

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No. 8:07-CR-342-T-27MAP**

**YOUSSEF SAMIR MEGAHED**  
\_\_\_\_\_ /

**MOTION FOR RECONSIDERATION  
OF THE COURT’S OCTOBER 25, 2007, ORDER OF DETENTION**

COMES NOW the Defendant, YOUSSEF SAMIR MEGAHED, by and through undersigned counsel, and pursuant to 18 U.S.C. §3142(f), and hereby respectfully moves this Honorable Court to reconsider its Order of October 25, 2007 (Dkt. 61), which reverses Magistrate Judge Jenkins’ Order of Release on September 14, 2007, and orders Youssef Megahed’s (hereinafter “**Megahed**”) pre-trial detention. As grounds in support thereof, Megahed shows as follows:

**LEGAL AUTHORITY TO RECONSIDER DETENTION ORDER**

18 U.S.C. §3142(f) provides that the detention hearing:

may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

At the time of the detention hearing in this case, counsel for Megahed had not received any discovery from the Government, which was not due to be produced to the defendants until Wednesday, January 9, 2008 (Dkt. 73).

Since this Court's October 25, 2007, Order of Detention, the Government has produced in discovery the post-arrest statements of the co-defendant, Ahmed Abdellatif Sherif Mohamed (hereinafter "**Mohamed**"); several FBI laboratory reports regarding the nature of the alleged explosive materials, which make up the substance of the charge in Count Two of the Indictment; and a forensic analysis of the G.P.S. device located inside the defendants' vehicle.

This information, which was not available to Megahed at the time of the detention hearing, is extremely material as to whether there are conditions of release this court can set to reasonably ensure his appearance at future court proceedings and to reasonably ensure the safety of any other person or the community if he were to be granted pre-trial release. This information is material because it shows that the defendants were not transporting dangerous explosive materials and were on a legitimate, lawful, readily-explainable and readily-verifiable, weekend college road-trip to see the coast line of the South Eastern United States.

## **FACTUAL AND PROCEDURAL HISTORY**

On August 29, 2007, the grand jury returned a two-count Indictment in the

instant case charging Mohamed alone in Count One with a violation of 18 U.S.C. § 842(p)(2)(A). Factually, Count One is based upon Mohamed's alleged creation of a YouTube video in which he allegedly narrates and explains the process of creating a remote detonating device from a remote-controlled toy truck. The Indictment further alleges that Mohamed created this YouTube video for the purpose of providing material support to terrorism. The Indictment fails to allege, and there is absolutely no evidence, that Megahed was involved in the creation, distribution, receipt, viewing, or even had knowledge, of the YouTube video which is the subject of Count One.

Count Two of the Indictment alleges that both Mohamed and Megahed violated 18 U.S.C. §842(a)(3)(A) by allegedly transporting in interstate commerce explosive materials without a proper license. This charge arises out of a traffic stop of a vehicle being driven by the co-defendant, Mohamed, and in which Megahed was a passenger. The vehicle was stopped in Goose Creek, South Carolina, and law enforcement conducted a search of the vehicle's trunk. During the search, law enforcement discovered, not in plain view, a total of four (4), four and one-half inch (4.5") pieces of PVC pipe which were found to contain a "pyrotechnic mixture consisting of sugar, potassium nitrate (stump remover) and cat litter.

At the time of the August 4, 2007, vehicle stop, Megahed was enrolled at the

University of South Florida as a mechanical engineering student and was in his Senior year, just three credit hours short of graduation. Mohamed was an Egyptian foreign national civil engineering instructor at the University of South Florida. Additionally, all of the evidence provided by the Government in discovery, including but not limited to Mohamed's admissions, reveals that Count One and Count Two are not part of a common scheme or plan involving both Mohamed and Megahed to commit some unlawful act.

