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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 vs.

14 ZIMNAKO SALAH,
15 Defendant.

Case No.: 2:24-CR-0043 DC-1

DEFENSE OPPOSITION TO
GOVERNMENT'S MOTION IN LIMINE
NO. 1

Date: February 14, 2025
Time: 9:30 a.m.
Court: Hon. Dena Coggins

16 The defense requests that the court deny the Government's Motion in Limine No. 1,
17 seeking to admit a variety of other acts evidence.

18 ARGUMENT

19 On its face, this is a simple case with an element, intent, that is not easily proven by the
20 events of November 12, 2023 alone. The other acts evidence the government seeks to admit to
21 bolster their case are highly prejudicial, at times conflicts with the theory they construct, and rely

1 on speculation to fill gaps by creating a theory that this incident was part of a complicated and
2 long running plot to carry out real bombings at churches.

3
4 BOMB EVIDENCE

5 The cornerstone of the prosecution's theory is the supposed bomb preparations located in
6 the Colorado storage unit. This is the only significant evidence pointing towards an overall plot
7 to bomb churches. However, the evidence is far from conclusive. In the storage unit, the FBI
8 located propane canisters, nails, tape, batteries, and wires, all items that can be purchased in any
9 store and found in most homes or garages.

10
11 As the expert's report provided in discovery explained, a bomb requires several
12 components, one of which is an initiator that "converts electrical current into another form of
13 energy, which is usually heat, to start a reaction in the explosive or incendiary material." No
14 initiator was located, and without an initiator, the items located could not be assembled into a
15 bomb.

16
17 Further, most of the items located had explanations that were unrelated to making bombs.
18 When law enforcement located the storage unit they interviewed the storage unit manager, who
19 was upset with Mr. Salah because while he rented the unit there had been evidence Mr. Salah
20 had been staying there overnight, and he had since stopped paying for the storage unit. This was
21 winter in Denver, Colorado, a location known for rather cold temperatures. Mr. Salah would
22 have needed the propane tanks to cook food on his stove (later located by law enforcement) and
23 generate heat. The wires wrapped around the propane tanks would have charged electronic
24 devices, and kept those devices near the heat sources where their batteries would function better.

25
26 Significant to the government are that some of the nails were actually located on a strip of
27 tape, indicating partial completion of the project. However, this is also a simple way to keep
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1 nails together so they don't become scattered around a worksite. Also significant was the fact
2 that some of the tape had been wrapped around a canister, and when removed removed strips of
3 labeling that remained on the tape. This tape, however, had no nails attached to it. Further, so
4 much of the labeling was removed that it appears, to defense counsel at least, that no nails were
5 in between the tape and the canister. Consequently, this evidence ultimately consists of a variety
6 of household items that could not have been assembled into a bomb, and which no evidence
7 suggests were all assembled together at once.
8

9 Additionally, it is important to remember the context in which these items were
10 discovered. They were essentially refuse left behind after Mr. Salah left the storage unit. If they
11 were bomb components, he would have presumably wanted to keep them or take them with him
12 for use in assembling a bomb later. The probative value of this evidence is therefore weak.
13

14 However, the prejudice of this accusation is strong. A bomb hoax, though reprehensible,
15 is far less incendiary a matter than an actual bomb attack. This accusation significantly increases
16 the level of the accusations against Mr. Salah, because a real bomb is obviously far worse than a
17 fake bomb. Further, the uncharged accusation that Mr. Salah was planning and working towards
18 a terror attack may incline the jury to "compromise" on a guilty verdict on the reasoning that
19 although the evidence is weak, the charges are far less significant than the alleged conduct and
20 those two things balance out.
21

22 DRY RUN EVIDENCE

23 Without the bomb component, there is nothing for Mr. Salah to be conducting dry runs
24 leading up to. Even beyond that, however, the dry run component of the theory is highly
25 speculative and contradictory.
26

27 The first issue with the dry run evidence is that it is ambiguous. The government argues
28

1 that because Mr. Salah visited a lot of churches, and brought a backpack with him each time, he
2 must have been up to no good. But the other side of that is that if Mr. Salah frequented churches,
3 and always carried a backpack with him, then it is less surprising that he might have
4 inadvertently left it at the Scottsdale and Roseville churches.
5

