

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v. - :

S3 07 Cr. 115 (AKH)

ABDUL TAWALA IBN ALISHTARI, :

Defendant. :

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SENTENCING MEMORANDUM OF THE UNITED STATES OF AMERICA

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The Government respectfully submits this memorandum in advance of the sentencing of defendant Abdul Tawala Ibn Alishtari (“Alishtari”), which is scheduled for April 15, 2010, at 12:00 p.m.¹

I. PRELIMINARY STATEMENT

Alishtari awaits sentencing for his commission of two exceedingly serious criminal offenses: attempting to finance terrorism and orchestrating a multi-million dollar investment fraud. From June 2006 to December 2006, Alishtari discreetly moved \$152,000 on behalf of an individual claiming to be a wealthy Pakistani who was seeking to support terrorist training camps. Alishtari moved these funds with the understanding that the money was intended to be used to purchase such items as night vision goggles, medical supplies, and other equipment for use at terrorist training camps. Eager to help this terrorist financier achieve his goals, Alishtari introduced him to a personal contact (“Imam-1”), who, according to Alishtari, belonged to the

¹ In this memorandum, “Plea Agreement” refers to the plea agreement entered into by the parties and dated September 23, 2009; “9/29/09 Tr.” refers to the transcript of Alishtari’s guilty plea proceeding before Your Honor on September 29, 2009; “PSR” refers to the Presentence Investigative Report; and “Def. Sent. Mem.” refers to Defendant Abdul Tawala Ibn Ali Alishtari’s Sentencing Memorandum, which was filed on April 7, 2010.

Muslim Brotherhood and was a “fire breathing” imam. Alishtari also urged the financier to invest several millions of dollars in an electronic debit card system that Alishtari was developing. This debit card system, according to Alishtari, would enable the financier and his family to move large sums of money beneath law enforcement radar.

Attempting to finance terrorism is an extremely serious offense. Terrorist training camps are essential for organizations like al Qaeda to operate and achieve their terrorist objectives. Training camps provide a mechanism for terrorist organizations to indoctrinate their members and train operatives to execute acts of violence. Fortunately, the individual providing the funds to Alishtari was not a terrorist financier, but an undercover law enforcement officer, and Alishtari’s dealing with this individual occurred under a law enforcement ruse. But the fact that the money never ultimately funded terrorist training camps in no way diminishes the seriousness of Alishtari’s conduct, the need to deter such conduct, and the appropriateness of a lengthy term of incarceration.

The defense’s sentencing submission goes to great length to minimize Alishtari’s conduct and to distance him from his attempted financing of terrorism. In doing so, the defense utterly ignores numerous conversations between the undercover officer and Alishtari, discussed in detail in this memorandum, in which Alishtari fully appreciated that the funds would be going to support terrorist causes and even discussed another financial system that would enable the undercover’s family to move even larger sums of money. Alishtari had plenty of time to consider whether he wanted to finance terrorism. He easily could have withdrawn, but chose otherwise.

Second, Alishtari orchestrated a massive investment fraud, which victimized over 50

individuals and resulted in a total loss of upwards of \$18 million to these victims.² Alishtari originally pitched something called the Flat Electronic Data Interchange (“FEDI”), explaining FEDI to investors as a novel and highly lucrative trading exchange that would operate out of the United Arab Emirates. After FEDI, Alishtari conned investors into sending money toward a gold-backed debit card business and then a business involving cyber cafes and computer encryption. These were simply ways for Alishtari to defraud investors out of millions of dollars. While promising investors exorbitant returns on their investments, Alishtari diverted the money invested to pay for his own lavish lifestyle that included a fleet of cars and membership in exclusive private clubs; the financing of an unrelated business operated by his brother; and the funding of a film festival. The investors received little, if any, of the money they invested, let alone the massive returns they were promised.

II. BACKGROUND

A. Procedural Background

On or about February 14, 2007, Alishtari was charged in a sealed indictment in five counts: (1) financing terrorism in violation of Title 18, United States Code, Sections 2339C and 2; (2) providing material support for terrorism, in violation of Title 18, United States Code, Sections 2339A and 2; (3) money laundering, in violation of Title 18, United States Code, Sections 1956(a)(2)(A) and 2; (4) conspiring to commit wire fraud, in violation of Title 18,

² Based on information provided by the law enforcement agents assigned to this prosecution, the Probation Department estimated the fraud amount to be approximately \$15 million. (PSR ¶ 47, p. 29). As the Government has prepared its data for restitution, the Government has determined that the actual fraud amount appears to be closer to \$18 million. In the plea agreement, the parties agreed that the loss amount was greater than \$7 million, but not more than \$20 million. (Plea Agreement p. 3).

United States Code, Section 1349; and (5) wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2. Alishtari was arrested on or about February 16, 2007, at which time the indictment was unsealed.

On March 26, 2007, a superseding indictment was filed, naming Brian Anderson as a co-defendant and charging him with two wire fraud conspiracy counts and two substantive wire fraud counts. On February 6, 2008, a second superseding indictment was filed, adding additional wire fraud conspiracy and substantive wire fraud counts, as well as a money laundering conspiracy count, against Anderson.

Anderson pled guilty on August 28, 2008, to conspiring to commit wire fraud in connection with a \$4 million investment fraud and Ponzi scheme. Operating a program called "Frontier Assets," Anderson made a series of false representations to investors, including the promise of high rates of return, in order to induce them to provide millions of dollars in investment money. Contrary to his representations, Anderson never made any significant investments with the money he solicited and instead used the money to pay off prior investors. At least 50 investors were defrauded of a total of at least \$4 million in funds. On January 15, 2010, this Court sentenced Anderson to a term of imprisonment of 90 months' imprisonment. This Court has scheduled a conference for April 15, 2010, to make a final determination as to restitution owed by Anderson.

As discussed more fully below, Alishtari pled guilty before Your Honor to a superseding information on September 29, 2007.

B. Offense Conduct

1. Attempted Terrorism Financing

a. Overview Of Alishtari's Attempted Financing Of Terrorism

In the summer of 2006, after assessing information that seemed to link Alishtari to terrorist suspects and suspicious activity, the Federal Bureau of Investigation's ("FBI's") Joint Terrorism Task Force ("JTTF") commenced a proactive counterterrorism investigation of Alishtari. The information leading the JTTF to commence this investigation included:

- In or about November 2002, the FBI received a report over the Internet advising that Rising Star, a company run by Alishtari's brother to which Alishtari had sent money, was creating a virtual banking system. The source further reported that the purpose of this system was to transfer money to people that have difficulty securing bank accounts in the United States, specifically terrorist cells.
- The FBI discovered a series of contacts between Alishtari and numerous individuals who have been linked to extremist activity. For instance, Alishtari had on a number of occasions sent money to Imam-1. As discussed below, Alishtari introduced an undercover officer to Imam-1, explaining that Imam-1 is a member of the Muslim Brotherhood, is a "fire-breathing imam," supports "defeating the Jews," and recruits people to "work" in Bosnia and Chechnya.

The proactive investigation entailed the introduction of an undercover law enforcement officer ("UC-1") to Alishtari. UC-1's story was that he was a wealthy Pakistani financier who supported terrorist activity abroad. UC-1 explained that he wished to discreetly send "donations" from the United States to UC-1's uncle, who purportedly was an imam in Afghanistan who financed terrorist training camps. Fully understanding that the money would be used to purchase gear and equipment for these terrorist camps, Alishtari readily agreed to help UC-1 finance terrorism.

Working at UC-1's direction, Alishtari moved approximately \$152,500 in smaller

installments to designated bank accounts in Canada and New York. Specifically, Alishtari made the following wire transfers for UC-1: (1) \$25,000 to a Canadian bank account, on August 17, 2006; (2) \$25,000 to a New York bank account, on September 8, 2006; (3) \$12,500 to a New York bank account, on September 12, 2006; (4) \$45,000 to a New York bank account, on September 22, 2006; (5) \$25,000 to a New York bank account, on November 1, 2006; and (6) \$20,000 to a New York bank account, on November 10, 2006. In exchange for moving these funds, Alishtari was paid \$15,000 by UC-1.

The transfers typically would proceed as follows: UC-1 would wire an installment of money to a JP Morgan Chase bank account set up by Alishtari in the name of a shell company, ID Pixie; UC-1 then would alert Alishtari that the wire transfer had occurred; and Alishtari next would wire the funds to yet another bank account that UC-1 had specified. The purpose of Alishtari moving the funds in this manner was to create an added layer of security between UC-1 and the money, therefore making it more difficult to trace the money trail back to UC-1. In order to have an explanation ready in the event these wire transfers ever aroused suspicion, Alishtari advised UC-1 to provide him with fake invoices to create the appearance that Alishtari was merely paying debts that he owed. Therefore, for each wire transfer, UC-1 sent Alishtari a fake invoice from a fictitious company indicating that Alishtari owed a brokerage fee payment.

