

returned a superseding indictment against the defendant adding a third count of making materially false statements on his asylum claim form in violation of Title 18, United States Code, Section 1546(a). On November 2, 2010, the defendant pled guilty to Counts 2 and 3 of the Superseding Indictment charging him with making materially false statements on his asylum claim form in violation of Title 18, United States Code, Section 1546(a). On November 8, 2010, the Court granted the government's motion to dismiss Count 1 of the Superseding Indictment without prejudice based on the defendant's guilty pleas and in the interest of judicial economy.

Statement of the Facts

Based on documentary evidence, Dhakane entered the United States on March 28, 2008, at the Brownsville Port of Entry (POE) in the Southern District of Texas. He was transferred to the DHS Detention and Removal (DRO) facility at Pearsall, Texas, in the Western District of Texas. The defendant filed his Form I-589, Application for Asylum and for Withholding of Removal on October 28, 2008, that is the subject of the false statement counts, while at the Pearsall facility.

The defendant was interviewed by the case agents three times. Each interview was preceded with giving him his Miranda warnings both orally and in writing. Each time, Dhakane agreed to speak with the agents both orally and in writing.

A. Terrorism Ties

In relation to Count 1 of the Superseding Indictment, the defendant omitted material information regarding whether he ever belonged to or was associated with any organization or group in Somalia, including but not limited to a political party, military, paramilitary, or guerilla organization on Question 3a of his Form I-589, Application for Asylum and for Withholding of

Removal. In particular, he omitted his association with two Specially Designated Global Terrorists (SDGT): al-Barakat and Al-Ittihad Al-Islami (AIAI).

The defendant told the case agents that he served as a hawaladar, or transferor of funds outside the normal banking system, for al-Barakat, an organization that the Treasury Department named as an SDGT on November 11, 2001, pursuant to Executive Order 13224.¹ From prior to September 11, 2001, the exact date unknown, to on about January 2003, Dhakane worked for al-Barakat; the Defendant was aware that al-Barakat was designated an SDGT at the time it was so designated. As part of his duties, the Defendant told the agents that he also handled financial transactions for AIAI. On September 23, 2001, pursuant to Executive Order 13224, AIAI was designated an SDGT. Dhakane told the agents that prior to 9/11, Somalis sent millions of dollars to Somalia via al-Barakat. The defendant stated that he processed individual money transfers to include many transactions in excess of \$100,000. The Defendant told the agents that he was personally responsible for ensuring that the money went to the appropriate AIAI sheikh or cleric, thereby earning their trust. After 9/11, the Defendant stated that the Somalis structured their money transfers to be \$3,500 or less to avoid detection by the US government.

In his tape-recorded statements to the confidential human source (CHS), who will be called to testify at sentencing, Dhakane implied he was a member of AIAI and stated he “was asked to leave the war” by an AIAI sheikh who was his uncle. The Defendant told three separate witnesses, who will also be called to testify, that he was a member of AIAI, worked for AIAI, or he was a fighter for AIAI, respectively. The Defendant told the agents that he does not

¹ <http://www.treas.gov/offices/enforcement/ofac/actions/20011107.shtml>
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

distinguish between AIAI, the Council of Islamic Courts (CIC),² and the Al-Shabbab in that essentially the same individuals make up all three groups and only the US government tries to classify them into different groups. Al-Shabbab was designated as a Foreign Terrorist Organization (FTO) on February 26, 2008.³ The Defendant stated to the agents that the only difference between the individuals in these groups is that they can be categorized either as supporters or fighters. When asked to clarify this statement, the Defendant told the case agents that all of these individuals are ready to fight and die for the cause.

In a sworn statement dated May 19, 2009, Dhakane, himself, also told the immigration court some seven months after he filed his asylum claim that he worked for al-Barrakat from 1997 until 2002. In 2001, Dhakane stated that he became the director of money exchange and customer relations counselor.

Timothy McCants, a Federal Bureau of Investigation supervisory special agent from FBI headquarters who will testify as to facts, history, and associations of al-Barrakat, and its designation as an SDGT. In summary, Agent McCants will testify as to the formation and history of al-Barrakat, including the parties that were behind the formation and the funding of this financial business. He will testify as to his personal investigation and that of his team that led to the designation of al-Barrakat as an SDGT on November 11, 2001, by the United States Treasury Department pursuant to Executive Order 13224, as well as his interviews with the owner of al-Barrakat and Agent McCant's follow-up investigation. In corroborating the defendant's admissions, Agent McCants will also testify that prior to September 11, 2001, money

² Also known as the Islamic Courts Union.

