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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. HAMID HAYAT, and UMER HAYAT, Defendants.	CR. NO. S-05-240 GEB GOVERNMENT'S OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION REGARDING RELEASE ON BOND Date: August 22, 2005 Time: 2:00 p.m. Court: Hon. Mag. Judge Dale A. Drozd

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I.
INTRODUCTION AND PROCEDURAL HISTORY

A complaint was filed June 7, 2005, charging defendants Hamid Hayat and Umer Hayat with making false statements in violation of 18 U.S.C. § 1001. The same date, following defendants' arraignment, Magistrate Judge Peter A. Nowinski ordered that defendant Umer Hayat be detained as both a flight risk and danger to the community. After a detention hearing conducted on June 10, 2005, defendant Hamid Hayat was likewise ordered detained as both a flight risk and danger to the community. Defendants did not appeal these orders to the District Court (and their 10-day period of time to do so has

long since expired, see Local Rule Crim 12-430(j)).

On June 16, 2005, a Grand Jury returned an indictment against both defendants, charging defendant Hamid Hayat with two separate counts of making false statements, and defendant Umer Hayat with one count of making false statements.[1]

On August 5, 2005, the parties appeared before Judge Garland E. Burrell, Jr., for trial confirmation in connection with the previously set August 23, 2005 trial date. The Court vacated the trial date and set the matter for status on October 7, 2005.[2]

Defendants filed the instant motions on August 15, 2005 seeking reconsideration of the detention orders and release on bail. These motions should be denied.

First, as explained below, defendants have not offered any new evidence or basis to demonstrate, as they must, that there are sufficient grounds for reconsideration of the Court's previous detention orders.

Second, detention is manifestly appropriate because there is a severe risk that defendants will flee and/or pose a danger to the community.

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[1]Defendants were arraigned on the indictment on June 21, 2005.

[2]A hearing under the Classified Information Procedures Act is also set for the same day.

II.

THERE IS NO BASIS FOR RECONSIDERATION OF JUDGE NOWINSKI'S PREVIOUS DETENTION ORDERS

In their motions, almost as an afterthought, defendants claim that reconsideration of Judge Nowinski's June, 2005 detention orders is warranted because 1) the grand jury has not indicted defendants for material support and 2) defendant's August, 2005 trial date has been vacated. Defense Motions at 6. This is not good cause for reconsideration of Judge Nowinski's orders.

A defendant is not allowed to seek reconsideration of a prior detention order under the Bail Reform Act without making an appropriate showing of cause:

> [A detention] hearing may be reopened ... after a determination by the judicial officer, at any time before trial[,] <u>if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue</u> whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

18 U.S.C. § 3142 (f)(emphasis added).

Local Rule Crim. 12-430(i) has similar requirements: a party moving for reconsideration of a prior ruling must demonstrate "what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion or what other grounds exist for the motion."

In <u>United States v. Navarro</u>, 972 F.Supp. 1296, 1298 (E.D. Ca. 1997), <u>rev'd on other grounds</u>, 160 F.3d 1254 (9th Cir. 1998), <u>cert. denied</u>, 527 U.S. 1011 (1999), Judge Karlton explained the necessity for imposing such requirements:

"Under the "law of the case" doctrine a court is generally

> precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." That is because, while motions to reconsider are directed to the sound discretion of the court, considerations of judicial economy weigh heavily in the process. Accordingly, before reconsideration may be granted there must be a change in the controlling law, facts, or other circumstances, the need to correct a clear error, or the need to prevent manifest injustice. In implementation of the general constraint on motions for reconsideration, Local Rule Crim. 12-430 requires that a party seeking reconsideration of a district court's order must brief the "new or different facts or circumstances [which] were not shown upon such prior motion, or what other grounds exist for the motion." The purpose of the rule is to insure that the standards for reconsideration have been met by the moving party prior to the court's consideration of the merits.
>
> As with motions to alter or amend a judgment made pursuant to Fed.R.Civ.P. 59(a), motions to reconsider are not vehicles permitting the unsuccessful party to "rehash" arguments previously presented. Nor is a motion to reconsider justified on the basis of new evidence which could have been discovered prior to the court's ruling. Finally, "after thoughts" or "shifting of ground" do not constitute an appropriate basis for reconsideration. These relatively restrictive standards "reflect[ ] district courts' concern for preserving dwindling resources and promoting judicial efficiency."

