



7 have corrected, in paragraph 1, defendant's history, residence,  
8 family ties.  
9 THE COURT: Yes, sir.  
10 MR. MAHER: Where it states student housing, that  
11 should be private housing.  
12 THE COURT: Any objection?  
13 MS. BARONI: No, your Honor.  
14 THE COURT: Thank you.  
15 MR. MAHER: Otherwise, it appears accurate.  
16 THE COURT: Thank you. How would you like to proceed,  
17 Mr. Maher?  
18 MR. MAHER: We are ready to proceed with a detention  
19 hearing.  
20 THE COURT: Yes.  
21 MR. MAHER: And if the government has any witnesses,  
22 are they ready to proceed with witnesses or not?  
23 THE COURT: Why don't you folks confer off the record  
24 and let me know what you'd like to do next.  
25 MR. MAHER: Thank you.  
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1 (Pause)  
2 MR. MAHER: We have a number of exhibits. I just ask  
3 that we get them premarked.  
4 THE COURT: Yes, sir.  
5 MR. MAHER: If I may proceed with argument.  
6 THE COURT: Yes.  
7 MS. BARONI: Your Honor, if I may, for the record,  
8 this is the first time the government has been provided with a  
9 copy of all of these exhibits despite communication yesterday  
10 with Mr. Maher.  
11 THE COURT: I guess we are going to need to sit here  
12 and read these, right?  
13 MR. MAHER: These are all documents that I believe are  
14 in the government's possession.  
15 MS. BARONI: We can go forward, your Honor. If the  
16 government needs additional time to look at anything in  
17 particular, we will request it.  
18 THE COURT: Yes, ma'am.  
19 MR. MAHER: Your Honor, Mr. Hashmi has been indicted  
20 with charges of terrorism and basically support to a terrorist  
21 group, Al Qaeda. The issue before the court today is, is there  
22 a combination of conditions which will assure, reasonably  
23 assure Mr. Hashmi's return to court, or is this a case in which  
24 detention is warranted? And for the reasons that I would like  
25 to proffer to the court, it's our position that this is indeed  
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1 a case where the court can fashion reasonable conditions to  
2 allow Mr. Hashmi to be outside of detention, be outside of the  
3 special housing unit of the Manhattan Correctional Center, and  
4 come back to court without any risk to the community.  
5 Your Honor, this case is very complicated in many  
6 ways, and as a defense we have not been privy to what the  
7 government has, obviously. We have been able to develop some  
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8 investigation, the family retained our firm actually a number  
9 of months ago to begin to investigate this case on behalf of  
10 Mr. Hashmi.

11 Mr. Hashmi was arrested about a year ago in England  
12 pursuant to this indictment and arrest warrant. He has been in  
13 England incarcerated pending extradition. He has had counsel  
14 there that brought forth very worthy arguments against  
15 extradition which were not agreed to by the British  
16 authorities.

17 In looking to the nature and circumstances of the  
18 offenses charged, which is one of the key factors under 3142 of  
19 18 U.S. Code, I would like the court to look or be aware of the  
20 submission that the government made in the extradition  
21 proceedings in England. It is marked as Exhibit 1, should be  
22 the top one. The first page is a letter from the Embassy of  
23 the United States attesting that the government of the United  
24 States was providing a number of documents. The documents that  
25 are attached in this exhibit are two affidavits sworn by

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1 Brendan McGuire, Assistant United States Attorney, who I  
2 believe is present here in court. This affidavit in support  
3 was the basis for which the English government extradited Mr.  
4 Hashmi, and was the sworn representation of the United States  
5 government as to the complete scope and nature of the charges  
6 of Mr. Hashmi notwithstanding the present indictment which, if  
7 one reviews it, I believe is to the point of being so vague  
8 that there is no notice as to what the charges are.

9 This affidavit and the supplemental affidavit, do go  
10 into detail as to what the government's allegations are, and  
11 what they say is this. I am starting at paragraph 7: That a  
12 cooperating witness provided material support to Al Qaeda, and  
13 on at least on one occasion in or about February 2004 assisted  
14 the cooperating witness by permitting him to store certain  
15 military gear in Hashmi's London apartment.

16 Paragraph 8 goes on to say that in June 2004, the  
17 cooperating witness entered into a cooperation agreement with  
18 the U.S. Attorney's office for the Southern District of New  
19 York. As part of the agreement, that cooperating witness pled  
20 guilty to various charges including providing material support  
21 to Al Qaeda. Then the government makes this statement: "The  
22 testimony of the cooperating witness will serve as 'the  
23 centerpiece' of the case against Mr. Hashmi."

24 Later in that paragraph the statement that the  
25 cooperating witness recently returned from the United Kingdom

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1 where he testified at length as a key witness in the  
2 prosecution of Omar Khyam and other former ALM members. This  
3 is very important, your Honor, in understanding the nature and  
4 circumstances of the offenses charged.

5 The trial of Omar Khyam, the codefendant, there were  
6 seven co-defendants in the case, publicized as the fertilizer  
7 trial in England. It was a year-long trial that began in March  
8 of 2006 and ended, I believe, in April of 2007. According to

9 the press, it was the longest and costliest trial in English  
10 criminal history. The press widely reported in England and the  
11 international press that main witness in this case for the  
12 Crown was a man named Junaid Babar. Junaid Babar, it came out,  
13 had pled guilty in the Southern District of New York in 2004 to  
14 providing material support to Al Qaeda. and he also provided  
15 information at that trial that he had had contacts with Mr.  
16 Hashmi, and it is our belief, and I don't think there is any  
17 way that it cannot be true, that Junaid Babar is the  
18 cooperating witness in this case, and it's important because  
19 knowing how Mr. Babar testified and what his stories have been  
20 regarding that case, is important for the court in  
21 understanding the nature and the strength of this case now in  
22 the United States.