³ <http://www.state.gov/s/ct/rls/other/des/102446.htm>

transfers to, from, and through al-Barrakat would commonly be in amounts over \$10,000, but after September 11, 2001, the money transfers were in amounts smaller than \$10,000. Agent McCants recovered many of the computer records of al-Barrakat.

Mark Wagoner, a Federal Bureau of Investigation special agent assigned to the San Antonio Joint Terrorism Task Force will testify to the facts, history, and associations of AIAI and its designation as an SDGT on September 23, 2001, by the United States Treasury Department pursuant to Executive Order 13224. In particular, Agent Wagoner will testify as to the history of AIAI and its relationship to al-Barrakat, the Islamic Courts Union, and Al-Shabbab, a designated FTO. Agent Wagoner will testify he has partially reviewed the voluminous al-Barrakat records recovered by Agent McCants and found documentation corroborating that the defendant worked for al-Barrakat after it was designated an SDGT following the terrorist attacks of September 11, 2001.

Justin F. Adams, Assistant Chief Counsel, Department of Homeland Security, in summary will testify that the defendant's omissions regarding his affiliations with al-Barrakat and AIAI as charged in Count 1 of the Superseding Indictment were material falsehoods since the law renders aliens inadmissible or removable for a range of activities tied to terrorist acts or organizations. *See* INA § 212(a)(3)(B)(i)(I)-(IX); 8 U.S.C. § 1182(a)(3)(B)(i)(I)-(IX). Aliens tied to these activities are also usually barred from relief, protection, or a benefit they seek under the INA, to include asylum. Mr. Adams will also testify that although there is a lawful order of removal for the defendant, because the defendant is a Somali citizen and there is no functioning government in Somalia able to issue travel documents, the United States will be required to release the defendant in the United States following any sentence the Court may impose.

B. Smuggling Operation, Including Smuggling of Terrorists

In Count 2 of the indictment, the defendant pled guilty to falsely stating on his asylum form the route he took to come from Somalia to the United States.

However, directly contrary to his statements to the Court at the time of his guilty plea where he denied being an alien smuggler, the defendant previously made detailed admissions to law enforcement agents that he participated in and later ran a large-scale smuggling operation out of Brazil; most of his smuggling clientele consisted of East Africans attempting to get into the United States from June 2006 until his entry into the United States in March 2008. The defendant's admissions to the case agents regarding his smuggling operation will be corroborated by at least three smuggling clients who will be called to testify at sentencing. Furthermore, the defendant told the CHS that he ran a hotel in Brazil that he used for smuggling individuals; the Defendant provided false passports and travel documents to his smuggling clients; he bribed Brazilian immigration officials so the clients would not be deported by Brazilian authorities; he facilitated the further smuggling of these individuals into the United States by using his subordinates; and, he instructed the clients on how to make false asylum claims. The Defendant bragged on tape to the CHS that he made as much as \$75,000 in one day by smuggling Somalis. On tape, Dhakane stated his minimum charge for smuggling individuals was \$3,000 per person. Dhakane told the agents that based on his conversations with his smuggling clients and his extensive familiarity with United States asylum law, he knew that none of the individuals he smuggled had a valid claim to be in the United States because they had not come directly from Somalia.

Most importantly, Dhakane told the case agents that he smuggled or attempted to smuggle

several AIAI-affiliated Somalis into the United States. (1) Dhakane was paid a commission for turning Mohamed Ma'alín to another smuggler; Ma'alín, who was a supporter of the Islamic Courts, only made it as far as Bolivia. (2) Dhakane provided Adani LNU with new Kenyan passports and Brazilian visas for \$600 and put Adani and his cohorts up at a hotel in Sau Paulo and then had the visas renewed; Dhakane then obtained a South African passport and a letter certifying authenticity from the South African government for Adani for another \$1,400. Adani, who was a supporter of the Islamic Courts, did make it to the United States. (3) Mohammed Ereg a/k/a Idris, who was an AIAI member and currently in the United States, paid Dhakane \$2,000, but was turned back to Brazil upon arriving in Guatamala; Ereg is currently in the United States. (4) Dhakane helped to smuggle Abirizak LNU a/k/a Al Qaeda, to California; Abdirizak was a low level operative for the Islamic Courts. (5) Dhakane smuggled Hassan Yare from Brazil to the United Kingdom; Yare was a fighter and a member of the Shiirkoole Islamic Courts, a division of the Islamic courts. Dhakane knew these were AIAI/Al Shabbab supporters or fighters based on his conversations with them. As stated previously, when asked to clarify this statement, the Defendant stated that all of these individuals are ready to die for the cause. Dhakane stated he did not know their exact reason for wanting to enter the United States, but cautioned that he believed they would fight against the US if the jihad moved from overseas locations to the US mainland.

