



May 16, 2011

Hon. Mark J. Langer
Clerk
United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

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Re: American Civil Liberties Union v. Department of
Justice,
Nos. 10-5159 & 10-5167

Dear Mr. Langer:

This appeal was argued on February 8, 2011, before Judges Ginsburg, Garland and Williams. Pursuant to Fed. R. App. P. 28(j), appellants/cross-appellees call the Court's attention to a press release issued on May 14, 2011, by the United States Attorney's Office for the Southern District of Florida, a copy of which is attached.

In its press release, the United States Attorney's Office publicly announced the names of six individuals who had been indicted on charges of providing material support to a foreign terrorist organization. The press release also included a quotation from United States Attorney Wilfredo A. Ferrer describing one of the indictees as follows: "Despite being an Imam, or spiritual leader, Hafiz Khan was by no means a man of peace. Instead, as today's charges show, he acted with others to support terrorists to further acts of murder, kidnapping and maiming." *Id.* The press release is available at <http://www.justice.gov/usao/fls/PressReleases/110514-01.html>.

This statement, which comes close to asserting that Mr. Khan is guilty, was reported in full in last Sunday's New York Times. See Don Van Natta, Jr., *Florida Men Accused of Supporting Pakistani Taliban*, New York Times, May 14, 2011 at A11, available at <http://www.nytimes.com/2011/05/15/us/15taliban.html> (attached).

As this press release makes clear, the United States government continues its practice of affirmatively publicizing the names of indicted individuals and the charges against them, in ways that are easily and permanently available to the general public both on government websites and on the websites of news media. This practice belies its argument, in this appeal, that individuals who have been openly indicted have a privacy interest that trumps the public's compelling interest in learning about the government's warrantless cell phone tracking through the disclosure of criminal case docket information.

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Respectfully,

/s Catherine Crump

Catherine Crump

Counsel for appellants/cross-appellees

cc: John S. Koppel

CERTIFICATE OF SERVICE

On May 16, 2011, I served upon counsel for defendant one copy of the foregoing plaintiffs' 28(j) letter by means of this Court's electronic filing system, and also caused four copies to be sent to the Court via UPS.

/s/ Catherine Crump

Catherine Crump

Executed on May 16, 2011

Press Release

SIX INDIVIDUALS CHARGED FOR PROVIDING MATERIAL SUPPORT TO THE PAKISTANI TALIBAN

May 14, 2011

FOR IMMEDIATE RELEASE

Wifredo A. Ferrer, United States Attorney for the Southern District of Florida, John V. Gillies, Special Agent in Charge, Federal Bureau of Investigation (FBI), Miami Field Office, and the members of the South Florida Joint Terrorism Task Force ("JTTF") announced that six individuals located in South Florida and Pakistan have been indicted in the Southern District of Florida on charges of providing financing and other material support to the Pakistani Taliban, a designated foreign terrorist organization.

The four-count indictment charges **Hafiz Muhammed Sher Ali Khan ("Khan")**, 76, a U.S. citizen and resident of Miami; his son **Irfan Khan**, 37, a U.S. citizen and resident of Miami; and one of his other sons, **Izhar Khan**, 24, a U.S. citizen and resident of North Lauderdale, Fla. Three other individuals residing in Pakistan, **Ali Rehman, aka "Faisal Ali Rehman;" Alam Zeb;** and **Amina Khan, aka "Amina Bibi,"** are also charged in the indictment. Amina Khan is the daughter of Khan and her son, Alam Zeb, is Khan's grandson.

All six defendants are charged with conspiring to provide, and providing, material support to a conspiracy to murder, maim and kidnap persons overseas, as well as conspiring to provide material support to a foreign terrorist organization, specifically, the Pakistani Taliban. Defendants Khan, Rehman and Zeb are also charged with providing material support to the Pakistani Taliban.

FBI agents arrested Hafiz Khan and his son Izhar Khan today in South Florida. They are expected to make their initial appearance in federal court in Miami at 1:30 p.m. on Monday, May 16, 2011. In addition, Irfan Khan was arrested in Los Angeles and is expected to make his initial appearance there. If convicted, each faces a potential 15 years in prison for each count of the indictment. The remaining defendants are at large in Pakistan.

The defendants are originally from Pakistan. Hafiz Khan is the Imam at the Miami Mosque, also known as the Flagler Mosque, in Miami. His son, Izhar Khan, is an Imam at the Jamaat Al-Mu'mineen Mosque in Margate, Fla. The indictment does not charge the mosques themselves with any wrongdoing and the individual defendants are charged based on their provision of material support to terrorism, not on their religious beliefs or teachings.