23 Mr. Babar, the allegations again in this affidavit  
24 signed by Mr. McGuire, states that he was in contact with what  
25 he thinks was the No. 3 leader of Al Qaeda, a man called Hadi.

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1 It's Mr. Babar's allegation that after dropping out of school  
2 after one year of college, that he made his way to Pakistan  
3 some time in the few weeks after 9/11, lived in Pakistan for a  
4 number of years, and reached a point where he had personal  
5 contact with the leading Al Qaeda strategist for Afghanistan.  
6 That is the allegation at that trial. He states that, and by  
7 states I mean the government in this affidavit, that Mr. Babar  
8 says that in 2004 he gave gear to Mr. Hadi. This gear  
9 consisted of quote, and I am looking at paragraph 14,  
10 "ponchos, waterproof socks, and raincoats." Then it states the  
11 cooperating witness subsequently stored this gear at Hashmi's  
12 apartment with Hashmi's approval.

13 In the next paragraph it states in February 2004 the  
14 cooperating witness took two trips to Afghanistan to provide  
15 money and gear to Hadi, one was Ansar Bud, a fellow Al Qaeda  
16 supporter, and one was Mandez Ali. On both occasions the  
17 cooperating witness gave Hadi the gear he had received from Ali  
18 and had stored it at the apartment which included, again quote,  
19 "ponchos, waterproof socks, and raincoats."

20 The final three paragraphs regarding the factual basis  
21 for the government's charges allege that Mr. Hashmi allowed Mr.  
22 Babar to use his cell phone to contact Ali and several other Al  
23 Qaeda supporters including Omar Khyam. The government then  
24 states in their affidavit that they have telephone records that  
25 corroborate the witness's statement that Hashmi allowed him to

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1 use his cell phone to contact Ali and other Al Qaeda supporters  
2 including Khyam, and also the government states that they had  
3 e-mail messages. Again, the e-mail messages the government  
4 says confirm that they had communicated.

5 From this affidavit, the government had stated a  
6 number of things clearly: First, that the totality of material  
7 support that Mr. Hashmi is alleged to have provided was to  
8 allow a man to store ponchos, waterproof socks, and raincoats,  
9 not that Mr. Hashmi even provided himself, handed over this

10 camping equipment to anyone else but that he allowed someone to  
11 keep it in his apartment for a few days. That is the totality.  
12 There is no allegation that Mr. Hashmi provided funds, helped  
13 transfer funds, that he transferred any weapons, any fake ID's,  
14 none of that, but simply that this cooperating witness stayed  
15 in his apartment for a few days in 2004 and stored that stuff  
16 in his apartment, and he let him use the phone, and again the  
17 allegations in paragraphs 16 through 18 the government does not  
18 state that in the electronic intercepts, does not state that  
19 Mr. Hashmi ever made any statements that were recorded  
20 confirming that he was trying to support Al Qaeda at all. It  
21 just indeed the paragraphs merely confirmed that they had  
22 contacts, which of course is not a crime.

23 There have been, as I said, a number of press articles  
24 about Junaid Babar and his background. He has testified. It  
25 is our belief on information and belief, your Honor, that he

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1 grew up, Mr. Babar, in New York City, had been born in Pakistan  
2 but grew up most of his life in Queens. He went to St. John's  
3 for a year and dropped out, he worked as a parking attendant,  
4 he started going to meetings of a group called the Al  
5 Muhajiroun otherwise known by the abbreviation ALM, and that  
6 some time after 9/11 he made his way to England and then  
7 subsequently to Pakistan for a number OF years.

8 Exhibit No, 2, your Honor, and I apologize, I don't  
9 believe it's stapled, is a statement that was filed by counsel  
10 for Mr. Hashmi in his extradition proceeding. It's a 64-page  
11 single-spaced statement of Mr. Babar. This is a statement made  
12 to English -- excuse me -- Royal Canadian Mounted Police and/or  
13 intelligence officers, very detailed statement, 64 pages, and  
14 in that statement, Babar recounts his what he says are his  
15 memories interacting with, on my reading, over 40 different  
16 individuals over a three-year period, about. He describes in  
17 his words what he says were at least three different cells that  
18 were operating in England and in Pakistan and that had varying  
19 communications with leadership in the Al Qaeda structure. He  
20 goes on to great detail in these 64 pages. In this statement,  
21 though, he does not mention the name of Mr. Hashmi until page  
22 61 of this statement, and on page 61 it starts at the  
23 beginning, he refers to Mr. Hashmi by his first name, Fahad,  
24 F-A-H-A-D, and he describes staying with Fahad when Babar went  
25 to England some time in 2004.

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1 On page 62, the next page, he is describing how Babar  
2 had been having meetings with a man named Ausman. Ausman is  
3 also known as Mr. Khyam, who is the lead defendant in that  
4 case. He says that when he was discussing issues, that,  
5 quoting the last line of that page, "Nothing of relevance was  
6 discussed this time because Fahad was present."

7 That's important. What is this issue not speaking in  
8 front of Fahad? If we then turn to our next exhibit, your  
9 Honor, which is testimony provided at the trial, and again this  
10 was a part of the extradition materials submitted by Mr.

11 Hashmi's counsel in England. This is testimony of Mr. Babar on  
12 March 29 of 2006, and I direct the court to page -- handwritten  
13 page 4 of that, it's denoted as page 47 in the transcript. The  
14 reason why Mr. Hashmi -- why they didn't speak in front of Mr.  
15 Hashmi is Mr. Hashmi was not part of any criminal conspiracy.  
16 If you look at line 16, Mr. Babar was asked: "So as far as  
17 Fahad was concerned, was he part of the group, the organization  
18 or an outsider?"