C. Rape of Underage Smuggling Client to Further Defendant's Asylum Claim

On Part A, Question II. of his asylum form, the Defendant, falsely claimed that the minor female he was traveling with, L.O.A. was his wife and that they had been married in Mogadishu, Somalia. The defendant pled guilty to this charge on Count 3 by admitting he falsely stated that

L.O.A. was his wife and had been married in Somalia.

However, contrary to his statements to the Court at the time of his guilty plea, the defendant specifically denied he raped and impregnated L.O.A. In her Victim Impact Statement, L.O.A. details how she was a smuggling client of the defendant's who first met him in Brazil and has never been married to him. L.O.A. told the agents that the defendant kept her locked away and repeatedly raped and impregnated her prior to coming to the United States. The defendant stated that it would better his asylum chances if he had a pregnant wife. The defendant told L.O.A. that if she told the United States authorities about the rapes or that he was not her husband, he would have her killed. As seen in the Victim Impact Statement, L.O.A. talks about the extreme psychological stress she suffered and continues to suffer both by the defendant's direct actions as well as the cultural stigma attached to being an unwedded mother, despite the fact she was a rape victim. Because of the Defendant's brutalization of L.O.A., she has been diagnosed as suffering from Post Traumatic Stress Disorder.

Relevant Conduct

The Sentencing Guidelines state that relevant conduct includes:

(1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant ... that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.

U.S.S.G., § 1B1.3(a)(1)(A). The relevant conduct may also include conduct for which the defendant has not been convicted. *See also, United States v. Cooks*, 589 F.3d 173, 185 (5th Cir. 2009); *United States v. Gracia*, 983 F.2d 625, 629 (5th Cir. 1993).

Terrorism Enhancement, U.S.S.G. §3A4.1

Based on defendant's conduct relating to Counts 1 and 2 of the Superseding Indictment and to be supported by the proposed evidence and testimony at sentencing, the United States respectfully requests that the Court enhance the defendant's sentence pursuant to U.S.S.G. §3A1.4. U.S.S.G. § 3A1.4, states that:

(a) If the Offense is a felony that involved, **or was intended to promote**, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32.

(b) In each such case, the defendant's criminal history category...shall be Category VI.

(Emphasis added.)

In *United States v. Graham*, the Sixth Circuit held that a defendant who intends to promote a federal crime of terrorism is not necessarily required to have been convicted of committing, attempting to commit, or conspiring to commit a federal crime of terrorism as defined in § 2332b(g)(5). The majority concluded that "intended to promote" implied that "the defendant has as one purpose of his substantive count of conviction of his relevant conduct the intent to promote a federal crime of terrorism...the offense of conviction itself need not be a 'federal crime of terrorism.'" The court observed that this interpretation is in harmony with the principles outlined in § 1B1.3 (Relevant Conduct), under which a defendant's offense level may be adjusted for acts which the defendant did not necessarily commit but were committed by others in furtherance of a jointly undertaken criminal activity with the defendant and were reasonably foreseeable to the defendant in connection with that activity. The *Graham* majority concluded that the objects of the offense of conviction, conspiracy, constituted federal crimes of terrorism. As a result, the terrorism enhancement could be applied and the application of §

3A1.4 does not merely hinge upon whether the object crime of the conspiracy is one enumerated in § 2332b(g)(5). *United States v. Graham*, 275 F.3d 490, 517-518 (6th Cir. 2001); *see also*, *United States v. Mandhai*, 375 F.3d 1243, 1247-48 (11th Cir. 2004).⁴

In *United States v. Ashquar*, the Seventh Circuit stated:

Thus, intent to obstruct a [terrorist] investigation is enough, at least where obstructing an investigation promotes the crime. We agree. Promoting a crime includes helping and encouraging that crime, and one way of furthering a crime is to try to prevent the government from finding out about it. So long as the sentencing court finds that the defendant intended to obstruct an investigation into a federal crime of terrorism, as opposed to an investigation into more ordinary violations of the law, the court has found the intent required to apply § 3A1.4.

