

**IN THE UNITED STATES COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:10-CR-395
)	
)	Sentencing Date: February 24, 2011
ZACHARY ADAM CHESSER,)	
)	The Honorable Liam O’Grady
)	
Defendant.)	

DEFENDANT’S POSITION WITH REGARD TO SENTENCING FACTORS

Pursuant to Rule 32 of the *Federal Rules of Criminal Procedure* and section 6A1.3 of the advisory *United States Sentencing Guidelines* (U.S.S.G.), the Defendant, Mr. Zachary Adam Chesser (“Mr. Chesser”), by counsel, states that he has received and reviewed the Presentence Report (“PSR”). Mr. Chesser objects to the Probation Officer’s calculation of the advisory Guidelines range of 360 months (restricted) as reflected in the Presentence Report (“PSR”). Specifically, Mr. Chesser objects to the imposition of a two-point enhancement for obstruction of justice under § 3C1.1. Without this enhancement, Mr. Chesser’s advisory Guidelines range is 292-360 (restricted) months. For the reasons set forth below, however, and in conformity with ¶ 10 of the Plea Agreement, Mr. Chesser respectfully asks the Court to impose a sentence of twenty years of imprisonment, which is sufficient, but not greater than necessary, to comply with the purposes of sentencing enunciated by Congress in 18 U.S.C. § 3553(a)(2).

BACKGROUND

Mr. Chesser was twenty years old at the time of his arrest. The Probation Officer’s detailed description of Mr. Chesser’s childhood and adolescence reflects a young life spent

drifting from one obsession to another. In middle school, Mr. Chesser was a vocal anti-war pacifist. PSR at ¶ 69. During those years, he grew his hair long and focused on heavy-metal music.



In high school, Mr. Chesser cut his hair short and played on the basketball and football teams. In eleventh and twelfth grades, Mr. Chesser rowed for his high school crew team and joined a largely ethnic Korean break-dancing team that met after school. PSR at ¶ 70.

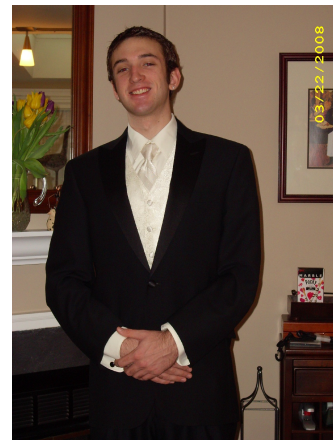


At another point in his teenage years, Mr. Chesser became so captivated by Japanese anime that he spent four years studying Japanese, and he even traveled to Japan with a school group on spring break. PSR at ¶ 72. He spent years as a vegetarian later practiced Buddhism. PSR at ¶ 71. His father describes



him as “an all-or-nothing person.” PSR at ¶ 96; *see also*, Letter from David Chesser dated February 11, 2011 (Exhibit 1); Letter from Megan Chesser dated January 7, 2011 (Exhibit 2).

During his senior year, he began dating a classmate, the daughter of Somali immigrants. After four months of dating, he converted yet again, this time to Islam. PSR at ¶ 73. He dedicated himself to the study of Islam just as he had with athletics, Japanese anime, break-dancing, heavy metal music, and Buddhism. By then a freshman at George Mason University (“GMU”), he isolated himself from everybody except other Muslims at GMU and spent hours each day studying Islam. PSR at ¶ 73. Despite his increasing devotion to a rigid form of Islam, in the fall of 2008, Mr. Chesser volunteered to campaign in the 2008 presidential election. PSR at ¶ 74. But by the time the election came on November 4, 2008, Mr. Chesser had been convinced it would be a violation of Islamic law to vote.



Mr. Chesser’s pattern of throwing himself completely into a subject led him to seek out the literature and lectures of the most extreme versions of Islam available. PSR at ¶ 74. He began listening to radical cleric Anwar Al-Awlaki. PSR at ¶ 10. As he had done during his time spent listening to heavy metal music, he again grew his hair long, but this time, he grew a beard as well. He started wearing robes to school, the thobe worn by some men in the Middle East. Students at George Mason mockingly referred to him as Jesus.

Over the course of several weeks, Mr. Chesser’s views became too extreme for his high-school girlfriend, whose family practiced a moderate and mainstream version of Islam. The

relationship ended after Mr. Chesser refused to continue to date and demanded that they marry. PSR at ¶ 73.

At the same time Mr. Chesser was becoming more extreme in his religious views, Proscovia Kampire Nzabanita, the daughter of a Ugandan diplomat who had been raised as a Roman Catholic and spent her entire life in the West on her father's diplomatic assignments, was also undergoing a months-long conversion to Islam. PSR at ¶ 25. The two were introduced through a local mosque, and were married three days later. In November, 2009, they had a son.

The new family spent their time in a small apartment in northern Virginia, where Mr. Chesser devoted hours to posting information on radical Islamist websites, forums, and blogs. PSR at ¶ 12. He wrote about "Destroying the West" with a long list of ideas that included filling tanker-trucks with Ricin and orchestrating denial of service attacks on "Fantasy Football" websites. PSR at ¶ 29. He threatened the makers of the cartoon South Park after they aired an episode mocking Islam's prohibition on drawing the prophet Mohammed by portraying him wearing a bear costume. Several irate fans of the cartoon called Mr. Chesser's home with death threats of their own. Mr. Chesser's parents also received death threats. PSR at ¶ 92. In response to the threats made against South Park, other fans of the cartoon used art and satire as a means to express themselves by sponsoring "Everybody Draw Mohammed Day!" on May 20, 2010. They further satirized the prohibition of drawing the prophet Mohammed by depicting him as inanimate objects such as a domino, a cup of coffee, and a spool of thread, with each of these objects protesting that it was the true likeness of the prophet.¹ Mr. Chesser posted identifying

¹ The poster these fans distributed was directed at Mr. Chesser and his comments on the website, Revolution Muslim: "In light of recent 'veiled' (ha!) threats aimed at the creators of the television show South Park (for depicting the prophet Mohammed in a bear suit) by bloggers on Revolution Muslim's website, we hearby (sic) deem May 20, 2010 as the firs annual "Everybody Draw Mohammed Day!"

information of some of these individuals on a jihadi blog. PSR at ¶ 40. “Everybody Draw Mohammed Day!” quickly garnered national media attention, and the creators withdrew from the event. PSR at ¶ 24. Mr. Chesser was also shocked by the media attention his threats had generated, and he drifted away from the website where he had made the initial threat against the creators of South Park.²

Mr. Chesser turned his focus to joining the ethnic Somali guerilla group al-Shabaab, which was designated a foreign terrorist organization on February 29, 2008. Apparently oblivious to the fact that no airline would allow his pregnant wife to fly to Somalia just days before her scheduled due date, Mr. Chesser purchased two tickets to Uganda. Statement of Facts at ¶ 41. But Mr. Chesser did not have to be turned away at the ticket counter by the airline because his mother-in-law had hidden her daughter’s passport. Thwarted by his mother-in-law, and unaware he had been placed on the Terrorist Screening Center’s No Fly List, Mr. Chesser devised another plan to get his family to Africa.

On July 10, 2010, Mr. Chesser attempted to board a flight to Uganda with his son at JFK Airport in New York, but they were stopped at the airport and Mr. Chesser was interviewed by federal law enforcement. PSR ¶ 58. At the time he was interviewed, Mr. Chesser was carrying a bag full of diapers, a \$40 camera, and \$1000 in cash. He informed the interviewing agent he planned to walk into Kenya from Uganda, and then walk into Somalia from there. He later told federal agents that crossing these international borders “was as simple as crossing into Kansas

² The creators of South Park are currently preparing for the Broadway opening of their new musical satirizing the Mormon faith entitled the “The Book of Mormon.” Vogue.com, South Park’s Creators New Comedy-Musical: The Book of Mormon, <http://www.vogue.com/vogue-daily/article/south-parks-creators-new-comedy-musical-the-book-of-mormon/> (last visited Feb. 10, 2011).

from Missouri.” Mr. Chesser had studied Japanese in high school, but he did not speak any of the languages native to the countries in East Africa. Mr. Chesser’s father accurately describes his son as “impractical, [but with] a good heart.” PSR ¶ 97.

On October 20, 2010, Mr. Chesser pleaded guilty to Communicating Threats, Soliciting Others to Threaten Violence, and attempted Provision of Material Support to a Designated Foreign Terrorist Organization in violation of 18 U.S.C. §§ 875(c), 373, and 2239B. The Court continued his case for sentencing on February 24, 2011.

Mr. Chesser has repudiated violence and is deeply remorseful for his conduct. In his statement of responsibility, Mr. Chesser states he “completely reject[s] the idea that killing can be justified in the name of Islam or any religion.” *See*, Statement of Responsibility (Exhibit 3 at 2). He describes the eighteen-month period he adhered to a radical version of Islam as “a missing puzzle piece in [his] life.” *Id.* He has made sincere and determined efforts to repair the harm he has caused, and he has expressed his strong desire to emerge from prison a productive citizen for both society and his family. *See*, Under Seal Exhibit (Exhibit 4).

LAW AND ARGUMENT

A sentence of twenty years is sufficient but not greater than necessary to comply with the requirements of 18 U.S.C. § 3553(a)(2) and properly considers all of the co-equal factors outlined in 18 U.S.C. § 3553(a). The severe sentencing provisions of U.S.S.G. § 2M5.1, when combined with the terrorism enhancement found in § 3A1.4, produce draconian sentencing recommendations that are not based on past practice or empirical data and that often exceed the maximum punishments authorized by 18 U.S.C. § 2339B. Additionally, given what is now known about adolescent brain development, a variance is warranted due to Mr. Chesser’s age and

developmental immaturity. The over-arching mandate of 18 U.S.C. § 3553(a), including consideration of the history and characteristics of Mr. Chesser, the nature of this offense, and the strictures of the parsimony provision, will be satisfied by a sentence of twenty years.

