

that she must choose him or choose her mother (at a time when Defendant's wife was planning an extended visit overseas to her family). At that time his wife accused him of wanting to leave the family "for Turkey." I also find relevant Defendant's prior experience with the incarceration, in Uzbekistan, of his sister, which he has worked tirelessly to remedy and which appears to have some connection with (or perhaps is the genesis of) the "material support to terrorist organization" allegations raised by the Government here. The prospect of Defendant's potential incarceration in this case, coupled with his apparent political beliefs and the situation with his sister, give me grave concerns, beyond the typical case, that the Defendant would flee to avoid prosecution. It is also apparent that he has the wherewithal to travel internationally, albeit, in this situation, it would have to be without his passport which has been surrendered to the Clerk of the Court. Finally, and not insignificantly, Immigration and Customs Enforcement has issued a detainer for Defendant and could, theoretically, remove the Defendant prior to his prosecution under the current Indictment.

Moreover, I find by clear and convincing evidence that Defendant represents a risk to other persons or the community. The testimony in this case reasonably leads to the conclusion that the Defendant is willing to sacrifice his own life for his Bay'ah - his oath of allegiance to the Islamic Jihad Union (IJU). Defendant was apprehended on his way to Turkey. The Government alleges in paragraph 9 of the Affidavit of FBI Special Agent Donald Hale that in April 2009, Turkish authorities seized weapons and detained extremists associated with the IJU. Defendant was leaving behind his wife and children and taking with him over \$2800.00 (having purchased an airline ticket that cost in excess of \$1000.00) despite his statement to authorities, upon his arrest, that he could barely support his family. The Government also proffered a discussion Defendant had with a witness, who related that Defendant's understanding of Islam is of the more radical version, supporting "jihad" or holy war, and that Defendant's "teachers" in his faith are Anwar al-Awlaki and Osama bin Laden. I have a grave concern that, rather than go to jail in the United States, Defendant is at risk of choosing an alternative that would present a risk to other persons or the community.

Thus the issue of the defendant's detention was thoroughly, fairly, and correctly decided by Magistrate Judge Hegarty. None of the grounds raised by the defendant in the instant motion, all of which have been previously raised, alter the soundness of this analysis. This Court, upon conducting its *de novo* review, should adopt the holdings of the magistrate judge.

II. This is a Presumption Case

The defendant's brief raises a question it does not fully answer: Is this a presumption case? As a matter of undeniable statutory construction, it is. Title 18

U.S.C. §3142(e)(3) states:

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed[.]

Title 18 U.S.C. §2332b is the statute that lists acts of terrorism transcending national boundaries. Turning to 18 U.S.C. §2332b(g)(5)(B), a number of offense are listed, including 18 U.S.C. §2339B, the offense the defendant in this case is charged with. And looking at 18 U.S.C. §2339B(a)(1), the maximum penalty for a violation is 15 years imprisonment. In this case, the grand jury found probable cause and indicted defendant Muhtorov with one count of violating 18 U.S.C. §2339B. Reading these statutes, there can scarcely be any doubt this is a presumption case. *See also Magistrate's Order of Detention, Doc. 24 at 4.*

The defendant appears to argue, citing case law outside the Tenth Circuit, that if a defendant makes essentially any claim to refute the presumption of detention, then the presumption of detention is rebutted and the government is then in the position of having to prove risk of flight and danger to the community without reliance on the

presumption. This defense assertion is wrong. The law of the Tenth Circuit is as follows:

Under section 3142(e), upon a finding of probable cause that the defendant has committed a [presumption offense], a rebuttable presumption arises that no conditions of release will assure defendant's appearance and the safety of the community. Once the presumption is invoked, the burden of production shifts to the defendant. However, the burden of persuasion regarding risk-of-flight and danger to the community always remains with the government. The defendant's burden of production is not heavy, but some evidence must be produced. Even if a defendant's burden of production is met, the presumption remains a factor for consideration by the district court in determining whether to release or detain.

United States v. Stricklin, 932 F.2d 1353, 1354–55 (10th Cir. 1991); *see also United States v. Garcia*, 445 F. App'x 105, 106 n.1 (10th Cir. 2011) (“Once the government invokes this presumption, the defendant bears the burden of producing evidence to rebut the presumption.”). In this case, the magistrate rightly weighed the presumption, the evidence produced by the government and the defense, and found that defendant Muhtorov was a risk of flight as well as a danger to the community.

III. Evidence Presented at the Bail Hearing

Title 18 U.S.C. §3142 specifically states that rules concerning admissibility do not apply to detention hearings. *See* 18 U.S.C. §3142(f)(2)(B). Despite this statutory authority, the defense -- using case law from a variety of other courts -- contends that only “reliable” evidence may be considered; and, proceeds to advance a list of less-than-specific, general objections about the evidence presented at the detention hearing.

A. Classified Evidence

The fact that the government has not provided full discovery to the defense is irrelevant for the purposes of bail. This is a complex case, involving classified information and information gathered under the Foreign Intelligence Surveillance Act. See Government's Motion to Declare the Case Complex [*Docket #35*]. The government is currently in the process of seeking a protective order so that it can begin to provide discovery to the defense. See Government's Motion for Protective Order [*Docket #34*]. Nor is it in any way material that some information in this case remains classified and was not disclosed by the government at or before the detention hearing. It is not the government's obligation to disregard the processes established by the Classified Information Procedures Act and instead provide the defense all classified information before or during the preliminary proceedings of the case. See *generally* Government's Motion for In Camera, Ex Parte Hearing pursuant to CIPA [*Docket #36*].