19 "Answer: He wasn't part of the group. He was a --  
20 very much an outsider."

21 Turning to page 17, handwritten page 17 of that  
22 transcript, and looking at lines beginning at line 24 down to  
23 line 10, it's our contention that this encapsulates why these  
24 alleged plotters in England were not involved in any conspiracy  
25 with Mr. Hashmi. It starts off on line 24:

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1 "Q Can you help us, please, why nothing was discussed about  
2 Jihad during that car journey?  
3 "A Well, one of the reasons was because Fahad was with me, and  
4 Ausman had never met Fahad, and Ausman knew that Fahad was a  
5 member of Al Muhajiroun, so it wasn't discussed in front of  
6 Fahad.  
7 "Q. Perhaps we are getting some idea of the sort of working but  
8 why not say anything about jihadism etc. in the presence of  
9 ALM or someone who was a member of ALM?  
10 "A Because ALM is a very public group, and basically they just  
11 talk too much."

12 This is a crucial exchange, because although in the  
13 media and in other prosecutions that we have seen, the  
14 government is quick to cast various Islamic groups as being  
15 extremist and being terroristic. There are huge philosophical  
16 and political differences between different groups of people  
17 who are Muslims and are engaged in political activity. There  
18 is a world of difference in the political ideology of ALM, Al  
19 Muhajiroun, and Al Qaeda and other jihadis who espouse the  
20 philosophy of Al Qaeda.

21 This is a long subject, I am not going to go into it  
22 except to say that ALM, Al Muhajiroun, was predicated on the  
23 idea that they were an intellectual group, they were a  
24 political group. They believed in recruiting students at  
25 campuses to engage people in debate. They organized speakers

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1 to come over. They handed out flyers, they went to  
2 demonstrations. They were not involved in militant military  
3 action. Their philosophy was that you change society by  
4 winning people over philosophically to accept Islam, and then  
5 the people or the people in charge of government will willingly  
6 implement Islam. No different than many groups in our  
7 mainstream political spectrum here believe that Christianity or  
8 other religions should be a part of the government. They did  
9 not though undertake as part of their group to engage in  
10 military, i.e. criminal military behavior.

11 Now, the weight of the evidence against the person is

12 another factor under 3142, and as the government has stated in  
13 their affirmation, that the centerpiece of their case will be  
14 this cooperating witness, Junaid Babar, it's important that the  
15 court understand that the credibility of this person is going  
16 to be hotly contested. Mr. Babar, from all reports, pled  
17 guilty to five counts and is facing seven years of  
18 imprisonment. He has stated that also he was threatened with  
19 the death penalty in Pakistan if he didn't comply, and I am  
20 looking at an article we have, we also have it for the court,  
21 it's from the Guardian, dated Monday, April 30, 2007, and in  
22 the fourth to last paragraph, says: "During his evidence,  
23 Babar claimed to have conspired in two attempts to kill the  
24 Pakistan president Pervez Musharaff, and said he would be  
25 facing the death penalty in Pakistan if he had not agreed to

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1 collaborate with the FBI."  
2 There are also press reports that Mr. Babar, through  
3 his work on behalf of the government has been put in witness  
4 protection, that his family has been flown over from overseas  
5 under assumed identities, are being taken care of by the U.S.  
6 government financially. Obviously, we don't know the depth of  
7 the financial support, but we have strong suspicions that there  
8 is deep financial support going towards this individual and his  
9 family, which would obviously be an indication of possible bias  
10 on his part in testifying.  
11 He was also a star witness in the fertilizer case, and  
12 in that case there were seven defendants, two of them were  
13 outright acquitted. The jury deliberated which I believe was  
14 an unprecedented 27 days, and a article by the Times that we  
15 found in the Times on line, states that the judge actually told  
16 the jury after 27 days that they no longer needed to have a  
17 unanimous opinion, that a majority verdict would be sufficient.  
18 And then convictions for the other five came down. So our  
19 contention, although this trial transcript is a year long and  
20 we have not had the opportunity to go through it by any means  
21 like it should be, that it is rife with inconsistencies on  
22 Mr. Babar's behalf.

23 Another crucial aspect of the nature and weight of the  
24 evidence against the person is this whole idea that Babar  
25 actually met the third-ranking member of Al Qaeda, Mr. Hadi.

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1 There are press reports that Mr. Hadi is currently imprisoned  
2 by the U.S. government in Guantanamo. Obviously, the defense  
3 would want to know if that can be corroborated by the U.S.  
4 government itself, whether they have interviewed Mr. Hadi  
5 regarding Babar, regarding Mr. Hashmi, and whether Mr. Hadi in  
6 the course of his duties as the leading strategist in  
7 Afghanistan for Al Qaeda took the time to receive a hand  
8 delivery of waterproof socks from Mr. Babar.

9 Turning to the history and characteristics of the  
10 defendant, of Mr. Hashmi, your Honor --

11 THE COURT: Yes, sir.

12 MR. MAHER: A lot of the details are laid out in the  
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13 report before the court. Mr. Hashmi is a person who I think is  
14 seen by the people who know him as someone who is caring, as a  
15 humanitarian, and as someone who is well loved. I think the  
16 evidence that we have a packed courtroom here of people, people  
17 who have not seen him most probably in three years, who took  
18 time on a work day to be here, to support him, I think speaks  
19 more than I can say about how this man has touched people by  
20 his acts of generosity and kindness.

21 His physical and mental condition, he is a bright  
22 young adult. He has completed his master's degree. He is an  
23 intellectual, he is not terrorist. He has strong family ties.  
24 His father and mother are here in court, his brother and  
25 sister-in-law with their baby are here, his young niece. He

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1 has aunts and uncles, other members of the community, all  
2 demonstrating live in person the depth of his family ties, your  
3 Honor, and his ties to this community. He is not employed,  
4 obviously, he's been in prison, in Bellmarsh Prison in England.  
5 He himself has no financial resources at this point. His  
6 parents have a modest income. His father is an accountant with  
7 a public entity and simply does not have tremendous resources  
8 at all, and that's a understatement.