(citations omitted); see also Catholic Social Services v. Ashcroft, 268 F.Supp.2d 1172, 1196 (E.D. Ca. 2002).

The defendants utterly fail to address, much less satisfy, the requirements of the Bail Reform Act and Rule 12-430(i). Defendants devote all of one sentence, in the conclusion of their respective briefs, to set forth the "new facts" which demonstrate why reconsideration is merited. However, the two "new facts" to which they refer are not new or germane at all.

They first assert as a "new fact" that the Grand Jury has not indicted the defendants for material support for terrorism. Defense Motions at 6. The fact that the defendants were not indicted on material support charges was known to Magistrate Judge Nowinski when

he made his decision to deny bail and, in fact, was forcefully argued by the defense as a reason for granting bail. Magistrate Judge Nowinski simply rejected the argument and the defendants are searching for a more sympathetic ear. Furthermore, as the government has informed defense counsel, investigation of this case continues and, especially given the evidence set forth hereafter in this brief, they should not discount the possibility that additional charges may be filed.

The defendants next assert that because the trial date has been vacated, the defendants will be jailed "indefinitely." Defense Motions at 6. Again, that is not a "new fact" or "information" within the meaning of the Bail Reform Act or the Local Rule. No trial date had been set at the time Magistrate Judge Nowinski denied bail. Moreover, the "fact" of defendant's incarceration is not one of the statutory factors under 18 U.S.C. § 3142 (g) germane to the analysis of whether the defendants are a flight risk or a danger to the community. Defendants who are deemed a flight risk or a danger to the community are not released on bond simply because no trial date has yet been set in their case.[3]

---

[3] The defendants, who have been incarcerated for approximately 2½ months, have not and cannot show that their incarceration is likely to be so lengthy as to violate due process. See, e.g., United States v. El-Gabrowney, 35 F.3d 63, 65 (2d Cir. 1994)(anticipated pre-trial incarceration of 27 months did not violate due process); United States v. El-Hage, 213 F.3d 74, 79 (2d Cir. 2000)(anticipated pretrial incarceration of 30-33 months did not violate due process), cert. denied, 531 U.S. 881 (2000).

III.

DEFENDANTS SHOULD BE DETAINED AS A SEVERE FLIGHT RISK AND DANGER TO THE COMMUNITY

In order to detain a defendant prior to trial, the government must show either that the defendant is a flight risk (by a preponderance of the evidence) or that defendant poses a danger to the community (by clear and convincing evidence). See United States v. Aitken, 898 F.2d 104, 107 (9th Cir. 1990); United States v. Motamedi, 767 F.2d 1403, 1406 (9th Cir. 1985); 18 U.S.C. § 3142(e), (f).

Title 18, U.S.C. § 3142(g) sets forth factors the Court should consider in determining whether detention is appropriate:

> (1) the nature and circumstances of the offense charged . . . ;
>
> (2) the weight of the evidence against the person;
>
> (3) the history and characteristics of the person, including -
>
> > (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
> >
> > (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
>
> (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g); United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991). Of these factors, "the weight of the evidence is the least important." Gebro, 948 F.2d at 1121; see United States v.

Winsor, 785 F.2d 755, 757 (9th Cir. 1986).

An examination of the relevant bail factors indicates that defendants pose a severe risk of flight, that defendants pose a severe danger to the community, and that there are no current conditions that will reasonably assure their appearance at further proceedings and mitigate the danger to the community.

A. The Nature and Circumstances of the Offenses Charged

Defendants are charged with making false statements to the FBI in a matter "involving international and domestic terrorism." Indictment, Counts 1-3. Defendant Hamid Hayat is charged with two separate counts of making false statements. In Count One, he is charged with falsely stating on June 3, 2005: "that he was not involved in any way with any type of terrorist organization, that he never attended any type of terrorist training camp, that he never attended a jihadist training camp, that he never attended a terrorist training camp in Pakistan, and that he would never be involved in anything related to terrorism, when, in truth and in fact as he then well knew, he had attended one or more jihadist terrorist training camps in Pakistan." Indictment, Count 1 (emphasis added).

