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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)	Case No. SA CR 05-214-CJC
)	
13 Plaintiff,)	<u>PLEA AGREEMENT FOR DEFENDANT</u>
)	<u>KEVIN JAMES</u>
14 v.)	
)	
15 KEVIN JAMES, et al.,)	
)	
16 Defendants.)	
)	
17)	
18)	

19
 20 1. This constitutes the plea agreement between Kevin James
 21 ("defendant") and the United States Attorney's Office for the
 22 Central District of California ("the USAO") in the above-
 23 captioned case. This agreement is limited to the USAO and cannot
 24 bind any other federal, state or local prosecuting,
 25 administrative or regulatory authorities.

26 ///
 27 ///
 28 ///

1 PLEA

2 2. Defendant agrees to plead guilty to count one of the
3 indictment in United States v. Kevin James, et al., SA CR No. 05-
4 214-CJC.

5 NATURE OF THE OFFENSE

6 3. In order for defendant to be guilty of count one,
7 which charges a violation of Title 18, United States
8 Code, Section 2384, the following must be true: (1) two or more
9 persons conspired to levy war against, or oppose by force the
10 authority of, the United States government; (2) the defendant was
11 a member of the conspiracy; and (3) the offense occurred in a
12 state, territory, or place subject to the jurisdiction of the
13 United States. Defendant admits that defendant is, in fact,
14 guilty of these offenses as described in count one of the
15 indictment.

16 PENALTIES

17 4. The statutory maximum sentence that the Court can impose
18 for a violation of Title 18, United States Code, Section 2384 is:
19 20 years imprisonment; a three-year period of supervised release;
20 a fine of \$250,000; and a mandatory special assessment of \$100.

21 5. Supervised release is a period of time following
22 imprisonment during which defendant will be subject to various
23 restrictions and requirements. Defendant understands that if
24 defendant violates one or more of the conditions of any
25 supervised release imposed, defendant may be returned to prison
26 for all or part of the term of supervised release, which could
27 result in defendant serving a total term of imprisonment greater
28 than the statutory maximum stated above.

1 trial, including the right to have the Court appoint counsel for
2 defendant for the purpose of representation at trial. (In this
3 regard, defendant understands that, despite his plea of guilty,
4 he or she retains the right to be represented by counsel - and,
5 if necessary, to have the court appoint counsel if defendant
6 cannot afford counsel - at every other stage of the proceedings.)

7 d) The right to be presumed innocent and to have the
8 burden of proof placed on the government to prove defendant
9 guilty beyond a reasonable doubt.

10 e) The right to confront and cross-examine witnesses
11 against defendant.

12 f) The right, if defendant wished, to testify on
13 defendant's own behalf and present evidence in opposition to the
14 charges, including the right to call witnesses and to subpoena
15 those witnesses to testify.

16 g) The right not to be compelled to testify, and, if
17 defendant chose not to testify or present evidence, to have that
18 choice not be used against defendant.

19 By pleading guilty, defendant also gives up any and all
20 rights to pursue any affirmative defenses, Fourth Amendment or
21 Fifth Amendment claims, and other pretrial motions that have been
22 filed or could be filed.

23 WAIVER OF DNA TESTING

24 10. Defendant has been advised that the government has in
25 its possession items of physical evidence that could be subjected
26 to DNA testing. Defendant understands that the government does
27 not intend to conduct DNA testing of any of these items.

28 Defendant understands that, before entering guilty plea pursuant

1 to this agreement, defendant could request DNA testing of
2 evidence in this case. Defendant further understands that, with
3 respect to the offense to which defendant is pleading guilty
4 pursuant to this agreement, defendant would have the right to
5 request DNA testing of evidence after conviction under the
6 conditions specified in 18 U.S.C. § 3600. Knowing and
7 understanding defendant's right to request DNA testing, defendant
8 knowingly and voluntarily gives up that right with respect to
9 any items of evidence there may be in this case that might be
10 amenable to DNA testing. Defendant understands and acknowledges
11 that by giving up this right, defendant is giving up any ability
12 to request DNA testing of evidence in this case in the current
13 proceeding, in any proceeding after conviction under 18 U.S.C. §
14 3600, and in any other proceeding of any type. Defendant further
15 understands and acknowledges that by giving up this right,
16 defendant will never have another opportunity to have the
17 evidence in this case submitted for DNA testing, or to employ the
18 results of DNA testing to support a claim that defendant is
19 innocent of the offense to which defendant is pleading guilty.