Courts must consider the recommended guideline range as one of seven co-equal statutory sentencing factors enumerated in 18 U.S.C. § 3553(a). *United States v. Booker*, 543 U.S. 220, 259-60 (2005). Those factors include: (a) the nature and circumstances of the offense, (b) the history and characteristics of the defendant, (c) the kinds of sentences available, (d) the guideline range, (e) the need to avoid unwarranted sentencing disparities, (f) the need for restitution, and (g) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence, to protect the public from further crimes of the defendant and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment. *See* 18 U.S.C. § 3553(a).

Upon consideration of those factors, a sentencing court may find that the case falls outside the “heartland” contemplated by the guidelines, or that “the guidelines sentence itself fails properly to reflect the § 3553(a) considerations,” or that “the case warrants a different sentence regardless.” *Rita v. United States*, 127 S.Ct. 2456, 2465 (2007). While the sentencing court must begin its analysis by correctly calculating the advisory sentencing range, the court is then free in light of the other statutory sentencing factors to impose an entirely different sentence. This is because, under *Rita*, a district court is free simply to disagree, based on the § 3553(a) sentencing factors, with the U.S.S.G.’s “rough approximation” of the appropriate sentence for any given case. *Id.*

The overriding principle and basic mandate of § 3553(a) requires district courts to impose a sentence “*sufficient, but not greater than necessary*,” to comply with the four purposes of sentencing set forth in § 3553(a)(2): retribution (to reflect the seriousness of the offense, to promote respect for the law, and to provide “just punishment”), deterrence, incapacitation (“to protect the public from further crimes”), and rehabilitation (“to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”). The sufficient-but-not-greater-than-necessary requirement is often referred to as the “parsimony provision.” This requirement is not just another factor to be considered along with the others set forth in Section 3553(a) — it sets an independent limit upon the sentence.

A. The lengthy sentence outlined in § 2M5.1 and enhanced by § 3A1.4 is not supported by empirical data and does not reflect sound policy.

When the Sentencing Commission fails to fulfill “its characteristic institutional role” of developing a particular guideline, or its later amendments, based upon empirical data, national experience, or some rational policy basis, the district court has the discretion to conclude that the resulting advisory range “yields a sentence ‘greater than necessary’ to achieve §3553(a)’s purposes, even in a mine-run case.” *United States v. Kimbrough*, 128 S. Ct. 558, 575 (2007); *Spears v. United States*, 129 S. Ct. 840, 843 (2009) (explaining that when the Commission fails to fulfill its institutional role, a district court can vary from the guidelines “based on *policy* disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case”).

Sentencing Guidelines are typically developed by the Sentencing Commission using an empirical approach based on data about past sentencing practices. *Rita v. United States*, 551

U.S. 338, 349 (2007). However, the Commission did not use this empirical approach in formulating the Guideline for providing material support for a designated foreign terrorist organization. Instead, at the direction of Congress, the Sentencing Commission has amended the Guidelines under § 3A1.4, and later § 2M5.3, several times since their introduction in 1987, each time recommending broader application and harsher penalties. U.S.S.G., App. C, Amend. 526 (Nov. 1, 1995); U.S.S.G., App. C, Amend. 539 (Nov. 1, 1996); U.S.S.G., App. C, Amend. 565 (Nov. 1, 1997); U.S.S.G., App. C, Amend. 637 (Nov. 1, 2002).

In 1994, Congress directed the Sentencing Commission to create an enhancement for prison sentences resulting from felonies involving international terrorism. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 120004 (to be codified at 28 U.S.C. 994 (2006)). Congress directed that the enhancement apply to crimes involving or intending to promote international terrorism, “unless such involvement or intent is itself an element of the crime.” *Id.* In the wake of the Oklahoma City bombing, Congress directed that § 3A1.4 should apply to domestic terrorism offenses as well. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 730 (to be codified at 28 U.S.C. 994 (2006)).

Prior to the terrorist attacks of September 11, 2001, there were no base offense Guidelines for federal crimes of terrorism. U.S.S.G., App. C, Amend. 637 (Nov. 1, 2002)(noting that amendments under the USA Patriot Act modify existing Sentencing Guidelines “for a number of offenses that, prior to the enactment of the Act, were enumerated in 18 U.S.C. § 2332b(g)(5) as predicate offenses for federal crimes of terrorism but were not explicitly incorporated in the guidelines.”). The Sentencing Commission created a base offense guideline for providing material support to a designated foreign terrorist organization in the wake of the attacks of

September 11, 2001. *Id.* But it failed to restrict the sweeping coverage of § 3A1.4, which Congress directed be created as a stop-gap measure to enhance sentences for felony crimes, unless the crime itself related to or involved terrorism. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 120004 (to be codified at 28 U.S.C. 994 (2006)). The failure by the Commission to restrict the coverage of § 3A1.4 produces the irrational result that the Guideline for providing material support to a terrorist organization is enhanced for terrorism itself. Needless to say, any violation of the statute – providing material support for terrorism – by definition involves terrorism.

The combined operation of §§ 2M5.1 and 3A1.4 result in the draconian offense level of 38 in every case. When combined with § 3A1.4's requirement that every defendant also be placed in Criminal History Category VI, the lowest possible sentencing range is 292-365 months, which includes a three-point reduction for acceptance of responsibility. And yet the maximum penalty authorized by Congress for providing material support to a designated foreign terrorist organization is 180 months.

Section 3A1.4's placement of all defendants in Criminal History Category VI is not based on a study of the recidivism of those convicted of material support or any other empirical evidence that such offenders be treated as incorrigible recidivist offenders. And it was implemented despite the empirical data and research regarding first offenders such as Mr. Chesser who would otherwise be in Criminal History Category I. *See* U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at Ex. 9 (May 2004) [hereinafter *Measuring Recidivism Report*]; U.S.

Sentencing Commission, *Recidivism and the "First Offender,"* at 1314 (May 2004) [hereinafter *First Offender Report*].

The only other provision in the Guidelines that automatically inflates a defendant's Criminal History category is the Career Offender Guideline in § 4B1.1, which by its own definition applies only to defendants with at least two prior felony convictions. And Courts have varied from the often harsh sentencing recommendations of that guideline under § 3553(a). In *United States v. Martin*, 520 F. 3d 87, 88-96 (1st Cir. 2008), the First Circuit Court of Appeals affirmed a 144-month sentence in a case where the correctly-calculated sentencing guidelines called for a sentence of 262 to 327 months under the career-offender guideline. The district court in *Martin* regarded the career-offender guideline as an improper basis for determining the appropriate sentence on the facts before it, and instead imposed a variant sentence of 144 months, near the middle of the otherwise-applicable (non-career-offender) guideline range of 130 to 162 months. 520 F.3d at 88, 98. The court of appeals rejected the government's argument that the district court had improperly disregarded the career-offender guideline, holding that:

The Supreme Court's recent decision in *Kimbrough*, 128 S.Ct. at 574-75, opened the door for a sentencing court to deviate from the guidelines in an individual case even though that deviation seemingly contravenes a broad policy pronouncement of the Sentencing Commission. Here the district court grounded the defendant's sentence in case-specific considerations, which is the accepted practice in the post-*Gall* world.

520 F.3d at 96; *see also United States v. Marshall*, 259 Fed.Appx. 855, 862 (7th Cir., Jan. 4, 2008) (in light of *Kimbrough*, "we must reexamine our case law" that holds that "courts are not authorized to find that the guidelines themselves, or the statutes on which they are based, are unreasonable.")

Together, §§ 2M5.1 and 3A1.4, provide that all defendants convicted of providing material support to a designated foreign terrorist organization receive the maximum punishment authorized by 18 U.S.C. § 2339B regardless of distinctions between various defendants' material support, the intent with which they gave support, the organization to which the support was given, the quality and quantum of the support, the duration of the support, the identifiable harm caused by the support, and any identifiable victims of the support. All of this is done without any empirical or reasoned basis. Accordingly, the resulting Guideline ranges should be given little weight in this Court's § 3553(a) analysis.

B. Pursuant to § 3553(a) this Court should impose a sentence of twenty years in this case.

1. Nature and Circumstances of the Offense and the History and Characteristics of Mr. Chesser.

According to the statement of facts, Mr. Chesser's first substantial step in publicly espousing jihadi ideology took place on May 13, 2009, when he established a youtube.com website known as "AlWuranWaAlaHadeeth." Statement of Facts at ¶ 8. He was 19 years old at the time and had been a practicing Muslim for approximately nine months. But as he has done with virtually every other intense interest in his life, Mr. Chesser became obsessed and threw himself into an ever-increasing radical version of Islam that ultimately led to his arrest.

Mr. Chesser's youth and immaturity at the time of the offense conduct is not an inconsequential consideration. Recent studies of the brain conclude that its development may not be complete until the age of twenty-five. *See* Elizabeth Williamson, *Brain Immaturity Could Explain Teen Crash Rate*, Wash. Post, Feb. 1, 2005 (summarizing a recent National Institutes of Health (NIH) study that suggests "that the region of the brain that inhibits risky behavior is not

fully formed until age 25”). In *Roper v. Simmons*, 125 S. Ct. 1183, 1195 (2005), the Supreme Court relied on studies indicating adolescents are less culpable for their actions than adults: “[A]s any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.’ (citations omitted) It has been noted that ‘adolescents are over represented statistically in virtually every category of reckless behavior.’”(quoting Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Review* 339 (1992)).

While the *Roper* Court held imposition of the death penalty is unconstitutional for those persons who committed the death-eligible crime before the age of eighteen, the recent NIH report confirms that there is no bright line deliniating at what age a person reaches full maturity.

National Institute of Health Publication 4929, *The Teenage Brain: A Work In Progress* (2008).

