

A raid at the Virginia home of Farooque Ahmed, who is charged with plotting to bomb the Washington Metro subway system.

In U.S. Sting Operations, Questions of Entrapment

By ERIC SCHMITT
and CHARLIE SAVAGE

WASHINGTON — The arrest on Friday of a Somali-born teenager who is accused of trying to detonate a car bomb at a crowded Christmas tree-lighting ceremony in Portland, Ore., has again thrown a spotlight on the government's use of sting operations to capture terrorism suspects.

Some defense lawyers and civil rights advocates said the government's tactics, particularly since the Sept. 11 attacks, have raised questions about the possible entrapment of people who pose no real danger but are enticed into pretend plots at the government's urging.

But law enforcement officials said on Monday that agents and prosecutors had carefully planned the tactics used in the undercover operation that led to the arrest of the Somali-born teenager, Mohamed Osman Mohamud, 19, a naturalized United States citizen. They said that Mr. Mohamud was given several opportunities to vent his anger in ways that would not be deadly, but that he refused each time.

"I am confident that there is no entrapment here, and no entrapment claim will be found to be successful," Attorney General Eric H. Holder Jr. said Monday. "There were, as I said, a number of opportunities that the subject in this matter, the defendant in this matter, was given to retreat, to take a different path. He chose at every step to continue."

Mr. Holder called the sting operation, in which Mr. Mohamud was under the scrutiny of federal agents for nearly six months, "part of a forward-leaning way in which the Justice Department, the F.B.I., our law enforcement partners at the state and local level are trying to find people who are bound and determined to harm Americans and American interests around the world."

A study this year by the Center on Law and Security at New York University, which tracks terrorism cases, found that of 156 prosecutions in what it identified as the most significant 50 cases since 2001, informers were relied on in 97 of them, or 62 percent. The entrapment defense has often been raised, but as of September, it had never been successful in producing an acquittal in a post-Sept. 11 terrorism trial, the study found.

The Portland case resembles several others in which American residents, inspired by militant Web sites, have tried to carry out attacks in the name of the mil-

William Yardley contributed reporting from Portland, Ore., and Scott Shane from Washington.



MOHAMED OSMAN MOHAMUD. VIA AP



HOSAM MAHER HUSEIN SMADI. VIA AP



FAROOQUE AHMED. DEPARTMENT OF JUSTICE. VIA AP

itant Islamic movement only to be captured in a sting operation, with undercover F.B.I. agents or informers playing the role of terrorists and, as in this case, supplying a fake bomb.

In September 2009, Hosam Maher Husein Smadi, a 19-year-old Jordanian citizen, was arrested and charged with placing a fake bomb at a Dallas skyscraper. In October, Farooque Ahmed, a 34-year-old naturalized American citizen born in Pakistan, was arrested and charged with plotting to bomb the Washington Metro after meeting with undercover agents and discussing his plans and surveillance activities, the authorities said.

Some Muslim leaders in Oregon questioned how the sting op-

**Looking at how far
the police may go in
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eration there was carried out.

Imtiaz Khan, the president of the Islamic Center of Portland and Masjed As-Saber, a mosque where Mr. Mohamud worshiped, said several people at the mosque had questioned why law enforcement helped orchestrate such an elaborate plan for a terrorist act.

"They're saying, 'Why allow it to get to this public stunt? To put the community on edge?'" Mr. Khan said.

Mr. Khan said he and other Muslim leaders met regularly with the F.B.I. and other federal officials. In May, he was among a group of Muslim leaders in the Portland area who issued a statement condemning an attempted bombing in Times Square and thanking law enforcement for its "outstanding work" in the case.

Jesse Day, a spokesman for the mosque and Islamic center, said the circumstances of Mr. Mohamud's arrest had stirred "some distrust, a little bit, in the tactics" of law enforcement.

The government's 36-page affidavit filed in the Oregon case lays out a crucial conversation between Mr. Mohamud and an F.B.I. informer at their first meeting, on July 30, 2010. According to the affidavit, the informer suggested five ways that Mr. Mohamud could help the cause of Islam, some of which were peaceful, like proselytizing, and some of which were violent and illegal.

Mr. Mohamud, the affidavit said, immediately picked a violent crime: becoming "operational," by which he said he meant putting together a car bomb. The informer then offered to put Mr. Mohamud in touch with an explosives expert, setting off the chain of events that led to his eventual arrest.

Defense lawyers may have an opportunity to challenge the government's account of that conversation. According to the affidavit, while most of the conversations between the informer and Mr. Mohamud were recorded, that one was not "due to technical problems."

