

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
 )  
 vs. ) CRIMINAL NO. 02-10013-WGY  
 )  
 RICHARD COLVIN REID, )  
 a/k/a ABDUL-RAHEEM, )  
 a/k/a ABDUL RAHEEM, ABU IBRAHIM )  
 Defendant. )

GOVERNMENT'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S REQUEST  
FOR RULING ON MOTION TO STRIKE SURPLUSAGE  
FROM INDICTMENT

Procedural History

On July 8, 2002, defendant Richard Colvin Reid ("Reid") filed a Motion to Strike Surplusage From Indictment. Specifically, Reid asked this Court to strike paragraphs one and two from Counts One and Two, which read:

1. At all times relevant to this count brought under Title 18, United States Code, Chapter 113B -- Terrorism, Al-Qaeda was a designated foreign terrorist organization pursuant to 8 U.S.C. §1189.
2. At various time relevant to this count, Richard Colvin Reid received training from Al-Qaeda in Afghanistan.

The principal ground advanced by Reid in his motion was a distinctly trial-related reason: prejudice from associating him with al Qaeda. Specifically, Reid argued: "Any insinuation that a defendant has ties to this organization, apparently responsible for the September 11 terrorist attacks, cannot fail

to create impermissible bias." Reid further argued that paragraphs one and two are "unnecessary and may unduly prejudice the defendant if, at the very inception of the trial and before a word of testimony is heard, they are [revealed] to the jury." (citations omitted) This Court, recognizing that the content of the Indictment was better addressed at the time of trial, denied Reid's motion on July 10, 2002 (without opposition from the government). The Court noted at that time: "The matter is better handled at the time of trial as these would seem to be grounds not to send the indictment to the jury."

Now, on the eve of his scheduled change-of-plea hearing, Reid has renewed his motion to strike paragraphs one and two of Counts One and Two of the Indictment. As discussed in detail below, the motion should again be denied because Reid's intended change of plea moots any trial-related concerns that motivated his original motion.

### **Discussion**

In his renewed motion, Reid argues that the al Qaeda allegations should be struck from the Indictment because "[i]t was not the government's intent, as conveyed to counsel, to present evidence at trial on the allegations in paragraph 1 and

2 of Counts One and Two."<sup>1</sup> However, Reid's argument overlooks the fundamental difference between a fair trial and Rule 11 hearing. At trial, considerations of unfair prejudice inform a court's decisions about the allegations of the indictment, United States v. Fahey, 769 F.2d 829, 842 (1<sup>st</sup> Cir. 1985) (purpose of Rule 7(d) is to "protect . . . the defendant against immaterial or irrelevant allegations in an indictment . . . which may . . . be prejudicial"), and the admissibility of evidence, see Fed. R. Evid. 403. No such considerations are relevant to a Rule 11 hearing.<sup>2</sup>

---

<sup>1</sup>Reid does not in his motion challenge the factual accuracy of the allegations that he seeks to strike. He also does not challenge the government's right to present evidence of Reid's al Qaeda training for this Court's consideration at sentencing. However, the Court should know that the al Qaeda trained allegations of Count One and Two are supported by witness statements of individuals with personal knowledge of Reid's presence at al Qaeda training camps, as well as corroborating circumstantial evidence to that effect.

<sup>2</sup>Rule 11(f) does require the Court to "mak[e] such inquiry as shall satisfy it that there is a factual basis for the plea." The rule does not limit the government to a recitation of admissible evidence, or to evidence that it intended to offer at trial. Reid will have the same option at the Rule 11 hearing that any defendant has to object to, or at least not to admit to, facts not necessary to establish the essential elements of the charged crimes. The government fully expects Reid to acknowledge and agree with the government's account of his conduct on board Flight 63 on December 22, 2001, and not to acknowledge or agree with the government's account of his conduct occurring before that date, including but not limited to the al Qaeda allegations. Reid's admissions will be sufficient