U.S. Attorney Wifredo A. Ferrer stated, "Despite being an Imam, or spiritual leader, Hafiz Khan was by no means a man of peace. Instead, as today's charges show, he acted with others to support terrorists to further acts of murder, kidnapping and maiming. But for law enforcement intervention, these defendants would have continued to transfer funds to Pakistan to finance the Pakistani Taliban, including its purchase of guns. Dismantling terrorist networks is a top priority for this Office and the Department of Justice."

"Today terrorists have lost another funding source to use against innocent people and U.S. interests. We will not allow this country to be used as a base for funding and recruiting terrorists," said John V. Gillies, Special Agent in Charge of the FBI's Miami Office. "I remind everyone that the Muslim and Arab-American members of our community should never be judged by the illegal activities of a few."

This investigation was initiated by the FBI in conjunction with the JTTF, based upon a review of

suspicious financial transactions and other evidence, it was not an undercover. According to the allegations in the indictment, from around 2008 through in or around November 2010, the defendants provided money, financial services, and other forms of support to the Pakistani Taliban. The Pakistani Taliban, also known as Tehrik-e Taliban Pakistan, Tehrik-I-Taliban, Tehrik-e-Taliban, and Tehreek-e-Taliban, is a Pakistan-based terrorist organization formed in December 2007 by an alliance of radical Islamist militants. On August 12, 2010, the U.S. State Department formally designated the Pakistani Taliban as a Foreign Terrorist Organization, under Section 219 of the Immigration and Nationality Act.

According to the indictment, the Pakistani Taliban's objectives include resistance against the lawful Pakistani government, enforcement of strict Islamic law known as Sharia, and opposition to the U.S. and coalition armed forces fighting in Afghanistan. The Pakistani Taliban has committed numerous acts of violence in Pakistan and elsewhere, including suicide bombings that resulted in the death of civilians and Pakistani police, army, and government personnel, and other acts of murder, kidnapping and maiming. The Pakistani Taliban has also been involved in, or claimed responsibility for, numerous attacks against U.S. interests, including a December 2009 suicide attack on a U.S. military base in Khost, Afghanistan, along the border with Pakistan, which killed seven U.S. citizens; an April 2010 suicide bombing against the U.S. Consulate in Peshawar, Pakistan, which killed six Pakistani citizens; and the attempt by Faisal Shahzad to detonate an explosive device in New York City's Times Square on May 1, 2010. Most recently, on May 13, 2011, the Pakistani Taliban claimed responsibility for the suicide attacks that killed at least 80 people at a military training facility in northwestern Pakistan. The Pakistani Taliban has links to both al-Qaeda and the Taliban in Afghanistan.

As set forth in the indictment, the defendants sought to aid the Pakistani Taliban's fight against the Pakistani government and its perceived allies, including the United States, by supporting acts of murder, kidnapping, and maiming in Pakistan and elsewhere, in order to displace the lawful government of Pakistan and to establish strict Islamic law known as Sharia.

To this end, the defendants, assisted by others in the United States and Pakistan, conspired to provide and provided material support to the Pakistani Taliban by soliciting, collecting, and transferring money from the United States to supporters of the Pakistani Taliban, primarily using bank accounts and wire transfer services in the United States and Pakistan. According to the indictment, these funds were intended to purchase guns for the Pakistani Taliban, to sustain militants and their families, and generally to promote the Pakistani Taliban's cause. In addition, the indictment alleges that defendant Khan supported the Pakistani Taliban through a madrassa, or Islamic school, that he founded and controlled in the Swat region of Pakistan. Khan has allegedly used the madrassa to provide shelter and other support for the Pakistani Taliban and has sent children from his madrassa to learn to kill Americans in Afghanistan.

According to the allegations in the indictment, the defendants endorsed the violence perpetrated by the Pakistani Taliban. On one occasion in July 2009, defendants Khan and Irfan Khan participated in a recorded conversation in which Khan called for an attack on the Pakistani Assembly that would resemble the September 2008 suicide bombing of the Marriott Hotel in Islamabad, Pakistan. On another occasion in September 2010, Hafiz Khan participated in a conversation in which he stated that he would provide that individual with contact information for Pakistani Taliban militants in Karachi, and upon hearing that mujahideen in Afghanistan had killed seven American soldiers, declared his wish that God kill 50,000 more.

In closing, Mr. Ferrer noted, "Let me be clear that this is not an indictment against a particular community or religion. Instead, today's indictment charges six individuals for promoting terror and violence through their financial and other support of the Pakistani Taliban. Radical extremists know no boundaries; they come in all shapes and sizes and are not limited by religion, age, or geography."