U.S. v. Ashquar, 582 F.3d 819, 826 (7th Cir. 2009); *but see United States v. Biheiri*, 356 F.Supp.2d 589 (E.D.VA. 2005)(actual obstruction of investigation required for § 3A1.4 enhancement)

Obviously, one of the Defendant's motives was to falsely claim asylum to help himself. More importantly, based on the Defendant's recorded statements and admissions made to law enforcement agents, the Defendant was a former member, or at the very least, associated with AIAI, an SDGT, and that he believed that there was no separation of personnel between AIAI, the Council of Islamic Courts, and Al-Shabbab, a designated FTO. He admits that he knowingly believed he was smuggling violent jihadists into the United States with the full knowledge that if the decision was made by the SDGT, for which he was associated with in the past, to commit terrorist acts in the United States, these jihadists would commit violent acts in and against the

⁴ *See also United States v. Hale*, 228 F.3d 971, 988 (7th Cir. 2006)(§ 3A1.4 applies "where a defendant is convicted of a federal crime of terrorism as defined by [18 U.S.C.] § 2332b(g)(5)(B) or where the district court finds that the purpose or intent of the defendant's substantive offense of conviction or relevant conduct was to promote a federal crime of terrorism as defined by § 2332b(g)(5)(B).")

United States. Because the law enforcement authorities are constantly trying to investigate, detect, and prevent the infiltration of potentially violent jihadists, the Defendant's lies hid critical information from the United States authorities regarding his successful smuggling activities. Thus, the preponderance of the evidence proves that the other obvious motivation for him to lie on his asylum application was to cover up and obstruct the fact from United States authorities that he facilitated the smuggling of violent jihadists who are now present into the United States.

Upward Departure for Terrorism Conduct Pursuant to U.S.S.G. §§ 5K2.0, 5K2.9

In the alternative, if the Court does not grant the government's request for a Terrorism enhancement pursuant to U.S.S.G. §3A1.4, the government would request an upward departure pursuant to U.S.S.G. §§ 5K2.0 and 5K2.9 based on the defendant concealing his membership in two SDGTs and willfully smuggling and assisting for profit a multitude of individuals into the United States, including some that the defendant knew to be potential terrorists.

If the Court were only to look to U.S.S.G. §2L2.1(a), False Statement in Respect to Immigration Matter, the defendant's base offense level would be 11. This offense level in no way captures the seriousness of this defendant's criminal activity, both in terms of his knowingly aiding terrorist organizations and smuggling for profit aliens into the United States, including potentially violent extremists.

The Sentencing Guidelines allow departures based on circumstances of a kind not adequately taken into consideration.--

(A) Identified Circumstances.--This subpart (Chapter Five, Part K, Subpart 2 (Other Grounds for Departure)) identifies some of the circumstances that the Commission may have not adequately taken into consideration in determining the applicable guideline range (e.g., as a specific offense characteristic or other adjustment). If any such circumstance is present in the case and has not adequately been taken into consideration in determining the applicable guideline range, a departure consistent with 18 U.S.C. §

3553(b) and the provisions of this subpart may be warranted.

U.S.S.G. §5K2.0(a)(2)(A); *United States v. Saldana*, 427 F.3d 298, 308-16(5th Cir. 2005). In this circumstance and for the reasons stated above regarding the Terrorism enhancement, *supra* at 8-11, if the Court does not enhance the defendant pursuant to 3A1.4, Section 5K2.9⁵ provides similar grounds for granting an upward departure regarding the defendant's conduct surrounding his knowing and willful association and assistance to two terrorist groups both directly before and after 9/11 and with his smuggling activities as well as his smuggling activities of non-terrorist aliens.

Alternatively, if the Court does not find either U.S.S.G. §3A1.4 or § 5K2.9 applicable, the Court should still grant an upward departure based on the relevant conduct relating Counts 1 and 2, the defendant's knowing and willful association and assistance to two terrorist groups both directly and with his smuggling activities as well as his smuggling activities of non-terrorist aliens pursuant to U.S.S.G. § 5K2.0(a)(2)(B)⁶ and/or U.S.S.G. § 5K2.0(a)(3).⁷

⁵ If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

U.S.S.G. § 5K2.9.