9 He has lived, before 2003 when he went to England, to  
10 go to London Metropolitan University, Mr. Hashmi lived his  
11 entire life basically from about three years old until that  
12 time in Flushing, Queens, in the same apartment. I think maybe  
13 they changed apartments once when he was around three years old  
14 after a year, and his family has lived in the same apartment  
15 for about 23 years right off of downtown Flushing.

16 Past conduct, Mr. Hashmi has no prior criminal record  
17 whatsoever. absolutely clean. History of related drug or  
18 alcohol abuse, absolutely none. He abstains from all drinking  
19 and drugs. No criminal history, and record concerning court  
20 appearances, he has never had to come to court before, but he  
21 will come. Another consideration under history and  
22 characteristics of the person is whether at the time of the  
23 arrest the person was on probation or other type of release.  
24 Obviously, at the time he was not under any such categories.  
25 Nature and seriousness of the danger to any person in the

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1 community that would be posed by the person's release, your  
2 Honor, it's our contention that there is no danger to the  
3 community for Mr. Hashmi being released. First off, even if  
4 one accepts the government's allegation, what he is alleged to  
5 have done is to allow someone to store ponchos, socks, and  
6 raincoats in his apartment. That is if you believe what the  
7 government says. He did not do anything violent, he did not  
8 plot to do anything violent. He is not someone who is going  
9 to, if the court were to permit him to be released on  
10 conditions, do anything violent. He is not going to be a  
11 threat to anyone in the community, and the community would not  
12 be at risk by him.

13 Currently, he is in the special housing unit at MCC,  
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14 and in fact he is in what the lieutenant described to me as the  
15 shoe of the shoe. In other words, the shoe typically is the  
16 place where people who have gotten in trouble in the general  
17 population are sent to as punishment. But then if someone then  
18 takes a step of getting into trouble in the shoe, they are then  
19 sent to the place where Mr. Hashmi has automatically been  
20 placed into because of these charges. He has no disciplinary  
21 infractions as far as Bureau of Prisons is concerned. He has  
22 no history of violence, and yet here he is now locked up in the  
23 shoe of the shoe.

24 we think that there are reasonable conditions, your  
25 Honor. What we would propose is home detention. We propose

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1 GPS monitoring. We propose if the court would entertain travel  
2 restrictions to legal counsel, to work and religious services,  
3 we would ask the court to consider that, but we could work  
4 without those if the court would consider home detention and  
5 GPS monitoring.

6 There is also a personal surety bond. There is a  
7 close friend of the family who has known the family for 23  
8 years who is prepared to be a personal surety with property up  
9 to \$500,000 to ensure, again even with home detention, GPS  
10 monitoring, that Mr. Hashmi would come to court, and we are  
11 confident that if the court looks at all these factors, this is  
12 a reasonable method to ensure his return to court and not  
13 merely a way to detain him without cost. Thank you.

14 THE COURT: Thank you, sir. Ms. Baroni?

15 MS. BARONI: Thank you, Judge. I would like to start,  
16 your Honor, by pointing out to the court, which I am sure your  
17 Honor already knows, that under Section 3142(e), the bail  
18 statute, this is a presumption case, and the statute provides  
19 that it's to be presumed there is no condition or combination  
20 of conditions that your Honor can impose here that would  
21 reasonably assure the appearance of the defendant or the safety  
22 of the community based on the extremely serious charges that  
23 this defendant is charged with.

24 THE COURT: Ms. Baroni, I am going to ask you to keep  
25 your voice up so the folks sitting in the back are able to hear

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1 you.

2 MS. BARONI: Right, your Honor.

3 So with respect to that, your Honor, the government  
4 submits that the defendant, and Mr. Maher certainly have not  
5 met the requirements of that, they have not rebutted the  
6 presumption that is clearly set forth in the statute.

7 Your Honor, the defendant here is charged with  
8 extremely serious crimes. He is charged with providing  
9 material support to Al Qaeda, arguably the most dangerous  
10 terrorist organization in the world. There are various types  
11 of gear that this defendant housed in his apartment, and I just  
12 want to be clear that this gear went directly from Mr. Hashmi's  
13 apartment to London, straight to South Waziristan, to one of  
14 the highest-ranking leaders of Al Qaeda. Mr. Hashmi

15 participated in housing the gear, loading the gear into a car  
16 that was going to go to the airport, directly to Pakistan to be  
17 delivered to a high-ranking leader of Al Qaeda. He knew all  
18 along what this gear would be used for. This was gear the Al  
19 Qaeda people in Waziristan were seeking, and he did everything  
20 he could to ensure that it reached its destination.

21 The sentence, if convicted on these charges obviously,  
22 your Honor, would be decades in jail. and this gives rise  
23 obviously to a very strong incentive for this defendant to  
24 flee.

25 In addition to the extreme sentence that would result  
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1 from a conviction on these charges, this defendant is  
2 unquestionably a flight risk for other reasons as well. First  
3 of all, he has lived in London since December of 2003. He  
4 hasn't lived in the United States since then, he hasn't even  
5 visited the United States since then as far as the government  
6 is aware. The British government denied his student visa at a  
7 certain point in 2006, and the defendant when he was required  
8 to leave the UK decided to go to Pakistan rather than returning  
9 to the United States. He was arrested, in fact, at Heathrow  
10 Airport as he was about to get on a flight to Pakistan, and,  
11 your Honor, the government submits this is a very important  
12 fact, that he chose to go to Pakistan rather than to come back  
13 to the United States when his visa was up, which shows that he  
14 has ties obviously to Pakistan, he has ties to the United  
15 Kingdom, and despite the fact that his parents live here and  
16 his brother, he has no wife or children in the United States,  
17 certainly nothing that would keep him here if your Honor were  
18 to release him on any conditions of pretrial release.

