United States v. Aws Mohammed Younis al-Jayab: A Case Study on Transnational Prosecutions of Jihadi Foreign Fighter Networks

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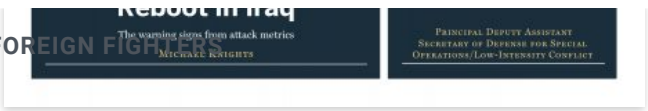

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Abstract: *The recent guilty plea in the criminal case against Aws Mohammed Younis al-Jayab, a resident of Arizona, Wisconsin, and California, makes public previously undisclosed information about a transnational jihadi logistical network with members located in Switzerland, Syria, Turkey, and the United States. The disclosures in related criminal cases in Chicago, San Francisco, and Switzerland shed new light on cross-border foreign fighter recruitment networks in the United States and Europe, and the potential threat they pose.*

On October 31, 2018, Aws Mohammed Younis al-Jayab, a 25-year-old Iraq-born Sacramento, California resident, pleaded guilty in the United States District Court for the Northern District of Illinois to providing material support to Ansar al-Islam, a designated foreign terrorist organization, and making false statements in an international terrorism case.[a] Al-Jayab's guilty plea concluded a protracted legal process featuring indictments in two separate district courts, motions for a change of venue, and motions to suppress evidence gained from a FISA warrant and related proceedings against co-conspirators in a third district.[1] While investigating al-Jayab, law enforcement uncovered his links to a network of jihadi attack planners based in Switzerland who were connected to individuals in Syria, Turkey, and other countries.

Al-Jayab is among the rare few who returned to the United States after fighting for a jihadi organization in Iraq or Syria.[2] According to statistics compiled by George Washington University's Program on Extremism, al-Jayab is one of the 72 identified American "travelers" who successfully joined jihadi groups in Syria and Iraq. Of the 72, 24 (33.3%) are believed to have died overseas, and 31 more (43.1%) are ostensibly at large. For the latter, there is no credible confirmation of their deaths or reports on their current statuses.[3] Three of the 72 identified travelers are in the custody of foreign governments.[4] Meanwhile, 15 travelers (20.8%) have returned to the United States; of that number, the United States has publicly charged 12 with terrorism-related offenses.[5] Al-Jayab is the ninth known traveler to be convicted in a U.S. court.[6]

While lawyers and scholars are intrigued by the uniqueness of foreign fighter returnee prosecution in the United States, media and public interest in this case is sparked by al-Jayab's social media presence, looks, and background. In a marked departure from the austere mien of many of his American jihadi counterparts, al-Jayab's Facebook posts advertised a young man with a curated appearance. His profile pictures, which show al-Jayab's well-coiffed hairstyle and designer sunglasses, led several news outlets to dub him the "hipster terrorist."[7]

Another aspect of al-Jayab's persona drew the attention of lawmakers—his refugee status in the United States placed the young man within the crosshairs of an intensifying national security debate. After al-Jayab's arrest in January 2016, opponents of the Obama administration's vetting and visa processing programs highlighted al-Jayab's refugee status, using his arrest to

argue that the programs were insufficient to prevent terrorists from entering the United States.[8]

Augmenting their argument by pointing to Iraqi refugee Omar Faraj Saeed al-Hardan, charged with terrorism-related offenses in the Southern District of Texas on the same day as al-Jayab, some in Congress used these two arrests to argue for stricter vetting procedures for refugees and visa applicants.[9] Commenting on both cases, House Homeland Security Committee Chairman Michael McCaul (R-TX) argued that "jihadists see [refugee and visa] programs as a back door into America and will continue to exploit them until we take action."[10] Others, in contrast to McCaul, used al-Jayab's arrest as evidence that the program could identify, detect, and arrest jihadis who were attempting to exploit U.S. immigration law.[11]

A review of Islamic State-related prosecutions in the United States, however, reveals that al-Jayab and al-Hardan's refugee statuses were anomalous. The vast majority of the individuals arrested for activities on behalf of the Islamic State since 2014 were U.S. citizens or permanent residents.[12] Narrowing the sample down to the 15 known American jihadis who returned to the United States after fighting in Syria and Iraq, al-Jayab was the only one known to have held refugee status at the time of return to the United States.[13]

The al-Jayab case is highly instructive for scholars and practitioners of counterterrorism who are interested in the dynamics behind foreign fighter logistics networks in the United States and how transnational connections allow for local and international mobilization. As detailed below, an extensive, transnational social network of jihadi contacts critically aided al-Jayab in building the group of contacts that assisted him in fundraising, logistics, and his eventual travel.