On September 14, 2007, Magistrate Judge Jenkins entered a pre-trial order releasing Megahed on a \$200,000 secured bond, with the special condition that he remain on electronic monitored house arrest, that he and his family surrender to pre-trial services their passports, and that he not leave his home for any purpose other than to meet with his attorney or to attend religious services. (Dkt.. 24). The Government appealed the September 14, 2007, Order of pre-trial release and this Court, after taking proffered evidence from the parties, entered its' October 25, 2007, Order revoking the September 14, 2007, pre-trial release Order and further ordered the pre-trial detention of Mr. Megahed. (Dkt. 61).

In this Court's October 25, 2007, detention Order, this Court made two material and crucial findings in justifying the pre-trial detention of Megahed. First, the court found that:

Megahed's release unreasonably and acceptably endangers the community and no conditions of release sufficiently suppress the danger. In sum, Megahed stands accused of transporting a simple but effective explosive compound, readily manufactured from commonly available ingredients. The most plausible and still unrebutted inference from the evidence is that someone, either Megahed and Mohamed or someone acting in concert, intended to use the compound to achieve the compound's intended and essential purpose, an explosion. If that conclusion reigns (and it does), only the incurably credulous would confidently assume the person who possessed the explosive compound harbors only the objectives found among ordinary and peaceful persons who possess no explosive compound.

(Dkt. 61, p. 14-15).

Second, this Court further found and stated in its October 25, 2007, detention order that:

Second, I find that Megahed's release presents an unacceptable danger to the community. The evidence fails to establish or even suggest any innocent or wholesome explanation for the events that led to Megahed's arrest.

(Dkt. 61, p. 12).

Evidence which has been provided by the Government in discovery establishes that Megahed and his co-defendant, Mohamed, were not transporting an "effective explosives compound" whose "intended and essential purpose" was to cause an explosion. Additionally, the discovery provided by the Government establishes an innocent and wholesome explanation for the events which led to Megahed's arrest.

## **MATERIALS FOUND IN PVC PIPES NOT EXPLOSIVE MATERIALS**

Evidence provided by the Government in discovery from the FBI Laboratory and from other sources reveals that the substance found inside the PVC pipes located in the trunk of the vehicle was neither an “explosive compound” nor was the compound’s “intended purpose to cause an explosion.” As such, this Court should reconsider its October 25, 2007, Order of detention since it was based on the evidentiary premises that the defendants were transporting across state lines an “effective explosive compound;” that the defendants “intended to use the compound to achieve it’s intended purpose to cause an explosion;” and that if Megahed was “intending to blow something up,” there existed no combinations of conditions of release the Court could set to ensure against “property damage, injury or death.” (Dkt. 61, p. 15).

After this Court’s October 25, 2007, detention Order, the PVC pipes and the mixture of materials found inside the pipes were sent to the FBI Laboratory for expert testing and analysis. The results of that testing have recently been provided to the defense. The FBI explosives experts have found that the material found inside the PVC pipes was a “pyrotechnic mixture” consisting of sugar, potassium nitrate (stump

remover) and cat litter.<sup>1</sup> A “pyrotechnic mixture,” while commonly referred to as a “low explosive,” is not scientifically nor legally defined as “explosive materials.”

18 U.S.C. §841 (c) defines “explosive materials” to mean “explosives, blasting agents, and detonators.” 18 U.S.C. §841(e) defines “explosives” to mean:

[A]ny chemical compound, mixture, or device, the primary purpose or common purpose of which is to *function by explosion*; the term includes, but is not limited to, dynamite, and *other high explosives*, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonator cord, igniter cord, and igniters. The Attorney General shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter.<sup>2</sup>

*(Emphasis added).*

A pyrotechnic mixture’s “primary purpose or common purpose is not to function by explosion” and it is not a “high explosive” similar to those defined in 18 U.S.C. §841(e). Instead, as expressed by the FBI in its laboratory reports, the phrase “pyrotechnic mixture” is a general term that refers to *low explosives* composed of an oxidizer and a fuel.<sup>3</sup> Similarly, the Code of Federal Regulations defines a “pyrotechnic composition” or mixture as “a chemical mixture which, upon *burning*

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<sup>1</sup>See FBI Laboratory Reports dated October 29, 2007, attached as Exhibit 1a, and December 5, 2007, attached as Exhibit 1b.