Still, in subsequent recorded conversations, the affidavit said, Mr. Mohamud picked the target, said he had wanted to commit such an attack for several years, and repeatedly demurred when told he could walk away if he did not have it "in his heart" to go through with it.

The question of how far the police may go in inducing the subject of an investigation to commit a crime turns on whether the facts show that the defendant was already predisposed to carry out a crime should the occasion arise.

Daniel C. Richman, a Columbia University professor of criminal law and former federal prosecutor, said it was largely up to juries

to decide whether to accept a defense of entrapment, which in practice is often hard to win. "These are jury questions that by and large go against the defendant, although every case is different," Mr. Richman said.

The Justice Department also has rules on how far investigators may go in facilitating a subject's criminal activity. The F.B.I.'s domestic operations guide, which was overhauled in 2008, notes that courts have found it to be "legally objectionable" when government agents lead a political or religious group "into criminal activity that otherwise probably would not have occurred."

The guide also has a long section of rules on what undercover agents and confidential informers can and cannot do, but it is almost entirely redacted from a publicly released version of the document.

F.B.I. officials have said the bureau requires legal reviews and higher-level approval of activities involving undercover agents and confidential informers to avoid putting convictions at risk with entrapment accusations. But they have made clear that once someone voices an intent to commit a violent act, undercover agents and informers are allowed to respond by offering to help the subject of the investigation obtain weapons.

"It doesn't matter whether it's a would-be terrorist who has expressed his desire to launch an attack, or a would-be drug dealer who has indicated an interest in moving a kilo of crack cocaine," said Kenneth L. Wainstein, a former assistant attorney general for the Justice Department's national security division. "So long as that person has expressed an interest in committing a crime, it's appropriate for the government to respond by providing the purported means of carrying out that crime so as to make a criminal case against him."

The Caucus

Second Hat in Ring To Lead the G.O.P.

The fight for control of the Republican National Committee intensified on Monday when Ann Wagner, a former leader of the Missouri Republican Party, declared her intention to run for chairwoman of the national party.

In a video announcement to members of the national committee, Ms. Wagner said the party needed new leadership to prepare for the 2012 presidential campaign, as well as a renewed focus on fundraising, transparency and accountability.

"We must be efficient, relevant, professional and credible," Ms. Wagner, at right, said. "We must start immediately to erase past debt and to restore the confidence of our donor base. We must have these resources in order to take back the White House and complete the job that was started this year."

Ms. Wagner, a former national co-chairwoman of the committee who also served as an ambassador to Luxembourg under President George W. Bush, is the second person to formally announce

intentions to run for the post. This month, a former Republican chairman from Michigan, Saul Anuzis, declared his intention to run.

Several other top Republican officials are considering bids, including Maria Cino, a longtime Republican leader with close ties to the Bush administration, and Gentry Collins, who recently left his position as political director for the national committee.

The current chairman, Michael Steele, whose term expires in January, has not said whether he intends to seek reelection. Mr. Steele's stewardship of the party has been sharply criticized by many Republicans, especially his handling of fund-raising, even though the party scored sweeping victories in the midterm elections and captured control of the House.

The 168 members of the national committee are scheduled to meet in Washington in January to elect a leader.

JEFF ZELENY

FACE TIME

It's All in the Game

Don't give President Obama any lip about his basketball injury.

Before he could be asked on Monday about the elbow to the face that resulted in 12 stitches, Mr. Obama pre-empted any questions with a light-hearted response in his first public appearance since he was hurt.

"Let me begin by pointing out that although Washington is supposed to be a town of sharp elbows, it's getting a little carried away," the president said, before going on to announce a pay freeze for civilian federal workers. He added that a doctor had given him a clean bill of health.

"I will continue to be playing basketball whenever I get a chance," he added. "In fact, I played yesterday with Sasha and Malia, and they took it easy on me because they were feeling pity."

The wound was clearly visible on Mr. Obama's lower lip, but it was less obvious on television than in person. On Friday, the president was playing five-on-five basketball with friends, family members and other acquaintances when Rey Decerega, director of programs for the Congressional Hispanic Caucus Institute, elbowed him in the mouth.

PETER BAKER

The online version of *The Caucus*, a blog looking at the latest political news from around the country: nytimes.com/politics

Senators Cannot Agree On Fix to the Health Law

By CARL HULSE

WASHINGTON — The Senate on Monday failed to repeal an unpopular element of the health care overhaul even though Democrats and Republicans agreed it needed to be jettisoned to prevent businesses from being saddled with undue tax paperwork.