In addition to moving the \$152,000 for UC-1, Alishtari aggressively pitched an electronic debit card system that he was developing, urging UC-1 and his family to invest millions of dollars in that system. Alishtari advised UC-1 that his debit card system would further UC-1's interests (*i.e.*, discreetly funding terrorist activity) by allowing UC-1 and his family to move large sums of money without the risk of law enforcement detection.

b. Details Of Alishтари's Interactions With The Undercover Officers

From June 2006 and December 2006, Alishтари and UC-1 had a number of recorded meetings and telephone calls. Throughout these recorded conversations, it was made abundantly clear to Alishтари that he was moving funds to support terrorist activity; Alishтари never wavered or hesitated to move the money for UC-1, and Alishтари offered to continue to help UC-1 discreetly move money through an electronic debit card system that Alishтари claimed to be developing.

June 6, 2006. Alishтари was first introduced to UC-1 on June 6, 2006, on a yacht off of Battery Park City in downtown Manhattan.³ Alishтари attended this introductory meeting with one of his associates, and discussed his business and introducing UC-1 to another one of his associates.

June 16, 2006. About ten days later, Alishтари and UC-1 met at a restaurant in Manhattan. During this meeting, UC-1 explained that he needed to move millions of dollars to Pakistan. Alishтари recommended that UC-1 set up foundations to distribute and hide the money.

June 30, 2006. On this date, Alishтари and UC-1 had an approximately five-hour meeting in a New York City hotel room. During this meeting, UC-1 made abundantly clear to Alishтари that the money Alishтари would be discreetly moving was intended to finance terrorist activity.

UC-1 explained that his "job" is to "basically move money" that he receives from "donors." UC-1 further explained that this money is used to provide "medical supplies,"

³ In the two weeks preceding the June 6, 2006 meeting, Alishтари and another individual had at least two conversations discussing UC-1 and, in general terms, how Alishтари might be able to assist UC-1 and his family.

“equipment,” and “night vision goggles” for “good Muslims” who are “there fighting for a good cause.” Alishtari responded that “Muslims don’t fight; we defend,” and commented that “we have a right to defend ourselves.” Alishtari then explained that his “job is to make what you [UC-1] do legal and bulletproof.”

Later in the meeting, Alishtari counseled that if UC-1 wishes to “weaponize,” which Alishtari defined as “buying goggles or . . . gas stuff,” UC-1 has to be “three steps away from” the money. UC-1 explained Alishtari’s “job” as making “this [money] non-traceable.” Alishtari agreed, confirming that “his job is . . . to make sure that the only, only legal people use the system. Only people who are not involved and, and, and this is the thing that you wanna know.” UC-1 further stated, “I wanted you to know . . . who I am, what I am, what I stand for. That’s very important. Business comes second.” Alishtari responded, “You’re probably the only person in the United States and maybe the world I would have these conversations with.”

During the June 30, 2006 meeting, Alishtari began pitching his debit card system to UC-1 as a way for UC-1 to discreetly move money. UC-1 asked whether, by using Alishtari’s debit card system, money that was being “laundered all over Afghanistan and Pakistan” could be tracked. Alishtari assured UC-1, “There’s no way they can track it,” emphasizing that he would establish “a private network” that is “totally invisible.” Conceding that questions might be raised “somewhere down the road, . . . if there was ever to be an investigation,” referring specifically to a “federal investigation,” Alishtari counseled that the “secret is to give them all the truth, but none, but nothing that’s relevant to your personal business.” Alishtari gave the example, “let’s say . . . for some reason in two years something blows up” and the federal government says, “this is the guy.” Alishtari assured UC-1 that, in such a scenario, his system would be protected so

that authorities would be unable to seize any of UC-1's assets. UC-1 responded that he "likes this idea," but still feared that the authorities would be able to "track it [the money] to a certain mosque, village, uh, either a training camp or something." Alishtari replied, "People are the weakness to any system," and acknowledged that "90% of people that I know wouldn't even want me to have this conversation with you, because it is risqué." Alishtari added, "My wife won't know this; my children won't know this."

July 21, 2006. UC-1 and Alishtari had another recorded meeting in a New York hotel room on July 21, 2006. During this meeting, Alishtari mentioned his relationship with Imam-1, the former imam of the Islamic Center of Boca Raton, whom Alishtari described as "an imam and a scholar." Alishtari explained that Imam-1 spent five years in prison in Egypt, "I believe for associating with the Muslim Brotherhood." Alishtari further stated, "And I believe he's [Imam-1] Muslim Brotherhood. I've seen people whom I knew were in it [the Muslim Brotherhood]. . . . He's never admitted it to me. And I've never asked him. . . . But I'd have to be an idiot not to know." Alishtari stated that Imam-1 sends "a lot of money to Arab causes — primarily taking care of families of Muslim martyrs and stuff like that."

During their conversation, UC-1 again reiterated that his purpose was "for one thing," which was "to take care of business back home. To take care, to send money back home." Alishtari responded, "I know what you're here for. . . . To take care of your father's business. Period. You don't have to say anything more than that." In a transparent effort to avoid UC-1 making explicit references to terrorism, Alishtari emphasized, "you don't have to go any further than that. I got it." UC-1 then said, "I need money to be moved now," and that he needs to "find another person that can move this." Alishtari suggested that the first installment of money that

UC-1 would bring to him should be half a million dollars. When UC-1 asked whether this would attract attention, Alishtari assured him that it would not. UC-1 stated that he would wire about \$25,000 to Alishtari within the next couple of weeks and requested Alishtari to move this money to an account in London. Alishtari agreed to UC-1's proposal and offered to open a new bank account under the corporate name "ID Pixie." Alishtari also requested \$2,500 in cash to set up the account, which UC-1 paid him at the conclusion of the July 21, 2006 meeting.

July 26, 2006. Less than a week later, Alishtari and UC-1 had a brief meeting at another New York City hotel room. During this meeting, Alishtari explained that he set up an account under the name ID Pixie,⁴ which would be the account that UC-1 would send the funds. Alishtari also gave UC-1 advice about how UC-1 should send the money and in what quantities, so as not to set off "bells and whistles."

August 16, 2006. UC-1 and Alishtari again met in a New York hotel room where they had a lengthy recorded conversation. While discussing the logistics of wire transferring money, UC-1 told Alishtari that, once the money was deposited by Alishtari in the designated account, it would be hand carried to UC-1's uncle, who UC-1 had explained was an imam funding terrorist training camps in Afghanistan. UC-1 also stated that, because of the recent events in London,⁵ he no longer wanted to send money to London accounts. As soon as UC-1 began describing his

⁴ During a telephone conversation the previous day, Alishtari again told UC-1 that he would set up an ID Pixie bank account for their transactions.

⁵ One week earlier, on August 9, 2006, law enforcement officials in London launched a series of raids, arresting nearly two dozen people in connection with a plot to attack seven airliners by using explosives disguised as sports drinks and other seemingly innocuous liquids. Eight men were later formally charged and put to trial by the United Kingdom's Crown Prosecution Service for their involvement in the failed plot. In September 2008, a British jury found three of these defendants guilty.

uncle and commented “that’s why they’re terrorist training camps,” Alishtari immediately interjected, “Yeah, well it’s best not to say that.” UC-1 stated, “as long as we’re on the same page,” and underscored “how serious this is.” Alishtari responded, “what we do is we keep everything separate.” Alishtari recommended that they would need to create “a paper trail” when moving the money to have an explanation when “someone knocks at my door and says you sent this money to this guy. Why did you send him the money?” That explanation would be that Alishtari was paying a debt he owed and the “paper trail” would be fake invoices for that debt.

At one point in this conversation, Alishtari proposed introducing UC-1 to Imam-1. Alishtari again reinforced Imam-1’s affiliation with the Muslim Brotherhood, stating that if Imam-1 is not “in the Muslim Brotherhood, nobody’s in it.” Alishtari described Imam-1 as a “fire-breathing” imam, in whose view “the axis of the Islamic world is about Jerusalem and defeating the Jews.” Alishtari additionally mentioned that Imam-1 is a “recruiter” who places people to “work” in Bosnia and Chechnya.

The following day, August 17, 2006, Alishtari wired \$25,000 received from UC-1 to a Canadian bank account that UC-1 had designated.

August 22, 2006. On August 22, 2006, UC-1 had a ten-minute recorded telephone conversation with Alishtari. Referring to the money that Alishtari had wired five days earlier, UC-1 stated that he was “waiting for the word from there to see if everything made it over there just fine,” referring to the money’s intended delivery to UC-1’s uncle in Afghanistan. Alishtari immediately interjected, “you don’t have to say more.”

Toward the conclusion of their conversation, UC-1 warned Alishtari not to “leave too much on the voicemail.” Alishtari responded, “everything I say anywhere, you can put on the

front page of the *New York Times*. . . . I don't say anything that I don't expect to see somewhere else at sometime later, you know, 'cause I know we're in a world today where nobody trusts anyone." At the same time, however, Alishtari also voiced concern that he and UC-1 might be caught, stating, "I'm just glad to hear you're okay. I would like you to give me a call every other day, not even to talk about business, just say 'I'm okay.'" Alishtari explained, "what that does for me, is it takes a lot of pressure off of me. . . . 'Cause I got a wife." Alishtari continued, "I worry about you because you're vulnerable. . . . Anything could happen to you."