In Count 2, Hamid Hayat is charged with falsely stating on June 4, 2005: "that he never attended a terrorist camp, that he never received any training directed toward a Jihad against the United States, and that he never received any weapons training at a jihadist camp, when, in truth and in fact as he then well knew, he had attended one or more jihadist terrorist training camps, which included weapons training, in Pakistan." Indictment, Count 2

(emphasis added).

Defendant Umer Hayat is charged, in Count 3, with falsely stating on June 4, 2005: "that he had no first hand knowledge of terrorist training camps in Pakistan that would prepare people to fight for Jihad, and that his son, Hamid Hayat, did not attend any terrorist or jihadist training camps, <u>when, in truth and in fact as he then well knew, he had visited various terrorist training camps in Pakistan, and Hamid Hayat had attended one or more jihadist terrorist training camps in Pakistan.</u>" Indictment, Count Three (emphasis added).

The nature and circumstances of the crimes themselves suggest that defendants pose a significant risk of flight and danger to the community. Defendant Hamid Hayat, the grand jury charges, allegedly traveled to Pakistan, participated in jihadi training, returned to the United States, and then lied about his conduct to the FBI. His father, Umer Hayat, allegedly traveled to Pakistani, toured jihadi camps, was aware that his son attended a camp, returned to the United States, and then lied to the FBI about his conduct and knowledge. This is not some garden variety false statement on a loan application or benefits' application. Defendants Hamid Hayat and Umer Hayat are charged with participating in and/or concealing their knowledge about terrorist training aimed at the conducting of jihad (holy war) against the United States. Defendants' charged conduct, on its face, demonstrates that defendants pose both a flight risk and danger.

B. <u>There Is Substantial Evidence Against The Defendants Establishing Their Guilt</u>

The weight of the evidence against defendants Hamid and Umer Hayat is substantial and compelling. The evidence includes, among other things:

1. Defendant Hamid Hayat had a series of recorded conversations with a cooperating witness ("CW") between March, 2003 and mid-April, 2003. During these conversations with the CW, defendant Hamid Hayat, among other things, revealed that he understood the nature and structure of various known Pakistani terrorist groups and that he had detailed knowledge regarding the mechanics of attending a jihadi camp. Defendant further revealed that he believed in jihad and swore that he would go to jihad.[4]

2. Defendants Umer Hayat, Hamid Hayat, and their family traveled from the United States to Pakistan on or about April 19-21, 2003.

3. Defendant Hamid Hayat had a series of recorded conversations with the CW after he arrived in Pakistan. Among other things, he advised the CW that he genuinely desired to attend a camp and strongly indicated in his final conversation with the CW that he had been accepted to "training" and was going to attend the same after

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[4]This proffer related to conversations between the CW and Hamid Hayat, as well as all other such conversations proffered herein, are based on preliminary summary translations of the recorded conversations. (These summaries, together with copies of the actual recordings, have been provided to the defense). The government is presently preparing full translations and transcripts of these conversations.

Ramadan in 2003.

4. Defendant Umer Hayat returned to the United States on or about February 27, 2005. His son, Hamid Hayat, returned to the United States on or about May 30, 2005.

5. During his initial interviews with the FBI on May 30, 2005 (in the airport in Tokyo), on June 3, 2005 (at defendants' home), and on June 4, 2005 (at the FBI[5]), defendant Hamid Hayat repeatedly denied that he had participated in any sort of jihadi or terrorist training in Pakistan.

6. On June 4, 2005, after advisement and waiver of his rights, defendant Hamid Hayat submitted to and failed a polygraph examination. Thereafter, defendant Hamid Hayat stated and admitted, among other things, as follows during a videotaped interview:

-He attended a jihadist training camp in Pakistan for approximately 3-6 months in 2003-2004, and another camp for a 3-day period in 2000.

-He described, with fair detail, the location of the second camp and layout of the same.

-The purpose of both camps was to train for jihad and to teach people to kill those who work against Muslims.

-The camp provided apparent paramilitary training, including weapons training, explosives training, hand

[5]Defendants Umer Hayat and Hamid Hayat voluntarily came to the Sacramento Division of the FBI, driving to the office in their own car.

to hand combat training, and exercise.

-He was being trained to and intended to commit jihad in the U.S.

-He did not have any orders to fight at present; however, he was awaiting such orders.