20 SENTENCING FACTORS

21 11. Defendant understands that the Court is required to
22 consider the United States Sentencing Guidelines ("U.S.S.G." or
23 "Sentencing Guidelines") among other factors in determining
24 defendant's sentence. Defendant understands that the Sentencing
25 Guidelines are only advisory, and that after considering the
26 Sentencing Guidelines, the Court may be free to exercise its
27 discretion to impose any reasonable sentence up to the maximum
28 set by statute for the crimes of conviction.

1 12. Defendant and the USAO agree and stipulate to the
2 following applicable sentencing guideline factors:

3 Base Offense Level : 33 U.S.S.G. § 2A1.5

4 Adjustments-

5 (Terrorism
6 enhancement) : +4 U.S.S.G. § 3A1.4

7 (Acceptance of
responsibility) : -3 U.S.S.G. § 3E1.1

8 Defendant and the USAO reserve the right to argue that additional
9 specific offense characteristics, adjustments and departures are
10 appropriate. Defendant also understands that defendant's base
11 offense level could be increased if defendant is a career
12 offender under U.S.S.G. §§ 4B1.1 and 4B1.2. In the event that
13 defendant's offense level is so altered, the parties are not
14 bound by the base offense level stipulated to above.

15 13. There is no agreement as to defendant's criminal
16 history or criminal history category.

17 14. The stipulations in this agreement do not bind either
18 the United States Probation Office or the Court. Both defendant
19 and the USAO are free to: (a) supplement the facts by supplying
20 relevant information to the United States Probation Office and
21 the Court, (b) correct any and all factual misstatements relating
22 to the calculation of the sentence, and (c) argue on appeal and
23 collateral review that the Court's sentencing guidelines
24 calculations are not error, although each party agrees to
25 maintain its view that the calculations in paragraph 12 are
26 consistent with the facts of this case.

27 DEFENDANT'S OBLIGATIONS

28 15. Defendant agrees that he will:

1 a) Plead guilty as set forth in this agreement.

2 b) Not knowingly and willfully fail to abide by all
3 sentencing stipulations contained in this agreement.

4 c) Not knowingly and willfully fail to: (i) appear as
5 ordered for all court appearances, (ii) surrender as ordered for
6 service of sentence, (iii) obey all conditions of any bond, and
7 (iv) obey any other ongoing court order in this matter.

8 d) Not commit any crime; however, offenses which would
9 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
10 not within the scope of this agreement.

11 e) Not knowingly and willfully fail to be truthful at
12 all times with Pretrial Services, the U.S. Probation Office, and
13 the Court.

14 f) Pay the applicable special assessment at or before
15 the time of sentencing unless defendant lacks the ability to pay.

16 THE USAO'S OBLIGATIONS

17 16. If defendant complies fully with all defendant's
18 obligations under this agreement, the USAO agrees:

19 a) To abide by all sentencing stipulations contained in
20 this agreement.

21 b) At the time of sentencing to move to dismiss the
22 remaining count of the indictment as against defendant.
23 Defendant agrees, however, that at the time of sentencing the
24 Court may consider the dismissed count in determining the
25 applicable Sentencing Guidelines range, where the sentence should
26 fall within that range, the propriety and extent of any departure
27 from that range, and the determination of the sentence to be
28 imposed after consideration of the sentencing guidelines and all

1 other relevant factors.

2 c) At the time of sentencing, provided that defendant
3 demonstrates an acceptance of responsibility for the offense up
4 to and including the time of sentencing, to recommend a two-level
5 reduction in the applicable sentencing guideline offense level,
6 pursuant to U.S.S.G. § 3E1.1; to recommend and, if necessary,
7 move for an additional one-level reduction if available under
8 that section; and to recommend that the Court impose a sentence
9 of eighteen years imprisonment pursuant to the factors set forth
10 in 18 U.S.C. § 3553.