August 31, 2006. Alishtari and UC-1 again met in a hotel room in downtown New York about ten days later. At the outset of the meeting, Alishtari and UC-1 looked out of the hotel window at the Statue of Liberty. Alishtari remarked, "they shouldn't have blown up the World Trade Center. . . . What they should've done is blown up the Statue of Liberty (laughter). . . . Americans believe in vengeance — they're all basically descended from pioneers and cowboys."

Alishtari then inquired, "where we are?" UC-1 replied that he had "some issues with people going over there. Some pilots and they're the ones delivering the money." This statement was a reference to the individuals who supposedly were delivering by hand the money that Alishtari previously had helped UC-1 move. Once again, Alishtari quickly interjected, "those are separate issues," and stated that he urgently needed four to five million dollars to secure the patent on his debit card system. UC-1 responded, "But this money needs to make it to those people first, okay? It needs to get [to my] uncle. Once that's there, I need to get more money than I have into the same account. . . . See, it's only three, two or three, flights that's going there, you know, from there, one, to Islamabad. Islamabad is" Before UC-1 could complete his sentence, Alishtari interrupted, "Wait a second. Remember what I say — the right hand and the

left hand.” This was another thinly-veiled attempt by Alishtari to avoid UC-1 explicitly stating the destination of the funds that Alishtari was moving (even though prior conversations made it abundantly clear to Alishtari that the money would be financing terrorism).

UC-1 stated that, because investing in Alishtari’s debit card system would divert his family’s money from other projects, his Pakistani cousin would need to examine Alishtari’s system before deciding to invest \$5 million. After Alishtari expressed concern that a visit from UC-1’s cousin would attract a lot of attention, UC-1 assured that his cousin “knows how to disappear.” When Alishtari stated that he needed “some money now . . . to get the business started,” UC-1 provided him with \$5,000 in cash and stated that he expected to have additional money coming in. UC-1 predicted that he would be receiving about \$50,000 during Ramadan that he would need Alishtari to move. UC-1 explained that Alishtari must demonstrate his capability to send money before UC-1’s relatives would agree to invest in Alishtari’s system: “we need to keep sending money.”

The topic of the conversation drifted to personal matters and family. UC-1 stated that he and his cousin are “the boys and then men who has [sic] roles to play. We have to take care of our bigger families before we can take care of our wives. Are you reading me through the lines?” Alishtari responded, “I understand.”

September 8, 2006. Just over a week later, Alishtari wired to a New York account another \$25,000 that UC-1 had sent to him. In a phone conversation earlier that day leading up to this wire transfer, UC-1 stated that he was uncomfortable sending money to Canada, and that sending money to an account within the United States would “make [him] feel more comfortable.” UC-1 added that the money “is still going to the same place.” As usual, Alishtari

interjected, “Whatever. Wait a second. There’s lots that you don’t have to say.” Alishtari assured UC-1, “We’re of like mind. . . . [W]e agree about many things, including the right hand not knowing what the left hand is doing.”

Three days later, on September 12, 2006, Alishtari wired \$12,500, which UC-1 had previously transferred to him, to a New York account that UC-1 had designated.

September 11, 2006. The day before Alishtari wired \$12,500 for UC-1, he had a recorded telephone conversation with UC-1, during which they discussed setting up a meeting with Imam-1. UC-1 asked Alishtari whether Imam-1 can be trusted. Reflecting an awareness of possible telephone surveillance, Alishtari responded that, when he sees UC-1 in person, he will provide a “security assessment,” which he cannot give over the telephone. UC-1 said that “those are the types of things I need you to look out for.” Alishtari also stated that “there’s things that you may discover about him [Imam-1] and there are things I want to tell you about him in person. . . . [Y]ou can weigh the risk in whatever, but uh, he’s definitely a conduit.” UC-1 asked Alishtari “how [do] you think we should use our friend’s [Imam-1’s] services . . . to accomplish our goals?” Alishtari responded, “My goal is right-sided. To build the kalifahs and the financial structures so that we can be secure. . . . That’s my side of the thing. His side of the thing is . . . a little bit more activist and political.” Alishtari then pondered outloud, “Do I trust him? Yes. Is he real and legitimate? Yes.” At the end of the call, Alishtari discussed wiring more money, stating, “if you can send some more [money] . . . the collection is always open.”

September 20, 2006. Alishtari arranged for UC-1 to meet Imam-1 in New York on September 20, 2006. Although there was no conversation relating to terrorism, Imam-1 and UC-1 discussed plans to meet again soon.

On September 22, 2006, two days after the meeting with Imam-1, Alishtari wired \$45,000 that UC-1 had previously sent to him to an account in New York.

October 12, 2006. After a number of discussions about UC-1's cousin's visit to New York from Pakistan to meet with Alishtari, that meeting occurred on October 12, 2006. Alishtari, two of his associates, UC-1, and another undercover law enforcement officer ("UC-2"), who posed as UC-1's cousin, met in a New York hotel room. The primary purpose of this meeting was for Alishtari and his business associates to explain their debit card system to UC-2, who needed to evaluate the system to determine whether it was a worthwhile investment for his family.

For approximately the first 45 minutes of this meeting, Alishtari discussed his debit card system, explaining how that system would avoid any "tracking" or "tracing" of transactions. Alishtari also distributed a power-point presentation and other literature further explaining the system. UC-2 then asked for him and his cousin (UC-1) to speak privately with Alishtari. Outside the presence of Alishtari's associates, UC-2 stated, "My cousin talked to you one-on-one before, and you know this is for a Muslim brother cause, overseas." Alishtari confirmed, "He told me." UC-2 then inquired, "how will this [referring to Alishtari's debit card system] better help our brothers there rather than us buying equipment like night vision goggles, the like?" Alishtari responded that the "main thing" is "security" and "secure money." Alishtari stated that he intended to build "a financial system that cannot be stopped by the West . . . it's part of us being able to win." Alishtari added, "[T]hey even got the SWIFT group⁶ telling them everything

⁶ The Society for Worldwide Interbank Financial Telecommunications ("SWIFT") is a corporate cooperative based in Belgium, which is responsible for running a worldwide digital network. SWIFT exchanges and shares records concerning financial transactions with

that's happening. . . . This [referring to Alishtari's debit card system] actually takes the records off the records."⁷ Alishtari emphasized that, because his system would not be a bank, it would avoid regulation.

At the conclusion of this meeting, UC-2 asked whether Alishtari understood their cause. Alishtari replied, "I'm sitting at the table . . . I'm for the Muslims. . . . I'm for all Muslims, even the ones who are a little shaky. Okay? I want all Muslims to be protected . . . I'm supporting the fighters. I'm supporting the nurses. I'm supporting everybody. If you think I'm just supporting you, you're wrong. I'm supporting everybody."

About three weeks later, on November 2, 2006, Alishtari wired another \$25,000 that UC-1 had previously sent to him to a designated bank account in New York. About a week after that, on November 10, 2006, Alishtari wired \$20,000 to a designated account in New York, bringing the total amount that Alishtari transferred for UC-1 to \$152,500.

December 1, 2006. On December 1, 2006, UC-1 and Alishtari met for the last time, again in a New York hotel room. During this meeting, UC-1 asked Alishtari if "the thought ever crossed your mind about giving me up?", to which Alishtari responded, "there's nothing to give up. When I'm finished with you, you'll be bulletproof." Alishtari again emphasized his mantra that the left hand should not know what the right hand is doing. Also during this meeting, UC-1

participating banks and other financial institutions. Records maintained by SWIFT can be particularly useful in helping to identify fraudulent activity and other illicit financial transactions that span international borders.

⁷ Less than four months earlier, on June 23, 2006, the SWIFT program was mentioned in a widely-publicized *New York Times* article. See Eric Lichtblau and James Risen, "Bank Data Is Sifted by U.S. in Secret to Block Terror," *N.Y. Times*, June 23, 2006, available at <http://www.nytimes.com/2006/06/23/washington/23intel.html?emc=eta1>.

invited Alishtari to go to Afghanistan. Alishtari answered that, to avoid raising suspicion about the trip, he might be able to travel through a United Nations delegation, sponsored by one of his companies, such as the Global Peace Film Festival.

2. Wire Fraud Conspiracy

The wire fraud conspiracy involved Alishtari's orchestration of a large fraudulent investment scheme that resulted in millions of dollars in losses. Alishtari received upwards of \$18 million from investors, who were assured huge profits. Contrary to these promises of exorbitant returns, very few of the investors recovered their initial investments, let alone the high rates of return that they were assured. Instead, Alishtari diverted investor money to pay personal expenses, to fund an unrelated company operated by his brother in Florida, and to fund a film production company.