Again, the defense's mentioning of classified information does not support any argument for a new hearing on detention. It is important to realize that procedurally, detention hearings are nearly always held at or near the time of the case's arraignment and discovery conference. Thus detention hearings are typically held before any discovery production has occurred. Particularly, defense counsel claims that the government has not provided discovery largely "because the evidence the government

has is secret.” *Defendant’s Brief, Doc. 31 at 6*. This claim is false. The government will provide discovery in this case consistent with procedures provided by law.¹

B. Hearsay of an Informant

Section 3142(f) states “the rules concerning admissibility...do not apply to the presentation and consideration of information at the [detention] hearing.”

The defense again objects to a standard canon of conducting bail hearings -- the use of hearsay testimony from a confidential informant. It is not unusual in this court for a law enforcement officer to offer the statements of a confidential informant as hearsay in a detention hearing. See *United States v. Duran*, 2009 WL 1798145, at *2 (D. Colo. June 23, 2009); *United States v. Tyree*, 2007 WL 1521062, at *2 (D. Colo. May 22, 2007); *United States v. Ruiz-Corral*, 338 F.Supp.2d 1195, 1199 (D. Colo. 2004). No ruling of this court or this circuit has required that evidence be deemed reliable to be admitted in a detention hearing. Such objections go to the weight, rather than the admissibility of such evidence. See, e.g., *United States v. Gomez*, 810 F.2d 947, 956 (10th Cir. 1987) (finding that the existence of incentives for a co-conspirator to testify against the defendant in the case went to the weight, rather than the admissibility of the testimony).

In terms of showing any issues relating to what weight the court should give questions about this hearsay, the defendant ably pointed out in the detention hearing that the lacking information about the identity of the informant impacted the weight

¹ In Footnote 5 of Defendant’s Brief Doc. 31 at p.6, defense counsel intimates that the United States in this case is akin to an authoritarian regime because discovery had not been produced before the detention hearing. Such intimation is unfounded, inappropriate and not well taken.

which the court should give the evidence. The magistrate judge acknowledged the defense's argument, but nonetheless rightly found, evaluating this and all evidence presented, that detention was appropriate.

C. FISA-Derived Information

The government has also already responded to the defendant's motion regarding the suppression of FISA before a detention hearing. Magistrate Judge Hegarty correctly, in uniformity with other courts which have addressed the issue, and under the precedent of this Court, found that FISA evidence was admissible in a detention hearing. *Magistrate's Order of Detention, Doc. 24 at 4*. Both courts that have previously considered the issue of whether FISA-derived information can be used in a detention hearing have found that it could be. *United States v. Jamal*, 285 F. Supp. 2d 1221 (D. Ariz. 2003); *United States v. Al-Arian*, 280 F. Supp. 2d 1345, 1351 n.14 (M.D. Fla. 2003). Likewise courts have allowed other forms of contested information to be considered in a detention hearing. See generally *United States v. Apker*, 964 F.2d 742 (8th Cir. 1992); *United States v. Angiulo*, 755 F.2d 969, 974 (1st Cir. 1985). A fuller treatment of the government's position of the use of FISA-derived information is available in the government's previously filed response to the defendant's motion. See Government's Response to Motion to Suppress FISA Acquired Evidence for Purposes of Detention [*Docket #18*].

IV. Designation of the IJU as a Foreign Terrorist Organization

The defendant's instant motion contains a great deal of information about the country conditions in Uzbekistan. It is not immediately clear what the purpose of this information is, or how it relates to the defendant in this case. What is clear is that providing material support to the Islamic Jihad Union is a crime.

Title 18 U.S.C. §2339B criminalizes providing material support to a foreign terrorist organization. This includes providing money, personnel to work for the organization, and indeed any service at all. *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2725 (2010) (holding that any kind of material support to a foreign terrorist organization, including peaceful instruction on topics of international law, is constitutionally prohibited by §2339B). This is so because foreign terrorist organizations are "particularly dangerous and lawless foreign organizations." *Id.* at 2731.

The Islamic Jihad Union was first designated as a foreign terrorist organization on June 12, 2005 and designated again listing new aliases on April 29, 2008. 70 F. Reg. 35332, 73 F. Reg. 30443. Designation is done pursuant to Section 219 of the Immigration and Naturalization Act and Executive Order 13224. See *id.* Section 219 provides that:

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that -

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section

1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism) (1); and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

8 U.S.C. §1189(a)(1). Not insignificant among those requirements is one that the Secretary of States must find that the terrorist group threatens the national security of the United States or of nationals of the United States. The defendant himself admitted upon his arrest that he knew that the IJU attacked U.S. and coalition forces, but the defendant' own knowledge and interest in participating in extremist violence is a separate point, one the government addresses below.

The IJU is a dangerous and violent group responsible for numerous attacks on civilians in Central Asia. But the designation of the terrorist group does not merely have to do with geopolitics happening half the world away. The complaint [*Docket #1*], which was discussed extensively at the detention hearing, is replete with not only examples of these attacks on civilians but attacks planned on United States nationals. These include an attempt to hit a U.S. target in Germany (para. 7), and attacks on coalition forces in Afghanistan (paras. 8-9). [*Docket #1*]. Again, when questioned about the IJU after his arrest, defendant Muhtorov admitted he knew that the IJU attacked U.S. forces.

