

# IF BY “PLOTS ON THE HOMELAND” YOU MEAN “DEFENSE AGAINST US-BACKED INVADERS”

Yesterday's declassified documents on the Section 215 (and Internet Trap and Trace) dragnets repeat something I observed about a James Clapper declaration submitted in several FOIA cases related to the program: they all redact parts of the description of what allows the government to search on an identifier. While the government is happy to tell us searches are limited to counterterrorism (and Iran), they're still hiding some aspect of what constitutes an appropriate search.

Which is just one of the reasons I'm interested in something NSA Deputy Director John Inglis said in yesterday's Senate Judiciary Committee hearing on the NSA's programs. At about 1:22, he described the selector they used to find Basaaly Moalin this way:

We knew a number that we had reasonable suspicion was affiliated with a terrorist group plotting against the homeland.

This claim – that the number was not just connected to a terrorist group, but a group “plotting against the homeland” – is new, as far as I'm aware.

Remember, the terrorist group in question is al-Shabaab. Other officials have said they got this number in October 2007 and court documents show the wiretap of Moalin began in December 2007. Yet al-Shabaab wasn't listed as a Foreign Terrorist Organization until February 2008. If they were plotting against the US in October 2007, why weren't they listed at that point?

I've long assumed (though it is just an

assumption) that the number in question was that of Aden Hashi Ayro, a Somali warlord whose calls with Moalin were submitted as evidence in his case. Ayro was killed by a US missile on May 1, 2008. And it's possible the claim that the pre-FTO al-Shabaab was plotting against our "homeland" pertains to him and his alleged ties to al Qaeda.

Here's how a June 2008 WikiLeaks cable celebrating Ayro's death described him.

(S/NF) Senior Al-Shabaab leader **and al-Qaida associate** Aden Hashi Ayrow was killed May 1 during a U.S. strike. In the early 1990s, Ayrow joined the military wing of Al-Ittihad Al-Islamiya (AIAI) and traveled to Afghanistan in 1997 for unspecified training. Ayrow remained in Afghanistan for a year before returning to Somalia to participate in Jihadist activities, and **returned to Afghanistan in 2001, reportedly meeting with Osama bin Laden.** Ayrow emerged in the 2002/2003 timeframe as a firebrand extremist and he quickly became a rising figure in what eventually became the Shabaab. Mercurial and largely uncontrollable, he was feared for his ruthlessness and unpredictability.

(S/NF) **Ayrow has been violently opposed to U.S. and western interests in East Africa.** The Shabaab's emergence as a terrorist threat in Somalia is closely linked to Ayrow's rise to power. During the course of 2005, Ayrow's jihadist group emerged in Mogadishu as a violent destabilizing force. He has been linked to the killing of foreign aid workers, dozens of Somalis, and BBC journalist Kate Peyton. He also was the figure largely responsible for the desecration of the Italian cemetery in Mogadishu. Ayrow's al-Shabaab faction has also conducted suicide bombings and anti-

aircraft attacks targeting Ethiopian and Somali forces in Somalia. Ayrow was closely associated with East Africa Al-Qaida (EAAQ) operatives Harun Fazul and Saleh Nabhan, and now-deceased EAAQ cell leader Abu Talha Al-Sudani. [my emphasis]

The label “al Qaeda associate” and the visit to Osama bin Laden may have qualified Ayro (as ties to Al Qaeda in the Arabian Peninsula did Ahmed Warsame) as something beyond al-Shabaab warlord in the US book. And Toronto Star’s Michele Shephard told me on Twitter that Ayro had global ambitions. Certainly, some of Ayro’s associates had ties to al Qaeda’s past and planned attacks on US embassies in Africa.

But Shephard and the WikiLeaks cable also both say that the immediate focus in 2007 was on Ethiopian troops who had invaded Somalia in 2006 with US backing.

Indeed, the 2010 affidavit supporting a search warrant application for Moalin’s home also emphasized al-Shabaab – and Ayro’s – focus on Ethiopia (though made no mention of US backing).

In late 2006, Ethiopian forces intervened on the [Somali Transitional Federal Government, which the ICU had ousted]’s behalf, routed the ICU and recaptured Mogadishu. With Ethiopian and African Union support, the TFG was reinstalled into power. Although it initially dispersed in the face of the Ethiopian invasion, al-Shabaab eventually regrouped and initiated a war in Somalia targeting all aspects of the TFG, including police stations, border posts, government facilities and civilian targets, as well as the TFG’s Ethiopian and African Union supporters.

[snip]

Al-Shabaab’s former leader, Aden Hashi Ayrow, called for foreign fighters to

join al-Shabaab in a “holy war” against the Ethiopian and other African forces in Somalia. Ayrow’s call was echoed by al-Qaeda leadership, including Usama bin Laden and Ayman al-Zawahiri, and fighters from other countries – including the United States – have traveled to Somalia to engage in violent jihad.

Abbreviated versions of these claims were made in the indictments against Moalin. The intercepted discussions quoted in the affidavit also make it clear Ayro was soliciting Moalin’s support to fight Ethiopian troops.

On April 12, 2008, after MOALIN learned that Al-Shabaab had been designated as a FTO, Ayrow told MOALIN that “it is time to finance the jihad.” He stated that “I am now in Dhusa Mareb” and “the Ethiopians are in Adaado.” MOALIN replied, “I was told that they are only a few men so why do you not prepare to finish them off?”

[snip]

Farah Yare [Moalin’s contact after Ayro’s death] reported to MOALIN on the fighting in the Mataban region. He stated that 18 men had been martyred, but that the enemy was destroyed. He stated, “We were fighting from morning til 2:00 p.m. So we were doing burials, to regroup our army.” As a follow up to the conversation the day before, on July 2, 2008, MOALIN, Khader and Isse Doreh had a conference call with Farah Yare. During the call, Yare described in detail the recent fighting against the Ethiopians, stating, “We caught up with them and we truly destroyed them.”

All of which is to say that, while the government took every opportunity to invoke the

names Osama bin Laden and Ayman Zawahiri, the government's public case and even the classified WikiLeaks cable suggests they were focused on Ayro because of his attacks on US interests in and around Somalia, especially the US-backed invasion of Somalia. I'm aware of no place in the Moalin public filings (remember, the chief government filing on FISA intercepts is heavily redacted) where the government claims Ayro was plotting against "the homeland" when phone calls to him got Moalin targeted.

But yesterday, NSA's second-in-command suggested that that was the basis for the use of the Section 215 dragnet database that ultimately led to Moalin's less than \$10,000 support to al-Shabaab's fight against Ethiopia.

I don't know whether the modifier "planning to attack the US" is part of the description of authorized identifiers that remains redacted in all these filings. But if it is, I'm really curious how Ayro and Moalin's efforts to defeat a US-backed invasion of Somalia – efforts first identified four months before al-Shabaab got listed as an FTO – qualifies as a plot to attack the "homeland."