11 BREACH OF AGREEMENT

12 17. If defendant, at any time between the execution of this
13 agreement and the completion of defendant's cooperation pursuant
14 to the agreement or defendant's sentencing on a non-custodial
15 sentence or surrender for service on a custodial sentence,
16 whichever is later, knowingly violates or fails to perform any of
17 defendant's obligations under this agreement ("a breach"), the
18 USAO may declare this agreement breached. For example, if the
19 defendant knowingly in an interview, before a grand jury, or at
20 trial, falsely accuses another person of criminal conduct or
21 falsely minimizes his own role, or the role of another, in
22 criminal conduct, he will have breached this agreement. If the
23 USAO declares this agreement breached, and the Court finds such a
24 breach to have occurred, defendant will not be able to withdraw
25 defendant's guilty plea, and the USAO will be relieved of all of
26 its obligations under this agreement. In particular:

27 a) The USAO will no longer be bound by any agreements
28 concerning sentencing and will be free to seek any sentence up to

1 the statutory maximum for the crime to which defendant has
2 pleaded guilty.

3 b) The USAO will no longer be bound by any agreements
4 regarding criminal prosecution, and will be free to prosecute
5 defendant for any crime, including charges that the USAO would
6 otherwise have been obligated to dismiss pursuant to this
7 agreement.

8 c) The USAO will be free to prosecute defendant for
9 false statement, obstruction of justice, and perjury based on any
10 knowingly false or misleading statement by defendant.

11 18. Following a knowing and willful breach of this
12 agreement by defendant, should the USAO elect to pursue any
13 charge that was dismissed or not filed as a result of this
14 agreement, then:

15 a) Defendant agrees that any applicable statute of
16 limitations is tolled between the date of defendant's signing of
17 this agreement and the commencement of any such prosecution or
18 action.

19 b) Defendant gives up all defenses based on the statute
20 of limitations, any claim of preindictment delay, or any speedy
21 trial claim with respect to any such prosecution, except to the
22 extent that such defenses existed as of the date of defendant's
23 signing of this agreement.

24 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

25 19. Defendant gives up the right to appeal any sentence
26 imposed by the Court, and the manner in which the sentence is
27 determined, provided that (a) the sentence is within the
28 statutory maximum specified above and is constitutional, (b) the

1 Court in determining the applicable guideline range does not
2 depart upward in offense level or criminal history category and
3 determines that the total offense level is 34 or below, and (c)
4 the Court imposes a sentence of 216 months or less. Defendant
5 also gives up any right to bring a post-conviction collateral
6 attack on the conviction or sentence, except a post-conviction
7 collateral attack based on a claim of ineffective assistance of
8 counsel, a claim of newly discovered evidence, or a explicitly
9 retroactive change in the applicable Sentencing Guidelines,
10 sentencing statutes, or statutes of conviction.

11 20. The USAO gives up its right to appeal the Court's
12 sentence, provided that (a) the Court in determining the
13 applicable guideline range does not depart downward in offense
14 level or criminal history category, (b) the Court determines that
15 the total offense level is 34 or above, and (c) the Court imposes
16 a sentence of 216 months or more.

17 COURT NOT A PARTY

18 21. The Court is not a party to this agreement and need not
19 accept any of the USAO's sentencing recommendations or the
20 parties' stipulations. Even if the Court ignores any sentencing
21 recommendation, finds facts or reaches conclusions different from
22 any stipulation, and/or imposes any sentence up to the maximum
23 established by statute, defendant cannot, for that reason,
24 withdraw defendant's guilty plea, and defendant will remain bound
25 to fulfill all defendant's obligations under this agreement. No
26 one - not the prosecutor, defendant's attorney, or the Court -
27 can make a binding prediction or promise regarding the sentence
28 defendant will receive, except that it will be within the

1 statutory maximum.

2 NO ADDITIONAL AGREEMENTS

3 22. Except as set forth herein, there are no promises,
4 understandings or agreements between the USAO and defendant or
5 defendant's counsel. Nor may any additional agreement,
6 understanding or condition be entered into unless in a writing
7 signed by all parties or on the record in court.

8 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

9 23. The parties agree and stipulate that this Agreement
10 will be considered part of the record of defendant's guilty plea
11 hearing as if the entire Agreement had been read into the record
12 of the proceeding.

13 This agreement is effective upon signature by defendant and
14 an Assistant United States Attorney.

15 AGREED AND ACCEPTED

16 UNITED STATES ATTORNEY'S OFFICE
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 THOMAS P. O'BRIEN
19 United States Attorney

20 _____ /S/ _____
GREGORY W. STAPLES Date
DOUGLAS F. McCORMICK
21 Assistant United States Attorneys

22
23 I have read this agreement and carefully discussed every
24 part of it with my attorney. I understand the terms of this
25 agreement, and I voluntarily agree to those terms. My attorney
26 has advised me of my rights, of possible defenses, of the
27 Sentencing Guideline provisions, and of the consequences of
28 entering into this agreement. No promises or inducements have

1 been made to me other than those contained in this agreement. No
2 one has threatened or forced me in any way to enter into this
3 agreement. Finally, I am satisfied with the representation of my
4 attorney in this matter.