<sup>2</sup>Also see 27 CFR §555.11 for nearly identical definitions of “explosive materials” and “explosives.”

<sup>3</sup>See FBI Laboratory Report dated October 29, 2007, attached as Exhibit 1a.

*and without explosion*, produces visible, brilliant displays, bright lights, or sounds. 27 CFR §555.11. (*Emphasis added*). Additionally, the annual list published by the Attorney General in the Federal Register as delegated by 18 U.S.C. 841(d), while listing “potassium nitrate explosive mixtures” as a prohibited material, fails to prohibit the possession of a “potassium nitrate pyrotechnic mixture.” The substance found in the PVC pipes was not a “potassium nitrate *explosive mixture*”, which by definition functions by explosion. Instead, the PVC pipe substance was a “potassium nitrate *pyrotechnic mixture*”, which by definition functions by burning and not by explosion. Therefore, the substance found in the PVC pipes fails to meet the legal definition of “explosive” or “explosive materials”, as was initially alleged by the Government at the initial bond hearings.

Therefore, contrary to this Court’s conclusions in its October 25, 2007, detention Order, the materials found in PVC pipes in the trunk of the vehicle on August 4, 2007, were not an “explosive compound” nor was the mixture’s “intended and essential purpose to cause an explosion.” Furthermore, FBI testing, which was revealed by the Government in discovery after the initial bond hearing, not only shows that the mixture found in the PVC pipes was not an “explosive compound” with an “intended and essential purpose to cause an explosion” but also that the “pyrotechnic mixture” found in the PVC pipes was completely harmless if ignited.

The FBI forensic experts created hypothetical replicas of the PVC pipes with different quantitative mixtures of sugar, potassium nitrate, and cat litter, and then ignited them. This scientifically-controlled testing established that the PVC pipes found in the trunk of the defendants' vehicle would not explode when ignited but, instead, would likely either burn, smoke, or do nothing at all.<sup>4</sup>

As such, this FBI laboratory testing certainly refutes any concern expressed by this Court in its October 25, 2007, detention order that the defendants were intent on "blowing something up." Simply put, based on the FBI expert testing, the PVC pipes found in the trunk of the vehicle were harmless pyrotechnic materials similar to those found in fireworks and road flares.<sup>5</sup> As such, given the complete harmless nature of the PVC pipes, this Court's conclusion that the release of Megahed could expose the community to the prospect of property damage, injury or death should be reconsidered by this Court.

Other than this Court's inaccurate conclusion that dangerous and "effective explosive materials" were being transported in interstate commerce for their only

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<sup>4</sup>See FBI Laboratory Report dated January 4, 2008, Section I, pages 1-16, attached as Exhibit 2. The test mixture containing Karo syrup, potassium nitrate, and cat litter when ignited had absolutely no reaction. This is the same mixture of substance found in the PVC pipes. See FBI Laboratory Report dated October 29, 2007, attached as Exhibit 1a.

<sup>5</sup>See FBI Laboratory Report dated October 29, 2007, attached as Exhibit 1a ("Examples of products using pyrotechnic mixtures include fireworks, black powder, and road flares.")

plausible purpose to “blow something up”, there existed at the initial detention hearing and continues to exist today absolutely no evidence that Megahed is in any way a danger to any person or the community if he were to be granted pre-trial release. Megahed is 21 years old and has no prior criminal history. At the time of his arrest, he was both lawfully employed and a full-time student with three credit hours left to graduate with an engineering degree. There simply is no evidence whatsoever that Megahed has any propensity for violence and that he would in any way harm the community or any person. To the contrary, his history reveals just the opposite.