Al-Jayab's Travel to and from Syria

In October 2012, Aws Mohammed Younis al-Jayab arrived in the United States from a refugee camp in Syria in which he and his family were staying.[14] He received United Nations refugee status from an application his father filed on behalf of the family.[15] "From the moment he arrived in the United States," the U.S. government argued in an April 2018 motion, "the defendant began to plot his return to Syria to fight on behalf of terrorist groups there."[16] Indeed, weeks after moving to the United States, he was in contact with an associate in Iraq via Facebook Messenger, lamenting: "I want to go back, God is my witness … I'll go to Turkey and enter in smuggled to Syria … go with Ansar [al-Islam] or the Front [Jabhat al-Nusra] only."[17]

From October 2012 to November 2013, al-Jayab developed his plan to travel to Syria to join jihadi groups. Court documents present evidence from online conversations between al-Jayab and at least 16 members (labeled Individual A to Individual P) of an overseas logistics network responsible for arranging travel and supplies for interested jihadi foreign fighters.[18] During this period of the Syrian conflict, jihadi groups in Syria were in flux, with many cooperating in early operations against the Assad regime.[19] Some members of al-Jayab's logistics network identified as affiliates of Ansar al-Islam, a jihadi group founded by the Kurdish cleric Mullah Krekar (Najm al-Din Faraj Ahmad).[20] Others were fighting with the upstart Jabhat al-Nusra, which at the time was a project of al-Qa`ida in Iraq (AQI) to establish a foothold across the

border in Syria.[21] Court documents claim that at the time of their conversations with al-Jayab, network members were located in several countries, including the United States, Syria, Turkey, Cyprus, and Indonesia.[22]

Only one individual, referred to in the criminal complaint as "Individual I," is known by name. Authorities revealed him to be Omar Faraj Saeed al-Hardan, a Houston, Texas-based Iraqi refugee charged on the same day as al-Jayab.[23] In April 2013, al-Hardan and al-Jayab discussed their idea of traveling to Syria to join either Ansar al-Islam or Jabhat al-Nusra on Facebook Messenger.[24] During this discussion, al-Hardan claimed to have fighting experience; he said he had participated in Ansar al-Islam operations in Iraq at the age of 16 and told al-Jayab the best ways to obtain a variety of firearms in Syria.[25] Both men made trips to shooting ranges—in Wisconsin and Texas, respectively—to train for fighting overseas.[26]

One major obstacle in al-Jayab's travel plan was his finances. In January 2013, al-Jayab had already spoken to a series of other network members in an attempt to gather enough money to buy plane tickets.[27] "Individual F," located in Syria at the time, sent two transfers of $231.00 and $450.00 to al-Jayab in Tuscon, Arizona, via Western Union.[28] This was not enough money for a plane ticket; after the transaction, al-Jayab told another network member that he was still in need of $400.00.[29] Along with this delay, other barriers arose. First, al-Jayab's contacts in Syria were worried that he would be detected in Turkey if he traveled to Syria with U.S. travel documents. They advised him to find an alternate path or way to conceal the purpose behind his journey.[30] Al-Jayab told them that he would declare himself at the U.S. Embassy in Turkey beforehand to avoid detection: "I'll say tourism, or I'll tell him my grandmother is sick in Turkey and I wanted to be with her."[31] With direction from network members after al-Jayab received the Western Union transfers, al-Jayab and al-Hardan decided that they would travel together to Syria. "It is better if we leave together when the Turkish route is open, so that if we are confronted by any resistance from the enemy, there is the two of us," al-Hardan argued. "I mean we would help each other."[32]

Planning travel in small groups is common practice for American jihadi travelers. For many, networked connections to other travelers are their best chance of reaching their destination by building "strength in numbers."[33] A majority of the American jihadi travelers in the Program on Extremism's database leveraged connections to like-minded individuals in their kinship and friendship networks to logistically support their travel attempts.[34] The downside of dependence on connection-building, as al-Hardan discovered, is that network expansion increases the risk of infiltration and discovery of plots by law enforcement.[35]