⁶ **(B) Unidentified Circumstances.**--A departure may be warranted in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that nevertheless is relevant to determining the appropriate sentence.

U.S.S.G. § 5K2.0(a)(2)(B).

⁷ **(3) Departures Based on Circumstances Present to a Degree not Adequately Taken into Consideration.**--A departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into

Vulnerable Victim Adjustment Pursuant to U.S.S.G. §§ 3A1.1(A), (B)(1)

Based on the defendant's relevant conduct in Count 3, the United States submits that the defendant should be given a five (5) point upward guideline adjustment for Vulnerable Victim pursuant to U.S.S.G. §§ 3A1.1(A) and (B)(1). This adjustment states that:

(a) If the finder of fact at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, **national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, increase by 3 levels.**

(b)(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

U.S.S.G. § 3A1.1. (Emphasis added).

In the case at hand, the defendant chose the victim L.O.A. specifically because of her gender, national origin, and ethnicity. The defendant has admitted to the Court at the time of his plea that he lied on his asylum form that he was married to L.O.A. and that they were married in Somalia. The defendant specifically chose the victim because she was female and from Somalia. The defendant, who was paid to smuggle the victim from Brazil to the United States, knew L.O.A. was traveling by herself and was a minor, and thus, vulnerable. L.O.A. told the agents that the defendant kept her locked away and repeatedly raped and impregnated her prior to coming to the United States. He chose L.O.A. because, as he told the victim, it would better his

consideration in determining the guideline range, if the court determines that such circumstance is present in the offense to a degree substantially in excess of, or substantially below, that which ordinarily is involved in that kind of offense.

U.S.S.G. § 5K2.0(a)(3).

asylum chances if he claimed he had a pregnant wife. The defendant told L.O.A. that if she told the United States authorities about the rapes or that he was not her husband, he would have her killed.

Using Minor to Commit a Crime Role in the Offense Adjustment

The United States respectfully requests that the Court give the defendant a two (2) point Role in the Offense adjustment pursuant to U.S.S.G. § 3B1.4. Section § 3B1.4 states

If the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense, increase by 2 levels.

U.S.S.G. § 3B1.4. Application note 1 defines “Used or attempted to use” includes directing, **commanding**, encouraging, **intimidating**, counseling, training, procuring, recruiting, or soliciting.” *Id.* As the defendant admitted to the Court at his plea colloquy, he lied on his asylum form that L.O.A. was his wife. As stated previously, the defendant chose L.O.A. because, as he told the victim, it would better his asylum chances if he claimed he had a pregnant wife. The defendant told L.O.A. that if she told the United States authorities about his raping her or that he was not her husband, he would have her killed.

Upward Departure Based on Psychological Trauma to Victim, U.S.S.G. §5K2.3

As set forth in her Victim Impact Statement, L.O.A. has suffered significant and continues to suffer psychological trauma due to the defendant’s horrific acts against her over a long period of time. And although L.O.A. is extremely fearful of the defendant and is afraid to come to court, she will be available to testify. L.O.A. to this day suffers continuing psychological issues due the defendant’s willful victimization of her. Because of the defendant’s brutal actions

of raping and keeping L.O.A. locked away and dependent on the defendant in order to increase his odds of getting asylum for which he knew he was not entitled to, the victim has difficulty being around any men and avoids men. Because her child is a product of rape, she is constantly reminded of both the defendant's crimes against her and the stigmatization in the Somali community of having an illegitimate child. Because of the Defendant's brutalization of L.O.A., she has been diagnosed as suffering from Post Traumatic Stress Disorder. Sentencing Guideline section 5K2.1 states that:

If a victim or victims suffered psychological injury much more serious than that normally resulting from commission of the offense, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the severity of the psychological injury and the extent to which the injury was intended or knowingly risked.

Normally, psychological injury would be sufficiently severe to warrant application of this adjustment only when there is a substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim, when the impairment is likely to be of an extended or continuous duration, and when the impairment manifests itself by physical or psychological symptoms or by changes in behavior patterns. The court should consider the extent to which such harm was likely, given the nature of the defendant's conduct.

