

UNITED STATES OF AMERICA v. ALI MOHAMED

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK

New York, N.Y.  
October 20, 2000

HON. LEONARD B. SAND, District Judge

**APPEARANCES**

MARY JO WHITE, United States Attorney for the Southern District of New York

PATRICK J. FITZGERALD, KENNETH M. KARAS, MICHAEL GARCIA, ANDREW C. McCARTHY,  
PAUL BUTLER, Assistant United States Attorneys

For Defendant Ali Mohamed: JAMES ROTH, LLOYD EPSTEIN

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(In open court)

DEPUTY CLERK: United States of America v. Ali Mohamed. Is the government ready?

MR. FITZGERALD: Yes, your Honor. Good morning.

THE COURT: Good morning.

DEPUTY CLERK: Defendant ready?

MR. ROTH: Yes, your Honor. James Roth for the defendant. We're ready.

THE COURT: Mr. Roth, you have an application?

MR. ROTH: Yes, your Honor. Your Honor, at this time, the defendant Ali Mohamed enters a plea of guilty to Counts One, Three, Five and Six of S(7) 98 CR 1023.

THE COURT: Isn't it One through Three?

MR. ROTH: I'm sorry. One, Two, Three, that's correct.

THE COURT: And he is offering to enter a plea to Counts One, Two, Three, Five and Six of the indictment?

MR. ROTH: That is correct, your Honor.

THE COURT: And my understanding is that that offer is made pursuant to Rule 11(e)(C).

MR. ROTH: (1)(C), your Honor.

THE COURT: Yes. Very well. Mr. Kenneally, will you arraign Mr. Mohamed.

DEPUTY CLERK: Mr. Ali Mohamed, please rise for a moment. Is your attorney present, standing beside you?

THE DEFENDANT: Yes.

DEPUTY CLERK: Ali Mohamed, have you received a copy of the indictment S(7) 98 Crim. 1023?

THE DEFENDANT: Yes.

DEPUTY CLERK: Do you wish to have Counts One, Two, Three, Five and Six read out loud to you?

THE DEFENDANT: No, sir.

DEPUTY CLERK: Do you understand the charges on each of Counts One, Two, Three, Five and Six?

THE DEFENDANT: Yes, sir.

DEPUTY CLERK: How do you offer to plead as to those counts, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Very well. Mr. Mohamed, how old are you, sir?

THE DEFENDANT: 48, your Honor.

THE COURT: 40?

THE DEFENDANT: 8.

THE COURT: 48. And how much schooling have you had? How much schooling, education?

THE DEFENDANT: I have two bachelor degrees and one master's degree.

THE COURT: And where did you obtain those degrees?

THE DEFENDANT: In Egypt. University of Alexandria in Egypt.

THE COURT: And you read, write, speak and understand English without any difficulty?

THE DEFENDANT: Yes, sir.

THE COURT: Have you received a copy of this indictment and gone over it with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: And has he explained to you the charges contained in this indictment?

THE DEFENDANT: Yes, your Honor.

THE COURT: And have you told him everything that you know about these matters?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are there any facts that you deliberately withheld from your attorneys?

THE DEFENDANT: No, your Honor.

THE COURT: I have been furnished a copy of a letter dated October 19 from the United States Attorney's Office to your attorney. Have you signed such a letter?

THE DEFENDANT: Yes, your Honor.

THE COURT: Before signing such a letter did you go over it carefully with your attorneys?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand the terms and provisions contained in that letter?

THE DEFENDANT: Yes, sir.

THE COURT: Are there any understandings or agreements or promises or inducements for you to enter into a plea other than those set forth in this letter?

THE DEFENDANT: No, sir.

THE COURT: Very well. We will mark the letter. Has it now been fully signed by all the parties?

MR. ROTH: Yes, your Honor.

THE COURT: All the signatories?

MR. ROTH: Yes, your Honor.