The defendant's argument that no evidence has been proffered to show the defendant intended to work for the IJU as personnel is simply wrong. The complaint

itself states that Muhtorov reached out to IJU point of contact Abu Muhammad to volunteer his services, including swearing his Bay'ah to the group. Also wrong is the defense's assertion that it is significant that the evidence suggests that Muhtorov intended to join a terrorist group abroad rather than act in the United States. The point of the statute with which defendant Muhtorov is charged, which proscribes material support to *foreign* terrorist groups, is to protect U.S. nationals and U.S. national security--inside and outside the United States. See 8 U.S.C. §1189(a)(1).

FACTS IN THIS CASE

I. Defendant's claim of being a human rights activist in 2005 is irrelevant

While the defense fails to produce the quantum of evidence required to rebut the presumption of detention, they do make a number of claims relying on human rights related reports about events in Uzbekistan from 2003 through 2006. *Defendant's Brief, Doc. 31 at 11-20*. The validity of information contained in such reports is questionable at best. The defense also cites numerous internet sources claiming the defendant was a "human rights activist." However, there are other online articles that question the defendant's claim of being a human rights activist – some online claim the defendant was an opportunist dismissed from the Ezgulik Human Rights Society because he supported violent extremism; while another even claims the defendant acted as an informant for Uzbek intelligence and received refugee status on fake grounds. [What Do We Know About Uzbek Terrorist Suspect Jamshid Muhtorov?](http://3dblogger.typepad.com/different_stans/2012/01/what-do-we-know-about-uzbek-), Different Stans, http://3dblogger.typepad.com/different_stans/2012/01/what-do-we-know-about-uzbek-

terrorist-suspect-jamshid-muhtorov.html (Viewed March 7, 2012) *Attachment 1*. The mere existence of these competing online narratives about events in Uzbekistan from 2003 to 2006 underscores the fallacy of the defendant's reliance on the internet as the basis of his claim to being a human rights activist. It also clearly demonstrates that none of this information is relevant to the issue of detention in this case, either factually or temporally. What is relevant are the facts from the defendant's actions within the United States from 2007 to the present.

II. Relevant facts to be considered in determining detention

2. Risk to Community Safety

Magistrate Judge Hegarty appropriately found the defendant failed to overcome the presumption and represents a risk to other persons or the community if he were to be released. The defendant proclaimed his willingness to sacrifice his own life for his Bay'ah – his oath of allegiance to the IJU. The defendant told others of his support for “jihad” or holy war, and proclaimed his “teachers” in his faith were Anwar al-Awlaki and Osama Bin Laden. Combined with his own affirmative steps and statements clearly show the defendant is a danger to the safety of the community.

However, there is more. The defendant's own witness, RuthAnn Kallenburg of Lutheran Family Services, explains that “coming to the U.S. was a tough transition for Jamshid [the defendant]. She said that the U.S. isn't quite all that it's cracked up to be. Kallenburg went on to say “that Jamshid is a very educated man and that when he

came to the U.S. the only jobs he could get were manual labor.” She went on to state that she believes “it was hard for Jamshid to accept the fact that his wife had to work and was contributing to paying the bills.” *Attachment 2*. The frustration described by this witness is consistent with evidence newly available to the government showing the defendant’s path to violence.

Subsequent to the detention hearing, the government interviewed two witnesses who describe how the defendant began to change in his behavior to frequently express extremist, violent beliefs. See FBI 302 interview of F.I., *Attachment 3*; and FBI 302 interview of Z.D., *Attachment 5*. Witness F.I. explains how the defendant not only expressed extremist views, but also physically assaulted his wife – hitting her in a fight over money. *Attachment 3*. F.I. took a picture of the injury to document what the defendant had done. *Attachment 4* (Picture of the defendant’s wife, Nargiza Muhtorova, with an injury to her left eye.) Witness Z.D. told the FBI about how the defendant’s wife stayed overnight with Z.D. on one occasion at Z.D.’s request. When the defendant discovered what Z.D. had done, the defendant threatened to kill Z.D. *Attachment 5*. By this pleading, the government proffers this evidence for the Court’s review.

Additionally, the government has new evidence obtained pursuant to a search warrant of the defendant’s phone. Agents seized the phone from the defendant at the time of his arrest at Chicago O’Hare Airport on January 21, 2012. After obtaining and executing a search warrant for the phone, agents discovered a series of nine jihadi videos. Each of these videos are provided to the Court and defense on a DVD

identified as *Attachment 6*. Many of these videos bear the flag of Al Qaeda. The videos also are subtitled in Russian and bear the identifiers for the Sodiqlar web site. The videos show a variety of terrorist actions against what appear to be Coalition Forces. The videos include small arms combat, sniper actions, the use of mortars and artillery, construction and use of IEDs, and anti-aircraft fire against helicopters. Still picture screenshots of these are provided in *Attachments 7 – 15, inclusive*. There is also one video documenting the actions of Osama Bin Laden and the September 11, 2001 attacks on Washington D.C. and New York, NY.

Disturbingly, the videos include footage showing a series of beheadings as well. The beheading videos show numerous men being questioned and then, while still bound alive, having their heads severed with a knife. After cutting through their necks, the videos show the heads gruesomely displayed. Still picture screenshots of these are provided in *Attachments 16 – 19, inclusive*. By this pleading, the government proffers this video evidence for the Court's review.

Accordingly, the Court must detain the defendant as a serious risk to the safety of the community.¹

¹ The defense attempts to use an FBI press release that states "The government does not allege that Muhtorov was plotting attacks against any targets inside the United States" as meaning that the FBI believes the defendant poses no threat to the safety of the community. This reading of the FBI press release is simply not true. Given the facts of this case, the defendant does indeed pose a threat to the community.