5

6 _____ /S/ _____
KEVIN JAMES Date
7 Defendant

8

9 I am Kevin James' attorney. I have carefully discussed
10 every part of this agreement with my client. Further, I have
11 fully advised my client of his rights, of possible defenses, of
12 the Sentencing Guidelines' provisions, and of the consequences of
13 entering into this agreement. To my knowledge, my client's
14 decision to enter into this agreement is an informed and
15 voluntary one.

16

17 _____ /S/ _____
ROBERT CARLIN, ESQ. Date
18 Deputy Federal Public Defender
19 Counsel for Defendant
Kevin James

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ATTACHMENT A

1
2 In 1997, defendant founded an organization entitled
3 Jam'iyyat Ul-Islam Is-Saheeh ("JIS") based on his interpretation
4 of Islam. Defendant preached the duty of JIS members to target
5 for violent attack any enemies of Islam or "infidels," including
6 the United States Government and Jewish and non-Jewish supporters
7 of Israel. Defendant recruited fellow prison inmates to join
8 JIS. Defendant required prospective JIS members to take an oath
9 of obedience to him and swear not to disclose the existence of
10 JIS. Defendant also required prospective JIS members to swear
11 that they would obey a ninety day contact rule, wherein they
12 would communicate with defendant at least once during every
13 ninety day period.

14 In addition to his recruitment efforts inside prison,
15 defendant also sought to establish groups or "cells" of JIS
16 members outside of prison which would carry out violent attacks
17 against perceived infidels, including the United States
18 Government, the Government of Israel, and Jewish persons, in
19 retaliation for the policies of the United States and Israeli
20 governments toward Muslims throughout the world.

21 Beginning in December 2004 and continuing to July 5, 2005,
22 defendant conspired with co-defendants Levar Washington
23 ("Washington"), Gregory Patterson ("Patterson"), and Hammad
24 Samana ("Samana") to levy war against the government of the
25 United States through terrorism, and to oppose by force the
26 authority of the United States government.

27 In furtherance of the conspiracy, defendant wrote and
28 disseminated a document referred to as the "JIS Protocol." In
the JIS Protocol, attached as Exhibit 1, defendant advocated the
establishment of an Islamic Caliphate in the United States. The
JIS Protocol states that "Muslims must be allowed to govern
themselves by Shariah and if not we are being oppressed . . . yet
we must wage the educational as well as the Organizational War or
Jihad." The JIS Protocol set out the criteria for "this task."
Defendant described "Jihad [as] the only true 'anti-terrorist
action'[,] a defensive battle against the aggression of
theological impostors led by Zionism."

The JIS Protocol further states that the "faithful mujahid
are strictly forbidden to obey Kafirs or disbelievers, in fact
they are commanded by Allah to battle against disbelievers . . .
utilizing most strenuous effort." Defendant wrote about "Shia
usurpation" of the name Hezbollah in Lebanon, and claimed that
JIS would "sit back, build and attack!!! Our obvious targets
being the Western forces of the US and their Kufr [sic] society,
Russia, Serbia, Brittain [sic] and Isreal [sic]." The JIS
Protocol states that "[i]t is important that the forementioned
[sic] objectives be carried out, we are not concerned with the
numbers of recruits to this movement, which was a mistake of many
before us that led to the many degrees of compromise and
infiltration, nor are we concerned with the lost [sic] of life in

1 the pursuit of our objectives; for martyrdom Fee Sabil Allah is
2 automatic paradise."

3 Defendant also wrote in the JIS Protocol of the need for
4 secrecy. In one section defendant discusses a probationary
5 period of six months for new recruits and that the "security and
6 clandestine movement of our group must be safeguarded hence
7 correspondence is imperative."