U.S.S.G. § 5K2.3. In this case, the repeated brutal raping and victimization of L.O.A. and the threats to kill her if she ever told the United States authorities go well beyond the norm in a case of a false statement regarding an asylum claim as charged in Count 3. The United States requests that the Court grant an upward departure pursuant to U.S.S.G. § 5K2.3 based on psychological trauma to the victim.

Obstruction or Impeding the Administration of Justice, U.S.S.G. §3C1.1 - Sentencing

The United States respectfully requests that this Court grant a two (2) point upward enhancement based on the Section 3C1.1 of the Sentencing Guidelines. Section 3C1.1 states

If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense, increase the offense level by 2 levels.

U.S.S.G. § 3C1.1. Application note 4(F) states that enhancement applies when the defendant has provided “ materially false information to a judge or magistrate judge.” *Id.*

At the time of his guilty plea, the defendant specifically denied the relevant conduct to Count 2 that while he was in Brazil, he smuggled aliens, including individuals he believed were potentially violent terrorists. Furthermore, the defendant specifically denied the relevant conduct related to Count 3 in that he raped and impregnated L.O.A. For the reasons stated above, both of these falsehoods to the Court were willful attempts to obstruct and impede the administration of justice with respect to the sentencing of the instant offenses of conviction and were directly related to the defendant’s offenses of conviction and the relevant conduct thereto.

Defendant Not Entitled to Acceptance of Responsibility

Based on the defendant’s obstructive behavior at his guilty plea where he falsely denied his relevant conduct specifically related to his offenses of conviction, the United States submits that the defendant has not clearly demonstrated his acceptance of responsibility as is required by

U.S.S.G. §3E1.1.⁸ To the contrary, the defendant willfully attempted to obstruct and impede the administration of justice with respect to his sentencing in regard to his materially false denial of his previous smuggling activities as it relates to his false claim of asylum in Count 2 and his materially false denial of the rape and impregnation of the child he falsely claimed was wife as it relates to Count 3. Application note 1(A) states in part:

A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. However, a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility.

Id. In addition to the government's request that the defendant should be denied the two points acceptance of responsibility downward adjustment by the Court, the government will not move for nor agree to the third point of acceptance of responsibility pursuant to §3E1.1(b).

Government's Proposed Guideline Sentence

If the Court grants the enhancements and adjustments as requested by the United States, the guideline calculation would be as follows:

-
- ⁸ (a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.
- I. (b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level.

U.S.S.G. §3E1.1

Offense Level

U.S.S.G. §2L2.1(a), False Statement in Respect to Immigration Matter	11(not added)
U.S.S.G. §3A1.4, Terrorism Enhancement	32
U.S.S.G. §3A1.1(a), (b)(1), Vulnerable Victim	5
U.S.S.G. §3B1.4, Using Minor to Commit a Crime	2
U.S.S.G. §3C1.1, Obstructing or Impeding Administration of Justice	<u>+ 2</u>
Total Offense Level	41

Criminal History Category pursuant to U.S.S.G. §3A1.4, Terrorism Enhancement VI

Advisory Sentencing Guideline range 360 months to life

Findings and Sentencing Pursuant to 18 U.S.C. § 3553

Regardless of the Court's determination of the appropriateness of a particular enhancements, adjustments, and/or upward departures under the advisory sentencing guidelines or if the Court determines that a sentence outside the advisory sentencing guidelines is more appropriate, the United States respectfully requests that the Court also state on the record its findings pursuant to Title 18, United States Code, Section 3553 and further state why the Court believes its sentence is the proper one under Section 3553 any circumstances. The United States suggests that when the Court reviews all of the information at sentencing as detailed *supra* regarding (1) the long-term assistance the defendant provided two terrorist organizations both directly in Somalia and in his smuggling operation in Brazil, including the concealment of these activities, to further the goals of these terrorist organizations; (2) his extended period of smuggling aliens into the United States from Brazil aside from potential terrorists; (3) the rape and victimization of a child smuggling client, all to further his false asylum claims; (4) the

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December 2010, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the following CM/ECF participant:

Alfredo R. Villarreal, Esquire
Alfredo_Villarreal@fd.org

Keli Luther, Esquire
kluther@voiceforvictims.org

Dolores Rodriguez, USPO
Dolores_Rodriguez@txwp.uscourts.gov

/s/

MARK T. ROOMBERG
Assistant United States Attorney