Two years later, in *Gall v. United States*, 552 U.S. 28 (2007), the Court relied on the youth of the twenty-one-year-old defendant as one of the reasons justifying a below-guidelines sentence:

In summery, the District Judge observed that all of Gall’s criminal conduct “including the present offense, occurred when he was twenty-one-years old or younger” and appeared “to stem from his addictions to drugs and alcohol.” *Id.*, at 122-123. The District Judge appended a long footnote to his discussion of Gall’s immaturity. The footnote includes an excerpt from our opinion in *Roper v. Simmons*, 543 U.S. 551, 569 (2005), which quotes a study stating that a lack of maturity and an undeveloped sense of responsibility are qualities that “often result in impetuous and ill-considered actions.” The District Judge clearly stated the relevance of these studies in the opening and closing sentences of the footnote: “Immaturity at the time of the offense conduct is not an inconsequential consideration. Recent studies on the development of the human brain conclude that human brain

development may not become complete until the age of twenty-five. “[T]he recent [NIH] report confirms that there is no bold line demarcating at what age a person reaches full maturity. While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant.” App. 123, n 2.

Id. at 57-58; *See also, United States v. Stern*, 590 F. Supp. 2d 945 (E. D. Ohio 2008)(granting variance for twenty-two-year-old defendant who began viewing child pornography as an adolescent.) .

Mr. Chesser’s crimes themselves, while serious, are precisely the type of ill-considered actions discussed in *Roper* and *Gall*. On July 10, 2010, Mr. Chesser attempted to board a plane to Uganda with his seven-month-old son, a grossly irresponsible action for anyone to undertake. Upon arrival in Uganda, he planned to walk across East Africa with a bag full of diapers and approximately \$1000, and later join a Somali insurgent group despite having no ethnic, cultural, or linguistic ties to that group. Dr. Stephen Xenakis, a forensic psychiatrist, who evaluated Mr. Chesser, describes this as “sensation-seeking” behavior that, in light of current scholarship in neurobehavioral medicine, is unlikely to continue as Mr. Chesser’s brain completes its development. *See*, Report of Dr. Stephen Xenakis dated February 8, 2010 (submitted under seal as Exhibit 5). Given Mr. Chesser’s history as an intense, curious and immature teenager, this will most certainly be the case. This history also helps explain his whole-hearted rejection of violent jihad and the determination and effort he has put forth in attempting to undo some of the damage his actions have caused. In a post-*Booker* world, this Court certainly retains authority to fashion a non-guidelines sentence in light of the nature and circumstances of these offenses and the characteristics and history of Mr. Chesser.

Should the Court sentence Mr. Chesser to twenty years in prison, Mr. Chesser will be approximately forty-years-old upon his release. Both the age of an offender and his/her first offender status are powerful predictors of the likelihood of recidivism. Indeed, the Sentencing Commission has itself recognized that (1) recidivism rates decline dramatically with age, and (2) first-time offenders are even less likely to re-offend than defendants with a limited criminal history who also fall within Criminal History Category I. *See* U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at Ex. 9 (May 2004) [hereinafter *Measuring Recidivism Report*]; U.S. Sentencing Commission, *Recidivism and the "First Offender,"* at 1314 (May 2004) [hereinafter *First Offender Report*]. The Commission's research has, for example, demonstrated that a 20-year-old defendant in Criminal History Category I has a 29.5% chance of reoffending, while a 49-year-old defendant with the same criminal history has only a 6.9% chance of recidivating. *Measuring Recidivism Report* at Ex. 9. With respect to first offenders, the Commission has found that offenders with zero criminal history points have a recidivism rate of just 11.7%, while offenders with just one criminal history point have double the recidivism rate at 22.6%. *First Offender Report* at 13-14.

Despite these clear and compelling findings, the Commission has failed to revise the Guidelines to take either age or first-offender status into account. The Commission clearly recognized the advisability of revising the Guidelines to take these factors into account. *See First Offender Report* at 1-2 (identifying goal of "refin[ing] a workable 'first-offender' concept within the guideline criminal history structure."); *Measuring Recidivism Report* at 16 (noting that "[o]ffender age is a pertinent characteristic" that would "improve [the] predictive power of the

guidelines “if incorporated into the criminal history computation”). But, in the six years since publishing its *Fifteen Year Report*, the Commission has taken no action toward implementing such revisions. Should the Court sentence Mr. Chesser to twenty years in prison, Mr. Chesser will be approximately forty-years-old upon his release. Both the age of an offender and his/her first offender status are powerful predictors of the likelihood of recidivism. Indeed, the Sentencing Commission has itself recognized that (1) recidivism rates decline dramatically with age, and (2) first-time offenders are even less likely to re-offend than defendants with a limited criminal history who also fall within Criminal History Category I. See U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at Ex. 9 (May 2004) [hereinafter *Measuring Recidivism Report*]; U.S. Sentencing Commission, *Recidivism and the “First Offender,”* at 1314 (May 2004) [hereinafter *First Offender Report*]. The Commission’s research has, for example, demonstrated that a 20-year-old defendant in Criminal History Category I has a 29.5% chance of reoffending, while a 49-year-old defendant with the same criminal history has only a 6.9% chance of recidivating. *Measuring Recidivism Report* at Ex. 9. With respect to first offenders, the Commission has found that offenders with zero criminal history points have a recidivism rate of just 11.7%, while offenders with just one criminal history point have double the recidivism rate at 22.6%. *First Offender Report* at 13-14.

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In response to the Commission’s inaction, a growing number of courts have themselves taken both age and first-offender status into account when fashioning an appropriate sentence under 18 U.S.C. § 3553(a). *See, e.g., United States v. Darway*, 255 Fed. Appx. 68, 73 (6th Cir. 2007) (upholding sentence in child pornography case as reasonable where district court granted downward variance on basis of defendant’s first-offender status); *United States v. Hamilton*, 2009 WL 995576, at *3 (2d Cir. Apr. 19, 2009) (holding that “the district court abused its discretion in not taking into account policy considerations with regard to age recidivism not included in the Guidelines”); *United States v. Holt*, 486 F.3d 997, 1004 (7th Cir. 2007) (affirming a below-guidelines sentence where the district court’s only reason for the variance was that the defendant’s age made it unlikely that he would again be involved in another violent crime); *United States v. Cabrera*, 567 F. Supp. 2d 271, 279 (D. Mass. 2008) (granting variance because defendants, like Cabrera, “with zero criminal history points are less likely to recidivate than all other offenders.”); *Simon v. United States*, 361 F. Supp. 2d 35, 48 (E.D.N.Y. 2005) (explaining that sentence of 262 months – as opposed to Guidelines sentence of 324 to 405 months – constituted “sufficient, but not excessive, deterrence” for 44-year-old defendant); *United States v. Nellum*, 2005 WL 300073 at *3 (N.D. Ind. Feb. 3, 2005) (explaining that age of offender is relevant to § 3553(a) analysis, even if not ordinarily relevant under the Guidelines,

and granting variance to 57-year-old defendant); *United States v. Ward*, 814 F. Supp. 23, 24 (E.D. Va. 1993) (granting departure based on defendant's age as first-time offender since guidelines do not "account for the length of time a particular defendant refrains from criminal conduct" before committing his first – *i.e.*, the charged – act).

In response to the Commission's inaction, a growing number of courts have themselves taken both age and first-offender status into account when fashioning an appropriate sentence under 18 U.S.C. § 3553(a). *See, e.g., United States v. Darway*, 255 Fed. Appx. 68, 73 (6th Cir. 2007) (upholding sentence in child pornography case as reasonable where district court granted downward variance on basis of defendant's first-offender status); *United States v. Hamilton*, 2009 WL 995576, at *3 (2d Cir. Apr. 19, 2009) (holding that "the district court abused its discretion in not taking into account policy considerations with regard to age recidivism not included in the Guidelines"); *United States v. Holt*, 486 F.3d 997, 1004 (7th Cir. 2007) (affirming a below-guidelines sentence where the district court's only reason for the variance was that the defendant's age made it unlikely that he would again be involved in another violent crime); *United States v. Cabrera*, 567 F. Supp. 2d 271, 279 (D. Mass. 2008) (granting variance because defendants, like Cabrera, "with zero criminal history points are less likely to recidivate than all other offenders."); *Simon v. United States*, 361 F. Supp. 2d 35, 48 (E.D.N.Y. 2005) (explaining that sentence of 262 months – as opposed to Guidelines sentence of 324 to 405 months – constituted "sufficient, but not excessive, deterrence" for 44-year-old defendant); *United States v. Nellum*, 2005 WL 300073 at *3 (N.D. Ind. Feb. 3, 2005) (explaining that age of offender is relevant to § 3553(a) analysis, even if not ordinarily relevant under the Guidelines, and granting variance to 57-year-old defendant); *United States v. Ward*, 814 F. Supp. 23, 24

(E.D. Va. 1993) (granting departure based on defendant's age as first-time offender since guidelines do not "account for the length of time a particular defendant refrains from criminal conduct" before committing his first – *i.e.*, the charged – act). In light of Mr. Chesser's absence of criminal history, a similar variance is warranted in this case.

2. The Advisory Guidelines Range.

Mr. Chesser respectfully objects to the calculation of the restricted advisory guidelines range of 360 months (total offense level 37 at Criminal History Category VI). The obstruction of justice enhancement is unwarranted in this case, and the correct advisory guidelines range should be 292-365 months (total offense level 35 at Criminal History Category VI).