**AN INNOCENT AND WHOLESOME EXPLANATION EXISTS FOR  
EVENTS LEADING UP TO AUGUST 4, 2007, ARREST**

Mohamed’s post-arrest admissions coupled with the forensic analysis of the G.P.S. device provides a verifiable, innocent and wholesome explanation for the events which lead up to Megahed’s arrest on August 4, 2007. The evidence provided by the Government in discovery reveals that on August 4, 2007, a vehicle being driven by Mohamed, with Megahed in the front passenger seat, was stopped in Goose Creek, South Carolina, for allegedly exceeding the 45-mph speed limit. The evidence further reveals that Mohamed had only arrived in the United States in January 2007, approximately six months prior to the traffic stop. Mohamed, who is 26 years old,

was present in the United States on a student visa and was working as a civil engineering instructor at the University of South Florida.

Megahed, a 21-year-old lawful resident of the United States for over ten years, was a University of South Florida engineering student who had met Mohamed at school. At the time of Megahed's arrest, he and his family, which consists of his mother, father, 18-year-old Hillsborough Community College student sister, 25-year-old University of Central Florida graduate student brother, and 11-year-old Downs Syndrome brother, all had pending applications for United States Citizenship<sup>6</sup>

Both Mohamed and Megahed developed a friendship based on their engineering interests and their mutual Egyptian heritage. Mohamed, who had only been in the United States for a short period of time, had an interest in seeing as much of the United States as possible. As such, Megahed and Mohamed planned a "road trip" in which they would drive up the Eastern coastal states and attempt to see as many beaches as they could over the August 4, 2007, weekend.

In order to save costs, the college students packed sleeping bags, food and drinks and planned on sleeping in the vehicle during the weekend trip. All of these items were found inside the vehicle at the time of the boys' arrest. In order to get

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<sup>6</sup>Both Megahed and his family have recently been granted an interview with immigration officials related to their pending applications for United States Citizenship. See Megahed's Immigration document attached as Exhibit 3.

as far as possible over the short weekend trip, they left during the very early morning hours of Saturday, August 4, 2007. On their way northward from Tampa on I-75, the boys stopped in Ocala, Florida, and purchased a G.P.S. device at Wal-Mart. The G.P.S. was purchased to help with directions and to assist them in locating the cheapest gas prices possible by identifying the nearest Wal-Mart Stores with Murphy Oil Gas Stations, which the boys had concluded were offering gas at the lowest prices.

The data forensically recovered by the FBI from the G.P.S. device reveals that the ultimate destination of the trip, as programmed into the G.P.S. device and advised to law enforcement at the time of the traffic stop, was Sunset Beach, North Carolina. Sunset Beach is a beach community located just over the South Carolina border into North Carolina.<sup>7</sup>

At the time of vehicle stop in Berkley County, South Carolina, the defendants' vehicle was traveling down St. James Avenue, approximately .8 miles from a Murphy Oil Gas Station located at 603 St. James Avenue and approximately .5 miles from Alternate U.S. Highway 17.<sup>8</sup> Alternate US-17 is the most direct route to Sunset Beach, North Carolina, from the Murphy Oil Gas Station located at 603 St. James

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<sup>7</sup>GPS Go screen and traveling directions for Sunset Beach, North Carolina attached as Exhibit 4.

<sup>8</sup>GPS Go screen for Murphy Oil, 603 St. James Avenue, Goose Creek, S.C. attached as Exhibit 5.

