of the investigations by identifying where DOJ is and has been focusing its efforts. In effect, it could allow terrorist organizations to map the progress of the investigation and thereby develop the means to impede it. For example, this may cause terrorists, who learn that their associates or even people who know their associates have been detained to alter their plans in a way that presents an even greater threat to the United States. For example,

- Discovering that a particular detainee is detained, or discovering that particular information about a plot is public, may cause the terrorist group to accelerate the timing of a planned attack, reducing the time available to detect and prevent such an attack.
- Official verification that a member has been detained and therefore can no longer carry out the plans of his terrorist organization may enable the organization to find a substitute who can achieve its goals more effectively, thereby thwarting the government's ability to frustrate ongoing conspiracies.
- Upon learning that a particular terrorist cell has been compromised through the detention of some or all of its members or affiliated persons, or disclosure of evidence about that particular cell, terrorists may switch to an alternative cell, thereby retaining the ability to mount future terrorist attacks.

- Public disclosure at a hearing that a detainee or other witness may be cooperating would alert the terrorist organization to this and potentially cause the organization to take some action to thwart the investigative efforts and/or jeopardize the witness.

16. Public hearings involving evidence about terrorist links (or detainees where we are not even sure yet the extent of any terrorist links) could allow terrorist organizations and others to interfere with the pending proceedings by creating false or misleading evidence. Even more likely, the terrorist organizations may destroy or conceal evidence, tamper with or threaten potential witnesses, or otherwise obstruct the ongoing investigations and pending prosecutions. For example, if evidence is disclosed that a particular detainee has funded a terrorist organization through a particular method or scheme and the United States is now aware of that scheme, other individuals may destroy evidence of funding that organization through similar schemes. Or, the organization itself may be tipped off to the United States investigative methods in a way that causes it to move the underlying funds.

17. Opening immigration hearings for the "special interest cases" would reveal other investigative sources and potential witnesses for other pending cases. For example, if evidence is offered about a particular phone number link between a detainee and a number connected to a terrorist organization or member, other individuals who have used that number in the past will be on notice that the United States is now aware of the links. It may even be able to determine what sources and methods the United States used to become aware of that link.

18. Likewise, divulging the detainees' identities and opening their hearings may deter them or others from cooperating with the Department of Justice once they are released from

custody and impair their usefulness to the ongoing investigation. As a result of their public identification, terrorist organizations with whom they have a connection may refuse to deal further with them. This could eliminate valuable sources of information from the investigation. It would similarly impair the government's ability to infiltrate terrorist organizations engaged in ongoing criminal activities. Moreover, a detainee who knows his name will be made public may be deterred from cooperating now or in the future for fear of retaliation by terrorist organizations against him or his family and associates. Terrorist organizations that discover the identities of these individuals could subject them to intimidation or harm, thereby discouraging or preventing them from supplying valuable information or further leads.

19. Of course, in addition to the potential for significant harm to U.S. interests, posed by open hearings, INS detainees also have a substantial privacy interest in having their possible connection to the ongoing investigation kept undisclosed. Although some particular detainees may choose to identify themselves, it is important to note that as to all INS detainees whose cases have been placed in the special interest category concerns remain about their possible connection to terrorism, and specifically to the worst terrorist attack ever committed on United States soil. Although they may eventually be found to have no connection to terrorist activity, discussion of the causes of their apprehension in open court would forever connect them to the September 11 attacks. Given the nature of these investigations, the mere mention of their names in connection with these investigations could cause the detainees embarrassment and humiliation.

20. Further, the government cannot proceed to close hearings on a case-by-case basis, as the identification of certain cases for closure, and the introduction of evidence to support that

closure, could itself expose critical information about which activities and patterns of behavior merit such closure.

21. Since September 11 the United States has been involved in an unprecedented worldwide effort to prevent further attacks by apprehending those responsible for the September 11 attacks and by detecting, disrupting, and dismantling terrorist organizations. In the course of this effort, DOJ has made extensive use of grand juries in conducting the investigation.

22. Due to the breadth of DOJ use of grand juries in the wake of the September 11 attacks, it is entirely foreseeable that grand jury information will be pertinent to immigration hearings of special interest INS detainees. This is true notwithstanding the fact that the deportation charge against a particular alien may not relate to terrorism, as grand jury information may be directly relevant to such issues as the granting of bail or relief from deportation. Although Rule 6(e)(3)(C)(i)(I) authorizes DOJ to obtain a court order to disclose such information in the immigration proceeding, the general secrecy consideration which underlies grand juries strongly counsels against disclosure of such information if the immigration proceeding is open to the public. As a result, the Government may be placed in a position of not being able to advance directly probative information in the course of the immigration proceeding.

23. Evidence introduced in the immigration proceeding might reveal the fact or nature of an ongoing criminal investigation (whether or not a grand jury is being used) and provide the terrorist organization information about the nature and direction of the United States investigative and prosecution efforts.

I declare under penalty of perjury that the foregoing is true and correct.

4/9/02
DATE

Dale L. Watson
DALE L. WATSON