THE COURT: All right. We will deem that marked as Court Exhibit A of today's date and it will be sealed. Do you understand, Mr. Mohamed, that you have a right to continue to plead not guilty, and that if you do so, you have a right to a trial by a jury of 12 people, at which you would have the right to the assistance of counsel, and if you could not afford an attorney, one would be supplied at no cost to you, as indeed has happened? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at such a trial the burden would be on the government to establish your guilt beyond a reasonable doubt, to the unanimous satisfaction of all 12 jurors? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that upon such a trial you would have the right to subpoena witnesses and to confront and to cross-examine all witnesses that were called by the government against you? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at such a trial you could remain silent, and no inference could be drawn against you by reason of your silence; or if you wanted to, you could take the stand and testify in your own defense, do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you wanted to, and the Court and the government agreed, you could have a trial before a judge, without a jury, in which event you would have the same rights and the same burdens would be on the government?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if your offer to plead guilty is accepted, that you would give up those rights with respect to these charges against you, and any right to appeal with respect to any prior proceedings in this case, and the Court would have the same power to impose sentence as it would have if a jury brought in a verdict of guilty against you? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that in connection with your offer to plead guilty, I may ask you questions about the offense to which you are pleading guilty, and that if you answered these questions under oath, on the record, and in the presence of your attorneys, if your answers are false, they may be used against you later in a prosecution for perjury or false statements? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: This plea is offered pursuant to the provisions of Rule 11 of the Federal Rules of Criminal procedure (e)(1)(C), which provides, in pertinent part:

“The attorney for the government and the attorney for the defendant may agree that upon the defendant’s entering a plea of guilty: (C) agree that a specific sentence or sentencing range is the appropriate disposition of the case. . . . Such a plea agreement is binding on the Court once it is accepted by the court.”

And subparagraph 2 thereof says:

“The court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.”

Do you understand that your plea agreement is made pursuant to that provision, and it further provides if the parties agree, pursuant to that provision, that it is an appropriate disposition of this case that Ali Mohamed shall not receive a sentence of less than the sum set forth in the plea agreement?

MR. ROTH: May we approach for a second, your Honor?

THE COURT: Excuse me?

MR. EPSTEIN: May we approach for a second?

THE COURT: Yes.

(Continued on next page)

(Page 17 filed under seal)

(In open court)

THE COURT: Mr. Mohamed, the agreement is that the sentence shall be not less than a term of years set forth in the plea agreement. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that if the Court should reject that agreement, or impose a sentence of less than the terms set forth in the agreement, then this entire plea agreement is void, do you understand that?

THE DEFENDANT: Yes, your Honor.

MR. FITZGERALD: Excuse me, your Honor. Just one correction, your Honor. I think the plea agreement will be voidable by the government, but not void.

THE COURT: Voidable.

MR. FITZGERALD: Yes. Thank you, Judge.

THE COURT: Your offer is to plead guilty to five counts charging you with conspiracy to kill nationals of the United States, conspiracy to murder, kidnap and maim at places outside of the United States, conspiracy to murder, conspiracy to destroy buildings and property of the United States, and conspiracy to destroy national-defense utilities of the United States.

Do you understand that pursuant to the relevant statutes, conviction on those five counts would subject you to a total maximum sentence of incarceration of life imprisonment plus any term of years. Do you understand that you would be subject to that potential sentence?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that in addition to that, you would be subject to a term of supervised release of five years on Counts One, Two, Three and Five and three years' supervised release on Count Six? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you are sentenced to a term of supervised release, if you violate the terms and conditions of supervised release, you will be subject to a further term of incarceration without credit for time previously spent on supervised release?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that you also will be subject to a fine of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss as a result of the offense?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand you are also subject to a mandatory \$500 special assessment? You understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that the Court may at the time of sentencing impose an obligation of restitution in an amount to be determined by the Court, do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are there any other punishments, penalties, sanctions to which the defendant will be subject as to which he should be apprised at this time?

MR. FITZGERALD: No, Judge.

THE COURT: Do you understand that you will not be able to withdraw your plea if it should come about that the sentence actually imposed by the Court is higher than you anticipated or higher than was estimated or predicted to you? Do you understand that?

(Pause)

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you been induced to offer to plead guilty by reason of any fear, pressure, duress, force, anything of that nature?

THE DEFENDANT: No, your honor.

THE COURT: Are you under the influence of any substances such as alcohol, drugs or the like that might affect your ability to understand what you are doing?

THE DEFENDANT: No, your Honor.

THE COURT: Then do I understand that you are offering to plead guilty because you believe that you are guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Mr. Kenneally, will you place Mr. Mohamed under oath, please. Is there some other form of oath that the defendant would prefer?