7. During his interview with the FBI on June 4, 2005 (at the FBI), defendant Umer Hayat denied that he had any firsthand knowledge of training camps in Pakistan, indicating that he would swear on the Quran that this were true. Defendant Umer Hayat also denied any knowledge of his son's attendance in terrorist or jihadi training.

8. Defendant Umer Hayat was subsequently confronted with a small portion of his son's videotaped interview. Thereafter, defendant Umer Hayat stated and admitted, among other things, as follows during a videotaped interview:

-Hamid Hayat attended a jihadist training camp in Pakistan in 2003-04.

-Umer Hayat paid for Hamid's flight and had provided him with an allowance of $100 per month, knowing that Hamid's intention was to attend a jihadi training camp.

-Hamid Hayat first became interested in attending a jihadi training camp during his early teenage years, after being influenced by a classmate at the madrassah (religious school) Hamid attended in Rawalpindi, Pakistan. Hamid was also influenced by

his uncle, who fought with the mujahedeen in Afghanistan.

-The madrassah Hamid Hayat attended was operated by Hamid Hayat's grandfather, and Umer Hayat's father-in-law. The father-in-law-sends the students from this madrassah to jihadi training camps in Pakistan.

-After completing his education at the madrassah, Hamid Hayat went to a training camp near Rawalpindi, Pakistan. Hamid was at the training camp for 6 months, but had been able to leave for home on the weekends.

-Because of his family connections, he was invited to observe several operational training camps. He was assigned a driver who drove him from camp to camp. While visiting these training camps, he observed weapons and urban warfare training, physical training, and classroom education.

9. An agent searched defendant Hamid Hayat at the time of his arrest on June 5, 2005. Defendant's wallet contained various identification documents, as well as a scrap of paper which included a brief statement in Arabic. Translated, the phrase states, "Lord let us be at their throats, and we ask you to give us refuge from their evil." At trial, the government will be prepared to offer expert testimony explaining the origin and usage of this phrase.

This is but a preview, if you will, of some of the government's

anticipated trial evidence. This information alone, however, demonstrates that there is substantial evidence of defendants' guilt. This is not a bare bones case where defendants have a genuine chance of prevailing or where pretrial detention could somehow work an injustice against an arguably innocent accused. Defendants, at best, will have a tremendous uphill battle in attempting to contest the government's case.[6] They undoubtedly know this, and this reality, in the circumstances of their situation, will serve as a very strong incentive for them to flee.

C. Defendants Umer Hayat and Hamid Hayat Have Made Misleading and/or False Statements to Government Officials in the Past

Hamid Hayat, Umer Hayat and other Hayat family members were stopped by U.S. Customs authorities on April 19, 2003 at Washington-Dulles International Airport, while in route to Pakistan. Defendant Umer Hayat was asked if he had any cash to declare and was reminded that individuals carrying more than $10,000 cash out of the United States are required to declare that fact. Umer Hayat indicated that he had $10,000 and produced the cash. Umer Hayat, upon inquiry, stated that the money was for his whole family. He was then asked, two times, if there was any more money to declare. He replied no. The family was then advised that they and their bags would be

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[6]Defendants claim that there is no element of violence in the charges against them, that the case does not involve defendant Hamid Hayat's training with weapons, and that there is no evidence that defendants engaged in preparation for terorist related violence. Defense Motions at 4. Not so. Each charge alleges that the false statements at issue were made in a matter related to terrorism. Moreover, the charges and evidence proffered indicate that Hamid Hayat participated in training with the intention of committing jihad against the United States, and that Umer Hayat supported the same.

searched. When Hamid Hayat was approached by inspectors, he removed two envelopes from his pocket containing an aggregate amount of $10,000. Inspectors then asked the three female members of the party if they had money. Umer Hayat's wife, Oma Hayat, stated that she did, and after some initial resistance, handed over $8,000 in currency.