Starting around 1998, Alishtari promoted an investment program known as FEDI. Alishtari fraudulently marketed FEDI as a novel commodities trading exchange that, when fully developed, would operate out of the United Arab Emirates and would rival other commodities trading exchanges. Alishtari and various co-conspirators recruited investors to purchase individual trading desks on the FEDI trading floor at the cost of approximately \$125,000 per desk. Investors in FEDI were promised rates of return of over one hundred percent in the first year alone.

To further his scheme, Alishtari established a web of shell companies in the United States and Canada, all of which he controlled, and directed investors to forward money to bank accounts for these companies. The names of some of these companies — Caravansary, Capitol Performance, and GlobalProtector.net — changed repeatedly during the course of the fraud.

Individuals hired by Alishtari operated these companies, yet they largely remained in the dark as to the nature of the projects that they were working on. In fact, when employees would question Alishtari about the failed projects, their employment eventually would be terminated.

By using investor money to hire these employees and to open offices, Alishtari cloaked his operation in a veil of legitimacy. He even caused plans to be drawn up for an exchange that was supposed to be literally floating on the Red Sea. Contrary to the promises made and this thin sheen of legitimacy, very few of the investors in FEDI recovered their initial investments or received the high rates of return that they were assured. Alishtari received millions of dollars from his victims, and diverted their money for his own personal uses. Alishtari instructed employees to transfer monies from the shell company accounts to his personal accounts. He then used what was purportedly FEDI investor money to pay his personal expenses, which included a lavish personal lifestyle, access to private clubs in Florida, and a fleet of cars. Millions of dollars were also directed to fund a wholly unrelated production company (named "Rising Star") operated by Alishtari's brother in Florida, despite the fact that the investors were never told that FEDI monies were going to fund this company.

In his sentencing submission, Alishtari describes Rising Star as a "company designed to fulfill the very purpose for which the investments were made." (Def. Sent. Mem. at 3). Former employees interviewed by the Government, however, paint a very different picture of Rising Star. Those employees indicate that Rising Star would constantly change direction and they did not understand what the company was producing. It appears that Rising Star in no way furthered the investors' interests, but rather was simply a way for Alishtari to funnel the money to other projects and to support his lifestyle. And, in any event, the investors investing in FEDI, not

Rising Star. In short, Rising Star was not going to help satisfy Alishtari's representations that investors would receive significant rates of return.⁸

In roughly 2000, Alishtari began having difficulty recruiting investors to FEDI, and circulated an email in which he described FEDI's problems. In particular, Alishtari said that FEDI had been rendered obsolete based on the United Arab Emirates' purported decision to open its own commodities exchange. This was merely a cover story designed to protect Alishtari.

In approximately 2001, Alishtari was introduced to Brian Anderson, who himself had operated several ponzi schemes that netted millions of dollars. Alishtari and Anderson began working together in what Anderson dubbed the "Alpha Project" — which was merely the FEDI fraud under a new name. Anderson specialized in concealing his fraud by using so-called "digital currency," which was provided by certain companies that operated outside the regulated bank system. Anderson used several such companies, but relied upon one called E-Bullion in particular. Companies such as E-Bullion essentially functioned as unlicensed money transfer operations by replacing money transfers with gold transfers. Customers transferred money by wire to E-Bullion to purchase quantities of gold, which could then be shifted, or transferred, into other E-Bullion accounts. For example, a \$10,000 transfer from an investor's account to an Anderson-related account would be recorded as the transfer of \$10,000 worth of gold from one account to another.

Using E-Bullion as a conduit for the funds, Anderson worked extensively with Alishtari to recruit and scam Anderson's investors to invest in the Alpha Project. Again, Anderson

⁸ Alishtari also funneled money to fund a film festival that he co-founded, the Global Peace Film Festival. Alishtari mentioned the Global Peace Film Festival in connection with the terrorism financing scheme as a way for him to conceal a trip with UC-1 to Afghanistan.

collected millions of dollars on Alishtari's behalf; Anderson used some of the money to maintain his earlier ponzi scheme, while the bulk of it was transferred to Alishtari. Alishtari continued to use the investors' money in the ways already discussed — to pay personal expenses, to purportedly fund fraudulent shell companies, and to fund individuals such as Imam-1, someone that (as noted in the prior section) Alishtari believed to be a member of the Muslim Brotherhood.

In sum, over the course of the fraud, Alishtari repeatedly changed the projects that his clients were purportedly investing in. The investment projects went from the trading desk in the United Arab Emirates, to a gold-backed debit card, and then to a business involving cyber cafes, web filters, and computer encryption. None of these projects ever came to fruition. However, they permitted Alishtari to keep investors believing that they would receive the money they invested soon. This false hope, of course, was never fulfilled, and investors ultimately were defrauded of many millions of dollars, while Alishtari used their money to pay various expenses completely unrelated to the purpose of the investments. Based on financial records, at least \$18 million does deposited into the various bank accounts that Alishtari operated in connection with the fraud.

C. Alishtari's Guilty Plea

Alishtari pled guilty to both Counts of the superseding information before Your Honor on September 29, 2009, in a proceeding that complied fully with Rule 11 of the Federal Rules of Criminal Procedure. Count One charged Alishtari with attempting to finance terrorism, in violation of Title 18, United States Code, Section 2339C, and carries a maximum term of imprisonment of 20 years. Count Two charged Alishtari with conspiring to commit wire fraud, in violation of Title 18, United States Code, Section 371, and carries a maximum term of

imprisonment of five years.⁹

In the plea agreement, the parties stipulated to an offense level of 32 and a Guidelines range of 121 to 151 months' imprisonment. The plea agreement reflected, among other things, an agreement by the parties that the fraud amount was more than \$7 million, but not greater than \$20 million. The parties also agreed that "the defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664." In addition, Alishтари admitted the forfeiture allegations contained in Counts One and Two of the Information, agreeing to forfeit all property traceable to the offenses, "including, but not limited to, at least \$15,000 in proceeds obtained as a result of the terrorism financing offense alleged in Count One of the Information."

The parties further agreed that a term of imprisonment within this stipulated range of 121 to 151 months would be reasonable under Title 18, United States Code, Section 3553(a), and that neither party would seek any departure or adjustment from that range. The agreement provides, however, that either party may seek a sentence outside of the stipulated range, based on the factors set forth at Title 18, United States Code, Section 3553(a).

During his plea allocution, Alishтари admitted, with respect to Count One (attempted terrorism financing), that in 2006, he "agreed and in fact did transmit monetary instruments from within the United States to Canada in an amount in excess of \$25,000," and that he was told that these funds were "to be used to help fund alleged terrorist activity in Pakistan and Afghanistan."

⁹ Both Counts also provide for a maximum term of supervised release of three years; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than Alishтари resulting from offense; and a mandatory special assessment of \$100.

(9/29/09 Tr. at 29-30). Alishtari further acknowledged that he “deliberately and consciously avoided confirming the fact or facts that there was an obvious and high probability that these funds were to be used to materially support terrorist activities such as purchasing night vision goggles, as stated to me by the undercover.” (9/29/09 Tr. at 30). Alishtari additionally confirmed that UC-1 “indicated, if not directly, indirectly, that [the money] would go to terrorist training camps.” (9/29/09 Tr. at 34). Later in the allocution, Alishtari admitted that UC-1 mentioned sending money to terrorist camps and “specifically said” on at least one occasion that some of the money was intended to go to these camps. (9/29/09 Tr. at 41-42; *see also id.* at 34 (“COURT: Did he tell you that the money was intended to go to charities and madrasahs? DEFENDANT: Yes, as well as – yes. And he also indicated, if not directly, indirectly, that it would go to terrorist training camps.”); *id.* at 35 (“COURT: So it would go to charities, madrasahs and terrorist training camps? That’s what you understood? DEFENDANT: Yes.”)). Alishtari also acknowledged that he understood what terrorist training camps are and what terrorist do, *i.e.*, “kill civilians in different places.” (9/29/09 Tr. at 43). Alishtari admitted that he “concluded that [the transactions were] most probably illegal at the time,” yet he nevertheless agreed to execute the transactions “after consideration.” (9/29/09 Tr. at 33). Alishtari allocuted that, in total, he was given a total of about \$152,000 by UC-1 to move, and that he also received \$15,000 for himself in exchange for moving the money. (9/29/09 Tr. at 30).

With respect to Count Two (wire fraud conspiracy), Alishtari admitted that, from 1998 to 2004, he “unlawfully, willfully and knowingly made false representations and promises with regard to the collection and expenditures of portions of money collected by [him] and others for the investment program known as FEDI.” (9/29/09 Tr. at 45). Alishtari explained that, in

obtaining these funds, he “intentionally overstated and exaggerated the progress of this program and thereby fraudulent obtained funds from investors.” (*Id.*). Alishtari also admitted that he wrongfully used some of these funds “to pay for personal expenses or for some purposes other than the investment program known as FEDI.” (9/29/09 Tr. at 45-46).