19 Another issue that goes to the risk of flight, your  
20 Honor, is the fact that the defendant has fought extradition in  
21 this case for the past year. He was seeking not to come back  
22 to the United States to face the charges here. The point of  
23 bail and pretrial release, your Honor, is to give the  
24 opportunity to the defendant to come back to court to face the  
25 charges, and he has demonstrated that his mindset was anything

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1 but doing this, that he wanted to do anything he could not to  
2 return to the United states.

3 There is also substantial evidence, your Honor, that  
4 this defendant does not respect the rule of law in this  
5 country, and would not respect any bail conditions that your  
6 Honor were to set here. When he lived in the United States, as  
7 Mr. Maher has stated, he was an active member of an extremist  
8 group called Al Muhajiroun. He was a very active member in New  
9 York. This organization has offices and membership in New  
10 York, in the United Kingdom, and in Pakistan. The organization  
11 openly supports jihad, supports raising money for Hamas and  
12 Hezbollah, and the government has evidence that during his time  
13 as a member of this group, that Mr. Hashmi, the defendant,  
14 urged the membership to reject the United States, to reject all  
15 law and order, and I am quoting, your Honor, from witnesses the

16 government would propose to have, that he has said that "we  
17 must not recognize any governmental authority other than  
18 Allah," urged others to defeat America, and claimed also, "we  
19 are not Americans."

20 Your Honor, the government doesn't raise these  
21 statements by the defendant to sort of criminalize his speech,  
22 obviously, in any respect. This is extremely relevant,  
23 however, to this defendant's mindset as to how much he would  
24 respect any order of pretrial detention that your Honor would  
25 set. He has said that he rejects all law and order in this

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1 country, all governmental authority, he doesn't recognize it,  
2 so, your Honor, the government respectfully submits that he  
3 would not recognize any orders of this court as well.

4 In fact, your Honor, the allegations, the criminal  
5 conduct charged in the indictment in this case is an extension  
6 of that. He provided material support to Al Qaeda, items that  
7 he knew would be used against U.S. forces in Afghanistan, and  
8 this defendant has demonstrated that he supports not only Al  
9 Qaeda but Hamas and Hezbollah, arguably the three most  
10 dangerous terrorist organizations in the world.

11 Another issue I would like to address, your Honor, is  
12 this defendant's conduct at the time he was arrested in the  
13 United Kingdom as Heathrow Airport in London. He was extremely  
14 violent, he was violent with the arresting officers, he was too  
15 violent to be served with a copy of the arrest warrant, too  
16 violent to sign the property voucher of the evidence that was  
17 seized from him. He repeatedly shouted to the arresting  
18 officers that he hoped they would be killed, and other  
19 statements about his hatred for the west, he refused to provide  
20 his address at the time of his arrest. Your Honor, I think  
21 these facts also are very probative of his dangerousness to the  
22 community.

23 As Mr. Maher stated, this defendant has no job here,  
24 and has no resources. He hasn't lived here or visited here  
25 since 2003. Any connections that he may have here, your Honor,

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1 the government submits, pale in comparison to all of the other  
2 evidence of risks of flight as well as dangerousness.

3 I would like to respond briefly to some of Mr. Maher's  
4 points with respect to the strength of the government's case  
5 here. The government has a very strong, extremely strong case  
6 against Mr. Hashmi. There is cooperator testimony. This  
7 cooperator was a key witness in a recent terrorism trial in the  
8 United Kingdom. It was a terror cell that was plotting to bomb  
9 soft targets in the UK. He proved to be an extremely credible  
10 witness, testified for three weeks, was cross examined by seven  
11 defense lawyers, and resulted in the convictions of five of the  
12 defendants.

13 In addition to the cooperator testimony, there is  
14 extensive documentary evidence, phone records, e-mails,  
15 additional witnesses that the government has, and Mr. Maher's  
16 pointing to certain aspects of the testimony in the UK, I want

17 to make clear that the terrorism charges in the UK, the bomb  
18 plot that was the subject of that year-long trial, is not  
19 something the government has ever alleged that Mr. Hashmi was  
20 involved in. So to the extent that his name was omitted from  
21 the witness statements, cooperator testimony in that case, Mr.  
22 Hashmi is charged with entirely different crimes, so that is  
23 not material, that material shouldn't be material in any way,  
24 your Honor, to your Honor's assessment of the strength of the  
25 government's case.

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1 Just to sum up, your Honor, I think it's clear that  
2 given the nature of the charges against him, the evidence that  
3 he has no respect for the rule of law in this country, there is  
4 absolutely no reason to believe that he will remain here, that  
5 he will respect any order of pretrial detention that your Honor  
6 were to set forth. The government strongly urges the court to  
7 detain this defendant pending trial.

8 If your Honor has any specific questions, I would be  
9 happy to address them.

10 THE COURT: Thank you. Mr. Maher?

11 MR. MAHER: May I respond, your Honor?

12 THE COURT: Yes, sir.

13 MR. MAHER: Thank you. Concerning Mr. Hashmi being  
14 denied a visa in England it's our information that he was never  
15 denied a visa, he was basically kept in limbo by the British  
16 government. It's our conjecture it's because there was an  
17 ongoing intelligence operation, but he was never told that his  
18 visa was denied, that he had to leave England. Again, we don't  
19 have all the information yet on that, your Honor.