When subsequently questioned, Umer Hayat and Hamid Hayat made a series of inconsistent statements about the origin of the money. Umer Hayat first stated that the $10,000 was money that he had earned from his business as an ice cream salesman. He also indicated that his wife worked and that the money on her person was her own. Hamid Hayat then stated that he worked for a church and that the money in his possession was his earnings from teaching. Shortly thereafter, Umer Hayat offered a different explanation, stating that much of the money represented wedding gifts from his friends for the upcoming weddings for his daughter Najia and his son Hamid. Questioning continued, in a separate location. Umer Hayat offered a third and different explanation for the money: he stated that he took a cash advance before his flight and that a large portion of money was to be given to families in Pakistan from some of his friends in the United States. Hamid Hayat then seemingly changed his explanation as well, stating that he received $1,800 from the sale of his Ford Escort the day prior to their departure. Hamid Hayat also indicated that his mother, in fact, was not employed.[7]

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[7]U.S. Customs seized approximately $27,000 in cash (and other financial instruments) from the Hayats after these events.

This evidence, like the evidence associated with the charged crimes, suggests that defendants are exceedingly poor risks for the purposes of admission to bail. Defendants' propensity to lie whenever it is convenient, whether to the FBI, or to Customs authorities, indicates that they cannot be trusted.

D. Defendants Face Significant Custodial Sentences Upon Conviction

Defendants' criminal exposure is quite severe and obviously would give defendants a substantial incentive to flee. According to the government's preliminary guidelines calculations, if defendant Hamid Hayat were convicted at trial, his advisory guideline range would be 16 years of incarceration[8]. As for Umer Hayat, his advisory guideline range would be 8 years of incarceration[9].

E. Even Though Defendants Have Some Ties to the United States, They Have Significant Established Ties to Pakistan

Although defendants have some ties to the Lodi community and the United States, they also have significant and developed ties to Pakistan which make them a high risk for flight.

Defendant Umer Hayat, age 47, was born in Pakistan[10]. He moved

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Subsequently, the Hayats and a series of third parties filed claims to the seized money. Customs ultimately assessed a penalty of $2,500 and returned the remaining cash (and financial instruments).

[8]U.S.S.G. § 3A1.4 indicates, in relevant part, that the offense level is 32 and criminal history is VI if the offense is a felony that involved or was intended to promote a federal crime of terrorism. Under this guideline, the post-trial advisory guideline range for Hamid Hayat would be 210-262 months. Given that the statutory maximum for both counts combined is 16 years (192 months), the maximum advisory sentence would be 192 months.

[9]U.S.S.G. § 3A1.4 also would apply to Umer Hayat. Given that the statutory maximum for his single count is 8 years (96 months), the maximum advisory sentence for him would be 96 months.

[10]His passports so indicate.

to the United States in 1976, became a naturalized citizen in 1993, and has apparently maintained some form of residence in Lodi for approximately 30 years. Umer Hayat PTS Report at 1, 2. Defendant Umer Hayat lives with his wife of 25 years and has two daughters and two sons: Hamid Hayat (age 23), Nija Hayat (17), Arslan Hayat (16), Rehalla Hayat (10), all of whom normally reside at home. Id. They have had a residence at 302 E. Acacia # A, Lodi, for approximately 20 years. Id.

Of significance, defendant Umer Hayat has spent a substantial amount of time living abroad in Pakistan. During his Pretrial Services interview, defendant indicated that he spent 2003 and 2004 in Pakistan. Umer Hayat PTS Report at 1. Indeed, a review of defendant's American passports indicates that defendant traveled to Pakistan four times between late 1999 and the present, and remained in Pakistan for *30* months during that time frame[11]. It is suspected that Umer Hayat has made numerous other trips to Pakistan as well based on his familial ties to that country[12].

Defendant Hamid Hayat, age 23, was born in the United States and is a citizen here. Of significance, defendant Hamid Hayat has lived *more than half of his life* in Pakistan. According to defendant, he has traveled to Pakistan at least five to seven times

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[11]Various U.S. passports for Umer Hayat located by the government indicate that, at the very least, he resided in or visited Pakistan on the following dates: 10/19/03 to 2/28/05 (over 16 months), 4/23/03 to 6/12/03 (about 1.5 months), 11/12/99 to 5/23/00 (over 6 months), and 11/1/98 to 4/17/99 (6.5 months).

[12]For example, one Umer Hayat Pakistani passport located by the government (issued in 10/89 and valid through 1994) has a Pakistani entry stamp with an illegible date and a U.S. immigration stamp dated 1/26/90.

since he was born. Hamid Hayat Supplemental PTS Report at 2.On one occasion, defendant stated, he lived with his maternal grandparents for ten years from 1990 to 2000. Id. Most recently, defendant resided in Pakistan for two years between 2003 and 2004. Id. Indeed, during a conversation with the CW in 2003, defendant stated, that this country [referring to the U.S.] is just a name and that his heart belongs to Pakistan. This remark is telling.