D. The Presentence Report

On or about December 23, 2009, the Probation Office for the United States District Court for the Southern District of New York issued a Presentence Investigative Report. In the report, the Probation Office applied the same Guidelines calculation contained in the plea agreement, resulting in an offense level of 32 and a Criminal History Category of I. (PSR ¶¶ 50-76, pp. 29-30). The Probation Office recommended a sentence of 121 months’ imprisonment, reflecting a term of 121 months on Count 1 and 60 months on Count 2, to run concurrently. (PSR pp. 29-30). The Probation Office further recommended a term of three years’ supervised release on each count, also to run concurrently, a special assessment of \$200, and restitution in the amount of \$15 million. (*Id.*).

III. SENTENCING

A. Application of the Guidelines

1. Offense Level

With respect to Count One (attempted terrorism financing), the base offense level is 26, pursuant to U.S.S.G. § 2M5.3, which is the Guidelines provision that applies to providing material support or resources to support terrorist activity. Two additional levels are added, pursuant to U.S.S.G. § 2M5.3(b), because Alishtari’s conduct involved the provision of funds, or other material support or resources, with the intent, knowledge, or reason to believe that they

were to be used to commit or assist in the commission of violent acts. Here, Alishtari moved \$152,500, with the knowledge that the money would be used to finance terrorist training camps, whose purpose is to train operatives to commit acts of terror, including the murder of innocent civilians. As a result, the offense level for Count One is 28.

With respect to Count Two (wire fraud conspiracy), the base offense level is six pursuant to U.S.S.G. § 2B1.1(a)(2), which applies to crimes of fraud or deceit for which the maximum term of imprisonment is less than 20 years. The loss involved in Alishtari's wire fraud conspiracy was, according to the Government, approximately \$18 million. Therefore, the loss amount was greater than \$7,000,000, but not more than \$20,000,000, resulting in a 20-level increase pursuant to U.S.S.G. § 2B1.1(b)(1)(K). In addition, because this crime involved at least 50 victims, another four levels are added pursuant to U.S.S.G. § 2B1.1(b)(2)(B). Alishtari's elaborate investment fraud scheme involved sophisticated means, and therefore two additional levels are added pursuant to U.S.S.G. § 2B1.1(b)(9). Finally, as the head of the fraudulent investment scheme, Alishtari was an organizer, leader, manager, and supervisor of the criminal offense, triggering an increase of two more levels pursuant to U.S.S.G. § 3B1.1(c). The resulting offense level for Count Two therefore is 34.

Turning to the grouping analysis, Count One and Count Two each constitute separate "Groups" under U.S.S.G. § 3D1.2. The Count with the higher offense level, Count Two, constitutes one Unit under U.S.S.G. § 3D1.4. The offense level for Count One (level 28) is from five to eight levels less serious than the level for Count Two (level 34), and therefore Count One constitutes $\frac{1}{2}$ of an additional Unit, resulting in a total of $1 \frac{1}{2}$ Units. Pursuant to U.S.S.G. § 3D1.4, $1 \frac{1}{2}$ Units results in one additional offense level. Accordingly, the combined offense

level for Counts One and Two is 35.

Finally, because Alishtari demonstrated acceptance of responsibility through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(a). The Government hereby moves for an additional one-level of reduction, pursuant to U.S.S.G. § 3B1.1(b), because Alishtari gave timely notice of his intent to plead guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, the applicable Guidelines offense level in this case is 32.

2. Criminal History

Based on information available to the Government, Alishtari has no criminal history aside from the instant offenses. He therefore is in Criminal History Category I.

3. Advisory Sentencing Range

Based on an offense level of 32 and Criminal History Category I, Alishtari's advisory Guidelines range is 121 to 151 months' imprisonment, as stipulated by the parties in the plea agreement. At offense level 32, the applicable fine range is \$17,500 to \$175,000, pursuant to U.S.S.G. § 5E1.2.

B. A Sentence Within The Guidelines Range Of 121 To 151 Months' Imprisonment Would Be Both Reasonable And Sufficient, But No More Than Necessary, To Achieve The Legitimate Purposes Of Sentencing

1. Governing Legal Framework

The Guidelines still provide strong guidance to the Court in light of *United States v. Booker*, 543 U.S. 220 (2005) and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005).

Although the *Booker* Court held that the Guidelines are no longer mandatory, it held also that the

Guidelines remain in place and that district courts must “consult” the Guidelines and “take them into account” when sentencing. 543 U.S. at 264. As the Supreme Court stated in *Gall*, “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range” — that “should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 50 (2007).

After that calculation, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); the four legitimate purposes of sentencing, *see id.* § 3553(a)(2); “the kinds of sentences available,” *id.* § 3553(a)(3); the Guidelines range itself, *see id.* § 3553(a)(4); any relevant policy statement by the Sentencing Commission, *see id.* § 3553(a)(5); “the need to avoid unwarranted sentence disparities among defendants,” *id.* § 3553(a)(6); and “the need to provide restitution to any victims,” *id.* § 3553(a)(7). *See Gall v. United States*, 552 U.S. at 49-50 & n.6.

In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

Courts may not presume that the appropriate sentence necessarily lies within Guidelines range, but “the fact that § 3553(a) explicitly directs sentencing courts to consider the Guidelines supports the premise that district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Gall*, 552 U.S. at 50 n.6. Their relevance throughout the sentencing process stems in part from the fact that, while the Guidelines are advisory, “the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives,” *Rita v. United States*, 551 U.S. 338, 348 (2007), and the Guidelines are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions,” *Gall*, 552 U.S. at 46; *see also Rita v. United States*, 551 U.S. at 349. To the extent a sentencing court varies from the Guidelines sentence, the court “must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Gall*, 552 U.S. at 50.

Applying these § 3553(a) factors to Alishtari’s crimes, a term of incarceration within the range of 121 to 151 months is sufficient, but not greater than necessary, to comply with the purposes of sentencing. The factors most applicable in this case – the nature and circumstances of the offense, the history and characteristics of the defendant, the need to reflect the seriousness of the offense, the need to promote respect for the law, the need to provide just punishment for the offense, the need to provide adequate deterrence, the need to protect the public from future crimes of the defendant, the need to avoid unwarranted sentencing disparities, the advisory Guidelines range, and the need to provide restitution to victims – strongly weigh in favor of a lengthy term of imprisonment.

1. Nature And Circumstances Of The Offense, The Seriousness Of The Offense, And The Need For Just Punishment

a. Alishtari's Attempted Funding Of Terrorist Training Camps

Despite supposedly being “extremely remorseful for his acts,” Alishtari’s “contrition does not extend to wrongs which may have been mis-attributed to him and thereby used to besmirch his lifelong efforts at helping Muslims and others as well as promoting global peace.” (Deft. Sent. Mem. at 2). The defense claims that, notwithstanding Alishtari’s conviction for attempting to support terrorism, “the world is no safer from any terrorist act because Mr. Alishtari is incarcerated. He is not a threat to humanity, not a terrorist sympathizer, and not anti-American.” The Court should not accept Alishtari’s efforts to minimize his conduct.

As discussed more fully above in the section describing the offense conduct, Alishtari moved approximately \$152,000 at the direction of UC-1, with the express knowledge that the money was going to support terrorist training camps. UC-1 was very up-front with Alishtari about the destinations of these funds, explaining that his wealthy uncle supported terrorist causes abroad and that the money would be used to purchase night vision goggles, medical supplies, and other equipment needed at the training camps. Alishtari was not duped into moving these funds; he knew full well what they were going to support and eagerly helped UC-1 move the money. In fact, Alishtari explained to UC-1 that in order to “weaponize,” which Alishtari defined as “buying goggles or you know gas stuffs or anything like that,” UC-1 needed to stay “three steps away” from the destination of the funds.

Alishtari pitched his electronic debit card system to UC-1 and UC-1’s purported cousin, UC-2, as “a financial system that cannot be stopped by the West” and “part of us being able to

win.” Alishtari explained that his debit card system is a way to avoid detection by the SWIFT system, which is perceived as a way that the U.S. Government tracks the financing of terrorism. When UC-1 expressed concern that, under Alishtari’s system, authorities might be able to track money back to “a training camp or something,” Alishtari assured UC-1 that this fear was unfounded. Alishtari even introduced UC-1 to a member of the Muslim Brotherhood who, according to Alishtari, is “fire-breathing,” supports “defeating the Jews,” and recruits people to fight in Bosnia and Chechnya.

The defense also tries to split hairs by arguing that “in not one of the 114 separately recorded telephone conversations” with Alishtari, was there any discussion of “aiding or attempting to assist any terrorist organization.” (Def. Sent. Mem. at 5). While it is technically true that at no point did Alishtari and UC-1 mention a particular foreign terrorist organization like al Qaeda, UC-1 made clear to Alishtari that the money was supporting terrorism and, in particular terrorist training camps. And Alishtari himself repeatedly discussed introducing UC-1 to a member of the Muslim Brotherhood – and on September 20, 2006, Alishtari indeed made this introduction at a hotel room in New York. As discussed below, factions of the Muslim Brotherhood have been linked to extremist activity, giving birth to the terrorist organization, Hamas.