Caught in a partisan dispute over how to proceed with eliminating new tax reporting rules, the Senate twice was unable to reach an agreed-upon threshold of 67 votes to eliminate a provision that critics have seized on to illustrate the failings of the health care legislation championed by Democrats.

A Democratic plan to overturn it attracted only 44 votes in support with 53 against; a Republican plan that would have cut other programs to make up the shortfall caused by the repeal fell short on a vote of 61 to 35.

Under the provision, which was added to the health care law to help pay for it, businesses that spend a cumulative \$600 or more with a vendor, supplier or contractor would have to file a 1099 form with the Internal Revenue Service identifying the recipient of the money.

The idea is that the new reporting requirement would increase compliance with tax laws, generating added tax payments that would help pay for new health care coverage. Lawmakers in both parties now say that the provision goes too far and that it would put a burden on companies now exempt from reporting such spending while requiring an expansion of the Internal Revenue Service to keep track of the added paperwork.

"It defies description except to say that it's one more overbearing government intrusion on free

enterprise in our country," Senator Kay Bailey Hutchison, Republican of Texas, in urging repeal of the provision.

Despite the inability to overturn the provision, Senate officials said they expected that another vote on repeal would come soon, given the support the idea has in both parties.

The provision survived because of the complex politics of the Senate. Some lawmakers were reluctant to back repeal on Monday since the rule change would have been added to a popular food-safety law that is nearing approval, potentially jeopardizing its passage. In addition, dueling Democratic and Republican proposals allowed lawmakers to register their disapproval of the 1099 requirement without the repeal passed or not.

Senator Mike Johanns, Republican of Nebraska, said his proposal lifted the provision, which does not take effect until 2012, without adding to the deficit by allowing the administration to make cuts in other programs to offset the costs.

"If we can't solve this problem and pay for it," asked Mr. Johanns, "how do we ever solve the multitrillion-dollar deficit that this country is facing?"

Senator Max Baucus, the Montana Democrat who leads the Finance Committee, offered the Democratic proposal that would eliminate the new tax requirements but would not provide additional revenue. Mr. Baucus said the Republican approach was granting too much leeway to the administration to determine spending cuts.

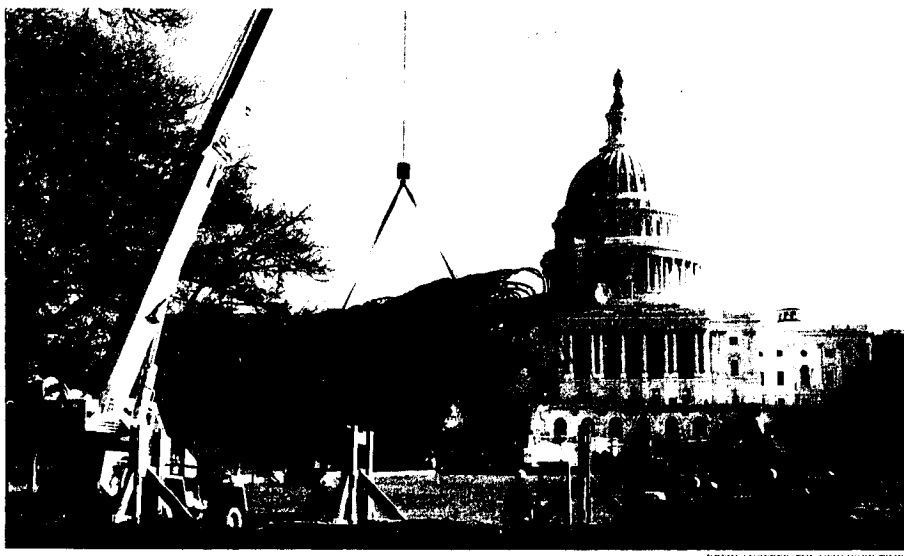
Republicans said the fight over the 1099 requirement was just the first to come in their efforts to unravel the health law.

"We are going to do it a little bit at a time until we can repeal the whole thing and start all over," Ms. Hutchison said.

Do not forget the Neediest!

First, Lift, Then Lights

A 67-foot Engelmann spruce from the Bridger-Teton National Forest in Wyoming was lifted into place Monday outside the West Front of the Capitol. The tree will be decorated with ornaments made by Wyoming residents, and the lights will be switched on Dec. 7. It is the first Capitol Christmas tree from Wyoming.



DREW ANGERER/THE NEW YORK TIMES