MR. ROTH: We just asked him whether he wanted to affirm, your Honor.

THE COURT: And his answer was?

THE DEFENDANT: Whatever. It does not matter.

(Defendant sworn)

THE COURT: What we're going to do now is I am going to ask the government to state on the record what the elements of the six counts are, what it is that the government must prove beyond a reasonable doubt to the unanimous satisfaction of 12 jurors to establish your guilt on those six counts, and then I am going to ask you to tell me in your own words what it is that you did that leads you to believe that you are guilty of those counts.

So I would ask that the government now state the elements of the six causes of action.

MR. FITZGERALD: Yes, Judge. It's Counts One, Two, Three, Five and Six.

THE COURT: Yes.

MR. FITZGERALD: So that is actually five counts that name defendant Mohamed in the indictment. Count One charges a violation of Title 18, United States Code, Section 2332(b), which is conspiracy to kill nationals of the United States. The elements of the crime that the government would be required to prove is that the defendant engaged in conspiratorial conduct outside the United States as part of a conspiracy to kill nationals of the United States, and that, specifically charged in Count One, the four goals of the conspiracy included murdering United States nationals anywhere in the world, killing United States nationals employed by the American military in Somalia and Saudi Arabia, and, three, killing United States nationals employed in embassies, and, four, concealment of the conspiracy.

As to Count Two, which charges a violation of Title 18, United States Code, Section 956(a)(1), and 956(a)(2), a conspiracy to murder, kidnap and maim in places outside the United States, the government would be required to prove that the defendant Mohamed, within the jurisdiction of the United States, conspired with others who could be located anywhere to commit an act that would be murder or maiming if carried out within the special maritime and territorial jurisdiction of the United States, and that any conspirator committed an act within the United States in furtherance of that conspiracy, and as specifically charged, that the indictment alleges four objects: killing United States nationals employed by the American military in Somalia and Saudi Arabia; two, killing United States nationals at embassies overseas; three, killing United States civilians anywhere in the world; and, four, concealment.

Count Three charges a violation of Title 18, United States Code, Section 1117, conspiracy to murder, and that requires that the defendant and one or more other persons conspired to violate Sections 1114 or 1116 and that an overt act be carried out. Specifically, in this indictment it is charged that the conspiracy sought to violate both 1114 and 1116.

The requirements for Section 1114 is that the goal be to kill an officer or employee of the United States Government, including members of the armed services, on account of their duties, and Section 1116 requires that the goal be to kill internationally protected persons. And internationally protected persons are defined by statute to include, among others, employed U.S. employees entitled to special protection by law, which would include ambassadors located in embassies overseas.

As specifically charged in the indictment, Count Three alleges that the conspirators sought to kill United States Government employees on account of their official duties, including employees of the United States military in Somalia and Saudi Arabia and employees located at embassies and, secondly, sought to kill internationally protected persons and, third, sought to conceal the conspiracy.

Count Five charges a conspiracy to destroy buildings or property owned or leased by the United States Government, in violation of Title 18, United States Code, Section 844(n), and the conspiracy was to violate Title 18, United States Code, Section 844(f)(1) and (f)(3). That would require the government to

prove that the conspiracy sought to damage or destroy buildings or property owned or leased by the United States Government, and that a means of that destruction was through the use of fire and explosives. And for subsection (f)(3), another goal that would need to be proven was that the aim was to cause death.

As specifically charged in the indictment, Count Five would require the government to show that the goals of the conspiracy were to bomb United States embassies and kill United States Government employees; secondly, to attack the people and to harm the people within United States embassies and other American facilities; third, to attack the United States military facilities; and, fourth, to seek to cause death by such conduct.

And finally, Count Six charges a violation of Title 18, United States Code, Section 2155, which is a conspiracy to destroy national-defense utilities of the United States. That would require the government to prove that the defendant was part of a conspiracy to interfere with the national-defense utilities of the United States by injuring or destroying such utilities, and such national-defense utilities are defined to include buildings or structures of the armed forces, and that is to include buildings and structures in the American military overseas.