The defense also suggests that in his plea allocution, Alishtari only “admitted ‘consciously avoiding’ integrating certain representations made to him by the undercover during the course of the government sting.” (Def. Sent. Mem. at 1). While it is true that the allocution alternatively would have supported a conscious avoidance theory of guilt, Alishtari also allocuted

to having specific knowledge that the money he was transferring would be used to fund terrorist training camps:

COURT: Did he mention sending money to terrorist camps?

DEFENDANT: Yes.

THE COURT: He mentioned that the money that he was giving to you to put into bank accounts, that some of the money was ultimately intended to get into terrorist camps, to finance them?

DEFENDANT: Yes, sir. He specifically said that I recall once on the record, terrorist camp, and most of the time he referred to them as madrasahs.

(9/29/09 Tr. at 41-42; *see also id.* at 34 (“COURT: Let’s step back. Did he tell you that the money was intended to go to charities and madrasahs? DEFENDANT: Yes, as well as — yes. And he also indicated, if not directly, indirectly, that it would go to terrorist training camps.”); *id.* at 35 (“COURT: So it would go to charities, madrasahs and terrorist training camps? That's what you understood? DEFENDANT: Yes.”).

Alishitari further admitted that he knew what terrorist training camps are and that they train terrorists to kill civilians:

COURT: And you read about terrorists and these training camps, did you not?

DEFENDANT: Yes.

COURT: You had seen it in the newspaper?

DEFENDANT: Yes.

THE COURT: You know what terrorists do, kill civilians in different places?

DEFENDANT: Yes.

(9/29/09 Tr. at 43).

Terrorist training camps indoctrinate attendees on extremist views, and instructors administer training to potential operatives on a broad range of subjects, including use of automatic weapons, urban warfare, assassination techniques, counter-surveillance, and improvised explosives. With the emergence of the Taliban movement in the late 1990s along the Pakistani-Afghan border, large portions of northwestern Pakistan became dominated by forces sympathetic to al Qaeda and willing to host guesthouses and training camps. These camps ultimately were responsible for training many of the culprits in some of the most notorious terrorist acts of the past decade. Various footage released by terrorist groups of training at these camps depict recruits running basic calisthenics, practicing with weapons and guerrilla tactics, building improvised explosive devices, and attending classroom-style instruction sessions for more technical lessons. Often footage of the training camps is accompanied by song or narration extolling the jihad and martyrdom, and condemning the West the home of infidels. In sum, training camps operated by international terrorist organizations offer training to those seeking to wage jihad, or armed holy war, against the United States, our interests, and our allies, through such acts as murder, hostage-takings, and bombing attacks.¹⁰

To function, terrorist training camps demand considerable financial and logistical support. The type of support needed by camps includes the very type of support that Alishtari

¹⁰ The report prepared by the Government's expert, Evan Kohlmann, contains a detailed explanation of terrorist training camps, including their development and their purposes, and the sort of support that is needed for such camps to function. The discussion of the camps, the materials needed at those camps, and the Muslim Brotherhood contained herein is derived largely from that expert report. The Government will provide a copy of Kohlmann's report to the Court upon request.

and UC-1 discussed during recorded meetings, including the supply of night vision goggles, medical supplies, “gas stuff,” and other equipment. For instance:

- Alishtari gave UC-1 the following advice for how he can be protected from law enforcement scrutiny: “say if you’re buying goggles or you know gas stuffs or anything like that. . . . the term is weaponized. Anything that could be weaponized has to be what is called three steps away from it. You give cash to somebody, that person gives cash to somebody and it shows up. If, it comes directly out of a check, they got you.” (June 30, 2006).
- UC-1 explaining to Alishtari that his family wants to move money to support terrorist causes: “They wanna make sure it ends up in the right hand, no one is doing it for personal gain, you know, no one’s going out there buying up, it’s going to medical supplies for you know, some of these people, or it’s going to um you know for um their equipment, their some of these people are doing it for night vision goggles, whatever the hell, you know it is. It’s going to good Muslims. Who’s out there fighting for the good cause. You know.” (June 30, 2006).
- During a discussion of moving funds, UC-1 explained, “That’s why they’re terrorist training camps, A.T.”¹¹ and commented immediately thereafter, “the reason why I tell you this stuff is because I want you to understand how serious it is. When you develop these security, you this system, I want you to know there’s a lot of . . . [Alishtari interrupts].” (August 16, 2006).
- UC-2 asked Alishtari how his debit card system could support “the Muslim Brother cause” by helping them purchase “equipment like night vision goggles, the like.” Alishtari confirmed that his system would provide the necessary security for such transactions. (October 12, 2006).

In recent years, terrorist organizations, such as al Qaeda and the Taliban, have increasingly come to rely upon support for the acquisition of high-tech items, such as night vision goggles, that cannot be easily or cheaply obtained in areas like Pakistan or Afghanistan. Night vision goggles are particularly desired by mujahideen groups planning attacks on U.S. forces. As

¹¹ “AT” is Alishtari’s nickname, used throughout his conversations with UC-1.

the name suggests, night vision goggles facilitate such attacks by enabling the fighters to view individuals, vehicles, and military bases, despite being in the dark.¹²

In addition to equipment like night vision goggles, mujahideen organizations have also relied upon outside logistical support in obtaining various medical supplies and attention. The jihad support group known as Azzam Publications regularly issued open appeals for doctors and other medical professionals to provide direct assistance to the mujahideen, both in Afghanistan and Chechnya. In January 2000, Azzam Publications distributed online a list of “Frequently Asked Questions.” In response to the question, “How can we help the Mujahideen in Chechnya?”, the publication explained:

The Mujahideen are in urgent need of Doctors, medical personnel and medical supplies. They are also in need of thousands of small medical combat kits which contain basic dressings, antibiotics, painkilling injections, insertable tampons (to absorb blood from bullet injuries) and other items. A Doctor qualified in Combat Medicine will know what is required. The Doctor and medical personnel should endeavour to make their way to Chechnya through the aid organisations and join the fighting units of Ibn-ul-Khattab. All foreign volunteer help should be directed through Khattab’s units, who will then distribute the help as needed.

Azzam Publications reiterated the need for such aid ten months later in November 2000, when it broadcast another call appeal on behalf of the Taliban for weapons, money, and medical assistance: “An appeal to Muslim doctors to be on standby to travel to Afghanistan in order to treat the wounded if the need arises and to arrange medical supplies.”

In this November 2000 appeal, Azzam Publications also called for donations to support chemical and biological weapons. In addition to the need for “chemical warfare suits,” Azzam

¹² At the Embassy Bombing trial, *United States v. Usama Bin Laden et al.*, S(7) 98 Cr. 1023 (LBS), Essam al-Ridi testified to purchasing at least six pairs of night vision goggles for jihadi fighters, which he explained were equipment that a jihadi fighter “need[s].”

Publications called for “Muslim import-export traders to arrange the purchase and delivery of large quantities of gas masks (in tens of thousands), among other items, “via the Taliban Embassies in Pakistan.”

Given such critical logistical support needs, contemporary mujahideen organizations have become dependent upon contributions from outside sympathizers. These contributions come in the form of resources from groups and from individuals willing to assist in the acquisition of cash, night vision goggles, computers, telephones and radios, and other specialized goods and services. With their perceived proximity to wealthy donors and their access to certain advanced electronic items, supporters living in Western countries are especially desired.

b. The Wire Fraud Conspiracy

The defense’s efforts to minimize the significance of the investment fraud also is unconvincing. This fraud, which the defense agreed was between \$7 million and \$20 million (and the Government maintains was close to the high end of that range), victimized many individuals who trusted Alishtari to use their hard-earned money toward real investments. Rather than using the money for their stated purposes, Alishtari diverted the money to pay unrelated expenses, including payments to support his lavish lifestyle that included country club memberships and a fleet of private cars, to fund an unrelated film festival, and to provide payment to individuals including Imam-1. The fraud took a number of forms. It started as a trading desk project based in the United Arab Emirates, it then became a gold-backed debit card, and then it became a business involving cyber cafes, web filters and computer encryption. As supported by statements given to the FBI by former employees, Alishtari constantly changed the fraud to encourage investors to continue to give money – metaphorically dangling a carrot in

front of them. But in reality he had no intention to returning the investments that he had received.

When interviewed by the FBI, it became clear that many of Alishtari's former employees could not explain what they were working on, were confused by the project, and were conditioned not to ask any questions of Alishtari. These individuals hardly were performing work for Alishtari in furtherance of legitimate transactions for investors geared at making them money. One employee ("Employee-1"), who served the function of processing incoming investments, did not even understand what the investors were investing in. Not long after Employee-1 became suspicious of where the money was going and started asking Alishtari about the failed projects, Employee-1's employment was terminated. Indeed, the investigation revealed that a number of Alishtari's employees, who questioned what was going on, eventually were fired or forced to quit.