Defendants Umer and Hamid Hayat's other immediate family, i.e., Umer's wife and the three other children, have also spent a significant amount of time living in Pakistan. In 2003 and 2004, they, like defendants, all lived in Pakistan[13].

Of significance, defendants have many close relatives who reside in Pakistan. First of all, defendant Hamid Hayat's spouse currently remains in Pakistan. Hamid Hayat Supplemental PTS Report at 2. According to Umer Hayat, his father (believed to be Suleman Suleman), two sisters, and one brother (believed to be Umer Khatab) left for Pakistan in approximately April, 2005 and he was uncertain how long they would be there. Umer Hayat PTS Report at 1. In addition, it appears that many of Umer Hayat's in-laws reside in Pakistan including his father-in-law, Saaed Ur Rehman (grandfather to Hamid), and his brother-in-law, Attiq Rehman (uncle to Hamid).

Finally, and of great significance, defendants own their own residence in Pakistan. Umer Hayat indicated during his Pretrial Services interview that he and his family spent 2003 and 2004 in

[13]Defendant Umer Hayat has one sister living in Lodi near his home.

Pakistan building a house[14].

In short, even though defendants have some ties to the Lodi area, they have very significant and current ties to Pakistan. Both Umer and Hamid Hayat have established Pakistani familial connections, a Pakistani home, and a history of travel to Pakistan, all of which could easily be utilized to facilitate a flight from justice in the United States.

F. Defendant Umer Hayat Has a Modest Record of Gainful Employment in the United States; Defendant Hamid Hayat Has No Significant Record of Gainful Employment in the United States

Umer Hayat has a modest record of lawful employment during his residence in the United States. According to pretrial services, defendant Umer Hayat has "seasonal" employment: he has owned and operated an ice cream truck during the summer months for the past 15 years earning $1500 per month. Umer Hayat PTS Report at 2. Otherwise, defendant collects approximately $1,000 in rental income each month from renters at the Acacia property. Id. at 1. It does not appear that defendant Umer Hayat has any sort of full-time occupation or career. In addition, Umer Hayat's spouse, Oma, does not work, apparently due to an illness. Id. at 2.

Defendant Hamid Hayat has no history of employment to speak of. He was employed as a laborer at the Delta Packing Company for a period of three days prior to his arrest. Otherwise, even though 23 years of age, he has had no gainful lawful employment whatsoever, much less any sort of full-time occupation or career. Hamid Hayat Supplemental PTS Report at 2. Moreover, defendant apparently has

[14]This has been independently confirmed.

completed education only through the sixth grade. Id.

Finally, it could not be said, based on the above facts, that either father or son would have tremendous employment prospects in the United States if released on bail.

In short, it does not appear that either defendant Hamid Hayat or Umer Hayat has any sort of occupation that naturally ties them here to the United States or that they would be loath to give up. Their occupational ties to the United States are minimal at best.

G. Defendants' Criminal History

Defendant Umer Hayat has one known criminal conviction for a misdemeanor crime of violence. Defendant was arrested on August 27, 2001, for kidnaping and willful cruelty to a child. On November 11, 2001, he was convicted of misdemeanor battery, and sentenced to 3 years probation and 3 days jail. Umer Hayat PTS Report at 2.

Defendant Hamid Hayat has no known criminal history[15].

H. Defendants Pose a Significant Danger to the Community

Defendants are a danger to the community. The charges filed and evidence proffered indicate that defendant Hamid Hayat attended a terrorist training camp with the intention of committing jihad here in the United States. The charges filed and evidence proffered indicate that Umer Hayat, among other things, provided support to his son to attend a jihadi camp. Defendants' detention is manifestly necessary to safeguard the community against any possibility that defendants will take steps, either themselves, or

[15]Both defendants deny use of illicit substances. Neither defendant reports any sort of significant ailments which would be germane to a bail determination. Hamid Hayat Supplemental PTS Report at 3, Umer Hayat PTS Report at 2.

through others, to bring harm to American citizens or property.