Reid's argument that the government did not intend to offer evidence at trial in support of the al Qaeda allegations is immaterial now that Reid has indicated an intention to waive his right to trial. Prosecutors' decisions about the evidence to be presented to a jury can be influenced by any number of factors that are irrelevant to a Rule 11 hearing (and to sentencing). Quite apart from the importance of the prosecutor's obligation to weigh probative and prejudicial value, the government may determine not to offer admissible evidence for other reasons, such as trial economy, discovery issues, appellate risks, and witness issues. Such concerns and issues do not apply when a defendant, like Reid, decides to waive his right to trial and plead guilty to a pending indictment.

As the risk of unfair trial prejudice is mooted by Reid's decision to plead guilty, the only issue for this Court to decide is whether the allegations of paragraphs one and two are relevant to the essential elements of the crimes charged in Count One, Attempted Use of a Weapon of Mass Destruction, in violation of 18 U.S.C. §2332a(a)(1), and Count Two, Attempted Homicide, in violation of 18 U.S.C. §2332. See, e.g., Dranow v. United States, 307 F.2d 545, 558 (8<sup>th</sup> Cir. 1962) (motion to

---

to conclude that Reid has admitted to the essential elements of

strike should be granted only where it is clear that allegations contained therein are not relevant to the charge made or contained inflammatory and prejudicial matter); United States v. Bin Laden, 91 F.Supp.2d 600, 621 (S.D.N.Y. 2000) (same, and "it has long been the policy of courts within the Southern District to refrain from tampering with indictments"). Here, Reid's prior al Qaeda training is relevant to knowledge, motive, intent, planning and premeditation.<sup>3</sup>

As this Court knows from earlier proceedings in this case, it was the intention of the government to offer at trial certain e-mails drafted by Reid, his post-arrest statements, and the "Abdul Ra'uff trip report" to show that Reid was an Islamic extremist engaging in acts of international terrorism while on a martyrdom mission. That Reid was trained by al Qaeda, a foreign terrorist organization designated by the U.S. Department of State, is relevant to the first two counts of the Indictment for

---

the charges in the Indictment.

<sup>3</sup>"The threshold for relevance is very low under Federal Rule of Evidence 401. United States v. Rodriguez-Cortes, 949 F.2d 532, 542 (1<sup>st</sup> Cir. 1991). Evidence is relevant under Rule 401 if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' Fed. R. Evid. 401." United States v. Nason, 9 F. 3d 155, 162 (1<sup>st</sup> Cir. 1993); see also United States v. Tutiven, 40 F.3d 1, 6 (1<sup>st</sup> Cir. 1994).

many of the same reasons that support the admission of the other terrorism evidence. Moreover, Reid's al Qaeda roots properly place his conduct on December 22<sup>nd</sup> in an accurate and complete context. See United States v. Salameh, 152 F.3d 88, 111 (2d Cir. 1998) (per curiam) (terrorism evidence admitted "to furnish an explanation of the understanding or intent with which certain acts were performed").

**Conclusion**

For the above-stated reasons, this Court should again deny Reid's renewed motion to strike surplusage from the indictment and conduct the Rule 11 hearing he has requested.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By:

GERARD T. LEONE, JR.  
First Assistant U.S. Attorney  
TIMOTHY Q. FEELEY  
COLIN OWYANG  
GARY S. KATZMANN  
Assistant U.S. Attorneys  
(617) 748-3172

October 3, 2002

**CERTIFICATE OF SERVICE**

I, Timothy Q. Feeley, do hereby certify that I served a copy of the foregoing motion by hand on this date on counsel for defendant Richard C. Reid, Owen Walker, Esq. and Tamar Birckhead, Esq., Federal Defender Office, 408 Atlantic Avenue, Boston, Massachusetts.

\_\_\_\_\_  
Timothy Q. Feeley  
Assistant U.S. Attorney