

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
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 )  
 v. ) Criminal No. 09-10017-GAO  
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 )  
 TAREK MEHANNA )

**GOVERNMENT’S MOTION IN LIMINE TO PRECLUDE ARGUMENT AND EVIDENCE  
RELATED TO THE UNITED STATES GOVERNMENT’S POLITICAL POLICIES AND  
ACTIVITIES ABROAD AND IN DOMESTIC (CRIMINAL) TERRORISM  
INVESTIGATIONS AND RELATED MATTERS**

The United States of America, by and through United States Attorney Carmen M. Ortiz, and Assistant United States Attorneys (“AUSA”) Jeffrey Auerhahn and Alope S. Chakravarty, for the District of Massachusetts, and Jeffrey D. Groharing, Trial Attorney, Counterterrorism Section, National Security Division, United States Department of Justice, hereby moves *in limine* to preclude the defendant from arguing, eliciting testimony (including expert testimony) or presenting evidence regarding the merits of United States government’s political policies abroad, and references to the righteousness of its defense and intelligence activities, and domestic criminal investigations and prosecutions, and alleged political motivation for defendant’s actions. Based upon the defendant’s arguments in this case, and disclosures made by the defense, the government anticipates attempted references in opening statement and closing argument, and during cross and direct examination, that question or

criticize the righteousness of U.S. governmental policies and actions, such as the invasion of Iraq and Afghanistan, and the defendant's First Amendment right to protest same, the solicitation of assistance in terrorism investigations, the relationship with the American Muslim community, the prioritization of law enforcement objectives, the decision to designate al Qa'ida as a terrorist organization, and several other political and irrelevant issues which will prevent a jury from remaining focused on the facts that they will be sworn to decide. Eliciting evidence about the legitimacy of the U.S. government's policies is not probative of any issue in this case going to an element of an offense or to a legal defense, but could appeal to juror's political leanings and/or otherwise confuse and dissuade a jury from finding the necessary facts in this case. Fed. R. Evid. 401, 402.

The fact that the defendant's activities were contrary to U.S. criminal laws is the relevant inquiry, not whether the policies and actions of the United States were just, nor whether the applicable criminal statutes are appropriate. Moreover, introduction of such testimony or allowance of such argument will confuse, mislead and distract the jury from determination of the factual matters at hand. Fed. R. Evid. 403. The jury will be improperly influenced by the suggestion that U.S. involvement in conflicts was unjustified or certain U.S. policies are

inappropriate, and that the defendant's actions were politically motivated and therefore his actions should not be found to have violated the applicable criminal statutes because they are protected by the First Amendment. This is not proper comment on the evidence in this case as applied to the criminal charges, and invites jury nullification on issues that are not within their province. This case does not present a political question, nor should the defense be permitted to invite speculation as to the motives of the government's prosecution of the defendant, the righteousness of that decision, nor to inject his dissent against certain U.S. policies as a defense. If the defendant had a selective prosecution claim, he should have raised it in a motion to dismiss. He should not be permitted to invite the jury to do that which he is not legally entitled to as a remedy at law.

In addition, the fact that his motivation might have been a political objective is not a defense to actions that violate a criminal statute, see, e.g., United States v. Hildebrand, 152 F.3d 756, 764 (8<sup>th</sup> Cir. 1998) (and cases cited) (abrogated on another issue Whitfield v. U.S. 543 U.S. 209 (2005)); United States v. Freeman, 761 F.2d 549, 551-552 (9<sup>th</sup> Cir. 1985) (holding that defendant could be held liable for counseling tax evasion even though speech derived from motive to effect political change); United States v. Schulz, 529 F.Supp.2d 341 (N.D.N.Y. 2007).

Furthermore, among the most serious charges of this

prosecution are that the defendant conspired to and attempted to provide material support to terrorists and a terrorist organization. The justification for such actions, or arguing that the form of support that the defendant tried to provide was *de minimis* is not a defense and should not be presented to the jury. In addition, the propriety of the Material Support statutes is not within the province of the jury to decide, and is therefore dangerously close to inviting jury nullification. Similarly, pointing to the things that other supporters of terrorism did that the defendant did NOT do is similarly inappropriate. See e.g. United States v. Holy Land Foundation for Relief and Development, 03-CR-240-G, N.D. Tx. November 2, 2006)(Fish, D.J)("[T]he fact that other entities have supported the same organizations that the defendants are being prosecuted for supporting is not probative of the defendants' knowledge or intent in supporting those organizations."). Moreover, allowance of such testimony and argument invites distracting introduction of evidence and academic commentary which are unrelated to the central issues in this case related to the defendant's own conduct and evidence of the same.

Accordingly, for the reasons stated herein, the government respectfully requests this Court to preclude the defendant from eliciting testimony, presenting evidence of or arguing in the opening or closing statement related to the propriety of the U.S. Government's policy positions with regard to the Executive's

actions, the suggestion the prosecution seeks to punish the defendant for opposing what he might view as improper foreign policy actions of the United States, and his alleged first amendment right to do so.

Respectfully submitted,  
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United States Attorney

By: /s/ Alope Chakravarty  
Alope S. Chakravarty  
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U.S. Department of Justice

Date: October 3, 2011

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Alope Chakravarty  
Alope Chakravarty  
Assistant U.S. Attorney