6 Beyond that, the government does not explain what the point of a dry run was in the first
7 place. Normally a dry run is conducted when the activity has some level of difficulty to it, and
8 success is not certain. But the activity here is walking into a church that is open to the public,
9 dropping a backpack somewhere, and leaving. This is not an activity that is difficult to perform,
10 or requires testing to see how it will work out. Certainly it did not require Mr. Salah to test it at
11 four different churches on five occasions just to figure out how to walk into a church with a
12 backpack. If Mr. Salah's intent was to bomb a church, the dry runs would needlessly attract
13 attention.
14

15 Arguably, a potential bomber would want to know how a particular church handled
16 security, for example if they scanned backpacks with a metal detector when people entered the
17 church. But this doesn't require leaving the backpack in the church, and it doesn't even require
18 bringing a backpack into the church, because all it requires is walking in and observing the
19 security measures as you enter. Consequently, the dry run component of the other acts evidence
20 is highly speculative and adds little to the government's argument.
21

22 Finally, the dry run theory does not match the actual facts of the visits to the other
23 churches. On October 22, 2023, Mr. Salah visited the La Mesa church. He was there for several
24 hours, more than ample time to drop a backpack somewhere and leave. He didn't. This suggests
25 that he wasn't actually in the churches to drop off backpacks, and had the backpacks for another
26 purpose.
27
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1 However, the prejudice from the argument is strong. This turns one incident into four or five
2 incidents, multiplying the severity of the case several times. And, like with the uncharged
3 accusation that Mr. Salah was constructing a bomb, these other uncharged incidents carry the
4 risk that the jury will, though not convinced the case is proven beyond a reasonable doubt, decide
5 that he is only being charged with 20% or 25% of the actual conduct and that a guilty verdict is a
6 compromise between the weak evidence and the uncharged conduct.
7

8 The government does note that this dry run evidence could prove identity. However, the
9 evidence on identity is already overwhelming, and the defense does not plan to dispute the issue
10 of identity. The defense anticipates this case will be decided primarily on the issue of intent, and
11 additional evidence to prove identity will be cumulative and should be excluded under Rule 403.
12

13 PLANNING EVIDENCE

14 Mr. Salah bought a motorcycle and a backpack before the incident at the Scottsdale
15 church. The government has presented no evidence that suggests that on the dates when Mr.
16 Salah bought the items, he had begun planning to leave a backpack at that church or even knew
17 that the church existed. Further, it seems improbable that he bought a motorcycle solely to drop
18 off a backpack at a church. When he left his backpack at the Roseville church, he used his own
19 car with his own license plate, making no effort to hide his identity. Similarly, the idea that he
20 planned to use the particular backpack he bought, instead of another backpack, seems unlikely.
21 The government has not articulated anything about the particular backpack that made it
22 important or useful for being left at a church.
23
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25 However, the defense concedes that the prejudice created by admitting the evidence that
26 Mr. Salah bought a motorcycle and a backpack is small, because there is nothing wrong or
27 suspicious about having these items and the jury would learn he possessed them regardless. The
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1 defense is more concerned about the prejudice created by admitting the visit to the Scottsdale
2 church at all, as discussed above. Still, because the evidentiary value of Mr. Salah buying these
3 items is so low, the defense requests that they be excluded.
4

5 If the motorcycle purchase is admitted, the defense requests that the license plate of the
6 motorcycle be excluded. The license plate read “KAA8OM”, which the defense believes is
7 meant to mean “Kaboom.” This license plate was apparently selected by the previous owner, and
8 therefore its meaning should not be attributed to Mr. Salah. This license plate is also most likely
9 a reflection of the excitement and adrenaline associated with motorcycles, as opposed to any
10 reference to bombs. This will, however, draw the connection in the jury’s mind between
11 explosions and Mr. Salah, and is therefore highly prejudicial.
12