20 To say that Mr. Hashmi fought extradition should be  
21 used against him in deciding whether to detain him in this  
22 country I feel is an astounding argument. Everyone is entitled  
23 to due process, and part of due process is challenging  
24 allegations and the ability of a government to bring you in  
25 front of that prosecuting authority under the law.

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1 As a man, a Muslim man, in another country who is  
2 being charged as being a terrorist link with Al Qaeda based  
3 upon what the defense would consider lies that someone who has  
4 a lot to lie about and a many incentives to lie about it, I  
5 don't see how it is unfathomable anyone wouldn't want due  
6 process and to follow counsel's advice to make sure that all  
7 procedures were followed before he was shipped away, I don't  
8 see that as any factor that should be used against him at this  
9 point at all.

10 THE COURT: Isn't the inquiry, part of the inquiry  
11 here today whether or not the defendant will appear to face  
12 these charges? Isn't that part of the inquiry?

13 MR. MAHER: Certainly it is, your Honor.

14 THE COURT: Yes, and then why is it I cannot or should  
15 not in your view take into account his refusal to voluntarily  
16 come to face these charges?

17 MR. MAHER: Your Honor, I am going to be somewhat

18 blunt about this. There is a huge, huge fear throughout the  
19 world and in this country of what the U.S. government is doing  
20 to Muslims, particularly Muslim men. There is Supreme Court  
21 precedent now that anyone, including a United States citizen,  
22 can be declared unilaterally an enemy combatant and can be  
23 whisked away from federal court jurisdiction on the signed  
24 affidavit of the Attorney General. with no judicial review  
25 until that goes to the military commission process, which could

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1 go on for years.

2 So for someone to want to make sure that there is due  
3 process before being brought here, I don't think indicates once  
4 he is here that he would try to leave, and I don't think he  
5 would try to leave. I think it's merely making sure that the  
6 government is following the letter of its laws before it brings  
7 someone here. That is our position, your Honor.

8 To bring up alleged support of Hezbollah and Hamas I  
9 also don't think is warranted here. We haven't seen that, that  
10 is not part of the allegations, it certainly wasn't put in the  
11 affidavit of the English authorities, and I don't think that  
12 that is probative of what is before the court right now.

13 THE COURT: Is it not somewhat probative on the issue  
14 of danger to the community?

15 MR. MAHER: I don't think so, and I think what it goes  
16 to, and again I am not accepting the government's argument that  
17 he said that at this point, but what I would like to say, your  
18 Honor, is that I think that this can be a crucial issue, the  
19 idea again of are we a society that allows political discourse,  
20 or are we a society that is going to say if you say something  
21 that is outside of the spectrum of accepted speech, that you  
22 therefore have criminal intent.

23 THE COURT: I didn't understand that to be the  
24 government's argument. I understood the government's argument  
25 on this issue to be more akin to the person who yells fire in a

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1 theater than a person who says "I believe XYZ."

2 MR. MAHER: what I didn't hear the government say, I  
3 didn't hear them say that Mr. Hashmi said, you know what, I  
4 want you to go and give military aid to Hamas so can do a  
5 suicide bomber, I want you to give a gun to Hezbollah so they  
6 can kill Israeli soldiers. That is not what I heard. I heard  
7 a generalized support. Now, again, this is a huge discussion  
8 but both of those groups are duly actually elected in their  
9 respective territories. There are many high-ranking officials  
10 in European governments that recognize those entities, and  
11 again this country has a different view, but if we are going to  
12 take the view that political speech not in conjunction with any  
13 criminal activity but political speech is now just going to be  
14 a basis for mens rea in a terrorism case just because it's  
15 there, I think that is dangerous, and that is what this -- I  
16 think that is what that argument goes to, and because it's not  
17 part of the indictment, they could have chosen to make it a  
18 charge of support for Hamas or Hezbollah, they haven't, I don't

19 think it's relevant.  
20 Regarding the conduct at the airport, the arrest, we  
21 obviously weren't there, we don't have all the information  
22 about that. We would submit that when he was arrested, again  
23 that does not implicate how he would behave if the court gives  
24 him conditions to return to court.

25 THE COURT: Why not?  
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1 MR. MAHER: First off, we don't know the facts. We  
2 weren't there. That is the British police, their rendition of  
3 what they say transpired. We don't know, even if he did yell  
4 at them or flail at them, we don't know yet what they did  
5 possibly to incite him, what was said to him.

6 THE COURT: The "we" in that sentence includes your  
7 client. Presumably you have spoken with him.

8 MR. MAHER: At this point, your Honor, we are not  
9 going to call our client to testify at this hearing, so my  
10 proffer at this point that there is incomplete information. The  
11 government also didn't bring one of the witnesses from England  
12 to testify what happened when he was arrested.

13 THE COURT: My experience in this courthouse is that  
14 the government almost always proffers with respect to facts  
15 relied on at a bail argument. If you think we should proceed  
16 in a different manner, then you should talk with the government  
17 and let me know what you think.

18 Go ahead, sir, whatever you want to do, go ahead.

19 MR. MAHER: Thank you.

20 So our bottom line argument with that, your Honor, is  
21 that we don't think that the mere fact of the conditions  
22 surrounding how he was arrested are probative to the degree --  
23 again this is a spectrum, your Honor -- are probative enough to  
24 say that this is a man who needs detention, automatic  
25 detention, and again his detention is going to be most likely

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1 special housing special housing unit. That is how he is going  
2 to be classified by the BOP. That is the reality.

3 And finally, as far as Mr. Hashmi not having a job,  
4 his family, again, as I said have -- are a modest middle income  
5 family, they will support him as he lives with them if the  
6 court would permit that. Thank you.

7 THE COURT: Thank you, sir. Further comment by the  
8 government?

9 MS. BARONI: No, nothing, your Honor, unless you have  
10 specific questions, but I would like to make the point,  
11 Mr. Maher continues to rely on this affidavit in support of the  
12 extradition. The entirety of the government's evidence is not  
13 set forth in that affidavit. The government has obviously  
14 additional evidence against Mr. Hashmi in this case.

