

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

CRIMINAL COMPLAINT

AHMED FATHY MEHALBA

CASE NUMBER:

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my

knowledge and belief. On or about September 29, 2003 in the District of Massachusetts defendant, (Track Statutory Language of Offense) **did, in a matter within the jurisdiction of the executive branch of the Government of the United States, knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation,**

in violation of Title 18 United States Code, Section(s) 1001(a).

I further state that I am a(n) Special Agent, Federal Bureau of Investigation and that this complaint is based on the following facts:

Official Title

See attached Affidavit of John Van Kleef.

Continued on the attached sheet and made a part hereof:

Yes []No

Signature of Complainant

JOHN VAN KLEEF
Special Agent, FBI

Sworn to before me and subscribed in my presence,

September , 2003 at

City and State

Cambridge, Massachusetts Date

CHARLES B. SWARTWOOD, III
United States Magistrate Judge

Name and Title of Judicial Officer

Signature of

Judicial Officer

AFFIDAVIT OF SPECIAL AGENT JOHN F. VAN KLEEFF
IN SUPPORT OF APPLICATION FOR A CRIMINAL COMPLAINT
AND SEARCH WARRANTS

I, John F. Van Kleeff, being duly sworn, depose and state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), and have been so employed for over ten years. Since in or about 2001, I have been assigned to a Counter Terrorism Squad, part of the Joint Terrorism Task Force ("JTTF"), in the FBI's Boston Office. From early 1996 to 2001, I was assigned to the Drug Squad of the Boston Field Division of the FBI. Previous to being assigned to the Drug Squad, I was assigned to an Economic Crimes Squad. During my employment at the FBI, I have participated in numerous investigations. I have received training in the aspects of investigation of criminal offenses. I have sworn out numerous affidavits in support of search warrants, arrest warrants and other applications.

2. During the course of my employment with the FBI, I have participated in numerous investigations of many types as a case agent and in subsidiary roles.

3. As evidenced herein, I believe there is probable cause to believe that Ahmed Fathy Mehalba, in a matter within the jurisdiction of the executive branch of the Government of the United States, knowingly and willfully made materially false, fictitious or fraudulent statements or representations on or about September 29, 2003, to wit, that he was not in possession of classified government information, all in violation of 18 U.S.C. §1001(a).

4. This affidavit is also filed in support of a search warrant to search the following items (hereinafter, "the Premises to be Searched"):

A. One black, soft-sided garment bag bearing a U.S. Army

insignia;

- B. One black, soft-sided Skyway suitcase bearing an Alitalia name tag bearing the name "A. Mehalba";
- C. One black camera base bearing the trade name Ambico;
- D. One black backpack bearing brand name EastPak
- E. Approximately 132 compact discs, including a disc labeled in black handwriting "Backup #3 for MO'S Profile."

5. This affidavit includes information known to me, as well as information related to me by other agents, either orally or in writing. This affidavit does not include all of the facts of which I or the other agents working with me in this investigation are aware, but instead includes only those which I believe are necessary to establish the requisite probable cause.

FACTS

6. On September 29, 2003, Mehalba flew from Cairo, Egypt, through Italy, into Logan Airport in Boston via Alitalia flight 618. Mehalba was stopped at the Customs and Border Protection (CBP) control point by CBP Officer Michael Bonner. Mehalba stated he was coming from Egypt, where he had been visiting family. Mehalba presented a United States passport and a United States/Department of Defense Uniformed Service card. Mehalba was referred for secondary processing.

7. During the secondary examination, Mehalba stated that he had traveled to Egypt to visit his father. Mehalba stated that he worked as a linguist, and presented an identification card which indicated that he worked as a linguist at Guantanamo Bay, Cuba. Mehalba stated that he was a private contractor for the Army, and later showed an identification card for the U.S. Naval Base, Guantanamo Bay, Cuba. Mehalba was asked to present another identification card which was attached to his belt. Mehalba refused, saying that it was secret.

8. CBP Officer Thomas B. Harrington asked Mehalba if he was carrying any business or government-related documents in his possession from Guantanamo Bay. Mehalba stated no. Officer Harrington and CBP Supervisor James B. Bailey commented on the problems at Guantanamo Bay, namely the Yee case (which, according to open press reports, I am aware concerns an Army chaplain who had served at Guantanamo Bay and who is being held by the United States military on suspicion of breaching security at Guantanamo Bay). Mehalba indicated that he was well aware of the problems and appreciated what the CBP officers were doing. Mehalba later asked how Yee was caught, and what led Customs onto him. Officer Harrington responded that it was through a Customs inspection.