3. Risk of nonappearance

Magistrate Judge Hegarty also properly found the defendant to be a risk of nonappearance. The defendant was arrested attempting to board a one way flight to Istanbul, Turkey. He quit his only job and told his daughter he would never see her again. He left his family behind in the United States with little to no financial resources, instead taking approximately \$2,800 in cash, two new iPhones, and an iPad with him on his way out of the country. There is evidence that the defendant told his family he intended to leave them indefinitely.

Accordingly, the Court must detain the defendant as a risk of nonappearance as well.

CONCLUSION

The defendant wants a second bite at the apple on the issue of detention. He also wants to continue to relate the message that he was once a human rights activist—a fact which, whether true or false, is starkly in contrast to the defendant's recent activities demonstrating a frightening progression from frustration with life in the United States to an radicalized infatuation with violent jihad. The defendant received a fair hearing on all 18 U.S.C. §3142 factors and was found by Magistrate Judge Hegarty to be a danger to the community by clear and convincing evidence, and a risk of flight by a preponderance of the evidence. The defendant presented all relevant legal and factual arguments in this new motion at that time, including his assertion that he is or

was a human rights activist in Uzbekistan, and Magistrate Judge Hegarty correctly found that no condition or combination of conditions could reasonably assure the safety of the community or the defendant's appearance at court proceedings. This Court in its review should find the same and order the defendant detained. The defendant's motion for a new hearing and a revocation of the order of detention should be denied.

Respectfully submitted this 7th day of March, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2012, I electronically filed the foregoing **GOVERNMENT'S RESPONSE TO DEFENDANT MOTION FOR REVOCATION OF MAGISTRATE JUDGE'S DETENTION ORDER AND FOR HEARING DE NOVO** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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S/ Maureen Carle _____

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**USA v. JAMSHID MUHTOROV
CASE #: 1:12-CR-00033-JLK**

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
FOR REVOCATION OF MAGISTRATE JUDGE'S DETENTION
ORDER AND FOR HEARING DE NOVO (DOC 31)**

EXHIBIT 01

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01/27/2012

What Do We Know About Uzbek Terrorist Suspect Jamshid Muhtorov?

It's a good thing that now with mainstream media coverage, we have more than just a bunch of blogs to read about this mysterious case of an Uzbek "human rights activist-turned-terrorist". Registan, Gazistan, and EurasiaNet's The Bug Pit -- all echoing and reinforcing each other -- are saying that Jamshid Muhtorov is a victim of evil American intentions to cater to the sinister Uzbek government -- and that he has been sold out for military cargo right-of-way (I'll use the US spelling of his name as it appears in court documents).

COURT DOCUMENTS IN MUHTOROV CASE

Oh, court documents! That's helpful. The complaint and the indictment. These could have been examined with a little assiduous Googling even 4 days ago as I see from one local crime buff's blog -- but none of the bloggers (including me) found them before now -- and I'm waiting to see what Registan and the Bug Pit will have to say after jumping to their conclusions.

While I realize we're supposed to believe that Jamshid is an innocent victim of the NDN-hungry US military, there may be something more to the case -- as the *Christian Science Monitor* (not exactly your gungo-ho military mouthpiece) points out after reading the court documents like real journalists: Muhtorov even cursed the FBI he knew was listening in on his phone calls:

Court documents filed in the case read at times more like a slapstick comedy than a deadly serious terror operation. The suspect and an alleged overseas terror contact overuse the word "wedding" as a code word, and at one point jointly curse the FBI agents who they believe -- correctly -- are monitoring their every utterance.

At one point, Muhtorov's wife threatens to take their children from Denver and go live with her mother -- in Kyrgyzstan.

When he tells her she must choose between her mother or him, she accuses him of choosing the alleged mission in Turkey over his wife and children.

Ultimately, the seriousness of the case is crystal clear. Last summer, according to an FBI affidavit, Muhtorov "told his young daughter that he would never see her again; but, if she was a good Muslim girl, he will see her in heaven."

Now, by using the headline, "The Bumbling Jihadi?" -- CSM lets us know that they think there might be something slapdash about this case, possibly more than the terrorist suspect himself.

But while we can concede that the "wedding" de-code could be opportunistic by the FBI (they say it's used typically by Al Qaeda), you have to wonder why a "wedding" trip would be postponed, and then resumed again later with a "gift" after that postponement.

A local TV channel also looked at the court documents and talked to the DA:

Muhtorov is facing charges of attempting to provide material to a foreign terrorist organization, according to John Walsh, the U.S. District Attorney for Colorado.

Muhtorov, who also goes by Abumumin Turkistony and Abu Mumin, was arrested without incident.

Court documents show Muhtorov told suspected terrorists he was "ready for any task, even with the risk of dying."

EXPERTS' COUNTER-NARRATIVE -- MINIMIZING TERROR, MAXIMIZING RIGHTS

Of course, the experts are weighing in with a counter-narrative similar to Registan:

Middle East & Islamic Affairs Prof. Nader Hashemi with the University of Denver said Muhtorov probably wasn't a real threat on U.S. soil.

And here's our own Sarah Kendzior producing an even more contrived counter-narrative:

"I knew him from having read about him in 2005 and 2006 when he was involved in human rights activities in Uzbekistan," said Uzbekistan researcher Sarah Kendzior.

Kendzior contributes to the website registan.net, a website devoted to covering central Asia.

"The group that he's being accused of having helped is very different from the sorts of human rights organizations that he was involved with in Uzbekistan," said Kendzior. "It's odd that he had this previous involvement with groups that are more similar, or sort of philosophically linked, to groups like Human Rights Watch or Amnesty International, and is now being linked to these fundamentalist organizations."