15 THE COURT: Thank you. Mr. Maher, we don't deny that  
16 this is a presumption case, correct?

17 MR. MAHER: No.

18 THE COURT: All right. Anything else from anyone?

19 MS. BARONI: No, your Honor.

20 THE COURT: All right, counsel. We obviously agree  
21 that this is a presumption case. We agree that the presumption  
22 is that no combination of conditions will reasonably assure the  
23 safety of the community and the defendant's return to face  
24 these charges.

25 Counsel have laid out correctly, of course, the 3142  
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1 factors to be considered. With respect to the nature and  
2 circumstances of the offense, it is clear that this is a  
3 serious crime, and moreover, the specific allegations of the  
4 crime charged allege that material went directly from Mr.  
5 Hashmi to Pakistan, to a very high-ranking leader of Al Qaeda.  
6 Thus, it is clear that the nature and circumstances of the  
7 offense charged including, as specifically set out in Section  
8 3142(g)(1), the fact that this is a federal crime of terrorism.

9 In addition on that point, I do consider that the  
10 punishment for such a charge upon conviction are extremely  
11 difficult, imprisonment is indeed for decades, and thus there  
12 is an increased incentive to flee.

13 With respect to the weight of the evidence against the  
14 individual, I take into account Mr. Maher's discussion of the  
15 cooperator, but on the other hand, taking into account that the  
16 cooperator appears to have been on the stand for some three  
17 weeks, and of course his testimony was not the only evidence in  
18 that quite lengthy trial, but the trial did result in the  
19 conviction of five out of seven defendants.

20 I also take into account the government's point that  
21 of course it doesn't rely solely on the one cooperator that we  
22 have discussed, but has in addition other witnesses, documents,  
23 telephone records, and e-mails. Judging from the specificity  
24 of the allegations in the affidavit, it does appear that the  
25 weight of the evidence in the case is heavy.

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1 With respect to the history and characteristics of the  
2 defendant and the specific factors set out in 3142(g)(3)(A), the  
3 defendant has few ties to the community which are current. I  
4 take into account defense counsel's statement that the  
5 defendant was for all intents and purposes raised in Queens,  
6 but he has not been present here for some years. Apparently,  
7 he has not seen fit to visit his family here for some years,  
8 and thus does not have a job or resources here.

9 Looked at the other way, the defendant does appear to  
10 pose a very substantial flight risk on account of not having  
11 been present in this country for some years and on account of  
12 the circumstances of his arrest on the way to Pakistan,  
13 apparently with a good amount of money with him.

14 I also take into account the defendant's fighting  
15 extradition. I understand counsel's point about due process,  
16 but the consideration here today in part is whether or not the  
17 defendant will appear to face these charges. He fought  
18 appearing to face these charges for a year or more, and thus I  
19 take that into account. In addition, I take into account the  
20 government's proffer with respect to the defendant's lack of

21 respect for the rule of law, both with respect to fighting  
22 extradition and with respect to his violent and apparently  
23 unlawful behavior upon being arrested. An arrest is the  
24 assertion by a court of jurisdiction over a defendant. If the  
25 defendant resists that assertion of authority in a violent way,  
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1 it certainly indicates a lack of respect for the rule of law.  
2 I take that into account. Certainly, also is relevant as to  
3 whether or not the defendant might or might not respect the  
4 orders of the court relating to pretrial detention. It appears  
5 from the defendant's activities upon arrest that he would not.  
6 with respect to the defendant's speech, I surely take  
7 into account counsel's suggestion that a defendant ought not to  
8 be disadvantaged merely because of his political speech.  
9 where, however, the speech urges persons to reject the  
10 authority of the United States government, to reject law and  
11 order, that certainly is relevant on the inquiry that is  
12 presented here at this bail hearing, and that is whether or not  
13 the defendant would respect the United States government's  
14 authority over him with respect to this charge, and thus I take  
15 that into account and it certainly weighs against this  
16 defendant.

17 Taking into account all of the 3142 factors then, I  
18 find that the defendant has not overcome the presumption and  
19 thus that no combination of conditions will reasonably assure  
20 his appearance to face these charges or the safety of the  
21 community. Accordingly, bail is denied.

22 Is there anything further today, counsel?  
23 MR. O'CALLAGHAN: Yes, your Honor, since this is the  
24 initial pretrial conference in the matter, it would be  
25 customary for some scheduling to be set with respect to  
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1 discovery and other items.  
2 THE COURT: what is the status of discovery?  
3 MR. O'CALLAGHAN: Your Honor, there is a number of  
4 pieces of discovery that are currently available, things in the  
5 nature of records, documents the government has obtained in the  
6 course of the grand jury investigation, items that were seized  
7 from the defendant at the time of his arrest at Heathrow  
8 Airport. and other items of that nature.

9 In addition to that, the government does expect there  
10 to be a number of items of classified discovery that will have  
11 to be worked out in the course of this case. We do believe now  
12 that the structure of the Classified Information Procedures  
13 Act, CIPA, will be implicated in this case. However, so the  
14 government would be prepared to make some discovery now, and  
15 then ask for an opportunity to make discovery on a rolling  
16 basis.