"Obstructing or Impeding the Administration of Justice" under U.S.S.G. §3C1.1 may apply "[i]f (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct" In this case, the Probation Officer has assessed a two-level enhancement under § 3C1.1 in connection with Count 3. Addendum to PSR. However, this enhancement is unwarranted in light of Application Note 5.³

According to the PSR, the conduct at issue involves a June 6, 2010, instruction Mr. Chesser gave to his wife: if asked about Mr. Chesser's international travel plans by law

³ See *United States v. Williams*, 152 F.3d 294, 304 (4th Cir. 1998) (citing *Stinson v. United States*, 508 U.S. 36 (1993) ("Guidelines commentary is binding unless it violates federal law or otherwise conflicts with a plain reading of the guideline."); *United States v. Peterson*, 2011 WL 117574, *3 (4th Cir. 2011) ("It is now established that this commentary to the Sentencing Guidelines is authoritative and binding, "unless it violates the Constitution or a federal statute, or is inconsistent, or plainly erroneous reading of the Guideline itself.").

enforcement officials, she was to tell inquiring agents that he had planned to visit Uganda to obtain her birth certificate. This was not a truthful statement and, after she made the statement to federal law enforcement agents on July 21, 2010, she was subsequently charged and convicted under 18 U.S.C. § 1001; Mr. Chesser's wife never made these statements under oath and, accordingly, never faced perjury charges.

U.S.S.G. §3C1.1 Application Note 5 lists examples typifying the conduct *not* intended for the Section's two-level increase. Though labeled non-exhaustive, subsection (B) is relevant in Mr. Chesser's case: "making false statements, not under oath, to law enforcement officers, unless Application Note 4(G) above applies." Note 4(G) involves "providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense." Note 6 defines "material evidence" to mean "evidence, fact, statement, or information that, *if believed*, would tend to influence or affect the issue under determination" (emphasis added). *See e.g., United States v. Gormley*, 201 F.3d 290, 294 (4th Cir. 2000) (employing the Note 6 standard, in the context of false statements to probation officer, to determine applicability of §3C1.1 enhancement). Although the court in *Gormley* remarked that the materiality threshold is "conspicuously low," it correctly analyzed the effect the statement would have on the investigation "if believed." *Id. at 294-95*. The statements at issue in *Gormley* implicated the defendant's clients in a fraud investigation, and *if believed*, "could have affected the sentence ultimately imposed within the guideline range." *Id. at 295*; *see also United States v. Washington*, 398 F.3d 306, 309 (4th Cir. 2005) (applying §3C1.1 when defendant called his wife to the stand where she testified falsely regarding "evidence [that] went

to a core issue in the trial, and [defendant] knew the testimony to be false.”)⁴ In *Washington*, defendant’s wife provided her husband an alibi that, *if believed*, would likely have been outcome-determinative.

Mr. Chesser’s instruction to his wife is readily distinguishable from Fourth Circuit precedent: it had *no* effect on the investigation or prosecution of the instant offense (providing material support or resources to designated foreign terrorist organizations). On June 6, 2010, at the time Mr. Chesser made the statements at issue, government officials had already been listening to his phone calls and conversations for months; the government was well aware of Mr. Chesser’s international travel plans and eventually placed him on the No-Fly List.

Courts have consistently found clear error when §3C1.1 enhancement rested on false unsworn statements to law enforcement officers that did not affect the investigation. *See, e.g., United States v. Kaminski*, 501 F.3d 655, 672 (6th Cir. 2007) (“[A] false but unsworn statement to a law-enforcement officer does not suffice to trigger the enhancement - or, phrased in another way, that an unsworn statement to a law-enforcement officer cannot constitute obstruction of justice under §3C1.1 unless it significantly obstructs or impedes the investigation or prosecution of the offense.”); *United States v. Williams*, 952 F.2d 1504, 1516 (6th Cir.1991) (“The focus of [§3C1.1] is on whether defendant, by actively making material false statements . . . succeeded in significantly impeding the investigation. Failed attempts to shift the investigative searchlight elsewhere are not covered by the guidelines.”); *United States v. Rodriguez*, 942 F.2d 899, 902

⁴ The Fourth Circuit most commonly applies the §3C1.1 enhancement when perjury is involved. *See e.g., United States v. Jones*, 308 F.3d 425, 427 (4th Cir. 2002) (perjury by defendant to get out of custody); *United States v. Sun*, 278 F.3d 302, 302 (4th Cir. 2002) (perjury by defendant); *United States v. Cook*, 76 F.3d 596, 605 (4th Cir. 1996) (same).

(5th Cir. 1991) (defendant's use of an alias after his arrest and during a continuing investigation did not significantly hinder the investigation); *United States v. Fiala*, 929 F.2d 285 (7th Cir. 1991) (ninety minute delay at a highway stop awaiting drug-sniffing dog when defendant denied presence of illegal substance not a significant obstruction to the investigation). *United States v. Barnett*, 939 F.2d 405, 407 (7th Cir.1991) (no additional expenditure of investigative resources); *United States v. Urbanek*, 930 F.2d 1512, 1515 (10th Cir.1991) (“[I]nvestigators already had the correct information in their possession when they asked the questions.”).

The statements identified as “material” failed to impact the investigation of law enforcement in any way. Federal agents were fully aware of the falsity of Mrs. Chesser’s words long before they were uttered. Accordingly, Mr. Chesser’s actions fail to meet the standard of “‘material’ evidence” set forth in §3C1.1 Note 6 and fit squarely under Note 5(B)’s example of conduct deemed unfit for an obstruction enhancement. The application of this enhancement, which drastically inflates the guidelines range from 292-360 (restricted) months to 360 months (restricted), should not be applied in this case where the statements at issue never even had the possibility of impacting a criminal investigation.

Were Mr. Chesser’s material support for terrorism offense not subject to the terrorism enhancement as discussed above, the adjusted offense level for Count 3 would be 26. After grouping the three counts under § 3D1.4, and applying a three-point reduction for acceptance of responsibility, the adjusted offense level would be 25, resulting in an advisory guidelines-range of 110-137 months (total offense level 25 at Criminal History Category VI). Were Mr. Chesser placed in Criminal History Category I, where he would be absent the Criminal-History enhancement found in 3A1.4, the advisory guidelines range would be 57-71 months. In light of

the parsimony provision of § 3553, a sentence to 240 months is appropriate in this case.

Finally, the combined operation of §§ 2M5.1 and 3A1.4 place nearly every § 2339B case in the advisory guidelines range of 360 months to life, which is twice the statutory maximum punishment of fifteen years. This occurs even though Congress has established no mandatory minimum sentence for this offense, and has thus authorized a wide range of punishments from probation to fifteen years imprisonment. While the guidelines range must be considered as one of the co-equal factors, the Supreme Court held recently that “[t]he Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.” *Nelson*, at 892 (emphasis in original). The operation of the guidelines in this case is wholly unreasonable, and this Court should impose a sentence of 240 months.

3. The Need to Promote Respect for the Law, to Provide Just Punishment and Deterrence and to Prevent Unwarranted Sentencing Disparities.

For the reasons discussed above, a sentence of twenty years in Mr. Chesser’s case would promote respect for the law, provide just punishment and deterrence, and prevent unwarranted sentencing disparities. Between 2001 and July 2007, a total of 108 defendants were charged with at least one count of violating 18 U.S.C. § 2339B. Robert M. Chesney, Federal Prosecution of Terrorism-Related Offenses: Convictions and Sentencing Data in Light of the “Soft-Sentence” and “Data-Reliability” Critiques, 11 *Lewis & Clark L. Rev.* 851, 885 (2007). Of the thirty defendants convicted and sentenced under § 2339B, seven were convicted by jury trial, and twenty-three were convicted following a plea agreement. *Id.* The mode sentence was 180 months, and the median sentence was 120 months. *Id.* The average sentence was 122.73 months. *Id.* For cases involving a guilty plea, the mean was 107.91 months, the median 96

months, and the mode 180 months. The table below is a representative sample of cases during and after the 2001 to 2007 time period analyzed in Professor Chesney's study.

	NAME	CHARGES <i>All U.S.C. sections are Title 18 unless otherwise noted.</i>	FACTS	SENTENCE
1	FARIS, Iyman (EDVA 2003)	§ 2339B (2 counts); § 371 (Guilty Plea)	Participated in plan with al Qaeda to carry out a terrorist attack in New York City by cutting bridge's cables. Attempted to obtain equipment for plot.	240 months
2	AL-KASSAR, Monzer (SDNY 2009)	§ 2339B(a)(1); § 2332(b); § 1114 and 1117; § 2332(g)(a)(1); § 1956(a)(3) (Jury Trial)	Agreed to sell 15 surface-to-air missiles, 4,000 grenades, nearly 9,000 assault rifles, and thousands of pounds of explosives to Revolutionary Armed Forces of Colombia.	360 months
3	AL-GHAZI, Tareq Mousa (SDNY 2009)	§ 2339B; § 1114, 1117, 3238 § 2332g(a)(1), (b)(4), 3238 (Jury Trial)	Associate of Al-Kassar, agreed to sell weapons to terrorists of Revolutionary Armed Forces of Colombia.	300 months
4	AREF, Yassin Muhiddin (NDNY 2007)	§2339B; § 1956(a)(3) and (h); § 2339A; § 1546 (Jury Trial)	Plotted to import surface-to-air missiles with the belief that they would be used to attack the Pakistani ambassador in New York City.	180 months
5	HOSSAIN, Mohammed Mosharref (NDNY 2007)	§ 2339B; § 2339A; § 1956 (Jury Trial)	Associate of Yassin Aref; plotted to import weapons for an attack on Pakistani ambassador.	180 months
6	SABIR, Rafiq (SDNY 2007)	§ 2339B (2 counts) (Jury Trial)	Pledged 'bayat' to Usama Bin Laden and conspired to provide martial arts training and medical assistance to al Qaeda through a man he believed to be a terrorist.	300 months
7	PARACHA, Uzair (SDNY 2006)	§ 2339B (2 counts); 50 U.S.C. § 1705(b) (2 counts); § 1028A (Jury Trial)	Attempted to help al Qaeda member Majid Kahn enter the U.S. to commit a terrorist acts of attacking gas stations. Posed as Kahn when dealing with authorities in U.S. so Kahn could go undetected.	360 months