9. Mehalba had with him the luggage identified in the Premises to be Searched. One of these was a garment bag bearing a U.S. Army insignia. During a check of it, a compact disc case was discovered. Mehalba stated that the discs contained "only music and videos," some of which he made in Egypt. The compact discs were reviewed by CBP Officer Daniel Ouelette. During that review, Officer Ouelette discovered on one disc, labeled in black handwriting "Backup #3 for MO'S Profile" (hereinafter, "the suspect disc"), classified information including a document labeled "SECRET."

10. I responded to Logan Airport during the afternoon of September 29. I use classified documents in my work as agent with the JTTF. I am familiar with the marking, general appearance and typical content of classified documents. I briefly reviewed the information contained on the suspect disc. It appears consistent in marking, appearance and content with classified information of the United States.

11. I read Mehalba his Miranda rights. He waived those rights, and later executed a written waiver of those rights. Mehalba admitted to me that he worked at Guantanamo Bay as a linguist, and had access to classified documents.

12. FBI Special Agent Craig Ring, also of the JTTF, asked Mehalba whether he

had any documents from “Gitmo” (short for Guantanamo Bay) on him. Mehalba said “no, not at all.” Ring asked “none?” Mehalba said “none.”

13. I asked Mehalba what was on the discs in his possession. He said they contained MP3's (digital music) and movies. I asked whether there were any government, classified or Guantanamo Bay documents on them. Mehalba said no. I asked him similar questions three times concerning various collections of the CDs found in his luggage. Each time Mehalba denied that there was anything in the CDs he should not have.

14. I again asked him a similar series of questions, including whether there was any classified, government or Guantanamo Bay documents on the CDs. Mehalba said no.

15. Mehalba gave myself and Special Agent Ring verbal consent to review the discs (we also obtained written consent from Mehalba to review them).¹ Special Agent Ring examined the substance of the suspect disc, and reviewed two files. One of them was labeled “SECRET” and the other contained information which I believe to be secret, based on my training, experience and knowledge. Special Agent Ring printed off several pages of the document, which are labeled “SECRET.” I and Agent Ring interviewed Mehalba about those documents. Mehalba admitted that the suspect disc was his, and that his handwriting was on it. However, Mehalba stated that the suspect disc had his personal documents on it, and on several occasions, Mehalba denied any knowledge of how that classified information came to be found on his disc.

16. I have been trained in the methods of storing, handling, transporting and

¹ Mehalba executed a written consent permitting the FBI to search his luggage (the luggage identified in the Premises to be Searched), and “all of the CDs” in his possession, including the suspect disc.

disseminating classified information. I am aware that several deliberate steps must be accomplished to download classified information onto a disc such as the suspect disc. These steps include gaining access to a classified computer, accessing the classified files, and then creating a copy of those files. I reviewed these steps with Mehalba. Mehalba agreed that those were the steps, but denied knowing how the files got on the CD. Mehalba stated that he bought the CDs in Guantanamo Bay, that they were purchased as blanks, that Mehalba also purchased a computer in Guantanamo Bay, and that he downloaded information from the computer onto the discs. He claimed he could not have downloaded secret files from the government computers.

17. I asked him why the suspect disc reflected Mehalba writing identifying it as containing back up MP3 files, and asked Mehalba whether he cared if he lost such music files. He said he didn't know, but also commented that it was important to him.

18. I have reviewed an FBI report dated December 21, 2001 prepared by FBI agents in Phoenix, Arizona, and including information prepared by the U.S. Army. It reflected that on May 20, 2001, U.S. Army Specialist Deborah M. Gephart, a student at the Counter-Intelligence School at Fort Huachuca, Arizona, had been arrested for vehicle theft. A subsequent search of Gephardt's quarters revealed a stolen laptop and classified counter-intelligence training material. After Gephardt's arrest, Ahmed Fathy Mehalba contacted the Charge of Quarters desk to inquire about Gephardt. The report reflects that Mehalba and Gephardt had established a close relationship while training together in January, 2001. The report further reflects that Mehalba told Gephardt that Mehalba's uncle was an Intelligence Officer for the Egyptian army. Mehalba made several attempts to gain information about Gephardt's arrest without success. During an interview, Gephardt requested counsel. She was discharged on September 21, 2001 on less than honorable conditions.

19. I asked Mehalba who was Private Gephardt. Initially, Mehalba responded

“who” more than once in response to my inquiries. I then asked who Deborah Gephardt was. Mehalba said they were in the Army together. I asked whether she was his girlfriend. He said she was. I later asked him whether he knew anyone who had mishandled classified information or got in trouble for breaching security. Mehalba said three times that he did not. I then asked about Private Gephardt. Mehalba said that she had been arrested for stealing a car.

