

SEALED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

05/13/03 09:25

FILED
4-14-06

UNITED STATES OF AMERICA

v.

CASE NO. 8:03-CR-77-T-30TBM

SAMI AMIN AL-ARIAN

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Paul I. Perez, United States Attorney for the Middle District of Florida, and the defendant, Sami Amin Al-Arian, and the attorneys for the defendant, William B. Moffitt and Linda G. Moreno, mutually agree as follows:

A. **Particularized Terms**

1. **Counts Pleading To**

The defendant shall enter a plea of guilty to Count Four of the Superseding Indictment. Count Four charges the defendant with Conspiracy to make or receive contributions of funds, goods or services to or for the benefit of the Palestinian Islamic Jihad, a Specially Designated Terrorist, in violation of 18 U.S.C. § 371.

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AF Approval [Signature]

[Handwritten initials and marks]

2. Maximum Penalties

Count Four carries a maximum sentence of five years imprisonment, a fine of \$250,000, and a term of supervised release of not more than three years. Each count carries a special assessment of \$50 per felony count for offenses committed prior to April 24, 1996, \$100 per felony count thereafter; for organizations the amounts are "\$200" and "\$400" respectively, said special assessment to be due on the date of sentencing.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Four are:

- First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan;
- Second: That the object of the plan was to make or receive a contribution of funds, goods, or services, to, or for the benefit of, a Specially Designated Terrorist;
- Third: That the defendant, knowing the unlawful purpose of the plan, willfully joined in it;
- Fourth: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the "overt acts" described in the Superseding Indictment; and
- Fifth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

4. Utilization of the Sentencing Guidelines

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the Court determine the defendant's applicable guidelines range and defendant's guidelines sentence, with any applicable departures, pursuant to the United States Sentencing Guidelines.

5. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One, Three, Seven, Nine, Thirty-Eight through Forty and Forty-Four will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

6. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida and the Counterterrorism Section of the United States Department of Justice agree not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office or the Counterterrorism Section at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

7. Sentencing Guideline Range

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties agree that the appropriate disposition of this case is a sentence within the guideline range of 46-57 months. The parties agree that the adjusted guideline level for the offense to which the defendant is pleading guilty is Level 26, to be reduced by 3 levels for acceptance of responsibility to a Level 23, and a criminal history of Category One. The Court may accept or reject this agreement, or defer a decision until it has had an opportunity to

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consider the presentence report prepared by the United States Probation Office. If the Court rejects this agreement, it must give the defendant an opportunity to withdraw the plea of guilty and advise the defendant personally that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

8. Deportation by the United States Immigration and Customs Enforcement - Stipulation and Cooperation

The defendant agrees to stipulate to deportation pursuant to section 238(c)(5) of the Immigration and Nationality Act (codified at 8 U.S.C. § 1228(c)(5)), and to cooperate with and provide to the United States Immigration and Customs Enforcement (ICE) prior to his transfer to ICE custody, any documentation necessary for the defendant's deportation to a country outside and not contiguous to the United States, including a travel document, validly issued by a country to the defendant. The defendant further agrees to arrange that said travel document will remain valid until the defendant has been successfully removed to the country that issued the travel document. The defendant agrees that the Court may make these provisions a condition of any sentence of probation or supervised release. Representatives of the Department of Justice agree to recommend to the Bureau of Immigration and Customs Enforcement that it expedite its efforts to execute the judicial order of deportation to be entered by the Court.

9. Recommendation as to Fine

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), at the time of sentencing, the United States agrees to make no recommendation as to the imposition or amount of a

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fine. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

10. Recommendation as to Facility

The parties understand that: a) the defendant is free to ask the Court to recommend that the Bureau of Prisons designate a particular facility or type of facility in which the defendant should be detained for the remainder of his sentence in this matter; and b) the government defers to the Bureau of Prison to designate the facility and type of facility in which the defendant should be detained for the remainder of his sentence in this matter.

11. Low End

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), at the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

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B. Standard Terms and Conditions

1. Monetary Penalties

The defendant understands that the Court will inform and determine that the defendant understands the maximum monetary penalties pursuant to Fed. R. Crim. P. 11(b)(1)(H - L). On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offenses to which the defendant is pleading provide for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the counts to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

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Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office and the United States Probation Office, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to

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appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Department of Justice Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and the Counterterrorism Section of the Department of Justice and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

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8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also

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understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

a. During the period of the late 1980s, and early to mid-1990s, defendant Al-Arian was associated with several organizations, including the Palestinian Islamic Jihad. Defendant Al-Arian knew that co-defendants Ramadan Abdullah Shallah (Shallah), Bashir Musa Mohammed Nafi (Nafi) and Mazen Al-Najjar (Al-Najjar) were also associated with the Palestinian Islamic Jihad.

b. On or about January 23, 1995, President William Clinton issued Executive Order 12947, which declared a national emergency regarding the grave acts of violence committed by foreign terrorists that disrupted the Middle East Peace Process. Executive Order 12947 prohibited certain transactions, including the making or receiving or any contribution of funds, goods, or services, to or for the benefit of organizations and individuals who were declared "Specially Designated Terrorists." Executive Order 12947 also made unlawful any transaction that evaded or avoided, or had the purpose of evading or avoiding, or attempted to violate, any of the prohibitions

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set forth in the Order. By January 24, 1995, the United States had designated the Palestinian Islamic Jihad, Sheik Abd Al Aziz Awda and Fathi Shiqaqi as Specially Designated Terrorists. Later that year, in November, 1995, the United States designated Ramadan Shallah as a Specially Designated Terrorist.

c. Defendant Al-Arian performed services for the PIJ in 1995 and thereafter.