17 However, these counsel have represented both with the  
18 government and in court before Magistrate Judge Peck that they  
19 were retained for purposes solely of a detention hearing, which  
20 gives the government pause that a counsel for this defendant  
21 going forward has not yet been retained or selected. In such

22 circumstances, it doesn't appear appropriate for the government  
23 to make discovery to counsel who have represented to the court  
24 that they don't intend to remain in the case, or at least they  
25 don't know what their status is. So perhaps we could put the  
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1 matter on for two weeks out to allow the defendant the  
2 opportunity to resolve his representation issues, and at that  
3 time we can discuss discovery and other scheduling.  
4 THE COURT: Counsel, how would you like to proceed?  
5 MR. MAHER: Two issues, if I could, your Honor.  
6 First, regarding Mr. Hashmi's detention at the shoe, we would  
7 like the court to obviously be on notice that we are quite  
8 concerned that what his treatment will be there. Mr. Wahid and  
9 I have represented a few clients at this point who have been  
10 charged in both terrorism cases and put in the shoe in  
11 Virginia, Eastern District of New York, and it's devastating.  
12 THE COURT: Is the defendant currently at MCC?  
13 MR. MAHER: In MDC in the shoe of the shoe, as I was  
14 told by the lieutenant, which again is the detention --  
15 THE COURT: I heard you the it first time.  
16 MR. MAHER: All right. So we are very concerned about  
17 that, and particularly --  
18 THE COURT: But if there is an issue, you will let me  
19 know, right?  
20 MR. MAHER: Right now there is a specific issue  
21 regarding exercise, that at this point the exercise comprised  
22 of Mr. Hashmi going into a cage that is probably no bigger than  
23 the size of the jury box -- smaller -- a lot less I am told  
24 from the side, than the size of this jury box, and that is a  
25 great concern of ours. It's my understanding there are larger  
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1 facilities that he could get exercise outside. There is an  
2 on-the-roof facility also. So we will agitate as we need to  
3 with the prison, but we would like the court to know that that  
4 is a strong concern of ours at this point.  
5 THE COURT: So if you are not able to reach some sort  
6 of resolution, you will let me know.  
7 MR. MAHER: Yes. And the issue of counsel, that is  
8 something also we were going to bring up with your Honor, and  
9 counsel for the government is entirely accurate. Our purpose,  
10 we were retained to now only. Mr. Hashmi does have a letter  
11 regarding this issue that he would like to give the court.  
12 THE COURT: Would you like to hand it up?  
13 MR. MAHER: Yes, your Honor.  
14 THE COURT: Show it to the government.  
15 (Pause)  
16 THE COURT: May I deal with this now?  
17 MR. MAHER: As the court deems fit, your Honor.  
18 THE COURT: All right. Essentially, the defendant has  
19 requested, first, the appointment of these two lawyers pursuant  
20 to the Criminal Justice Act, and if that is not possible, the  
21 appointment of a particular member of this court's CJA panel.  
22 Neither one of those options is available. As you

23 know, sir, you are not entitled to the counsel of your choice,  
24 but rather to competent counsel. As you might also know, the  
25 way in which counsel is appointed in this court is, once a  
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1 financial affidavit is filled out, which I know counsel will  
2 assist you with today, the CJA counsel on duty today is  
3 appointed to represent you, and that is what will happen right  
4 now. CJA counsel on duty today is John Burke, and he is  
5 appointed to represent you, sir.  
6 Mr. Maher, would it be possible for you to assist the  
7 defendant in filling out the financial affidavit if he needs  
8 assistance?  
9 MR. MAHER: Yes.  
10 THE COURT: Why don't we do that now so it is taken ca  
11 re of.  
12 (Pause)  
13 THE COURT: Counsel, do you wish to retain the letter  
14 for the record?  
15 MR. MAHER: Certainly.  
16 THE COURT: I don't need it any longer, if you would  
17 like to have it. Thank you, counsel.  
18 (Pause)  
19 THE COURT: Counsel, is it convenient to set a  
20 conference in about two weeks to be sure we know where we are?  
21 MR. O'CALLAGHAN: That would certainly be the  
22 government's suggestion, your Honor.  
23 THE COURT: Mr. Maher, is there any reason we  
24 shouldn't do that?  
25 MR. MAHER: From my perspective, no.  
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1 THE DEPUTY CLERK: June 14 at 11:30.  
2 THE COURT: Counsel, I know you will inform Mr. Burke  
3 that at that time I will of course ask him how long he would  
4 like to review the discovery to determine if motions are  
5 necessary, and the like. Let me know when you are finished  
6 with the affidavit unless there is anything else you want to do  
7 today?  
8 MS. BARONI: Yes, your Honor, the government would  
9 request that time be excluded under the Speedy Trial clock from  
10 today to June 14, 2007 to give Mr. Hashmi a chance to confer  
11 with his new counsel.  
12 THE COURT: Any reason not to do that, counsel?  
13 MR. MAHER: No.  
14 THE COURT: In order to permit the defendant to  
15 consult with new counsel and to determine what the schedule of  
16 discovery will be, the time between today and June 14 is  
17 excluded from calculation under the Speedy Trial Act in the  
18 interests of justice. Anything else, counsel?  
19 MS. BARONI: Not from the government.  
20 THE COURT: Counsel, just let me know when you are  
21 ready with the affidavit.  
22 (Pause)  
23 MR. MAHER: May I approach, your Honor?  
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THE COURT: Yes, sir.  
MR. MAHER: I would ask that Mr. Hashmi be permitted  
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to affirm.  
THE COURT: Of course.  
Mr. Hashmi, I have a financial affidavit which I am  
holding up. Nobody seems to have dated it. Counsel, is there  
any objection to my dating it June 1?  
MR. MAHER: No.  
THE COURT: Mr. Hashmi, do you affirm that the  
information in this affidavit is true and complete?  
MR. HASHMI: Yes, I do.  
THE COURT: Thank you, counsel. On the basis of the  
affidavit then, Mr. Burke is appointed to represent Mr. Hashmi,  
and I will ask Ms. Phillips to give Mr. Hashmi Mr. Burke's  
phone number so that he has it. Anything else? Thank you,  
counsel.

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