She said he was known to want to expose corruption and fight for human rights against an oppressive government in Uzbekistan.

This is particularly contrived because Sarah would have known by then (she was said to be "digging through VOLUMES of Uzbek-language material") -- it was on her own Registan on the morning of January 24, and she gave her interview to Denver TV on the evening of the 24th -- that Muhtorov was in fact dismissed from the Jizzak chapter of Ezgulik, the human rights group he was in, for not filing reports on time (Foust quoted the WikiLeaks cable on this). Furthermore, she knows full well that far from being "sort of philosophically linked, to groups like Human Rights Watch or Amnesty International," he was in fact linked to the Uzbek farmers' organization that wanted to overthrow Karimov by force (which is why Ezgulik wanted to disband its Jizzakh chapter and part ways with Muhtorov).

Human Rights Watch doesn't advocate the overthrow of governments, but I take that back about Amnesty, Gita-gate showed us how in fact Amnesty has developed a notion of "defensive jihad" as a legitimate form of people's struggle. I imagine somebody could concoct a "defensive jihad" defense for Muhtorov as well -- oh, the same outfit involved in Gita's case are citing his case already.

Even allowing for the tilt of international groups to violence themselves, it's really a stretch to say that Muhtorov was "like" Western human rights groups. He was only with Ezgulik for a time (two years), and he left it for a more radical group; and even Ezgulik, although it is registered and does not pursue a goal of overthrowing the government, isn't exactly like HRW, either. Sarah knows better. She's just trying to posture.

What she seems most keen to do in this interview is to stress how the feds have nabbed the wrong guy, because all he was doing was fighting against corruption in Uzbekistan (why he had to go to Turkey to do that, she doesn't

explain). She is quoted as speaking of "an oppressive government in Uzbekistan" -- the sort of phrase she never really puts together in one sentence so clearly on Registan, where she usually demurs and speaks more vaguely of the problems of Uzbek shortfalls in human rights (and even here she doesn't finger Karimov personally for the interview with the TV station).

So, it's odd that he previously had these links, she says -- which she misrepresents, and knowingly so, as she knows he wasn't any Amnesty chapter and then "is linked" (i.e. by the FBI) to these other groups (which she and other Registanis don't think exist). Yet the documents available from human rights groups and WikiLeaks online show that Muhtorov broke away from a legal group to pursue a more extreme struggle and then fled the country anyway, where he was seen as "opportunist" by the city refugee agency.

WIKILEAKS CABLE ON MUHTOROV'S SPLIT FROM HUMAN RIGHTS GROUP

We know about his history with Ezgulik (regretably) from WikiLeaks, from a US cable from Tashkent:

In December 2005, the head of the Ezgulik Human Rights Society, Vasila Inoyatova, filed a request with Jizzak Province registration authorities to dissolve Ezgulik's Jizzak regional branch. As she explained to poloff, the decision was the result of more than two years of internal conflict, which culminated in the defection of the Jizzak branch to a rival political party. Ezgulik's problems are symptomatic of the larger issue of destructive rivalry in Uzbekistan's small and dwindling human rights community.

The new coordinator, Jamshid Mukhtarov, also failed to submit regular reports, and reportedly complained to Inoyatova that financing from the Tashkent headquarters was insufficient to provide him a living income. In May 2005, according to Inoyatova, Mukhtarov went to Russia to work and earn money for six months. With Mukhtarov absent, and Baybulatov holding the seal, Inoyatova said, "there was no one to defend human rights." Mukhtarov returned to Uzbekistan in October, and reportedly refused to apply to local registration authorities for a new corporate seal. Finally, in December, Mukhtarov and other Ezgulik activists decided to break relations with Inoyatova and allied with the Free Farmers Party (reftel). (Note: Ezgulik is affiliated with the rival opposition party Birlík.) "

Inoyatova characterized the ideological difference between Birlík and the Free Farmers Party. She said that the Free Farmers calls for a revolution in Uzbek society - for nothing less than regime change - while Birlík calls for a more gradual evolution in public attitudes toward civil society. According to Inoyatova, the Free Farmers Party seeks to call Uzbek citizens onto the streets in protest. Birlík, in contrast, recognizes that opposition political forces cannot mobilize enough activists to force change in the government, and the population as a whole is not sufficiently politically aware to recognize and act for change. Jamshid Mukhtarov believes Inoyatova is too reluctant to mount open demonstrations and protest publicly against the government, and says that his politics are more consistent with those of the Free Farmers.

Inoyatova said that, with Mukhtarov's rebellion, she realized that she had irretrievably lost control over the Jizzak branch, and she filed a request with Jizzak authorities to formally close it. She said that Ezgulik veteran Mamarajab Nazarov has already joined with Bakhtiyor Hamroyev, Jizzak regional coordinator of the Human Rights Society of Uzbekistan, and eight others to form an initiative group, which will soon apply for registration as Ezgulik's new regional affiliate.

HUMAN RIGHTS WATCH, STATE DEPARTMENT AND OTHER REPORTS OF 2005-2006

We can also learn a little bit about his past from the State Department's Country Report for Uzbekistan in 2005 (which isn't offline as Foust claimed it was the other day, fetching it from google-cache), although perhaps it was "down" temporarily. It's now "up".