Mr. Fener commended the investigative efforts of the FBI, U.S. Customs and Border Protection, U.S. Department of State, Broward Sheriff's Office, Miami-Dade Police, City of Miami Police, City of Miramar Police, City of Margate Police, and the Florida Department of Environmental Protection, and the members of the South Florida Joint Terrorism Task Force. The case is being prosecuted by Assistant U.S. Attorneys John Shipley and Sivashree Sundaram, from the U.S. Attorney's Office for the Southern District of Florida, and Trial Attorney Stephen Ponticiello from the Counterterrorism Section of the Justice Department's National Security Division.

An indictment is only an accusation and a defendant is presumed innocent until and unless proven guilty.

Attachments:

[Indictment \(PDF\)](#)

A copy of this press release may be found on the website of the United States Attorney's Office for the Southern District of Florida at <http://www.usdoj.gov/usao/fls>. Related court documents and information may be found on the website of the District Court for the Southern District of Florida at <http://www.flsd.uscourts.gov> or on <http://pacer.flsd.uscourts.gov>.

Technical comments about this website can be e-mailed to the [Webmaster](#). PLEASE NOTE: The United States Attorney's Office does not respond to non-technical inquiries made to this website. If you wish to make a request for information, you may contact our office at 305-961-9001, or you may send a written inquiry to the United States Attorney's Office, Southern District of Florida, 99 NE 4th Street, Miami, FL 33132.

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Florida Men Accused of Supporting Pakistani Taliban

By DON VAN NATTA Jr.
Published: May 14, 2011

MIAMI — Six people, including two imams at South Florida mosques, have been indicted on federal charges of providing financial support and encouraging violence by the Pakistani Taliban, the United States attorney here announced Saturday.

The indictment, which was handed up on Thursday, charged Hafiz Muhammed Sher Ali Khan, 76, the imam at the Miami Mosque (also known as the Flagler Mosque), the oldest mosque in Miami. The indictment also charged two of the imam's sons: Izhar Khan, 24, the imam at the Jamaat Al-Mumineen Mosque in nearby Margate, Fla.; and Irfan Khan, 37, of North Lauderdale, Fla. All three men are American citizens who are originally from Pakistan, the authorities said.

The four-count indictment charges the Khans, and three others living in Pakistan, with conspiring to provide material support to a conspiracy to murder, maim and kidnap people overseas, as well as with conspiring to provide about \$45,000 in financial support to the Pakistani Taliban from 2008 to 2010.

"Despite being an imam, or spiritual leader, Hafiz Khan was by no means a man of peace," Wilfredo A. Ferrer, the United States attorney for the Southern District of Florida, said in a statement. "Instead, as today's charges show, he acted with others to support terrorists to further acts of murder, kidnapping and maiming."

Hafiz and Izhar Khan are scheduled to be arraigned in federal court in Miami on Monday afternoon. Irfan Khan will be arraigned in Los Angeles on Monday. Each of the four counts in the indictment carries a maximum 15-year prison term.

Prosecutors said the indictment did not charge the mosques. They added that the defendants were charged "based on their provision of material support to terrorism, not on their religious beliefs or teachings."

The Muslim Communities Association of South Florida announced that Hafiz Khan had been suspended indefinitely from his mosque.

"Our organizations, together through the Coalition of South Florida Muslim Organizations, has been working with the U.S. attorney's office and the Miami F.B.I. office," the association said in a statement released Saturday afternoon, "and appreciate the efforts of law enforcement to root out potential sources and supporters of terrorism."

"We stand together with the U.S. attorney, Wilfredo Ferrer, and the men and women of the F.B.I., and have been and will be cooperating with law enforcement to our fullest ability," the Muslim association added.

The charges of supporting the Pakistani Taliban but not actually carrying out operations

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are the most pursued since the Sept. 11 attacks. Of the 50 top terrorism cases since 9/11, about 70 percent have involved financing or other support to terrorist groups, according to the Center on Law and Security at the New York University School of Law.

The Pakistani Taliban is closely allied with Al Qaeda and is responsible for attacks against Pakistani police and military targets in recent years. Pakistani authorities believe that a splinter group of the Pakistani Taliban was responsible for the suicide attack in northwestern Pakistan on Friday that killed more than 80 cadets from a government paramilitary force.

The indictment comes at a tense moment in relations between the United States and Pakistan after Osama bin Laden was killed in a raid by the Navy Seals on May 2 in Abbottabad, Pakistan.

On Saturday, the Pakistani Parliament condemned the raid as a "unilateral action" and "a violation of Pakistan's sovereignty," and demanded a formal review of the country's relationship with the United States.

F.B.I. agents arrested Hafiz Khan and his son Izhar in South Florida on Saturday, the authorities said. Irfan Khan was arrested in Los Angeles, they said.

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Lizette Alvarez contributed reporting from Miami, and Eric Schmitt from Washington.

A version of this article appeared in print on May 15, 2011, on page A15 of the New York edition with the headline: 3 Florida Men, Including 2 Imams, Accused of Aiding the Pakistani Taliban.

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