In 2014, al-Hardan began communicating with a person whom he believed to be a supporter of the Islamic State, but was, in reality, a confidential human source for the FBI.[36] Al-Hardan was arrested and later convicted by plea, and in December 2017, a judge in the Southern District of Texas sentenced him to 16 years in federal prison.[37]

Al-Jayab, unlike al-Hardan, did not have the misfortune of unwittingly communicating with a confidential human source, and by November 2013, he was on his way to Syria via Turkey. Ultimately, al-Jayab's winnings from a 2013 insurance settlement, in combination with the

funds he received from donors in Syria, paid for his trip.[38] With the $4,500 he received, he immediately bought a plane ticket from Chicago to Istanbul, departing the United States by himself on November 9, 2013.[39] By the end of the month, he was in Aleppo, Syria, fighting with Ansar al-Sham.[40] Ansar al-Sham, which is not a designated foreign terrorist organization in the United States, fought alongside Jabhat al-Nusra and other Sunni extremist groups during

raids against the Syrian army in the Aleppo governorate, according to al-Jayab's account.[41] Al-Jayab viewed Ansar al-Sham as "the same as Ansar al-Islam, just with another name."[42] Initially, his view of the organization that referred to itself as the "Islamic State" at the time was dim: "[they] have killed many from Jabhat al-Nusra and hundreds of mujahidin … this is the blood of Muslims shed at the hands of the State [referring to Islamic State]."[43] That notwithstanding, he claimed that he "would have been the first to join" the Islamic State if not for its penchant for intra-jihadi violence.[44]

As time progressed, jihadi infighting in Syria wrought by the Islamic State began to discourage al-Jayab. By January 2014, he had abandoned Ansar al-Sham for Ansar al-Islam.[45] Al-Jayab re-expressed his desire to join the Islamic State to friends and acquaintances, referring to the group as "our brothers" and detailing a joint operation his group conducted with the Islamic State.[46] Eventually, however, al-Jayab claimed that the Islamic State's stoking of intra-jihadi violence convinced him to leave Syria. "I did not come to fight [in Syria] for the sake of sedition," he explained to a Syria-based colleague referred to as "Individual M" on January 7, 2014.[47] Ten days after this conversation, al-Jayab was on a flight to Sacramento, California, where his family had recently moved.[48]

When al-Jayab filled out his customs form upon returning to the United States, he listed Jordan and the United Kingdom as the only countries he visited during his overseas travel.[49] This action prompted U.S. Citizenship and Immigration Services (USCIS) to interview al-Jayab on several occasions between July and October 2014. During the first interview, he admitted his omission of a "vacation" to Turkey in January 2014 on his customs form.[50] During a subsequent interview, al-Jayab claimed he had no affiliation with any terrorist organizations. He stuck to his original story and told investigators that he went to Turkey to visit his grandmother.[51] After a four-month investigation, which included the use of collected communications pursuant to Section 702 of the Foreign Intelligence Surveillance Act, two juries in separate U.S. district courts indicted al-Jayab. In January 2016, he was indicted in the Eastern District of California for making a false statement involving international terrorism.[52] Two months later, a special grand jury in the Northern District of Illinois indicted al-Jayab for providing material support to a designated foreign terrorist organization.[53]

The Swiss Connection: Al-Jayab and the Baden-Schaffhausen Cell

Most of al-Jayab's co-conspirators are non-U.S. persons and are thus unnamed in the U.S. indictment. However, as U.S. law enforcement was exploring al-Jayab's activities in Syria, they also assisted foreign partners in uncovering the individuals within his logistics network.

In October 2015, federal prosecutors in Switzerland filed an indictment against four Swiss nationals, all natives of Iraq.[54] The Swiss indictment charges Mohammed Osamah Abed

Mohammed (subsequently referred to as Abed Mohammed), Wesam al-Jbory, Mohammed al-Obaidy, and Abdulrahman Mohammed Tawfeeq al-Obaidy with participating and supporting a criminal organization.[55] The four men, who lived in the northern Swiss towns of Baden and Schaffhausen, traveled to Switzerland from Syria in 2012 with the intent of setting up a jihadi attack-planning cell in the country.[56] The Swiss indictment claims that the men leveraged a network of at least eight other Islamic State supporters, including one resident of the United States—Aws Mohammed Younis al-Jayab.