I. Defendants' Proposed Collateral Is Insufficient to Reasonably Assure Their Appearance At Future Proceedings and to Safeguard the Community

Defendants have indicated that they are willing to post the Acacia property, with an estimated equity of $240,000, as collateral. Defense Motions at 2, 5. This suggestion should be rejected.

As a preliminary matter, it should be emphasized again that Magistrate Judge Nowinski *already* considered whether this amount of bail would be sufficient to mitigate the risks of flight and danger to the community. The availability of this bail was specifically mentioned in Umer Hayat's initial Pretrial Services Report. Umer Hayat PTS Report at 2. Judge Nowinski rejected this proposed bail, finding, with respect to both defendants, that no combination of conditions would reasonably assure defendants' appearance at trial and protect the safety of the public.

In any event, the proposed bail is manifestly insufficient given the flight risk associated with these defendants and the danger to the community posed by these defendants.

First, the government has substantial doubts as to whether this property, in fact, has a value of $240,000. Defendants have not specified in their motion how they have come up with this estimate, whether by appraisal or otherwise. According to San Joaquin County Property assessment records, the 2004 value of the property is $126,812[16].

[16]Admittedly, tax valuations of real property usually are less than market valuations.

Second, in the government's view, it remains uncertain whether the property, in fact, can and will be properly deeded to the United States as security. Title to the property is held by Hamid Hayat and his uncle, Umer Khatab (Umer Hayat's brother). According to Pretrial Services, as well as defense counsel for defendant Hamid Hayat, Umer Khatab is presently in Pakistan. Umer Hayat PTS Report at 2. Defense counsel for Hamid Hayat informed government counsel that Umer Khatab intends to return on some date unknown. Moreover, defendants, in their motions, suggest that the "family" is prepared to quitclaim the property so that it can be used for bail. Defense Motions at 2, n. 2. That might well be. However, at present, there is no reliable information before this Court to suggest when Umer Khatab will return and if, indeed, he will be willing to relinquish his property interest or otherwise allow his property interest to be encumbered. Given this, it is speculative for the Court to even consider this property as potential security.

Finally, even assuming that the property has sizeable equity and that the property can be deeded by the appropriate title holders, the government believes that the proffered property bond still will not reasonably assure defendants' appearance at future proceedings and safeguard the public. Granted, defendants are potentially posting a sizable sum of money, likely in excess of $125,000. Given the circumstances of this case, however, even this amount of money will not reasonably mitigate the flight and danger risks. At the end of the day, the charges filed and evidence proffered indicate that defendant Hamid Hayat attended a terrorist training camp, that Umer Hayat provided support to his son for that

purpose, and that both defendants lied about their conduct, apparently to conceal their misdeeds. Both defendants have significant long-term ties to Pakistan. Were they to flee the United States, they would have family in Pakistan ready to welcome them. Defendants also have an established home in Pakistan. Thus, even if defendants were to forfeit their Lodi property and the equity therein, they still would have another residence and significant financial asset, ready and waiting in Pakistan[17]. Finally, the defendants have a tremendous incentive to flee. They face likely conviction, incarceration for a period of years (during which their family will undoubtedly face tremendous financial hardship), and a lifetime of infamy here in the United States based on their misdeeds. Given this probable future, why would defendants have any reason to remain in the United States and "face the music?" The government submits that they would not.

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[17]Query whether Umer Khatab, the other title holder, has any strong disincentive to lose the Acacia property? First, Khatab currently resides in Pakistan with unknown plans regarding a return to the United States. Second, given defendants' ownership of Pakistani property, as well as familial ties in Pakistan, defendants likely would have the means to compensate Khatab for any financial loss he would suffer if the Acacia property were forfeited.

IV.
CONCLUSION

Defendants pose a significant flight risk and danger to the community. There are no conditions which will reasonably mitigate these risks. As such, defendants should be detained pending trial.[18]

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Respectfully submitted,

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[18]Defendants suggest that it is somehow unfair that they are in custody while other individuals, namely Muhammad Adil Khan and Shabbir Ahmed, are or will be "set free." Defense Motions at 6, n.3. Two points: First, the custodial status of Khan and Ahmed is wholly irrelevant to the matter before this Court. Second, Khan and Ahmed were not "set free" by the government. Each was or will be deported from this country. Defendants' implicit argument -We should be released from custody because others not charged have been deported- is nonsensical.