In sum, all five counts will be proven by facts indicating that there was a conspiracy to kill United States nationals overseas, which included both United States employees, United States military employees, civilians and internationally protected persons; that Ali Mohamed joined that conspiracy; that an overt act was carried out; that conspiratorial conduct was carried out within the U.S.; that conspiratorial conduct was carried out outside the United States; that bombing was a method of the planned killing; and that the targets included both military facilities and personnel as well as buildings, including embassies which housed internationally protected persons.

THE COURT: Thank you, Mr. Fitzgerald. Now, Mr. Mohamed, would you tell us in your own words what it is that you did and when and where you did it that leads you to believe that you are guilty of each of those charges.

THE DEFENDANT: Your Honor, in the early 1980s I became involved with the Egyptian Islamic Jihad organization. In the early 1990s, I was introduced to al Qaeda—al Qaeda is the organization headed by Usama bin Laden—through my involvement with the Egyptian Islamic Jihad.

In 1992, I conducted military and basic explosives training for al Qaeda in Afghanistan. Among the people I trained were Harun Fadhl and Abu Jihad. I also conducted intelligence training for al Qaeda. I taught my trainees how to create cell structures that could be used for operations.

In 1991, I helped transport Usama bin Laden from Afghanistan to the Sudan.

When I engaged in these activities, and the others that I am about to describe, I understood that I was working with al Qaeda, Bin Laden, Abu Hafs, Abu Ubaidah, and that al Qaeda had a shura council, which included Abu Hajer al Iraqi.

In the early 1990s, I assisted al Qaeda in creating a presence in Nairobi, Kenya, and worked with several others on this project. Abu Ubaidah was in charge of al Qaeda in Nairobi until he drowned. Khalid al Fawwaz set up al Qaeda's office in Nairobi. A car business was set up to create income. Wadih el Hage created a charity organization that would help provide al Qaeda members with identity documents. I personally helped el Hage by making labels in his home in Nairobi. I personally met Abu Ubaidah and Abu Hafs at Wadih's house in Nairobi.

We used various code names to conceal our identities. I used the name “Jeff”; el Hage used the name “Norman”; Ihab used the name “Nawawi”

In late 1993, I was asked by bin Laden to conduct surveillance of American, British, French, and Israeli targets in Nairobi. Among the targets I did surveillance for was the American Embassy in Nairobi, the United States AID Building in Nairobi, the United States Agricultural Office in Nairobi, the French Cultural Center, and French Embassy in Nairobi. These targets were selected to retaliate against the United States for its involvement in Somalia. I took pictures, drew diagrams, and wrote a report. Khalid al Fawwaz paid for my expenses and the photo enlarging equipment. He was in Nairobi at this time.

I later went to Khartoum, where my surveillance files and photographs were reviewed by Usama bin Laden, Abu Hafs, Abu Ubaidah, and others. Bin Laden looked at the picture of the American Embassy and pointed to where a truck could go as a suicide bomber.

In 1994, Bin Laden sent me to Djibouti to do surveillance on several facilities, including French military bases and the American Embassy.

In 1994, after an attempt to assassinate Bin Laden, I went to the Sudan in 1994 to train Bin Laden’s bodyguards, security detail. I trained those conducting the security of the interior of his compound, and coordinated with the Sudanese intelligence agents who were responsible for the exterior security.

In 1994, while I was in Sudan, I did surveillance training for al Qaeda. Ihab Ali, also known as Nawawi, was one of the people I trained. Nawai was supposed to train others.

In early 1990s, Zawihiri made two visits to the United States, and he came to United States to help raise funds for the Egyptian Islamic Jihad. I helped him to do this.

I was aware of certain contacts between al Qaeda and al Jihad organization, on one side, and Iran and Hezbollah on the other side. I arranged security for a meeting in the Sudan between Mughaniyah, Hezbollah’s chief, and Bin Laden.

Hezbollah provided explosives training for al Qaeda and al Jihad. Iran supplied Egyptian Jihad with weapons. Iran also used Hezbollah to supply explosives that were disguised to look like rocks.

In late 1994, I was in Nairobi. Abu Hafs met another man and me in the back of Wadih el Hage’s house. Abu Hafs told me, along with someone else, to do surveillance for the American, British, French and Israeli targets in Senegal in West Africa.

At about this time, late 1994, I received a call from an FBI agent who wanted to speak to me about the upcoming trial of United States v. Abdel Rahman. I flew back to the United States, spoke to the FBI, but didn’t disclose everything that I knew.