There were reports that police arrested persons on false charges as an intimidation tactic to prevent them or their family members from exposing corruption or interfering in local criminal activities. In December Dildora Mukhtarova, the sister of human rights activist Jamshid Mukhtarov of the NGO Ezgulik, was arrested in Jizzakh in connection with a murder. Mukhtarov and the family's attorney maintained that the charges were fabricated as a means of intimidating Mukhtarov, who had attempted to defend local farmers against alleged illegal land seizures.

Human Rights Watch had a bit in its report of that period:

On January 11, [Ulugbek] Khaidarov and Jamshid Mukhtarov, a human rights defender from Jizzakh, were detained in this town on sexual harassment and drunken behavior charges after three women had asked for a match. Mukhtarov handed them a match and within minutes both were detained. Khaidarov and Mukhtarov were detained overnight and released after being compelled to write statements promising not to write articles for the internet or to oppose the government. One month later, Mukhtarov fled Uzbekistan.

MUHTOROV A DOUBLE AGENT? -- TOLIB YAKUBOV

Back on Registan now, Dilshod -- one of the many anonymous posters there who fits right in with the regime status-quo crowd, had this to say:

Btw, just went through a piece by Mr Tolib Yakubov, a leader of Uzbek HR group who lives in France. He says amazing things about Mr. Mukhtarov -- that he is likely to be a secret agent for the Uzbek intelligence, plus, that he received a refugee status on fake grounds (that he was not fleeing the gov't persecution, but was escaping from families whose members were killed by a gang his sister was part of) and that he indeed told Mr Yakubov that "democracy is kufr".

Tolib, God bless him, can tend to exaggerate, but he may be on to something. We know that Tolib was involved in a terrible split in the Uzbek human rights movement with various mutual recriminations. It could well be that the Uzbek intelligence agency has a disinformation department that sets groups like his against each other (and Registan's anonymous posters have sometimes happily taken part in such disinformation campaigns, unconsciously or not, such as with the "suicide girl" story).

It's an awfully tall tale to say that not only has Jamshid fled in fact because of some mafia settling of scores (!) but that he's a double agent (and perhaps the plan is to have the US return him, and then the Uzbek NSS lets him go?)

But perhaps that theory of the "double agent" explains a lot -- an opportunist trying to work different sides of the aisle. Suddenly, you see Islamic jihad groups illuminated as something that few ever think of them as being: merely opportunistic gangs. They give young men things to do. They have money and guns. They take over, they run ops. Maybe all these IMUs and IJUs feel so fake because they are at heart, just mafia-type gangs that have figured out how to use a thin veneer of religious extremism opportunistically to gain and keep recruits.

A BIT MORE...

There's not a lot on Jamshid on Google. You can try using the different spellings -- Jamshid Mukhtarev, Jamshid Mukhtorov, Jamshid Muxtarev. He shows up in a UK government report as beaten twice in a crackdown on activists in Jizzakh. There's a 2006 item that sheds some light on the story about his sister (he is mistakenly called

"she" in the story); it says she was a 19-year-old student arrested and forced to sign a confession of murder. [I found that 2006 news item but regrettably lost the link, will search again.] What appears to have happened to Muhtorov's sister is exactly what can and does happen in the Uzbek criminal "justice" system -- policemen are rewarded for solving crimes and they beat confessions out of people. Other items talk about his activism in Ezgulik in Jizzakh, his arrest with a prominent journalist once, etc. So is this really all about family revenge in the end? (It seems his sister was forced to sign a confession -- at the age of 19 -- to having murdered a cab driver.)

From all accounts -- and we do need more information -- Muhtorov is a character who has a long and checkered career in which most of the people who have dealt with him who have spoken publicly didn't find him reliable. Reputable human rights defenders have found him to be an opportunist, and one (Tolib) has claimed he may have cooperated with authorities (and as he is quoted in WikiLeaks, claiming that others who found fault with him were the ones cooperating with the government).

First he leaves a group where he was unhappy because they didn't pay him enough and demanded reports. Then he left to work in Russia for six months. When he returned (the order of events isn't clear), he distributed Human Rights Watch's report about the Andijan massacre. That fact in his story stood out to me as a possible flag of opportunism simply because most people don't distribute Western organization's literature, they distribute their own country's literature, like these four women just arrested recently.

That is, sure, there may have been a Russian-language edition of the HRW report available at that time that he distributed, but he may have simply wished to associate himself with this group for the purpose of claiming some of its protective powers and/or putting into his legend a story that would jump up and shout "human rights". This is quite common when people are trying to get refugee status -- they know they have to set up their story to pass officials in third countries or the US to qualify for the status by showing their activity and that they were persecuted for it.

As anyone who has ever worked on refugee and political asylum cases knows, the systems are overwhelmed with applicants and a large percentage of the claims are exaggerated or falsified, sometimes deliberately with the help of unscrupulous storefront green-card mills or even lawyers. It makes it hard for the real cases to shine through, in fact.

OSH REFUGEE COMMITTEE ACCOUNT OF MUHTOROV

Muhtorov then fled to Kyrgyzstan with his family, and the refugee agency official there went out of her way to say he was a dubious case as I discussed in my previous post. I'll quote in more detail here (translated from centrasia.ru and 24.kg):

Jamshid Muhtorov, who calls himself a leader of the Uzbek refugees, says Joldosheva [then head of the Osh Committee for Refugees and Employment], appeared in Osh in the winter of [2006]. He arrived together with his wife and children from Jizzak (Uzbekistan) and had no relationship to the Andijan events whatsoever. Muhtorov took upon himself the role of defender of all the Uzbek refugees although according to many of them, they had not delegated him that authority.

Muhtorov lives in Osh fairly well, Joldosheva believes.