8	ALI, Ahmed Omar Abu (EDVA 2009)	§ 2339B; § 2339A; § 1751(d); 50 U.S.C. § 1705(b); 49 U.S.C. § 46502 (Jury Trial)	Plotted with al Qaeda to kill President George W. Bush and other September 11-type attacks and assassinations.	Life
9	GRECULA, Ronald Allan (SDTX 2007)	§ 2339B (Guilty Plea)	Attempted to build and sell explosive device to al-Qaeda.	60 months
10	REYNOLDS, Michael Curtis (MDPA 2007)	§ 2339B; § 2339A; § 373; § 824(p)(2); 26 U.S.C. § 5841, 5861(d), 5871 (Jury Trial)	Posted solicitations to engage in terrorist activity, specifically bombing U.S. oil pipelines. Admitted to being in contact with al-Qaeda. Had explosives and illustrative operational plans at his home.	360 months
11	KASSIR, Oussama (SDNY 2006)	§ 2339B (4 counts); § 2339A (2 counts); § 2339A(a); § 956(a); § 842(p)(2)(A); § 371 (Jury Trial)	Established jihad training camp in Oregon. Trained jihadists in use of guns and knives in preparation to fight jihad against the United States in Afghanistan.	Life
12	WARSAME, Mohamed Abdullah (DMN 2009)	§ 2339B (Guilty Plea)	Traveled to Afghanistan to train with Al Qaeda where he attended lectures by Usama Bin Laden. Served as al Qaeda as security guard and taught English to Al Qaeda associates. <i>Cooperated with Government.</i>	92 months
13	AL-BAKRI, Muhktar (WDNY 2003)	§ 2339A (Guilty Plea)	Member of "Lackawanna Six" terrorist "sleeper cell." Received training in the use of firearms and explosives at Al Qaeda's al Farooq training camp. <i>Cooperated with Government.</i>	120 months
14	GOBA, Yahya (WDNY 2003)	§ 2339B (Guilty Plea)	Member of "Lackawanna Six" terrorist "sleeper cell." Traveled with al-Bakri and others to al Qaeda's al-Farooq training camp in Afghanistan where he received weapons and explosives training. <i>Plea agreement required cooperation.</i>	120 months
15	ALWAN, Sahim (WDNY 2003)	§ 1029B (Guilty Plea)	Member of "Lackawanna Six" terrorist "sleeper cell." Traveled to Afghanistan to attend al-Qaeda's camp al-Farooq where he listened to Usama Bin Laden's lectures and learned how to assemble and use firearms.	114 months

16	MOSED, Shafel (WDNY 2003)	§ 2339B (2 counts) (Guilty Plea)	Member of “Lackawanna Six” terrorist “sleeper cell.” Trained at camp al-Farooq.	96 months
17	TAHER, Yasein (WDNY 2003)	§ 2339B (2 counts) (Guilty Plea)	Member of “Lackawanna Six” terrorist “sleeper cell.”	96 months
18	AL-MARRI, Ali Saleh Kalah (CDIL 2009)	§ 2339B (Guilty Plea)	Attended terrorist training camps from 1998 to 2001. At order of Khalid Shaikh Mohammed, entered the United States on Sept. 10, 2001, to await instructions. Held as enemy combatant for more than eight years.	100 months
19	IQBAL, Javed (SDNY 2009)	§ 2339B and 2 (Guilty Plea)	Provided satellite transmission services to al-Manar, a Hizabllah operated television station.	69 months
20	ELAHWAL, Saleh (SDNY 2009)	§ 2339B and 2 (Guilty Plea)	Associate of Javed Iqbal.	17 months
21	AL-TIMIMI, Ali (EDVA 2005)	50 U.S.C. § 1705; § 371; § 924(c)&A; § 844(h); § 2384; § 373 (Jury Trial)	Convicted of urging followers to travel to Afghanistan to wage violent jihad against Americans. Some actually traveled overseas in effort to wage war against the U.S.	Life
22	KAHN, Masoud (EDVA 2005)	§ 371; § 2339A; § 924(c)&(o); §2384; 50 U.S.C. § 1705 (Bench Trial)	Member of the “Virginia Jihad Network,” used paintball guns to train for holy war around the globe. After September 11, traveled to Pakistan to train with Lashkar-e-Taiba in hopes of joining the Taliban in war against the United States.	Life
23	CHAPMAN, Seifullah (EDVA 2005)	§ 371; § 2339A; § 924(o) (Bench Trial)	Member of the “Virginia Jihad Network,” used paintball guns to train for holy war around the globe. Trained with Lashkar-e-Taiba in hopes of joining the Taliban in war against the United States.	780 months
24	CHANDIA, Ali Asad (EDVA 2008)	§ 2339B (2 counts); § 2339A (Jury Trial)	Provided material support to Lashkar-e-Taiba by helping leader Masoud Kahn in Virginia. Delivered paintballs for shipment to Pakistan. Visited Lashkar-e- Taiba offices in Pakistan. <i>Sentence vacated by 4th Circuit because of improper terrorism enhancement application, scheduled for re- sentencing in March.</i>	180 months

25	ROYER, Randall Todd (EDVA 2004)	§ 924(c); § 884 (Guilty Plea)	Member of the "Virginia Jihad Network," used paintball guns to train for holy war. Admitted to helping Kahn and others join the Lashkar-e-Taiba training camp.	240 months
26	AATIQUE, Muhammad (EDVA 2003)	§924(c); § 960 (Guilty Plea)	Member of the "Virginia Jihad Network," used paintball guns to train for holy war. Traveled to Pakistan and trained for jihad with Lashkar-e-Taiba. <i>Cooperated with Government.</i>	38 months
27	KWON, Yong Ki (EDVA 2003)	§ 371; § 924(c) and (h) (Guilty Plea)	Member of the "Virginia Jihad Network," used paintball guns to train for holy war. Traveled to Pakistan and trained for jihad with Lashkar-e-Taiba. <i>Cooperated with Government.</i>	38 months
28	SADEQUEE, Ehsanul Islam (NDGA 2009)	§ 2339B(a)(1) (2 counts); § 2339A(a) (2 counts) (Jury Trial)	Took photographs and videos in Washington, D.C. for use in jihad planning and sent videos to al Qaeda and Lashkar-e-Taiba contacts. Traveled to Bangladesh and formed violent jihadist organization known as "Al Qaeda in Northern Europe."	204 months
29	HASAN, Khwaja Mahmood (EDVA 2003)	§ 371; § 924 (Guilty Plea)	Member of the "Virginia Jihad Network," used paintball guns to train for holy war. Traveled to Pakistan and trained for jihad with Lashkar-e-Taiba. <i>Cooperated with Government.</i>	45 months
30	BRENT, Mahmud Faruq (SDNY 2007)	§ 2339B (Guilty Plea)	Traveled to Pakistan and attended Lashkar-e-Taiba training camp.	180 months
31	RESSAM, Ahmed (WDWA 2008)	§2332b(a)(1); § 844(h)(2); § 33 and 2; § 1028(a)(4) and (b)(3)(B); §1546; (Jury Trial)	Plotted to carry out an attack on the U.S. by detonating explosives at Los Angeles International Airport. The plot was to be paid for by proceeds from bank robberies, which Ressam also helped plan. Ressam had attended training camps in Afghanistan before coming to the U.S.	264 months

32	HAMDAN, Salim (Military Commission 2008)	10 U.S.C. § 950v(B)(25) (Military Commission)	Usama Bin Laden's "driver," Hamdan worked for Bin Laden personally for many years. Held as enemy combatant for five years.	66 months
33	HICKS, David (Military Commission 2007)	10 U.S.C. § 950v(B)(25) (Guilty Plea)	Attended al Qaeda training camps in Afghanistan and conducted surveillance on British and American embassies. Held as enemy combatant for six years.	84 months
34	KHADR, Omar (Military Commission 2010)	10 U.S.C. § 950v(B)(25) (Guilty Plea)	Threw a grenade that killed American sergeant Christopher Speer in Afghanistan. Converted landmines into Improvised Explosive Devices and planted IED's with the intent to kill American forces. Held as enemy combatant for nine years.	96 months
35	LINDH, John Walker (EDVA 2002)	50 U.S.C. § 1705; 18 U.S.C. § 844 (Guilty Plea)	Soldier in the Taliban in Afghanistan. Trained with al Qaeda at camp al-Farooq where he learned how to use guns, explosives, maps and learned battlefield training.	240 months
36	MALDONADO, Daniel Joseph (EDTX 2007)	§ 2339D (Guilty Plea)	Traveled to Somalia to join the Islamic Courts Union (ICU) and al Qaeda to fight jihad against the Transitional Federal Government in Somalia.	120 months
37	GEELE, Mohamed (Denmark 2011)	Convicted of breaking into the home of Danish cartoonist with the intent to harm (Jury Trial)	Broke into the home of Danish political cartoonist Kurt Westergaard, who had portrayed the Prophet Mohammad with a turban shaped like a bomb.	108 months

Given that the average sentence in cases where a defendant pleads guilty to at least one count of § 2339B is 107.91 months, a sentence to 240 months in this case, which involves providing material support to a foreign terrorist organization and the conduct described in Counts 1 and 2, will be more than sufficient to promote respect for the law and avoid unwarranted sentencing disparities. *See e.g., United States v. Warsame*, 651 F. Supp. 2d 978 (D. Minn.2009)(Comparing federal and military commission cases before imposing 92 month sentence.).

This Court should also consider that many of the individuals in the table above were convicted of providing material support to al Qaeda, which is responsible for horrific attacks on the United States and its interests and citizens abroad. *See e.g.*, Hamdan, Khadr, Hicks, Sadequee, Ressam, Al-Marri, Mosed, Taher, Alwan, Goba, Al-Bakri, Warsame, Reynolds, Grecula, Ali, Paracha, Sabir, and Faris. By contrast, Al Shabab was designated a foreign terrorist organization on February 26, 2008, and conducted its first and only terrorist attack outside of Somalia on July 11, 2010, one day after Mr. Chesser was stopped at New York's JFK airport. Just as there are disparities in culpability between those who provide material support for terrorist organizations and those who conduct violent terrorist attacks, so too are there disparities in the culpability of the forty-seven foreign terrorist organizations on the State Department's List of Designated Foreign Terrorist Organizations.