I reported on my meeting with the FBI to Abu Hafs and was told not to return to Nairobi.

In 1995, I obtained a copy of the co-conspirator list for the Abdel Rahman trial. I sent the list to el Hage in Kenya, expecting that it would be forwarded to bin Laden in Khartoum.

In 1996, I learned from el Hage that Abu Ubaidah had drowned.

In 1998, I received a letter from Ihab Ali in early January, 1998. The letter said that el Hage had been interviewed by the FBI in Kenya, and gave me a contact number for el Hage. I called the number and then called someone who would pass the message to Fawwaz for bin Laden.

After the bombing in 1998, I made plans to go to Egypt and later to Afghanistan to meet bin Laden. Before I could leave, I was subpoenaed to testify before the grand jury in the Southern District of New York. I testified, told some lies, and was then arrested.

MR. ROTH: That concludes the statement, your Honor.

THE COURT: The overall objective of all of these activities you described was, what?

THE DEFENDANT: Just to—I was involved in the Islamic Jihad organization, and the Islamic Jihad organization has a very close link to al Qaeda, the organization, for bin Laden. And the objective of all this, just to attack any Western target in the Middle East, to force the government of the Western countries just to pull out from the Middle East, not interfere in the—

THE COURT: And to achieve that objective, did the conspiracy include killing nationals of the United States?

THE DEFENDANT: Yes, sir. Based on the marine explosion in Beirut in 1984 and the American pull-out from Beirut, they will be the same method, to force the United States to pull out from Saudi Arabia.

THE COURT: And it included conspiracy to murder persons who were involved in government agencies and embassies overseas?

THE DEFENDANT: Yes, your Honor.

THE COURT: And to destroy buildings and properties of the United States?

THE DEFENDANT: Yes, your Honor.

THE COURT: And to attack national-defense utilities?

THE DEFENDANT: Yes, your Honor.

THE COURT: Anything further by way of allocution the government would request?

MR. FITZGERALD: No, Judge.

THE COURT: Mr. Roth, Mr. Epstein, do you know of any valid legal defense that would prevail if the defendant went to trial?

MR. EPSTEIN: No, your Honor.

THE COURT: And I take it that the pending motions brought on your behalf are withdrawn.

MR. ROTH: That's correct, your Honor.

THE COURT: Mr. Mohamed, are you satisfied with the representation you have received from your two attorneys?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Mohamed, have you signed and has your counsel signed an acknowledgment of rights form?

THE DEFENDANT: Yes, your Honor.

THE COURT: The Court finds that there is a knowing, voluntary plea of guilty which encompasses all of the elements of the charges to which the defendant has offered to plead guilty, and the plea is accepted. The Court will defer until it sees a presentence report whether it does or does not accept the recommendation pursuant to Rule 11(e). I take it that there is no application for bail or for revision of the terms of bail. The plea may be entered. We will set a sentencing date of nine months from today as a control date.

MR. FITZGERALD: Your Honor, my understanding is it is now required to advise the defendant pleading guilty that he is waiving his right to an appeal.

THE COURT: Yes. Is that contained in the agreement?

MR. EPSTEIN: It's not in the agreement.

MR. FITZGERALD: I don't believe it is in the agreement. I was advised there is recent case law that says it should be allocuted to at the time of the plea.

THE COURT: Do you understand that as a consequence of your offering to plead guilty, and the Court accepting that plea, you waive the right to appeal with respect to any proceedings heretofore had in this matter?

MR. EPSTEIN: Your Honor, it's our understanding that he would be waiving any right to appeal relative to the plea itself, but in terms of subsequent proceedings, there is nothing in any agreement between the parties that would preclude an appeal.

MR. FITZGERALD: That's correct, Judge. If there were something done illegally with regard to his sentence in the future, he is not waiving that, but he is waiving any past proceedings.

THE COURT: I believe I did tell him that: if your offer to plead guilty is accepted, you would give up all the rights that you previously had and any right to appeal with respect to any past proceedings in this case, and the court would have the same power to impose sentence as it would have if a jury returned a verdict of guilty. Anything further?

MR. FITZGERALD: No, your Honor.

MR. ROTH: No, your Honor.

MR. EPSTEIN: No, your Honor.

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