Swiss police identified several of these individuals, mainly by pseudonym or *kunya*, who stayed in contact with the cell in Switzerland via Facebook and Skype chat groups. The administrator of the chat groups, known only as "Abu Hajer," was assessed by Swiss law enforcement to be a senior Jabhat al-Nusra commander who was active in Damascus, Aleppo, and Ghouta before his defection to the Islamic State (then known as ISIL) at some point between August and October in 2013.[57] Abu Hajer was responsible for coordinating cross-border movement of foreign fighters from Turkey into Syria and vice versa.[58] The chat groups, alternately titled "Lions of Tawhid" and "You, the lions of the Islamic State," detail conversations between Abu Hajer and a group of Iraqis who had been active in Syrian jihadi groups but had since left to settle in other countries, including the four men who were later arrested in Switzerland.[59]

Two of the men who moved to Switzerland—Abed Mohammed and al-Obaidy—fought under Abu Hajer's command until 2012 while living in a shared apartment in Jirmanah, a suburb of Damascus.[60] A third man, Wesam al-Jbory, frequented the apartment in Jirmanah. The three men reconnected after they all moved to Switzerland. From the towns of Baden and Schaffhausen, they then coordinated the back-and-forth transfer of jihadi foreign fighters from Europe and the United States to the Syrian front, and later facilitated the passage of militants from Syria to Turkey and back into Europe.[61] In addition, between 2012 and 2013, Abed Mohammed, al-Obaidy, and al-Jbory made a series of trips between Switzerland and the Jirmanah apartment in Damascus.[62]

The Swiss indictment claims that on April 16, 2013, al-Jayab contacted Abed Mohammed, who at the time was staying in Jirmanah. To confirm his interest in attack planning in Europe, al-Jayab sent Abed Mohammed a cryptic message: "he works" spelled backward.[63] This detail parallels claims in the U.S. court records, which note that on the same day al-Jayab communicated with "Individual J," who told al-Jayab that he was "also working in Jirmanah" and that he "[didn't] want anything in the world, just [for al-Jayab] to get to Syria safely and find you there … I am eager to see blood."[64] This statement raises the likely possibility that several of the unnamed co-conspirators in the U.S. court case against al-Jayab are also members of the Swiss cell.

In February 2014, one month after al-Jayab's departure from Syria, Abed Mohammed returned to Switzerland after a stint in Syria, looking for battle-ready volunteers to plan jihadi attacks in Europe. Prior to his return to Switzerland, Abed Mohammed had declared allegiance to the Islamic State. Many of his previous contacts from AQI, Ansar al-Islam, and Jabhat al-Nusra had also joined the Islamic State. Using baking analogies to refer to explosives construction, Abed

Mohammed contacted his former commander in Damascus, Abu Hajer, asking him to send a "baker" with knowledge about synthesizing explosive material and fighting experience to assist in the Swiss cell's activities.[65] Abu Hajer recommended al-Jayab, who according to the Swiss documents, "belonged to Abu Hajer's faction [in Syria]." Al-Jayab was also was active in the pro-Islamic State Facebook and Skype groups administered by Abu Hajer.[66]

Ultimately, however, Swiss law enforcement interdicted the plot. Wesam al-Jbory traveled to Mersin, Turkey, from Switzerland in March 2014 to meet a contact who planned to transfer a flash drive of explosives-making instructions compiled by Abu Hajer.[67] Upon return to Switzerland, al-Jbory met Abed Mohammed and al-Obaidi at Abed Mohammed's apartment. After this meeting, Swiss police arrested the men and formally opened an investigation.[68] Undoubtedly, the arrests froze any plans for al-Jayab to travel to Switzerland to participate in the cell. They may have also set the stage for al-Jayab's prosecution in the United States.

It is unclear whether al-Jayab ever personally met the members of the Swiss cell prior to his 2012 arrival in the United States, while he fought in Syria, or during the planning stages of the attack plot being hatched in Switzerland. When news of the Swiss court proceedings referencing al-Jayab were first revealed in a U.S. court, his defense attorney was adamant that his client had never been to Switzerland but conceded that his client did have an aunt there. Interestingly, while his attorney claimed that "somebody" in a rural area of Switzerland between Bern and Zurich[b] accessed al-Jayab's email account in December 2013, he maintained that his client had no connections to anyone from the Swiss cell.[69]

During the run-up to al-Jayab's guilty plea, the American prosecutors sought to present documents from Switzerland at trial, but a judge delayed hearings on the motion.[70] Al-Jayab's guilty plea, which does not cover the allegations in the Swiss indictment, prevented the claims in the Swiss indictment from being presented to a U.S. jury. It remains to be seen if details of the Swiss case are discussed in the sentencing submission both the government and defense will submit to the court.