The only defendant convicted of providing material support to al Shabaab in the table above is Donald Maldonado, who received 120 months after successfully reaching Somalia and receiving weapons and explosives training in an al Shabaab training camp in Mogadishu in 2006. Rather than approach the FBI like Mr. Chesser did following the bombings in Uganda in July 2010, Mr. Maldonado was captured in Kenya by that nation's armed forces. The affidavit in support of criminal complaint in that case describes Mr. Maldonado's willingness to attack Americans and even serve as a suicide bomber.

Section 3553(a) also requires this Court to assess the need to protect the public and to deter defendant's like Mr. Chesser from future criminal conduct. *United States v. Ressam*, 2010 U.S. App. LEXIS 25583 (9th Cir. 2010) ("This factor is particularly relevant in a terrorist case such as this, where Ressam, who has demonstrated strongly held beliefs about the need to attack American interests in the United States and abroad, will by only 53 years old upon his release."). But unlike

cases involving charges of actual or attempted acts of violence, such as *Ressam*, a person may be convicted under § 2339B if he has merely attempted to provide something of value to a designated terrorist organization, even if there is no connection shown between the support provided and terrorism, and no intent to further terrorist activity. *Warsame*, 651 F. Supp. 2d at 983 (“In sum, while Warsame has not been directly involved in the types of catastrophic plots have garnered worldwide headlines, and does not merit the type of sentence appropriate for those involved in such plots, he provided material support to [al Qaeda] that has those sights in mind.”); David Cole, *Out of the Shadows: Preventative Detention, Suspected Terrorists, and War*, 97 Calif. L. Rev. 693 (2009). Thus, while this Court should address these sentencing factors under the parsimony provision, it need not give the weight sought by the government or some courts in cases involving charges of attempted and actual violent acts.

Another critical distinction between Mr. Chesser and others convicted of similar crimes is that, unlike *Ressam* and others, Mr. Chesser has categorically rejected violence and cooperated with the government’s investigation. Unlike Mr. Chesser, who has renounced violence and is determined to assist the government to the best of his ability, Ahmed Ressam told the judge in his case, “Sentence me to life in prison or anything you wish. I will have no objection to your sentence.”). *Ressam*, 2010 Lexis at *38. Mr. Chesser’s change of heart is entirely consistent with the way Mr. Chesser has lived his entire life thus far: an intense and all consuming passion for some passing interest that transitions into disinterest and is immediately followed by another all consuming passion for another passing interest. Mr. Chesser has now turned his interest and intense focus to assisting the government. *See*, Under Seal Exhibit (Exhibit 4).

Mr. Chesser is 21 years old and should be in Criminal History Category I. The Sentencing Commission has recognized that an offender within this Criminal History Category is extremely

unlikely to recidivate. Given Mr. Chesser' extraordinarily low risk of recidivism, a within-guidelines sentence of 360 months is simply greater than necessary to protect the public from the small chance of his committing future crimes. Such a lengthy sentence would only serve to provide retribution at a very high cost to the American taxpayer. Moreover, because it is the certainty, not the severity, of punishment that best serves as a general deterrent to the public at large, a sentence substantially below the advisory range would more than adequately fulfill § 3553(a)(2)(B)'s goal of "afford[ing] adequate deterrence to criminal conduct." In terms of deterrence, a sentence of twenty years will deter Mr. Chesser from committing further crimes.

CONCLUSION

In light of the factors outlined by § 3553(a), including the nature and circumstances of the offense and the character of Mr. Chesser, his decision to plead guilty and his acceptance of responsibility, he respectfully requests that this Court sentence him to 240 months.

Respectfully submitted,
Zachary Adam Chesser
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EXHIBITS

- 1) Letter from David Chesser dated February 11, 2011.
- 2) Letter from Megan Chesser dated January 7, 2011.
- 3) Statement of Zachary Chesser dated December 10, 2010.
- 4) Under Seal Exhibit.
- 5) Report of Dr. Stephen Xenakis, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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I further certify that a copy of the foregoing pleading will be delivered by electronic mail to:

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February 11, 2011

Honorable Liam O'Grady
United States District Judge
c/o **Michael Nachmanoff**
Office of the Federal Public Defender
1650 King Street, Suite 500
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Dear Judge O'Grady

I am David Chesser and am writing to you on behalf of my son Zachary Chesser. My professional background is as a Ph.D. economist; for the past ten years as a contractor at the U.S. Department of Transportation; for the prior year as an Instructor at Montana State University (during which Zac stayed with his mother in Missouri); for the prior 6 years as an Assistant Professor at the University of Missouri Columbia; and prior to that as a graduate student at the University of Virginia when Zac was born. I understand the gravity of the charges that Zachary has plead guilty to and the nature of his internet postings in the two years prior. Writing this letter is emotionally difficult, but I would like to share my understanding of who Zac is and who he has been over his lifetime. I start with an overview of who I believe Zac is and proceed chronologically: beginning with the years before the fall of 2008; then with the anomalous period between the fall of 2008 to his arrest in July 2010; and conclude with the period since his arrest.

Zac is intellectual, athletic and artistic, but his strongest character trait is that he cares passionately about the world and people. He loves children. He can also be impulsive, impractical, naïve and obstinately single-minded.

Zac's mother Barbara and I separated soon after we moved back to Northern Virginia in the summer of 2000 and were divorced by December 2000. Zac and his brother lived with me half-time and with his mother on the alternate weeks. My residence had been in an apartment in Springfield, but I purchased a townhouse in Oakton in January 2001. In the fall of 2000 I began seeing a counselor for depression related to the divorce and spoke with Zac and his brother about seeing one as well. They did not want to do this and at least in Zac's case seemed to be doing well in school and in making friends. However, while Zac and I had a very close relationship while we were in Missouri, I felt there was now a distance between us. At some point later in the fall or winter, his mother's partner Stacy moved in with Barbara.

Zac was entering sixth grade when we moved and from sixth to eighth grade was in the Gifted and Talented program. He and some friends from school were going to start a band and Zac taught himself guitar to participate, later taking lessons. He played youth basketball, where he was an all-star (at around 6'1" in seventh grade), and youth soccer, where he was one of the better players. He developed an interest in languages and took Latin in school. He taught himself to draw by first tracing designs from albums but was later able to produce good drawings free-hand. He became a vegetarian because he didn't believe it was right to kill animals. In our

frequent political discussions he had an idealistic but impractical view such as arguing for the government to provide an equal income to everyone. When he had difficulty in Math, he did not want help from me even though I have a good math background. He would instead insist his way was right even if I showed him how it was wrong. While he had been one of the best basketball players in the rec league, it took a lot of pressure to get him to go to tryouts for the more competitive travelling team. He also played paintball and video games. Overall I had some concern about our relationship becoming more distant and his willingness to challenge himself, but felt this could be part of being a very intelligent teen-ager.

In high school Zac did not have many friends who lived in my neighborhood (near Oakton High School). His school friends from eighth grade went to Thomas Jefferson or other high schools. He began taking Japanese in ninth grade and also liked history and civics. He played on the freshman football team and the freshman and J.V. basketball teams. His socializing consisted mainly of going to the basketball court and he spent a lot of time in his room drawing and playing guitar and keyboard. I encouraged him to do things outside the house and one of these activities was going to a vegetarian restaurant he had heard about in Vienna. I gave him twenty dollars from his allowance in the morning. That evening he asked for money to go to 7-11 and I asked how much his meal had been and why he didn't have anything left from the twenty. Zac said the meal was around six dollars, but that he liked the waiter who had said he was poor so he'd given the waiter the rest of the twenty as a tip.

Also while Zac was in ninth grade I began dating Meg whom I later married. To introduce Zac and his brother to Meg, we went fossil hunting in Maryland. Zac resented this excursion and told me afterwards '... not to take them along on my dates.' I had explained and reiterated that this was someone I expected to spend a lot of time with and was trying to introduce her to the family. Meg moved in just before Zac started tenth grade and we got married a year later (2006). We had a baby boy, Sam, in February of 2007. Meg's role in the household was more of a second adult rather than a parenting role. Eventually she grew to be an adult the boys could talk to more easily than to a parent. It was around this time that Zac became interested in Buddhism, but it did not develop into much more than reading a few books.

A big negative to Meg's moving in was that I used the presence of another adult to increase my drinking in front of Zac and his brother. While previously I had limited my drinking to the weeks the boys were with their mom and moderately on weekends, I gradually began drinking more. I think this lead Zac to spend more time in his room away from the family.

In eleventh grade Zac took a trip to Japan with his class from school and he rowed crew in the spring of eleventh and twelfth grade. He had been planning on rowing fall crew, but broke his ankle in a weight room accident. He enjoyed playing with our baby as Sam grew and became able to interact more. He coached a youth basketball with me as his adult assistant and really enjoyed working with the kids. He could not coach in twelfth grade due to the broken ankle. He also began break-dancing in eleventh grade and in twelfth grade he went to a couple of the local dance clubs/events. I approved of his going out as I was concerned about his going to college with limited social experience. He had initially not wanted to row crew in the spring, but I insisted he do something to get out of the house.