Nor was this a "mixed fraud" with legitimate purposes, as the defense endeavors to portray it. Alishtari constantly changed businesses, personnel and the investment schemes to attract new investors, and to lead original investors to believe they would receive their returns. During this entire time, Alishtari spent investors' money with complete disregard of the purpose of their investments. Rather than cut his losses and quit, Alishtari just figured out another way to solicit more money and make people believe they would eventually see their investments come to fruition.

The defense also argues that Alishtari's "patented method of encryption," which was used in the FEDI system, "was intended to provide individuals with security from identity theft at a time when identity theft security was severely lacking and computer-invasion crime was on the

verge of monumental expansion.” (Def’t. Sent. Mem. at 2). But when discussing this same encryption method with UC-2 during their October 12, 2006 meeting, Alishtari explained it as having a very different use. In response to a question about how Alishtari’s system could support “the Muslim Brother cause” by helping them purchase “equipment like night vision goggles, the like,” Alishtari explained that his debit card would provide the necessary security for such transactions. Alishtari touted his card as a way to circumvent tracking by SWIFT as a financial system that “cannot be stopped by the West.” Similarly, during Alishtari’s June 30, 2006 meeting with UC-1, Alishtari assured UC-1 that his debit card system would permit UC-1 to move money that was being “laundered all over Afghanistan and Pakistan” (UC-1’s words). During this conversation, Alishtari explained to UC-1 that there is “no way they can track it,” emphasizing that he would establish “a private network” that is “totally invisible.”

3. The History And Characteristics Of The Defendant

Alishtari’s willingness to agree to fund terrorist activity, discussed in the prior section, obviously reflects adversely on his character. In addition, the defendant’s eagerness to introduce UC-1 to Imam-1, a person that Alishtari represented to be a member of the Muslim Brotherhood, as well as Alishtari’s recommendation to UC-2 that his debit card system can circumvent the SWIFT system, provides further insight into the kind of person he is.

First, Alishtari boasted to UC-1 about his affiliation with Imam-1. During several meetings with UC-1, Alishtari presented Imam-1 as a member of the Muslim Brotherhood, explaining Imam-1 is not a member, “nobody’s in it.” Alishtari described Imam-1 as a “fire-breathing” imam who supports “defeating the Jews” and who recruits people to “work” in Bosnia and Chechnya. In fact, Alishtari refused to discuss Imam-1 in detail during a September 11, 2006

telephone conversation with UC-1, instead stating that he would provide a “security assessment of [Imam-1]” to UC-1 in person. Alishtari explained that he could not give this “security assessment” over the telephone, reflecting an consciousness that his telephone conversation might be surveilled, as well as the an awareness of the derogatory nature of discussing Imam-1’s conduct over a medium that could be intercepted.

Alishtari’s expressed pride in his relationship with Imam-1 was not unfounded chest-thumping in an attempt to gain credibility with UC-1. The investigation revealed that Alishtari in fact was close with Imam-1. Prior to interacting with UC-1, Alishtari had sent money to Imam-1 on a number of occasions. Additionally, Alishtari arranged for Imam-1 to come to New York City in September 2006 to meet with UC-1.

Alishtari’s affiliation with a member of the Muslim Brotherhood and his eagerness to introduce someone who was seeking to finance terrorism to this individual are very enlightening. The Muslim Brotherhood is an Islamic political organization that was founded in Egypt in 1928. The concept of jihad – or holy struggle – was a central ideological tenet of the Muslim Brotherhood, both in the context of spiritually liberating oneself from Western imperialism, and as a physical struggle against perceived Western domination of the Muslim world. Over the years, segments of the Muslim Brotherhood have become involved in active resistance and physical jihad. The component of the Muslim Brotherhood focused on physical jihad arguably has been most visible in the Palestinian territories, where the group birthed the Islamic Resistance Movement Hamas, a designated foreign terrorist organization. Hamas, which was first formed in December 1987 by the Palestinian branch of the Muslim Brotherhood, has become the predominant sponsor of continued fighting against Israel. The official charter of the

terror group explicitly states that Hamas “is one of the wings of the Muslim Brotherhood in Palestine.”

Alishtari’s discussion of the SWIFT system – and his touting of his electronic debit card system as a way to circumvent that system and “beat” the West – further reflects on his characteristics. During the October 12, 2006 meeting with UC-1 and UC-2, UC-2 made clear that he was at the meeting for “the Muslim Brother cause” and asked Alishtari how his debit card system would allow them to “better help our brothers there rather than us buying equipment like night vision goggles, the like?” Alishtari responded with the following explanation of the advantages of his system:

Basically what your talking about is, is, is finance. Anything that you do can become an asset, alright, a rock, a stone, a gun. And, and this card, okay. The main thing is you need to have is security just like right know, uh, if you’re running your operation whatever it may be, you gotta have secure money, you gotta basically, people are living or dying based on whether or not they get what they need to get. Y’know if someone needs water and you don’t get them water they’re dead. And if you couldn’t get the water to them, that’s a problem. Money is nothing more than a form of what’s called liquidities. It’s currency. What we are concerned with doing is building for the [UI] a financial system that cannot be stopped by the West. And now maybe that’s not important to you maybe not but it’s a part of as far as I’m concerned, it’s a part of us being able to win. Okay? ‘Cause right now one of the big things they got goin’ for them is they control all the money. Y’know, even, they even got the SWIFT group telling them everything that’s happening. They just can’t, they don’t know what’s happening. This actually takes the records off the records.

Notably, less than four months before the meeting when Alishtari mentioned the SWIFT system, the *New York Times* ran a story on that system. See Eric Lichtblau and James Risken, “Bank Data Is Sifted by U.S. in Secret to Block Terror,” *N.Y. Times*, June 23, 2006, available at <http://www.nytimes.com/2006/06/23/washington/23intel.html?emc=eta1>. That article discussed a supposedly “secret Bush Administration program initiated weeks after the September 11

attacks,” “run out of the Central Intelligence Agency and overseen by the Treasury Department.” According to the article, through this program, “counterterrorism officials have gained access to financial records” from the SWIFT system, which is described as “a vast international database.” The article additionally reported that the program is limited “to tracing transactions of people suspected of having ties to Al Qaeda,” which is done by reviewing SWIFT records, mostly involving “wire transfers and other methods of moving money overseas and out of the United States.”

Alishtari’s claimed knowledge of the workings of the SWIFT and his appreciation of the need for UC-2 to engage in transactions that cannot be detected by that system speak volumes about Alishtari. They show that Alishtari was not an innocent bystander who was ignorant of the consequences of what he was doing. Quite to the contrary, Alishtari was wary of SWIFT as a way for law enforcement to identify illicit activity, and articulated that the system he was developing would avoid scrutiny from SWIFT.

Alishtari’s commission of a six-year investment fraud scheme further reflects very negatively on his history and characteristics. Alishtari defrauded investors of upwards of \$18 million dollars, and these investors received little, if any, of the funds they invested, let alone the great returns they were promised. Rather than put the investments for productive purposes that might lead returns to the investors, Alishtari diverted his funds to unrelated causes, including to pay for his extravagant lifestyle.

In arguing that he is “not a terrorist,” “never intended to aid terrorism,” “was not predisposed to funding terrorism,” and “has never engaged in anti-American vitriol or spouted pro-terrorist sentiments,” Alishtari cites his founding of the Global Peace Film Festival (another

organization to which Alishtari wrongfully diverted investor funds). (Def't. Sent. Mem. at 4). Initially, this claim is belied by Alishtari's recordings with UC-1, during which he knowingly agreed to transfer funds to support terrorist training camps, he stated that "Muslims don't fight; we defend" and that "we have a right to defend ourselves," he introduced UC-1 to a "fire breathing" member of the Muslim Brotherhood, and he pitched his electronic debit card system as a way for them to "win" against "the West." Moreover, Alishtari's reliance on the Global Peace Film Festival as evidence of his pacifist ways is misguided. During his last meeting with UC-1 on December 1, 2006, Alishtari stated that he would be interested in traveling to Afghanistan with UC-1 and that he would travel through the Global Peace Film Festival as a cover to avoid raising suspicion about that trip.

4. The Need To Provide Adequate Deterrence, Protect The Public From Future Crimes Of The Defendant, And Promote Respect For The Law

The need to deter the provision of support for terrorist activity and terrorist groups is self-evident. There can be few higher priorities than deterring individuals from joining and supporting terrorist causes. Similarly, recent years have seen an explosion of investment fraud, which has victimized thousands of Americans. Both of Alishtari's crimes demand a sentence that will produce substantial deterrence for others inclined to engage in similar criminal conduct.

With respect to specific deterrence and the need to protect the public from further crimes from this defendant, a substantial sentence is warranted. While it is true that these offenses represent Alishtari's first conviction, Alishtari engaged in an elaborate and far-reaching fraud that spanned at least six years. In addition, while attempting to finance terrorism, Alishtari not only introduced UC-1 to an individual who supported extremist activity, but he also promoted

what appeared to be another fraudulent scheme, trying to entice UC-1 and UC-2 to invest millions of dollars into an electronic debit card system. A substantial sentence thus is necessary to reduce the danger of Alishtari engaging in similar fraudulent activity in the future.