Avenue, as calculated by the G.P.S. device. This Murphy Oil Gas Station was one of many Murphy Oil Gas Stations the boys had located by way of the G.P.S. device during their trip up the South Eastern coastline of the United States. The boys had located Murphy Oil Gas Stations in Myrtle Beach, South Carolina, Statesboro, Georgia, Savannah, Georgia, and Jacksonville, Florida.<sup>9</sup> The G.P.S. forensic evidence also reveals that during the boys' trip, exploring a part of the country neither boy had ever visited in the past, they stopped and visited the following places<sup>10</sup>:

Mikler Landing Beach Park in Jacksonville Beach, Florida.  
Statesboro, Georgia  
Savannah, Georgia  
Memorial Park located in Tybee Island, Georgia<sup>11</sup>  
The Beach Institution of African American Cultural Center located in  
Savannah, Georgia  
Walterboro, South Carolina  
Charleston, South Carolina

Specifically, during their "road trip on a college budget", the boys stopped along the way in Jacksonville, Florida, and visited a Wal-Mart to get assistance in working the G.P.S. device which they had purchased earlier in the day in Ocala, Florida. While in Jacksonville, they visited Mikler Landing Beach Park located in

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<sup>9</sup>G.P.S. Go screen for Murphy Oil, in Myrtle Beach, S.C., Statesboro, Ga, Savannah, Ga, and Jacksonville, Florida. attached as Exhibit 6.

<sup>10</sup>G.P.S. Go screen for Charleston, S.C., Tybee Island, Ga., The Beach Institution of African American Cultural Center attached as Exhibit 7.

<sup>11</sup>Tybee Island is commonly known and advertised as "Savannah's Beach"

Jacksonville Beach, Florida. After visiting the beach in Jacksonville, they then headed north toward Sunset Beach, North Carolina, stopping along the way to eat, get gasoline and see the Eastern coastal states. As noted above and verified by the G.P.S. forensic evidence, they specifically stopped in Statesboro, Savannah, and Tybee Island, Georgia, as well as in Walterboro and Charleston, South Carolina.

After being stopped by local law enforcement on St. James Avenue in Goose Creek, South Carolina, just about .8 miles from a Murphy Oil Gas Station where they had recently purchased gasoline, the stopping officer asked Mohamed if he could search the vehicle for drugs or firearms. Specifically, prior to searching the vehicle, the officer asked Mohamed “if there was anything in the vehicle he needed to know about?” Mohamed advised the officer that he would find some “fireworks” or “rockets” and fuses in the vehicle. Multiple officers searched the vehicle and located receipts in the interior of the vehicle which corroborated the trip from Florida and the stops in Ocala and Jacksonville. While searching the trunk of the vehicle, the officers located the “rocket/fireworks” and fuses previously disclosed by Mohamed.

The “fireworks” and fuses were not in plain view and were only discovered after the officers removed the clothing and sleeping items which were packed in the trunk of the vehicle. The “fireworks” were not commercially manufactured but instead were home-made from 4.5-inch pieces of uncapped PVC pipe filled with

potassium nitrate (stump remover), cat litter, and sugar.<sup>12</sup>

Mohamed and Megahed were both immediately detained and questioned. Megahed denied any knowledge of the “fireworks” or fuses and only first learned of the presence of the “fireworks” when Mohamed advised law enforcement prior to the search that they would be found in the vehicle.

Mohamed’s post-arrest statements at the scene of the arrest and in two subsequent FBI interviews reveal the reason why these pyrotechnic mixtures were inside the trunk of the vehicle during this “road trip” to see the South Eastern costal states. In his post-arrest interviews, Mohamed advised law enforcement that he became interested in fireworks just prior to July 4, 2007, when he became aware of their wide availability as part of the United States’ Fourth of July celebrations. Mohamed visited several firework stands and discovered the high-cost charged for fireworks and determined that he could make his own fireworks at a cheaper price. During a subsequent search of Mohamed’s personal vehicle, which was located in Tampa, Florida, law enforcement discovered, among other things, fireworks and a pamphlet on firework safety. Concerned about the high cost of store-purchased fireworks, Mohamed, according to his post arrest statement, located a YouTube video

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<sup>12</sup>As previously noted, this mixture of substance has been found by the FBI to be a harmless “pyrotechnic mixture” similar to a mixture used in fireworks or road flares.

on the Internet on how to make what he refers to as “sugar rockets,” or homemade fireworks. A post-arrest FBI forensic examination of Mohamed’s computers reveals that he did, in fact, visit websites on how to make “sugar rockets.” A forensic search of Megahed’s computers failed to locate any material or websites related to “sugar rockets,” explosives, or any other material remotely related to the PVC pipe items which were manufactured by Mohamed.