Zac also met Fatumah in the spring of twelfth grade, the sister of someone he knew from crew and a junior at Oakton who had enough credits to graduate early. Her father disapproved of his daughter being alone with a non-relative male. Zac was in love, but it was very rocky relationship and they broke up frequently. In January 2008, Zac had been accepted at Temple with a scholarship, but in late April he announced he wanted to go to George Mason saying his mom had forced him into a decision he did not want to make. While Zac and I (and Zac and his mom) argued about this decision, eventually we acceded and let him go to GMU. This sudden change in where he was going to school was the beginning of what I would call erratic behavior, as opposed to a young man searching for who he is. When I first said no, Zac seemed to become panicky and desperate. He tensed up and could not talk about it anymore other than to insist that going to GMU was what he was going to do. His reaction reminded me of his mother's reaction to big decisions – a physical response, tensing up and rapid breathing, and a refusal to see any other point. I said we would discuss it later and over the next few days he came up with more practical reasons, such as GMU being cheaper and its good reputation in addition to being what he wanted to do, so I agreed.

In the summer of 2008 Zac was still seeing Fatumah although it was apparently off and on; he took a job at Blockbuster; and he began attending services at the Islamic Heritage Center in Vienna. In midsummer he quit Blockbuster because he objected to working at a place that rented videos featuring naked women. It was also around this time that Fatumah threatened suicide while talking to Zac. He was at his Mom's house and wanted to rush over to see her but was restricted in his car use. His mother would not give him the keys and told him to call the police, which he did. In Barbara's description of Zac's reaction I could again see the panic and desperation he had exhibited in changing to GMU. This incident also deepened a rift between Zac and his mother. Around August, Zac began living at my house full time because his Mom's relationship with her live-in partner Stacy violated his Islamic beliefs. In talking to Zac at around this time I asked him about his sudden change in behavior from going to dance clubs to such a strict religious outlook. He said that he had been interested in Islam for a long time (since the spring) and that he realized he had been headed down a really wrong path with his social life.

In the fall of 2008 Zac began attending GMU while living at my house. He had wanted to get an apartment with friends but his mom and I insisted it was either at my house or in a dorm room. He took the bus to school and used this as an opportunity to see Fatumah who took the bus to NOVA in Annandale. I was proud of him for taking the responsibility of getting himself to class without a car since we did not have one available. However, it was around this time that Zac started to change his appearance in accordance with what he thought a devout Muslim should do: growing a beard; wearing robes; cutting off the bottoms of his pant legs so as not to cover his feet; and even wearing some type of loin cloth in place of underwear. He had given up being a vegetarian and was also spending a lot of time in his room. I was not around the house much as I was working a new position while continuing half-time at my regular one. My wife Meg told me she heard him listening to something that sounded like a Hitler speech. I talked with him about seeing a counselor, but that only resulted in his joining us for dinner each night. I was often angry with Zac because he would not do anything to help out around the house and when reminded would always say it was time for him to pray. One time this resulted in my chasing him from the house and yelling at him that he could not live with us if he didn't participate. The year ended

with all of us going to my Mom's house in New York, but Zac refusing to participate in any of the holiday events or gift giving. After Christmas I took him to a Ravens game and then we had dinner at a Hallal restaurant. Although my impression was that things went pretty well, and I did not drink, he told Meg afterward that he never wanted to do anything like that again.

In January of 2009 Zac moved into the dorm at GMU. I was hoping being on his own would help him grow up and be more responsible, but was also looking forward to having a more peaceful home. A few weeks later he sent me an email saying he was likely to get married in the near future. I argued against this, citing both practical and maturity reasons. He also began talking about going to an Islamist University, with his preferences being for ones in Saudi Arabia and Yemen. Sometime in February we found out Proscovia's name and I tried to contact her father saying that Zac was too young to get married and had never held a full-time job. The only response I got after several additional attempts was a request not to contact him. The next week I got a voicemail from Zac saying he was getting married later in the day. We scrambled to get a baby sitter and find out where it was (the Shirley Gate mosque). I wanted to attend despite my objections in order to maintain contact. The imam arranged a sit-down with the men to talk to me about their customs while Meg went upstairs with the women. The imam asked if I had any questions/thoughts. I said it was too rushed, which he chuckled at, and then he turned to the person beside him to say 'watch what you say, it will all be in the papers tomorrow.' Part of the discussion was on women's rights with their idea being that women just had a different set of rights from men. Most of the discussion was dominated by a Yemeni guy who seemed intent on talking about weapons. Zac's friends his own age mostly seemed nice and exhibited a certain childlike joy that I remember from my Kuwaiti roommates in college.

After the wedding, Zac and Proscovia lived in the dorm for the rest of the school year and we had them over for dinner or lunch a few times. Proscovia always wore a full burqa because of the presence of Zac's brother. Zac was not attending many classes and I tried to motivate him to do so as a way of providing for his family – I had cut off financial support at this point. Our contact was in part limited by our moving to a rental while trying to sell my old house, but we did have them over to house several times for dinner or lunch. The routine with these visits was that after dinner, Zac and I would get into some kind of discussion. One of Zac's main complaints about U.S. policy towards Muslim countries was the effect of the sanctions after the first Gulf War on Iraqi children. He termed this genocide and said millions of children had died. I was skeptical of the number and cited exceptions to the sanctions for humanitarian goods, that Saddam deserved a lot of the blame and that there was no easy policy to apply. He did agree in part with what I was saying, but he also felt deeply that this was a grave injustice.

After moving out of the dorm room in May 2009, Zac became the caretaker at the Shirley Gate mosque. He had a tiny room that had been a utility closet and Proscovia, now pregnant, stayed either there or at her mother's. I was concerned that his living situation might make him more obsessive, but also felt he might be exposed to a broader range of Muslims as several of the people at his wedding seemed to be decent good-hearted people. In the couple of visits I had to the mosque we generally spoke of his work taking care of the outdoor plants, which he took pride in, and his studying religious texts from the library. We had him and Proscovia over a couple of times and I also met him for lunch once or twice. Zac lost this job in the fall and he and

Proscovia moved in with her mother, in part so her mother could help her with the pregnancy.

In November we got a call from Proscovia's sister saying Zac was out of control and trying to get Proscovia's passport so they could leave the country. Her sister did not want Zac to know she had called me, so I then called Zac back and spoke to him. He sounded desperate and panicky, similar to the previous incidents with GMU and Fatumah's threatened suicide. We talked for a while with my pointing out that it was not the time with the baby soon to be born and that the airlines would not let Proscovia fly anyway. Talhah was born soon after. My mother was in town for Thanksgiving and we all visited Proscovia, Zac and Talhah in the hospital.

Zac and Proscovia then moved into the apartment of a friend who was away for work for an extended period. One of the things Zac most often spoke of in favor of the Muslim community was their willingness to help out those in need. Zac was a proud father and showed he was knowledgeable of Talhah's needs, such as a diaper change or feeding. He also held the baby firmly and played with him by making faces and such.

While Zac and I talked on the phone a few times, we did not have much further interaction until Easter. My mom was down and we had a brunch with my family. Meg, Sam and I had to leave early to see a house with our realtor, but Zac, Proscovia and Talhah stayed. My family later remarked that Zac had been talkative and that their time together had been very enjoyable. Our next contact was after I got a call from a Fox News reporter regarding Zac and the South Park creators. I waited a day and then called him, expressing my feelings about what he had done and saying that I wanted no further contact with him – that he and I could not discuss things when he was not being honest with me. Between this time and Zac's arrest we had no contact.

In my conversations with Zac since he has been in jail, he has said he was sorry to me and that he regrets his actions. He has spoken about making something of himself by taking classes while in prison and doing as much for Talhah as he can. He has also expressed an interest in Economics and one of the first things I will write to him will be an explanation of the Fed's monetary policy.

The question of what happened to Zachary is one that has been on my mind since the fall of 2008. I have attributed his sudden change in behavior to many things: the accutane he took for acne in the spring and summer of 2008 and has been known to cause psychosis; his being in love for the first time; his apprehension about the changes in his life with graduating high school or with developing new relationships; the damaging effects my drinking may have had on him. I don't think anyone, including Zac, will ever really have an answer. I do know from my rehabilitation course that addicts have a tendency toward extreme behavior and to see the world on their own terms rather than as it truly is. I see those tendencies in myself and I also see them in Zac to some extent. In Zac's adolescence the U.S. was the acknowledged national power in the world and I think through his love of this country he expected that we, as the superpower, would be able to solve the world's ills. More than anything else, I think Zac truly wants the world to be a good place, where children don't go hungry and people look out for one another. While it is a normal part of maturation to find out the world doesn't measure up to our childhood ideals, I think Zac came to this knowledge at a very young age and at a time when he was still dealing with his parents divorce. I think Zac was on a path to become more sophisticated about the world

and accept that there are limitations to what we can do and was hoping college would help to complete this process. Then, at a time in life that is difficult for many people, and I think particularly so for Zac, he found a religion of the poor with an extremist element that spouted the 'one true path'. True to his nature, Zac explored this with a passion. However, I think it would have remained a verbal/written exploration without the influence of his wife, the general goading of the extremists he was listening to, and finally the directed goading of being called an 'armchair jihadist'. In all of my experience of Zac, other than the period from the fall of 2008 to his arrest, I could not imagine him believing that it is right to answer a perceived injustice to innocents with another injustice to innocents. I am thankful that he was not able to get to Somalia. I think Zac has something to offer this world and can develop into a reasonable and responsible adult.

Sincerely,

David Chesser

TO: Honorable Liam O'Grady, United States District Judge

FROM: Megan Chesser

DATE: January 7, 2011

RE: Character reference for Zachary Chesser

I am Zachary Chesser's stepmom, married to his father, David(Dave) Chesser since September 2006. Dave first introduced me to Zac and his brother in December 2004 just before Zac's 16th birthday at a planned outing to Dave & Busters. In September 2005, I moved into his dad's townhouse. Zac and his brother were at our house every other week for the full week and at their moms for the off week. The boys also came to our house after school on the off weeks until they were picked up by their mom or stepmom so we often crossed paths on the off weeks too. At the request of his mom, Zac also lived with his dad and I full time during his first semester at George Mason(12/08), and then he moved into the GMU dorms, after which we saw him only occasionally before and after he got married in March of 2009.