"He rented a cafe, he got a job in an international project, and openly visits the Interior Ministry and other law-enforcement agencies. Furthermore, she says, he makes himself out to be a great martyr and pursues only his own goals, gaining refugee status in a third country.

"He is exploiting the situation of the introduction of a strict regimen in Osh," says Joldosheva. "He came to our committee with a statement that our special agents are persecuting him and threatening to deport him. And he brought with him another refugee who was supposedly taken out of town by the Uzbek secret police, beaten and then thrown out of a car. But the "beaten" man said that he was beaten by Kyrgyz secret police. A medical exam did not discover any signs of beating. This story very much surprised the leadership of the Kyrgyzstan Committee for National Security."

In the opinion of the workers at the Committee for Migration and Employment, Muhtorov is distorting the real nature of events, and appealing to all the international organizations with statements that he is supposedly being persecuted."

Now, given that this is the Osh city committee -- an official committee -- and given that they haven't bought the refugees' possibly true story of secret police persecution -- and have somehow implied they compared notes with the secret police themselves -- it's possible that Joldosheva isn't on the right side of this story (remember, this is 2006, however, not 2010, and the Osh authorities did help Andijan refugees back then).

That is, she may be discounting what is in fact a real story on Muhtorov's part. The article in centrasia.ru was prompted by another article on the Internet, "Situation in the South of Kyrgyzstan is Growing More Tense". (It's hard to say what that is, there are so many articles with names like this, like [this one](#).)

On the other hand, Joldosheva herself describes Muhtorov as going to the MVD and law-enforcement agencies, implying that he's cooperating with the authorities, something she appears then to judge, not applaud, and that it doesn't fit with the usual profile of a refugee.

The Osh authorities today are definitely no friend to human rights, and they may not at all have been telling the truth about Uzbek refugees back in 2006.

Even so, given that this is one of the longest and most detailed documents about Muhtorov and contains some red flags about him being an opportunist -- and no other indignant articles from independent sources claiming the opposite, but in fact, Yakubov saying he is a double agent -- it does seem to indicate that he isn't the pure human rights activist some may wish to portray him (and as he was portrayed in the [Common Language Project essay](#)).

(Joldosheva goes on to become the Minister of Labour and Employment, and [finds NGOs distorting reality in 2011](#), so she may not be a good judge of Muhtorov.)

Again, her 2006 account says that Muhtorov was seen going in and out of the MVD (police) offices -- something that contributes to the sense that he might be an agent of some kind or someone who cooperated with authorities. (And perhaps he was merely interceding on behalf of refugees if he really was their leader -- but that's not something we've actually established anywhere). He is also noted as going into business by renting a cafe, and working on some unspecified international projects -- that also doesn't square with the notion that he was just busy being a refugee leader and human rights activist waiting to get permission to emigrate.

Then, somehow, he gets to America -- possibly with refugee status, as the US has been accommodating some refugee applicants who fled the Andijan massacre and aftermath, and there is a small community of such Andijan-related refugees in the US.

Nobody has come up with anything about his story in this period, and yet somehow he went from a trim haircut and mustache to a long beard and piety forehead bruises indicating the very devout Muslim. It's not known where

or how this happened -- in one of the Denver pieces a friend, Fatima Iskenderova, who knew him back in Uzbekistan and in the US, describes a change coming over him.

A former friend told the 9Wants to Know investigators she severed her relationship with Muhtorov because he became a religious extremist.

Fatima Iskenderova said Muhtorov's personality changed when he moved to the United States.

"When I see him [in Uzbekistan], he shave very nice. He finished at University of Uzbekistan. He was a lawyer. Good intelligent man. When he come to United States, he start big beard. Change clothes, you know, he talking different," she said.

That's not a crime, but telling your daughter you won't see her again until you get to heaven could indicate the planning of one.

Posted at 09:00 PM in [Uzbekistan](#) | [Permalink](#)

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[Catherine Fitzpatrick](#) said...

Kenzior now answers the pseudonymous Dilshod on Registan:

Sarah Kendzior January 28, 2012 at 7:52 am

<http://www.registan.net/index.php/2012/01/24/the-truly-bizarre-case-of-the-uzbek-rights-activist-turned-terror-suspect/comment-page-1/#comment-400058>

http://3dblogger.typepad.com/different_stans/2012/01/what-do-we-know-about-uzbek-terror... 3/7/2012

"Thanks Dilshod — I did see that. Similar accusations were made on Uzbek opposition websites a few years ago. At the time, others strongly refuted them, and still others made even harsher claims. The same thing is happening now. Accusations of NSS participation are pretty common in Uzbek political circles, and given the nature of the subject, they are especially difficult to prove. I'm interested in learning who Muxtarov was and why he joined the groups he did when he did, but after looking through a lot of material I only have more questions than answers."

The problem with Kendzior's meta-take on this is that she's unwilling to concede that it isn't just that emigre groups or human rights groups inside the country squabble and accuse each other; it's also the case that the secret police really do harass people by disseminating rumours and setting people against each other. This is a given in this region and to pretend that it isn't a function of the regimes there, and pretend that you "can't prove it," is just troubling sophistry that -- once again -- helps sustain the regime's narrative.

It doesn't matter if they are "difficult to prove." Again, we realize that there are no WikiLeaks on Karimov, and no credible defectors. So what? We can document carefully when we do suspect such hoaxes are perpetrated, like the "suicide girl," and note that in fact the persons accused by uzmtronom.com and others in fact deny any complicity -- and the fact that they've been subject to other harassment and subsequent disinformation attempts (as Abutov was) tends to strengthen that interpretation.

