



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

 v. : **CRIMINAL NO. 04-543**
ATEF HASAN ISMAIL IDAIS :

GOVERNMENT’S SENTENCING MEMORANDUM

This memorandum is submitted to assist the Court in imposing an appropriate sentence upon the defendant Atef Idais. The defendant is scheduled to be sentenced on Thursday, September 8, 2005 at 3:00 p.m. For the reasons provided below, the government recommends a sentence at the top of the advisory Guideline range, which, in this case, would be a sentence of “time served.”

I. BACKGROUND

The defendant was charged by way of a two-count second superseding indictment filed June 16, 2005, charging him in Count One with making false statements under oath on a visa application and presenting a visa application containing false statements, in violation of Title 18, United States Code, Sections 1546 and 3238, and in Count Two with using a visa obtained based on a false statement, in violation of Title 18, United States Code, Section 1546, all arising from his false statements to obtain a visa and the use of that visa to enter this country.

Specifically, certified conviction records from Israel show that the defendant had been convicted and jailed in 1999 for the crimes of membership in the illegal association Hamas ^{1/}, throwing stones, offenses committed against public order. Idais, in filling out his visa application the next

^{1/} Hamas is on the State Department’s list of designated terrorist organizations.

year, denied that he had ever been arrested or convicted and denied membership in any terrorist organization.

On August 9, 2005, the defendant pled *nolo contendere* to both counts of the indictment. The factual background of this case was laid out at length in the government's Change of Plea Memorandum and Supplemental Change of Plea Memorandum. At the August 9, 2005 plea hearing, the defendant indicated that he did not contest those facts. The government moves to incorporate the Change of Plea Memorandums and the hearing testimony as if set forth herein.

II. SENTENCING CALCULATION

A. Statutory Maximum Sentence

The maximum sentence that may be imposed on defendant is twenty years imprisonment.

B. Sentencing Guidelines Calculation

The government is in receipt of the PSR's in this case. The government has been advised that it is to be amended to reflect that the defendant, who entered a *nolo contendere* plea, is not entitled to a reduction in his offense level for acceptance of responsibility. Per the probation department, defense counsel agrees with that assessment, and is in agreement to the resulting modified guidelines calculations. Idais' resulting Offense Level is 8. Coupled with a Criminal History Category of I, the resulting sentencing guidelines range is 0 to 6 months imprisonment. 2/

2/ Were the defendant's foreign conviction to qualify for prior record score points, the defendant's Criminal History Category would be III - 3 points for his prior conviction in Israel where the possible maximum was over one year, and 2 points for having committed the instant offense less than 2 years from release from that prior incarceration. For an 8/III, the sentencing range is 6-12 months imprisonment. The policy behind not counting foreign convictions rests in

C. Factual Objections

Although in agreement with the final guidelines calculations, the government contends that there are certain factual inaccuracies in the PSR based on information provided by the defendant which are significant and worthy of attention from this Court. They are in regards to the defendant's claimed college application and attendance and are significant because these mistruths show the continuing trend of mistruths that the defendant has perpetuated since his efforts to enter our country began.

Contrary to the defendant's assertion that he intended to attend college here in the United States at the time of his visa application, it is clear that he never intended to do so. In order to obtain a "school visa," the defendant first had to get accepted to an American school. In his June 2000 application to the University of Toledo, the defendant claimed that his family would pay his tuition and had the funds to do so.^{3/} When the defendant arrived in the United States only two months later in August 2000, he never set foot on the campus and never advised

part on the unreliability of record keeping in foreign jurisdictions and the difficulty in ascertaining the finality of the foreign conviction with any certainty. In this case, where the very crime for which the defendant is convicted in this case rests on this foreign conviction, the government asserts that the prior foreign conviction is certainly a significant factor that this court can consider when determining the defendant's sentence.

^{3/} Further, there are other apparent misstatements in his application to University of Toledo. Idais has claimed to the Probation Department - and others - that he attended colleges in both Jordan and India after his departure from Israel sometime after his graduation from high school in 1995 and prior to his return to and arrest in Israel in 1999. This Court will recall that he was arrested in 1999 returning to Israel from India in the company of men who attended Iran training camps, but the defendant claimed that he did not know those men and claimed that he had been attending college in India since he left Israel. However, Idais stated the following in his application to the University of Toledo in 2000 in response to the inquiry of whether he had attended any postsecondary, college, university or other - "I declare that since my graduation in 1995 I have been working in my father's commercial business - No further studies were undertaken since then." Thus, Idais either lied when he made this statement on this college application or he lied when he claimed he was studying in India and had no involvement with the men arrested with him who attended the training camps in Iran.

the officials at University of Toledo that he would not attend their school. Instead, he came directly to Philadelphia to join a female he met via the internet and married her within two months. This is contrary to his assertion that he “transferred to Temple University in Philadelphia in order to be closer to his now wife.” Idais did later apply to Temple University in December of 2000 (again claiming that his family had the funds to pay the tuition and fees) and was granted admission in March 2001, but he never attended that school nor did he make any tuition payments.^{4/} The defendant has claimed to Probation that the reason he was not able to attend school was because there was intense conflict in the West Bank during this time period around the time of P.L.O. leader Arafat’s death which prevented his family from paying his tuition, so he had to withdraw. This is untrue. First, the defendant never attended Temple University, so there was nothing for him to “withdraw” from. Second, Arafat did not die until November of 2004, four years after this claimed “withdrawal” from school for alleged financial reasons.

III. GOVERNMENT’S RECOMMENDATION

In this case, the government recommends the Court impose a time served sentence. This sentence comports with the advisory guidelines and imposes the appropriate sentence on an unrepentant and troubling defendant. While the defendant casts himself as a man simply seeking education in our country who was denied that opportunity for financial reasons, that is clearly not the case. The defendant is a member of Hamas who lied about his conviction

^{4/} After the defendant’s attempts to adjust his immigration status (based on his marriage) failed, the defendant filed for asylum in 2003. In that application, the defendant claimed that he had attended Temple University studying mechanical engineering from December 1999 to January 2000. The school is between sessions during that time period and the defendant attended no classes.

and status in order to obtain a bogus visa to enter our country for reasons that still remain unclear. He has made no effort to pursue legitimate education or to change his visa to one which would allow him to work, and he has been on public assistance since his arrival in our country. While refusing to acknowledge to this Court his membership in Hamas as per his certified conviction, he nonetheless has stated that he admires Hamas' "focus" on the killing of Jews, as opposed to, in his view, another terrorist group's more indiscriminate killing of others in addition to Jews as they pursue their political agendas. The defendant, a guest to this country presented with many fine opportunities for education, chose to squander those legitimate opportunities. Prior to pleading *nolo contendere*, the defendant, at the prior change of plea hearing claimed under oath that this visa application is not the one he filled out. Clearly, it was. He seems completely unrepentant about the crimes he committed. The defendant shows no sincere regret or remorse beyond the regret that he was caught, and, as a consequence, he has probably forfeited his continued residency in our country. Thus, the government's recommendation if a sentence of time served.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Government's Sentencing Memorandum has been served by me this date, by efile, (and be regular mail if not a participant to efile) upon:

Robert E. H. Miller, Esq.
1410 Wharton Street
Philadelphia, PA 19146

NANCY BEAM WINTER
Assistant United States Attorney

Date: _____