For the most part, Zac was a typical teen, trying to find his place. Zac was naturally athletic, super smart and very intellectual, and always had a fierce passion for the plight of people in the 3rd world. He initiated many a debate with his dad to discuss cause and solution to end poverty and oppression. He was very much a pacifist to the extreme and thought war was never the answer. I assumed that he would end up in the Peace Corps. He was also a vegetarian out of his concerns for animals and the environment.

During his sophomore(2005/06) and junior years(2006/07), Zac was on the basketball team, liked to play Xbox games in his spare time or watch TV, including Southpark and John Edwards. He also got a job as a bagger at Giant. Zac did spend a lot of time alone in his room behind closed doors during these two years mostly playing computer games(he did not have internet in his room until senior year). I think my moving into the house was a contributing factor to him hiding out in his room. It probably took a good year before the kids warmed up to me. One thing that became immediately apparent was that Zac did not appear to have any close friends beyond one kid who came to the house to play video games occasionally. I shared my concerns with his dad and this led to some clashes with Zac when we started requiring that he spend more time in the family room and, on a few occasions his dad physically removed the door to his room for few days.

In February 2007, Zac's half brother was born. This seemed to bring Zac back into the folds of the family a lot more. Zac was a great big brother. He held and played with his new brother all the time, fed him an occasional bottle, and even watched him briefly to give me a chance to do some things around the house. He did establish a Ono diaper changing rule, so babysitting was not an option. He also had a girlfriend that spring and went to the prom, so we were glad to see him socializing.

In Zac's senior year(2007/08) of high school, he seemed to be trying to reinvent himself and we couldn't keep up with all the clubs and activities he was participating in. He joined a break dancing club and was either jumping around in his room or off to a competition. Then, he got into high fashion and started buying these ridiculously expensive clothes and going to teen clubs in the city. Then, he decided he was going to teach English in Japan, and he joined the Japan Club and participated in the class trip to Japan. Then, he decided he wanted to go to Carnegie Melon and needed a scholarship, so he joined the crew team. In spite of all this, his senior year was a bit tense in our household because Zac was becoming very rebellious. He wanted to do what he wanted to do and there was no hearing the other side. He had little tolerance for any household rules, shirked his chores frequently, was letting his grades fall, etc. Attempts to talk to him often resulted in screaming, even over inconsequential things. None of this generated any grave concerns and we thought he was just being a typical difficult teenager rebelling before he went off on his own to college.

Zac is someone who always does things 150%. While he excelled in books smarts, his common sense and street smarts were not as strong. He would read something from a single source, often on the internet, and then declare that was the absolute truth and try to debate that point to eternity. It was not uncommon for him to make major decisions on the fly without weighing out all the facts. Zac had a list of colleges that were his first priority, but when Temple accepted him under early admissions, he just decided he was going there, stopped submitting applications, and there was no one going to talk him out of it or into completing the other applications. Then, 6 months later, he suddenly decided he was not going to Temple, and would go to George Mason. On family train trips, Zac was the one who would talk for 10 minutes with the guy who needed money to buy a sandwich or lost his wallet and needed a ticket home and then give him the requested \$20, as I cringed and watched that same guy con the next 5 people while we waited for the train.

In his senior year, Zac fell head over heels for a girl and this was the first one we actually got to meet. She was a nice girl and we liked her. She had some family issues and there was a lot of drama in our house related to that. Zac seemed to feel it was his duty to be the one to rescue her from the issue of the moment. He didn't share the details, but would all of the sudden have to leave the house on a moments notice at all hours and if we questioned him, he would fly off the handle and tell us we didn't understand. We liked her, but were afraid he was going to try and marry her too soon. She was a moderate(my impression) Muslim, and typical Zac, he took up reading the Koran when they started dating and threw himself into learning everything and anything about the Muslim religion. They broke up in early Nov 2008, and our belief is that it was because he had become too extreme.

Zac started verbally expressing more extreme Muslim beliefs to the family a couple weeks before the breakup. He was quoting all these ridiculous requirements that he said were supported by the Koran (no toilet paper allowed, men's pants can't touch the ankles, ranting about how the Koran says he can't support Obama even though he had signed up to help with the campaign in Oct just a month before). Around this time, he came home in robes one day, and by the end of December, he was wearing them every day. His dad had planned a father/son Redskins game in early December and Zac came down dressed in robes. His dad asked him to change into regular

clothes. Zac got very mad, but he did it, and then ranted the entire way to the game that he was never going to do this again. Around December 2008, I noticed Zac appeared to be listening to what I described to his dad as "brainwashing" lectures on his computer, in his room. By this time, we required that his door be open when he was in his room and awake. I could not understand what the voice was saying, but it was Arabic, and monotone, and Zac would be frozen in place, staring at the screen, for an hour or more. Knowing that Zac would be moving into the dorms in a few weeks, and concerned with Zac's increasing extreme Muslim viewpoints, we were in a bit of a panic. We discussed intervention options, but basically learned that you can't force it if someone is over 18. His dad talked to him to feel him out about his beliefs, 9/11, etc. and Zac would always reply that he did not believe in violence. His dad also talked to him again about being in his room too much, and he started spending waking hours downstairs. In January, Zac moved to the dorms, and shortly thereafter, got married and dropped of school in May 2009 leading him to the path where he is today.

As you consider the sentence that Zac will be given, I ask that you consider leniency. Zac is a good person at his core. He is at an age where young men often do stupid and irrational things. The person I've read about in the paper and saw on the jihadist websites is not the same Zac I knew. I believe these extremist groups are actively seeking out impressionable kids the same way the religious cults did in the 60's. Zac's transformation from college kid to extremist took place so quickly, in a little over a year, that there is little doubt someone had to be influencing and encouraging him. In addition, there was some family dysfunction that may have made Zac more susceptible to that influence. Zac is intellectually brilliant, but naive to the point that he would believe anything someone would tell him, if he considered that person to be an intellectual peer or superior. Zac sees everything in black and white and the Muslim religion is naturally appealing for that type of personality. I do believe that Zac has been jolted to his senses since being arrested. He's lost the two things that he cares about most, his wife and son, and when he gets out, I think he will do everything possible to ensure that he does the right thing going forward, which is to become a productive member of society and to provide for his family.

Statement of Responsibility

Between November of 2009 and July 2010, I, Zachary Adam Chesser, participated in illegal and immoral activities as set out in the Statement of Facts. I accept full responsibility for my actions, and I have nobody to blame but myself for my conduct. During this time period, I tried to join a designated terrorist organization in Somalia; I made threats against the creators of South Park and others, and I encouraged people to leave empty bags as hoaxes in public places to tie up law enforcement agencies. I also supported jihadi ideology through articles, videos, lectures, discussions, and other forms of media. I take responsibility for all of this activity. I regret it, and I am deeply sorry to all of those whom I have affected, including the victims of the threats, the American people, the Muslim community, law enforcement, and my family, especially my wife and son.

I became a Muslim in 2008 and immediately set out to be the best Muslim I could be. I had very little exposure to religious knowledge growing up, so when I learned anything about Islam, I immediately adopted it and tried to practice completely. I did not do a lot of critical thinking about what I learned. I just felt like I had to do everything to the fullest extent, whether it was how I dressed, who I spoke to, or how I prayed. After about three months of being a practicing Muslim, I was given a copy of lectures by the preacher Anwar Al-Awlaki. They had an element of radicalism to them which served as a gateway for me to other more extreme beliefs. When I first heard the lectures, I did not question Al-Awlaki's theological arguments. In hindsight, I realize that my willingness to accept Al-Awlaki's teachings uncritically was totally wrong and that being a devout Muslim does not mean accepting everything that Al-Awlaki or any other radical preacher says is true.

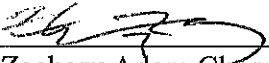
The jihadi ideology I was drawn into was contrary to everything I had grown up thinking and believing – I have always been a pacifist. From the age of fourteen, I became a committed vegetarian and a proponent of peace and human rights. For a while, I was both a practicing Muslim and a vegetarian. Somehow, I was able to reconcile the two beliefs by convincing myself that if I went to fight jihad, I would be saving more lives even if it meant that others died. I understand now how preposterous that sounds, and I completely reject the idea that killing can be justified in the name of Islam or any religion.

Two days after I was stopped from getting on the plane in New York, Al-Shabaab set off a bomb in Kampala, Uganda. My wife's sister lived in the neighborhood where the bombing occurred, and we could not get in touch with her for several days after the bombing. My wife was beside herself, and the reality that the group I thought I wanted to join was responsible for this act of terror had a very personal impact on me. I decided that I would try to reverse at least some of the harm I had already caused, so I went to the FBI with what was, in retrospect, an unrealistic proposal for cooperation. I did not know exactly what I was doing, and my rejection of jihadi ideology was still progressing, but even after my arrest, I was determined to cooperate because I knew it was the right thing to do.

I know I face a long time in prison. I hope to devote some of my time in prison to learning more about Islam so that I can be an effective voice against extremism when I am finally

released. I know that I have to live with the actions that brought me before the Court for the rest of my life, and I am doing and will continue to do everything in my power to make up for the harm I have caused. That is the only way I will be able to live with myself. I also hope to obtain a college degree in prison. I want to emerge from prison as a productive citizen who will do his best for society and his family. My only two goals are to right my wrongs as much as I can and to provide the best life I can for my wife and my son. I fully intend to be the best father I can be given my circumstances. When I became involved in the jihadi community, I attracted a lot of attention. Now my dream is to help my family without drawing any further attention to myself.

I am deeply sorry for the harm and pain I have caused. I am ashamed and bewildered that I was capable of doing it. The period between the winter of 2008 and July of 2010 feels to me like a missing puzzle piece in my life. I know that I will spend many years trying to understand why I followed the path that has led me here. I only hope that through my actions now and in the future I can make up for what I have done.


Zachary Adam Chesser

12/10/10
Date