

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA))
)
)
vs.)) CRIMINAL ACTION
)) NO. 03-1762-CBS
AHMED FATHY MEHALBA,)
Defendant,)
_____)

MEMORANDUM OF PROBABLE CAUSE AND ORDER ON THE
GOVERNMENT'S MOTION FOR DETENTION
October 15, 2003

SWARTWOOD, M.J.

I. Nature of the Offense and the Government's Motion

On September 29, 2003, a Criminal Complaint was filed, charging Ahmed Fathy Mehalba ("Mr. Mehalba"), with knowingly and willfully making a materially false, fictitious, or fraudulent statement or representation in a matter within the jurisdiction of the executive branch of the United States Government, in violation of 18 U.S.C. §1001(a).

At Mr. Mehalba's initial appearance on September 30, 2003 in connection with this Complaint, he was advised of his right to a preliminary examination in accordance with Fed. R. Crim. P. 5.1 and the Government moved for a detention hearing in accordance with 18 U.S.C. §§ 3142((f)(2)(A)(risk of flight)). This case was then continued to

October 8, 2003 for a consolidated probable cause/detention hearing. Prior to this latter hearing, the parties filed a Joint Motion To Continue Probable Cause and Detention Hearing (Docket No. 9) which I allowed and rescheduled such hearing to October 15, 2003.

On October 15, 2003, a consolidated probable cause/detention hearing was held and prior to the commencement of that hearing, Mr. Mehalba assented to an order of detention, but reserved his right to a detention hearing in the future. An Order of Detention is entered consistent with that request. The parties then proceeded with a probable cause hearing at which John F. Van Kleef, Special Agent with the Federal Bureau of Investigation ("FBI"), testified on behalf of the Government and was cross-examined by Mr. Mehalba's counsel.

II. Findings of Fact

1. Mr. Mehalba was employed by a private Government contractor, Titan Systems/BTG ("BTG"), as a linguist at the U.S. Naval Base, Guantanamo Bay, Cuba. Govt. Exs. 1 and 2. Mr. Mehalba was granted interim secret clearance for his work at Guantanamo Bay as a BTG employee. Govt. Ex. 3. As a BTG employee at Guantanamo Bay, Mr. Mehalba signed:

- (A) a JTFGTMO Computer User Licensing Agreement in which he agreed that "classified material is not accessed, stored, or processed on an unclassified computer". Govt. Ex. 4, ¶9.

- (B) a JTF-GTMO Initial Security Briefing document in which he agreed that he would "never divulge, publish, or reveal (either by word, conduct, or other means) any government information concerning the above activities except in the performance of my official duties in accordance with the laws of the United States". Govt. Ex. 5.
- (C) a Joint Task Force 170 Sensitive Information Nondisclosure Agreement in which Mr. Mehalba acknowledged that he was briefed that information pertaining to the personnel and operations of Joint Task Force 170 was of a sensitive nature and would not be disclosed and that disclosure would be a violation of law. Govt. Ex. 6.
- (D) a Defensive Travel Briefing which states, in part, that Mr. Mehalba would ". . . **NOT TAKE CLASSIFIED MATERIAL** with you as you travel" Govt. Ex. 7, ¶5.
- (E) a Notification Of Foreign Travel which provides, in part, that Mr. Mehalba was prohibited from taking "sensitive or classified material out of the U.S. without written approval from the PSO." Govt. Ex. 8, ¶3b.

(F) a Classified Information Nondisclosure Agreement between Mr. Mehalba and the United States in which he acknowledged that he had "received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures." Govt. Ex. 9, ¶2.

2. On September 29, 2003, Mr. Mehalba arrived at Logan Airport, Boston, Massachusetts on a flight from Cairo, Egypt with a stopover in Italy. Upon Mr. Mehalba's arrival, he was selected for second processing by U.S. Customs agents who discovered, among other things, a compact disk marked in Mr. Mehalba's handwriting "Backup #3 For Mo's Profile". Govt. Ex. 10. A review of that disk, revealed the existence of a document labeled "SECRET". Govt. Ex. 1.

3. Special Agent Van Kleef specifically asked Mr. Mehalba whether there was any classified information, government documents, or "GITMO" documents on the disk in his possession. Mr. Mehalba responded "no". This same question was repeated a number of times and Mr. Mehalba's response to the question remained the same. Id.

4. A review of the disk obtained from Mr. Mehalba revealed that the disk contained 368 documents marked "SECRET" or "SECRET/NO FORN"¹. Govt. Ex. 12).

5. Mr. Mehalba acknowledged that he had owned a personal computer while at Guantanamo Bay and that he had sold that computer before leaving Cuba. FBI and Terrorism Task Force Agents were able to obtain that computer from a second individual who had purchased it from the individual who had purchased it from Mr. Mehalba and analysis of the computer revealed that the hard drive contained secret documents.

6. Counsel for the parties have stipulated that at least one document obtained from one of Mr. Mehalba's disks was designated as "SECRET".

III. Probable Cause

I find that on September 29, 2003, Mr. Mehalba had in his possession a compact disk that contained secret information which had been obtained from Guantanamo Bay. A search of Mr. Mehalba's personal computer revealed that the hard drive had contained secret documents which were consistent with the documents that were on a compact disk which Mr. Mehalba had in the possession at the time he was stopped at Logan Airport by U.S. Customs Officials. In response to several specific questions asked of Mr. Mehalba by U.S. Government agents as to

¹"Secret/no forn" means secret, no foreign access.

whether or not the compact disk in his possession contained confidential or secret information, Mr. Mehalba responded that it did not. I find that it did. Therefore, I find probable cause for the conclusion that Mr. Mehalba knowingly made a false statement to U.S. Customs, FBI and Terrorist Task Force Agents and that he violated 18 U.S.C. §1001(a).

IV. Order of Detention Pending Trial

In accordance with the foregoing memorandum,

IT IS ORDERED:

1. That Mr. Mehalba be committed to the custody of the Attorney General. or his designated representative, for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

2. That Mr. Mehalba be afforded a reasonable opportunity for private consultation with counsel; and

3. On order of a court of the United States or on request by an attorney for the Government, the person in charge of the corrections facility in which Mr. Mehalba is detained and confined shall deliver Mr. Mehalba to an authorized Deputy United States Marshal for the purpose of any appearance in connection with a court proceeding.

RIGHT OF APPEAL

THE PERSON OR PERSONS DETAINED BY THIS ORDER MAY FILE A
MOTION FOR REVOCATION OR AMENDMENT OF THE ORDER PURSUANT TO 18
U.S.C. § 3145(b).

/S/CHARLES B. SWARTWOOD, III
CHARLES B. SWARTWOOD, III
MAGISTRATE JUDGE