If you approach this subject as always and everywhere discounting the very real power of the NSS to meddle as "impossible to prove," you will inevitably always exonerate it. The notion that the emigre groups do it to each other isn't any more provable much of the time.

It's not important, in any event, to "prove" that Muhtorov is an NSS agent. If he really were, one can't help wondering why the NSS hasn't rescued him from the FBI (!). And perhaps that's how the saga will end.


What's important to note -- and which Kendzior is continuing to studiously avoid -- is that Muhtorov was put out of business by a reputable and registered human rights advocate, Vasila Inoyatova of Ezgulik. He chose to work with a more radical group but didn't even stick with them, fleeing apparent persecution. And the story in Kyrgyzstan, even allowing for the possible agendas of the Osh refugee committee, doesn't tend to exonerate him.

Kendzior strikes the anthropological pose here in saying she doesn't care about his actions or evaluations of him by others, she only cares about his own motivations. Yet his actions in many cases, leading up to his fateful emails to some alleged terrorist group in Turkey, spell "opportunism" if not "desperation". Persecution of his family members -- his sister arrested, his father arrested -- could be a powerful motivation. But we don't even know if those two family members remained in jail. Did they? We don't see that anywhere.

Kendzior would be more honest if she laid out the evidence as she has found it in the Uzbek language pro and con Muhtorov (as I do here, asking questions about the motivations behind some of the evaluations of him). But to do so would mean she'd have to drop the weepy narrative of terrorist-as-tragically-misunderstood-artist-with-unhappy-childhood. And that seems a narrative hard for the Registanis to drop, because clinging to it enables them to show their superiority to the presumably narrow-minded and literalist government gumshoes.

01/28/2012 at 02:41 PM

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**USA v. JAMSHID MUHTOROV
CASE #: 1:12-CR-00033-JLK**

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
FOR REVOCATION OF MAGISTRATE JUDGE'S DETENTION
ORDER AND FOR HEARING DE NOVO (DOC 31)**

EXHIBIT 02

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MEMORANDUM

TO: Brian & Rick
FROM: Francie Rakiec
RE: Jamshid Mutorov
DATE: February 9, 2012

RuthAnn Kallenburg
303-901-3294

RuthAnn said that she has been friends with the Mutorov family for about 5 years. She first met them about 1 week after they came to the United States. RuthAnn said that at the time the Mutorov's came to the U.S. she was a volunteer for the Lutheran Family Services and this is how she first met the Mutorov's. RuthAnn said that initially she help the family get settled in the U.S. She stated that she developed a "quick" relationship with the family and she considers them to be her second family. She stated that she sees the family 1-2 days per week.

RuthAnn stated that the allegations against Jamshid make him sound like a much different person than the person she knows. She was surprised to hear about the charges and never knew the Jamshid that they were talking about in court. RuthAnn stated that the Jamshid she knows is "gentle and friendly" and would always invite her over for dinner. RuthAnn said that Jamshid was always very appreciative of the things she and other people did for him and his family. RuthAnn never saw Jamshid do anything that concerned her nor did she ever see anything suspicious.

RuthAnn said that Jamshid was employed as a truck driver and once he got this position he would sometimes be gone for days at a time. When he would return home the kids would be very happy to see him and he would spend time with his family. RuthAnn said that Jamshid's life

consisted of going to work, going to mosque and spending time with his family.

When Jamshid first came to the U.S. he was very excited to talk about his past and the work he did for Human Rights. She said that he was very proud of this work.

RuthAnn believes that coming to the U.S. was a tough transition for Jamshid. She said that the U.S. isn't quite all that it's cracked up to be. She said that Jamshid is a very educated man and that when he came to the U.S. the only jobs he could get were manual labor. RuthAnn also believes that it was hard for Jamshid to accept the fact that his wife had to work and was contributing to paying the bills. In Uzbekistan only the husband works. RuthAnn also believes that Jamshid really struggled with the fact that his sister was in prison in Uzbekistan and his brother had been kicked out of the military and she believes that he felt responsible for these things. RuthAnn believes that because of his struggles he became more devout in his faith. She said that just because he became more devout in his faith that does not make him a terrorist. She believes that he clung to his faith because things in his life were a little crazy. (Wife working and helping to support family, living in a crappy apartment and having to move because of bedbugs...etc.)

RuthAnn stated that she knows that Jamshid was very concerned with getting his sister out of jail. Jamshid told her that he had received information from the Uzbeki government that if he sent them \$5,000 then they would let his sister go. Jamshid sent the Uzbeki government \$5,000 on several different occasions, but they never released his sister. Finally Jamshid stopped sending the money because he realized the government would never let his sister go. RuthAnn suggested to Jamshid that he contact Amnesty International and have them help him try to get his sister released. Jamshid told her that if he did this his sister would be considered a political prisoner and that she would be treated much worse than she was already being treated.

RuthAnn said that she was at the court hearing on Tuesday with Nagiza and she plans on attending his bond hearing next Tuesday as well. RuthAnn said that she has already been questioned by the FBI. She was questioned on the day that Jamshid was arrested. She was in possession of Jamshid's laptop computer because it needed repair and she was trying to find someone to fix it for a reasonable price.

Nagiza currently works at the Hyatt downtown. As a result of Nagiza's job she has picked up quite a bit of English. RuthAnn believes that she knows quite a bit more English than Jamshid. RuthAnn said that she does not speak Russian or Uzbek and she would communicate with the Mutorov family in English.