

MIKE ROGERS WANTED TO DRONE KILL AN AMERICAN CITIZEN FOR TRAINING WITH AL QAEDA?

There has been some good commentary on NYT's story on Administration debates over killing Mohanad Mahmoud al-Farekh, the American citizen who was captured and charged in federal court on April 2, after the Administration considered but then decided against drone-killing him. Both David Cole and Brett Max Kaufman ask raise some important points and questions. Of particular note, they ask what the fuck Mike Rogers was doing pushing DOD and CIA to kill a US citizen.

Yet neither of those pieces gets to something I'm puzzling over. Al-Farekh was charged in EDNY (Loretta Lynch's district), but he was only charged with conspiracy to commit material support for terrorism, a charge that carries a 15 year maximum sentence. Basically, he is accused of conspiring with Ferid Imam who in turn trained Najibullah Zazi and his co-conspirators for their planned 2009 attack on the NY Subway system.

In approximately 2007, Farekh, an individual named Ferid Imam and a third co-conspirator departed Canada for Pakistan with the intention of fighting against American forces. They did not inform their families of their plan before departing, but called a friend in Canada upon arrival to let him know that he should not expect to hear from them again because they intended to become martyrs. According to public testimony in previous criminal trials in the Eastern District of New York, in approximately September 2008, Ferid Imam provided weapons and other military-type

training at an al-Qaeda training camp in Pakistan to three individuals – Najibullah Zazi, Zarein Ahmedzay and Adis Medunjanin – who intended to return to the United States to conduct a suicide attack on the New York City subway system. Zazi and Ahmedzay pleaded guilty pursuant to cooperation agreements and have yet to be sentenced; Medunjanin was convicted after trial and sentenced to life imprisonment. Ferid Imam has also been indicted for his role in the plot.

But the evidence laid out in the complaint is rather thin, basically amounting to the second-hand reports that al-Farekh, like Zazi and his friends, traveled to Pakistan for terrorist training.

Were we really going to kill this dude with a drone because he got terrorist training in Pakistan? That's it?

Now, it's quite possible the government is just charging him with the crimes the evidence for which they can introduce in a trial – though note that the government got a FISC warrant to collect on him (though it's possible this is drone-based collection, and so sensitive enough they wouldn't want to use it at trial).

Drones spotted him several times in the early months of 2013, and spy agencies used a warrant issued by the Federal Intelligence Surveillance Court to monitor his communications.

It's equally possible that al-Farekh will be indicted on further charges, a more central role in plotting attacks out of the tribal lands of Pakistan. Similarly, it's possible that al-Farekh's High Value Interrogation Group interrogation – reported as well in this WaPo story – provided valuable intelligence on other militants that will have nothing to do with his

own trial.

Still, both the earlier WaPo story (written in part by Adam Goldman, who wrote the book on the Zazi case) and the NYT story hint that the claims made about al-Farekh's activities in 2013 have proven to be overblown. The WaPo doesn't provide much detail.

Officials said there were questions about how prominent a role Farekh played in al-Qaeda.

The NYT provides more.

But the Justice Department, particularly Attorney General Eric H. Holder Jr., was skeptical of the intelligence dossier on Mr. Farekh, questioning whether he posed an imminent threat to the United States and whether he was as significant a player in Al Qaeda as the Pentagon and the C.I.A. described.

[snip]

Once in Pakistan, Mr. Farekh appears to have worked his way up the ranks of Al Qaeda, his ascent aided by marrying the daughter of a top Qaeda leader.

American officials said he became one of the terrorist network's planners for operations outside Pakistan, a position that included work on the production and distribution of roadside bombs used against American troops in Afghanistan.

Some published reports have said that Mr. Farekh held the third-highest position in Al Qaeda, but Americans officials said the reports were exaggerated.

His level in the Qaeda hierarchy remains a matter of some dispute. Several American officials said that the criminal complaint against him underplayed his significance inside the

terrorist group, but that the complaint – based on the testimony of several cooperating witnesses – was based only on what federal prosecutors believed they could prove during a trial.

This, then – along with the explicit connection with the Awlaki case, based as it was, at least at first, on Umar Farouk Abdulmutallab's interrogation and all the reasons to doubt it – seems the big takeaway. We almost killed this dude, but now all we can prove is that he trained in Pakistan.

Ironically, Philip Mudd argues for the NYT that we can't capture these people because we'd have to rely on our intelligence partners.

But many counterterrorism specialists say capturing terrorism suspects often hinges on unreliable allies. "It's a gamble to rely on a partner service to pick up the target," said Philip Mudd, a former senior F.B.I. and C.I.A. official.

Of course, these are often the same people we rely on for targeting intelligence, including against both Awlaki and al-Farekh. What does it say that we'd believe targeting information from allies, but not trust them to help us arrest the guys they apparently implicate?

Whatever that says, the story thus far (it could change) is that al-Farekh was almost killed on inadequate evidence because CIA and DOD were champing at the bit. That ought to be the big takeaway.