20. I asked about Mehalba’s family. He told me, among other things, he had a brother who was an engineer. I later asked Mehalba if any of Mehalba’s family was in the military, Mehalba admitted that his brother was an engineer in the Army. I asked if any others family members were in the military. Initially, Mehalba said no. I asked about his uncle and whether he was in the military. Mehalba said he was. I asked what he did. Mehalba mumbled “MI,” an acronym for military intelligence. When I asked further, Mehalba said that his uncle was retired, and that was a long time ago.

21. At the conclusion of the interview, Mehalba asked me whether he needed a lawyer, and then asked for one. Questioning ceased then.

DESCRIPTION OF PREMISES TO BE SEARCHED

22. The Premises to be Searched are described as follows:
- a. One black, soft-sided garment bag bearing a U.S. Army insignia;
 - b. One black, soft-sided Skyway suitcase bearing an Alitalia name tag bearing the name “A. Mehalba”;
 - c. One black camera base bearing the trade name Ambico;
 - d. One black backpack bearing brand name EastPak
 - e. Approximately compact discs, including a disc labeled in black handwriting “Backup #3 for MO’S Profile.”

DESCRIPTION OF ITEMS TO BE SEIZED

23. The Items to be Seized are as follows:

- a. All classified documents and information and information derived therefrom.
- b. Documents reflecting the acquisition, transfer, handling, processing, use, dissemination, or distribution of classified documents and information.
- c. Documents reflecting contact between Mehalba and any other person.
- d. Documents reflecting international travel to and from the United States.

PERMISSION TO SEIZE COMPUTER SYSTEMS AND PERIPHERALS

24. I have consulted with FBI Special Agent (SA) Kevin Swindon, who has been a Special Agent since 1996. SA Swindon is specially trained in computer search and seizure and is certified by the FBI as a member of the FBI Computer Analysis Response Team (CART). SA Swindon has been a member of CART since 1998 and has conducted numerous searches and seizures involving computers and computer data. SA Swindon has also told me what is summarized in paragraphs below.

25. Computer hardware, software, documentation, passwords, and data security devices may be important to a criminal investigation in two distinct respects: (1) the items themselves may be instrumentalities, fruits, and/or evidence of crime; and/or (2) items may have been used to collect and store information about crimes (in the form of electronic data). Thus, Rule 41 of the Federal Rules of Criminal Procedure permits the government to search and seize computer hardware, software, documentation, passwords, and data security devices which are: (1) instrumentalities, fruits and/or evidence of crime; and/or (2) storage devices for information about crimes.

26. Based on his knowledge, training, and experience, SA Swindon knows that searching and seizing information from computer-generated media, such as compact discs, often requires search by a qualified computer expert in a laboratory or other

controlled environment. This is true because of computer storage devices can store the equivalent of thousands of pages of information. Additionally, a suspect may try to conceal evidence; he or she might also store it in random order with deceptive file names. This may require searching authorities to examine all the stored data to determine which particular files are evidence or instrumentalities of crime. This sorting process can take weeks or months, depending on the volume of data stored, and often it would be impractical to attempt this kind of search on site.

27. Searching computers for criminal evidence is a highly technical process requiring expert skill and a properly controlled environment. For example, on site and laboratory analysis by a qualified computer specialist is often required in order to properly retrieve and analyze electronically stored (computer) data, document and authenticate the data, and prevent the loss of the data.

28. Based on the above facts and circumstances and information, permission is requested to seize all computer discs, even though there may be unrelated information stored on them. This unrelated data will not be used and will be separated (to the extent possible) from the evidentiary data and preserved.

CONCLUSION

29. Based on all of the facts and circumstances described in this affidavit for search warrant, along with my training, experience, and consultations with others, there is probable cause to believe that Ahmed Fathy Mehalba, in a matter within the jurisdiction of the executive branch of the Government of the United States, knowingly and willfully made materially false, fictitious or fraudulent statements or representations on or about September 29, 2003, to wit, that he was not in possession of classified government information, all in violation of 18 U.S.C. §1001(a). There is further probable

cause to believe that in the Premises to be Searched there are located the Items to be seized, which items constitute evidence, fruits, and/or instrumentalities of violations of the statute identified above.

Dated at _____, Massachusetts, September ____, 2003.

JOHN F. VAN KLEEFF
SPECIAL AGENT
FEDERAL BUREAU OF
INVESTIGATION

Sworn and subscribed to before me this ____ day of September, 2003 at _____, MA.

CHARLES B. SWARTWOOD, III
UNITED STATES MAGISTRATE JUDGE