Two months after al-Jayab's 2016 arrest in the United States, a Swiss court found Mohammed Osamah Abed Mohammed, Wesam al-Jbory, and Mohammed al-Obaidy guilty of participating and supporting a criminal organization. They were each sentenced to approximately four years in prison.[71] After his October 2018 guilty plea, al-Jayab faces no more than 15 years in prison for his role in the network.[c]

Assessment: American Jihadi Travelers, Transnational Dynamics

Al-Jayab's case highlights the role of social networks in influencing recruitment and foreign fighter mobilization. Rather than resorting to sweeping claims about "online radicalization," socio-economics, marginalization, or other factors, several in-depth examinations of recruitment suggest that the foreign fighter mobilization is more about "who you know."[72] Many reports note the geographically confined origin of those who traveled from various areas of the world to Syria and Iraq to join jihadi groups, with some (aptly) claiming that "all jihad is local."[73] This insight, however, should not come at the expense of understanding that extremist groups also represent transnational movements, and that the role of diaspora networks,

migration, and digital connectivity can shape networks of jihadi recruitment. In al-Jayab's case, he was able to correspond with like-minded individuals who, despite living in several different states and countries, were able to coalesce around the shared goal of traveling to Syria to wage jihad, helping each other with finances, logistics, and know-how. At the time of al-Jayab's travel, barriers to foreign fighter travel into Syria were much lower than today (late 2018), and financial and logistical assistance from the network may have been sufficient to catalyze al-Jayab's aspirations for travel into an action plan.

Second, the flow of foreign fighters from Western countries to jihadi groups in Syria and Iraq has tapered substantially from its peak after the Islamic State's declaration of its caliphate in the summer of 2014. While jihadi groups' loss of territory in the region, especially in border areas necessary for receiving foreign fighters, is one major factor for the decline, the efforts of Western law enforcement and intelligence agencies in identifying, arresting, and prosecuting travelers and attempted travelers also proved critical.[74] The prosecution of al-Jayab reveals some of the tools that U.S. law enforcement has at its disposal to make a legal case against returning foreign fighters. Some involve intelligence collection protocols and procedures, such as FISA Section 702 and the ability to obtain search warrants for social media accounts. Others require law enforcement from several agencies—in al-Jayab's case, from FBI and USCIS—to use extensive monitoring and vetting procedures built into U.S. immigration law to full effect. Finally, international cooperation and intelligence sharing, in this case between the FBI and Swiss Federal Police, proved vital to building prosecution against foreign fighters.

The product of information sharing in this context appears to have resulted in not only the arrest of al-Jayab, but also the uncovering of a much broader network of jihadi sympathizers on three continents, some of whom were planning terrorist attacks. Besides a smattering of media reports and the Swiss documents assessed in this article, very little is known publicly about this Switzerland-based jihadi attack cell. According to Swiss police, this group appears to have made constant movements between Central Europe and the Levant, assisted two-way transit of foreign fighters between Syria, Turkey, and Europe, and was actively involved in plotting attacks in Europe at the time of its disruption. While details about this case continue to be gradually released to the public, it is a reminder of the near-constant efforts of jihadi groups to utilize recruits with access to Western countries to guide and direct attacks. **CTC**

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Substantive Notes

[a] Al-Jayab was not alleged to have plotted any jihadi attack in the United States. "Plea Agreement," United States of America vs. Aws Mohammed Younis al-Jayab, United States District Court for the Northern District of Illinois, 2018.

[b] The town of Baden, where members of the Swiss cell lived during the commission of the attack plot, is located between Bern and Zurich.

[c] Although he pleaded guilty to one count of providing material support to a terrorist organization, carrying a maximum sentence of 15 years in prison, and one count of making false statements in an international terrorism case, which adds eight years to his sentence, the plea agreement contains an unusual clause that caps the maximum sentence at 15 years. "Plea

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