A *Google* internet search of the term “sugar rockets” reveals that there exists numerous websites on how to manufacture “sugar rockets” through the use of store-bought items containing potassium nitrate and sugar. The websites reveal that this mixture of substance is commonly used as a propellant for model rocket hobbyists interested in finding a less expensive method of launching toy model rockets.

The receipts provided in discovery as well as store surveillance videos further reveal that Mohamed did, in fact, purchase stump remover, sugar, and cat litter in late June and early July 2007, which he then used to make home-made fireworks or “sugar rockets.”<sup>13</sup> Mohamed further revealed to law enforcement that he had ignited these

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<sup>13</sup>In contrast to the receipts from Mohamed, receipts related to purchases made by Megahed fail to reveal that he purchased any of the items used to make the “sugar rockets” or fireworks. Additionally, a subsequent search of Mohamed’s residence revealed PVC pipes and other items consistent with the “sugar rockets” found in the vehicle. A search of Megahed’s residence failed to discover any items consistent with the “sugar rockets” found in the trunk. Mohamed’s hair and DNA were found inside the pyrotechnic mixture; in contrast, none of Megahed’s hair nor DNA were found in the PVC pipes or the pyrotechnic mixture.

fireworks on previous occasions and that they did not explode but instead traveled a few feet into the air and would make smoke. This description by Mohamed is consistent with post-arrest testing by the FBI of similar mixtures and substances which either burned, smoked, or did nothing at all when ignited.

Mohamed additionally advised law enforcement that he had made the “sugar rockets” or fireworks which were found in the trunk of the vehicle and that he had brought them on the trip with the hopes of locating an empty field where he could shoot off the “sugar rockets” or fireworks. Mohamed further advised that Megahed had no knowledge of the “sugar rockets” or fireworks which Mohamed had brought with them on the “road trip.”

As such, contrary to this Court’s finding in its October 25, 2007, Order of detention, subsequent evidence provided by the Government has revealed that there does exist a verifiable, innocent and wholesome explanation for the events which lead to Megahed’s arrest on August 4, 2007, in Goose Creek, South Carolina. That innocent and wholesome explanation is that he went on a weekend college road-trip with a friend to see a part of the United States neither of them had ever visited before - a road trip no different than a trip taken by thousand of college students every weekend who are studying in the United States or abroad; a road trip in which his college friend, without his knowledge, brought along some home- made “firework”

or “sugar rockets ” he was hoping to shoot off if he could find an open field in which to launch them.

### CONCLUSION

In light of the fact that there now exists information which was not known to this Court at the time of its October 25, 2007, detention Order, which establishes that the items found in the PVC pipes were not explosives but instead a harmless pyrotechnic mixture similar to what is used in fireworks or road flares, and that there is an innocent and wholesome explanation for the events leading up to Megahed’s arrest, it is respectfully requested that this Court reopen the detention hearing and following said hearing grant Megahed pre-trial release.

DATED this 30<sup>th</sup> day of January, 2008.

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

*/s/ Adam B. Allen* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of January, 2008, a true and correct copy of the foregoing was furnished by the CM/ECF system with the Clerk of the Court, which will send a notice of the electronic filing to Assistant United States Attorney Jay Hoffer, 400 North Tampa Street, Suite 3200, Tampa, Florida, 33602.

*/s/ Adam B. Allen* \_\_\_\_\_

Adam B. Allen, Esq.  
Assistant Federal Public Defender