5. The Need To Avoid Unwarranted Sentencing Disparities

Guidance for the appropriate sentence in this case also comes from the sentence received by Alishtari's co-defendant, Brian Anderson. On January 15, 2010, this Court sentenced Anderson to a term of imprisonment of 90 months' imprisonment. The defense seems to suggest that somehow Anderson's sentence mitigates in favor of Alishtari receiving a *lower* sentence than Anderson. (Deft. Sent. Mem. at 15-16). Such a result would be unreasonable. Alishtari pled guilty to a more serious fraud and, unlike Anderson, additionally was convicted of supporting terrorism.

The defense argues that "[a] sentence that 121-151 months for Mr. Alishtari would be disproportionate to the sentence Anderson received based upon his [Anderson's] commission of multiple criminal frauds, the intentional, willful, and ongoing nature of the conduct and the fact that Anderson deliberately took advantage of Mr. Alishtari's trust and good will to commit his crimes." (Deft. Sent. Mem. at 16). Anderson pled guilty to one count of conspiring to commit wire fraud in connection with a \$4 million fraud, which is a small fraction of the size of the fraud that Alishtari committed. In comparison, Alishtari pled guilty to a fraud within the range of \$7 million and \$20 million, and the actual fraud amount was close to the high end of that range. Nor is there any evidence that "Anderson deliberately took advantage of Mr. Alishtari's trust and good will"; rather, Alishtari already had been operating his fraudulent investment scheme for three years before he even met Anderson.

But perhaps most importantly, the defense's argument utterly ignores Alishtari's terrorism conviction. Anderson's conviction did not entail any acts of attempting to provide financial support to terrorist activity. Obviously, Alishtari's terrorism conviction should have a considerable impact on the sentence that he ultimately receives. Yet, the defense essentially wants this Court to turn a blind eye to Alishtari's attempted financing of terrorism and pretend that conviction never occurred. Anderson received a sentence of 90 months' imprisonment; Alishtari should receive a significantly greater sentence and one within the range of 121 to 151 months.

6. The Applicable Guidelines Range

As discussed above, while the Guidelines are advisory, "the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives," *Rita v. United States*, 551 U.S. 338, 348 (2007), and the Guidelines are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions," *Gall v. United States*, 552 U.S. 38, 46 (2007); *see also Rita v. United States*, 551 U.S. at 349.

In his sentencing brief, Alishtari essentially asks the Court to employ a novel application of the Guidelines (and one inconsistent with the Guidelines), by calculating "in a non-guideline context" the appropriate range as if the mandatory consecutive provisions of U.S.S.G. § 5G1.2(d) did not exist.¹³ As such, the defense calculates a sentencing range of only 63 to 78 months

¹³ Pursuant to U.S.S.G. § 5G1.2(d), "If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment. In all other respects, sentences on all counts shall run concurrently, except to the extent otherwise required by law."

(substantially less than the sentence Anderson received) as a “fair and just – and reasonable – means to measure the severity of Mr. Alishtari’s wrongs.” (Def’t. Sent. Mem. at 18). Initially, the Government notes that, in the plea agreement, the parties stipulated to a Guidelines calculation that calls for a range of 121 to 151 months, by applying the plain language of U.S.S.G. § 5G1.2(d). (Plea Agreement at 3-5). Additionally, the parties agreed that “the Court may run the sentences on Counts One and Two consecutively to the extent necessary to produce a combined sentence equal to the total punishment, as provided by U.S.S.G. § 5G1.2(d), but this does not limit the Court’s ability to impose a non-Guidelines sentence.” (Plea Agreement at 5 n.2).

Alishtari concedes that this calculation would be a non-Guidelines sentence, and he is fully entitled under the plea agreement to seek a below Guidelines sentence based on the applicable § 3553(a) factors. However, a sentence of 71 months, as sought by the defense, would not be a reasonable sentence in this case. As discussed more fully above, the nature of this offense, the history and characteristics of the defendant, and the need for just punishment and deterrence, among other considerations, call for a lengthy term of incarceration in this case. Moreover, Alishtari certainly should not receive a sentence that is 19 months lower than his co-defendant, who was convicted of committing a far smaller fraud and was not convicted of a terrorism offense.

The correct calculation under the Guidelines, as stipulated by the parties, calls for an advisory range of 121 to 151 months’ imprisonment. This range takes into account a number of relevant factors that reflect the seriousness of Alishtari’s crimes, including the nature of those crimes, the amount of the fraud, the number of victims, and Alishtari’s leadership role. Given

the nature of Alishitari's conduct, the unmeasurable harm caused by terrorist activity, and the many victims that were defrauded out of huge amounts of money, a sentence with the range of 121 to 151 months' imprisonment is appropriate.

7. The Need To Provide Restitution To Victims

Alishitari's investment fraud victimized a substantial number of investors. Restitution to these victims is mandatory pursuant to the Mandatory Victims Restitution Act ("MVRA"), codified at 18 U.S.C. § 3663A. The MVRA provides for mandatory restitution in criminal cases where, as here, the offense involves "fraud or deceit" and an "identifiable victim . . . suffered . . . a pecuniary loss." 18 U.S.C. § 3663A(c)(1). In such cases, "the court *shall* order . . . that the defendant make restitution to the victim of the offense . . ." 18 U.S.C. § 3663A(a)(1) (emphasis added). The defendant's criminal offense, which involved perpetrating a fraudulent investment scheme and recruiting deceived victims to invest upwards of \$18 million, caused cognizable harm to many identifiable victims and thus falls squarely within the sort of criminal activity for which restitution is mandatory. *See* 18 U.S.C. § 3663A(a)(2) (defining "victim" to include any person directly and proximately harmed by the "offense for which restitution may be ordered"); *United States v. Boyd*, 222 F.3d 47, 50 (2d Cir. 2000).

Where restitution is mandatory under the MVRA, restitution must be paid in full. Under § 3664, restitution must be ordered "to each victim *in the full amount of each victim's loss* . . . without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A) (emphasis added). Indeed, the legislative history of the MVRA reflects that the statute's "primary purpose is to force offenders to pay full restitution to the identifiable victims

of their crimes.” *Kalani v. United States*, No. 02 Civ. 8663 (SAS), 2002 WL 31453094, at *9 (S.D.N.Y. Oct. 31, 2002) (quoting *United States v. Reano*, 298 F.3d 1208, 1211 (10th Cir. 2002) (quoting legislative history of MVRA)). Consistent with this legislative purpose and the unambiguous statutory text, courts repeatedly have made it plain that the MVRA requires offenders to pay *full restitution* to the identifiable victims of their crimes. *See, e.g., United States v. Reano*, 298 F.3d 1208, 1211 (10th Cir. 2002) (quoting S. Rep. No. 104-179, at 12 (1996), reprinted in 1996 U.S.C.C.A.N. 924, 925) (MVRA is “necessary to ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society”); *Kalani v. United States*, 2002 WL 31453094, at *9; *see United States v. Myers*, 198 F.3d 160, 168 (5th Cir. 1999) (“The MVRA required the district court to order the *full amount of restitution*, without regard for [the defendant’s] ability to pay.”) (emphasis added); *United States v. Nachamie*, 121 F. Supp. 2d 285, 297 (S.D.N.Y. 2000) (noting that “district courts are statutorily *required to impose the full amount of restitution* without consideration of economic factors, including a defendant’s ability to pay”) (emphasis added).

Further, Alishtari’s financial means and the financial hardship that a substantial restitution award would cause are not appropriate considerations in setting a restitution figure. While such a hardship analysis is entirely appropriate in determining the amount of a criminal fine, *see, e.g., United States v. Salameh*, 261 F.3d 271, 276 (2d Cir. 2001), it should not be considered when it comes to restitution payments, *see United States v. Harris*, 302 F.3d 72, 75 (2d Cir. 2002); *United States v. Myers*, 198 F.3d at 168; *United States v. Nachamie*, 121 F. Supp.

2d at 297. To the extent a defendant's financial resources come into play with restitution, they are relevant only with respect to setting a schedule of payments. *See* 18 U.S.C. § 3664(f)(2).

The Government is compiling a list of victims that are entitled to restitution, but has not been able to compile a complete list of victim losses by the date of sentencing. Accordingly, the Government respectfully requests that the Court set a restitution amount in the future, not to exceed 90 days from sentencing, pursuant to Title 18, United States Code, 3664(d)(5).

IV. CONCLUSION

For the reasons stated herein, the Court should sentence Alishtari to a term of imprisonment between 121 and 151 months, order forfeiture in the amount of at least \$15,000 (to represent the money paid to Alishtari by UC-1), and order restitution to victims in amounts to be determined within 90 days of sentencing.

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New York, New York

Respectfully submitted,

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