13 CONSCIOUSNESS OF GUILT EVIDENCE

14 The license plate evidence has no particular bearing on this case. License plate readers,
15 and police officers, discovered that Mr. Salah sometimes had stolen license plates on his vehicles
16 as he drove around the western United States. However, when he visited the Roseville church
17 and left the backpack, he had his own license plate on the vehicle. When he visited the Scottsdale
18 church and left a backpack, he had the correct license plate on the vehicle. Consequently, he was
19 not trying to hide his identity while committing the alleged crimes. The evidentiary value of the
20 license plates as they pertain to his activities at the churches is therefore very low.
21

22 However, the prejudice associated with this evidence is high. Stealing license plates is a
23 crime, a crime with a particular victim who is inconvenienced by the theft. This is likely to upset
24 the jury, and make them think he is a bad person, and is less deserving of the benefit of the doubt
25 built into the requirement that all cases be proven beyond reasonable doubt. The evidence that
26 Mr. Salah cut up his license plates should be excluded for the same reason – it was perhaps an
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1 Beyond this, many Americans, not only asylees from Iraq, are upset by the US decision
2 to invade Iraq. It is regarded by many Americans as an expensive, foolhardy, and poorly thought
3 out war that accomplished little at great expense. Many Americans are likewise frustrated and
4 upset by the United States. The overwhelming majority of these Americans do not go on to
5 commit terror attacks, so the probative value of these statements are low.
6

7 Mr. Salah also wrote “Allah, Muhammad” on the wall of the storage unit. The defense
8 submits this has absolutely no evidentiary value. These phrases are common ones repeated by
9 nearly all Muslims, similar to “Jesus” or “God” as figures commonly referenced by Christians.
10

11 Mr. Salah also wrote “The stupid Jew” on the storage unit. But nothing in this case has
12 anything to do with Jews, synagogues, or anything regarding the Jewish faith.

13 However, the prejudice of this statement is high, because it makes Mr. Salah look
14 prejudiced, and may cause the jury to dislike him on that basis.

15 Mr. Salah’s search history on YouTube is likewise of minimal evidentiary value. The
16 Boston Marathon capturing his attention is not surprising because it captured the nation’s
17 attention. His concern regarding it is even more understandable because when Muslims commit
18 terror attacks in the United States, misguided people commit attacks against Muslims who had
19 absolutely nothing to do with the attacks and did nothing besides living a law abiding life. Being
20 aware of the things that provoke these attacks is a survival tool for Muslims in America.
21

22 More broadly, this evidence regarding motive will substantially complicate the case and
23 unduly consume time and resources. For example, the discovery presented by the government
24 shows that Mr. Salah watched and subscribed to many Youtube videos and channels, as opposed
25 to focusing solely on the ones described by the government. If the government seeks to introduce
26 the portions of Mr. Salah’s YouTube viewing history regarding terrorist attacks, then the defense
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1 will be required to show the full extent of Mr. Salah's viewing habits, so that the jury can
2 properly understand what his media consumption looked like. The prosecution turned over
3 approximately 80,000 pages of emails discovered on Mr. Salah's phone. The defense does not
4 have a precise count on how many of those emails came from YouTube regarding videos
5 watched by Mr. Salah, but estimates it as hundreds or thousands of videos viewed. A
6 representative sample of all the videos Mr. Salah watched, as opposed to only the ones relating to
7 terrorism, would be extensive. Additionally, the defense would need to contextualize the videos
8 the government suggests point towards terrorism, which would require additional time and
9 resources, and potentially expert testimony.
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11
12 The same is true for the other evidence regarding Mr. Salah's motive. If the government
13 presents Mr. Salah's comments to the couple that purchased his home or writing on a wall, the
14 defense may need to introduce evidence that gives a fuller and more complete picture of Mr.
15 Salah's character, consuming substantial time and resources on tangential matters that are
16 unlikely to be decisively resolved.
17

18 CONCLUSION

19 For the reasons stated above, the defense requests that the Government's Motion in
20 Limine No. 1 be denied.
21

22 Respectfully submitted,
23

24 DATED: January 21, 2025

25 By /s/ Michael Heumann
26 MICHAEL HEUMANN
27 Attorney for Defendant
28 ZIMNAKO SALAH