d. Such services included filing for Immigration benefits for individuals associated with the PIJ, hiding the identities of individuals associated with the PIJ, and providing assistance for an individual associated with the PIJ in an United States Court proceeding. The services are described with more particularity in the following paragraphs.

e. On or about February 6, 1995, defendant Al-Arian had a telephone conversation with a co-conspirator and discussed the recent Presidential Executive Order against terrorists.

f. Defendant Al-Arian was aware that the PIJ achieved its objectives by, among other means, acts of violence.

g. On or about August 25, 1995, defendant Al-Arian filed a visa renewal petition with the INS on behalf of co-defendant Nafi.

h. On or about September 1, 1995, co-defendant Al-Najjar wrote a \$5,000 check drawn on the Muslim Women Society (MWS) account, payable to World and Islam Studies Enterprise (WISE) which was deposited into the WISE account.

i. On or about October 25, 1995, co-defendant Al-Najjar executed an Affidavit filed with the INS in support of Nafi's alien employment petition. In the Affidavit,

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Al-Najjar stated that he and defendant Al-Arian had sufficient financial means to fund Nafi's salary. Al-Najjar further stated that in 1993, he contributed \$36,000 to WISE and that in January and February 1994, he had in excess of \$50,000 available to support the operations of WISE.

j. On or about October 30, 1995, in the early morning hours, defendant Al-Arian received a telephone call from a co-conspirator in which the co-conspirator asked whether defendant Al-Arian had heard that Fathi Shiqaqi had been killed. Defendant Al-Arian indicated that he had heard and then refused to talk. Later that day, he had a telephone conversation with Al-Najjar. Defendant Al-Arian indicated he wanted to meet with Al-Najjar.

k. On or about October 30, 1995, co-defendant Nafi made a telephone call to defendant Al-Arian. Nafi whispered during this conversation and defendant Al-Arian said the matter had been complicated and inquires had begun.

l. On or about October 30, 1995, defendant Al-Arian had a telephone conversation with a journalist with The St. Petersburg Times. When the journalist asked about Shallah being named the Secretary General of the PIJ, defendant Al-Arian falsely stated that Shallah's name must have been mixed up with someone else and falsely stated he only knew Ramadan Abdullah Shallah as Ramadan Abdullah. Later, defendant Al-Arian had another telephone conversation with a journalist with The St. Petersburg Times. During this conversation, defendant Al-Arian expressed shock and surprise and falsely stated there was nothing Shallah had done while at WISE to indicate any political affiliation. Defendant Al-Arian falsely stated that Shallah was not

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involved in any political activities while at WISE and that Shallah had been engaged in only scholarly work.

m. On or about October 31, 1995, defendant Al-Arian and co-defendant Al-Najjar caused a facsimile to be sent from WISE which explained its mission and its experience with Shallah and falsely denied any knowledge of Shallah's association or affiliation with any political group in the Middle East.

n. On or about August 7, 2000, defendant Al-Arian, who was in the Middle District of Florida, had a telephone conversation with co-defendant Nafi, who was in England, about utilizing a contact of Nafi's in Egypt to obtain travel documents for Al-Najjar. They then spoke about Nafi's problems with his immigration status in the United States. Then they had a coded conversation about the account to which Nafi had sent money to assist in the defense of co-defendant Al-Najjar's ongoing INS proceeding.

o. On or about August 8, 2000, defendant Al-Arian, who was in the Middle District of Florida, called a co-conspirator, who was outside the State of Florida. When defendant Al-Arian asked co-conspirator if any thing was deposited in his account or his wife's account, the co-conspirator replied there were "ten shirts" (referring to a sum of money). Defendant Al-Arian then directed the co-conspirator to send nine of them to the account of another co-conspirator.

p. Later in the day on August 8, 2000, defendant Al-Arian, who was in the Middle District of Florida, had a telephone conversation with co-defendant Nafi, who was outside the State of Florida, and told Nafi that the issue of "the magazines" (referring to a sum of money) was resolved, but the travel document had not been

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received from Egypt. They then discussed utilizing the press to support Al-Najjar in his INS hearing by setting up an interview with Abd Al Aziz Awda (Awda) to show that he had the permission of the Israelis to reside in the Gaza Strip. Defendant Al-Arian then asked Nafi for Awda's telephone number. Nafi told him to call back the next day to get the number. Additionally, they discussed Nafi's response to allegations in the press that he was a member of the PIJ.

q. On or about August 8, 2000, defendant Al-Arian directed co-defendant Hatem Naji Fariz (Fariz) to arrange a newspaper interview with Awda.

r. On or about August 9, 2000, defendant Al-Arian and co-defendant Fariz had a telephone conversation about causing one or more newspaper articles to be written on Awda. They desired to utilize these articles in the INS hearing regarding Al-Najjar and wanted them to portray Awda as a religious figure with no relation to the PIJ.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

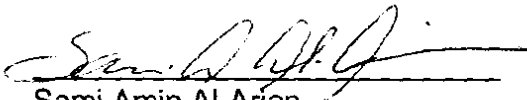
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11. Certification

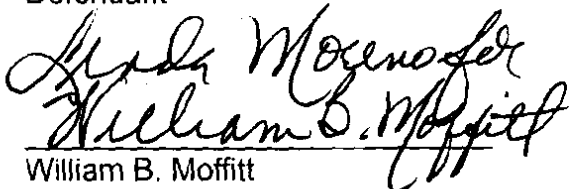
The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.


DATED this 28th day of February, 2006.

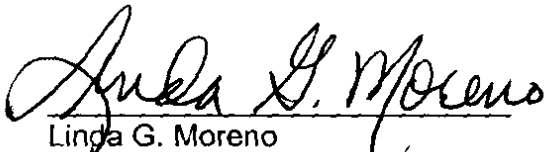
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