8 Defendant also wrote a document called "Blueprint 2005,"
9 attached as Exhibit 2, which set forth the following goals for
10 members of JIS:

- 11 • learn Arabic;
- 12 • acquire a steady job that does not interfere with
13 learning Arabic;
- 14 • recruit five "special operations members, preferably
15 felony free";
- 16 • "acquire two Weapons (pistols) with silencers";
- 17 • "appoint a member (from the five) to find contacts for
18 explosives or to learn bombmaking. We will need bombs
19 that can be activated from a distance";
- 20 • and "In order to fulfill these task [sic] you must
21 become legitimate. Acquire identification, drivers
22 license, work/school, keep regular contact with your
23 parole agent, attempt to remove your tatoos and monitor
24 your look. Your dress code must not bring attention .
25 . . casual dress so as not to arouse 'extremist
26 suspicion.' We have work to do."

27 Defendant directed JIS members to contact him every ninety
28 days: "Never violate three month contact agreement which means
that you must never fall out of contact with me directly for any
time exceeding 90 days." The Blueprint concludes as follows:

29 May Allah grant us victory through you, for
30 our sole purpose for residence in Dar ul-Harb
31 [house of war] has been outlined: 'O you who
32 believe! Endure and be more patient (than
33 your enemy), and guard your territory by
34 stationing army units (*J.I.S.) Permanently
35 at the place from where the enemy can attack
36 you (*U.S.A.), and fear Allah, so that you
37 may be successful' 3:200.

38 Defendant also wrote a document called the "Notoriety
39 Moves," which included a proposed statement to the press
40 following attacks by JIS members. That document, attached as
41 Exhibit 3, stated: "On missions that are done for leaving
42 impressions the following letter will be left behind and if 187's

1 [a reference to California's homicide statute] are involved a
2 video tape with one of our spokesman wrapped [sic] in a turban
3 will recite this letter and be sent to all major news stations."
4 The proposed letter reads as follows:

5 This incident is the first in a series of
6 incidents to come in a plight to defend and
7 propagate traditional Islam in its purity.
8 We advise those sincere believers in Allah
9 and followers of the Sunnah of his Messenger
10 to teach their children the importance of
11 staying within the bounds of the Shariah
12 because if you as parents won't enforce [sic]
13 it, the community will. We also advise those
14 sincere Muslims of the ahl-Sunnah wa'l
15 Jama'at to abstain from socializing and or
16 aiding the following targets of Jama'at
17 Islami As-Sahih:

- 18 * The so-called Nation of Islam and its
19 idol worshiping supporters of Farrakhan.
- 20 * The so-called "American-Muslims" or
21 those who follow Warith D. Muhammed's
22 transgression against traditional Islam
23 and the Sunnah (Hadith) of the Messenger
24 of Allah (saw).
- 25 * Those so-called Muslims who trash the
26 four schools of Islamic law and
27 qualified scholarship in Islam.
- 28 * Those so-called Muslims labelled [sic]
Shi'i, and supporters of the infidel
state of Iran.
- * Those so-called Muslims who believe it
permissible to join or support the
American Army (military) in any way.
- * Those so-called Muslims who are
employees of non-Islamic government
institutions that are blatantly in
opposition to the laws and religion of
Islam.
- * Those Jewish and non-Jewish supporters
of an Israeli state.

29 All who fall under the previously mention has
30 [sic] a legitimate reason to fear for their
31 safety. We are not extremists, radicals, or
32 terrorists. We are only servants of Allah
33 and lovers of the Sunnah, our actions will
34 gladly be corrected with proof from Islamic
35 sources . . . Once again, I advised [sic] the
36 masjid of America to hire or seek qualified
37 imams to govern over your Islamic centers and
38 restore Islamic Shariah to your areas. If by
doing this you come into opposition from
local law enforcement then know that it's

1 time for you to migrate. Allahu Alim!

2 Jama'at Islami As-Sahih

3 Defendant recruited Washington into JIS while both were
4 inmates at New Folsom Prison, and had Washington swear an oath of
5 loyalty and obedience to defendant and JIS. In furtherance of
6 the conspiracy, after his release from prison, Washington
7 recruited Patterson and Samana into JIS and had them swear oaths
8 of allegiance and obedience to JIS.

9 In furtherance of the conspiracy, defendant committed the
10 following acts, among others:

11 a. In December 2004, defendant instructed Washington to (1)
12 recruit five individuals without felony convictions and train
13 them in covert operations; (2) acquire two firearms with
14 silencers; and (3) appoint an individual from the group he
15 recruited to find contacts for explosives or learn to make bombs
16 that could be activated from a distance.

17 b. Between December 2004 and July 5, 2005, defendant wrote
18 letters to Washington advising him on how to recruit new members
19 for JIS and instructing Washington to take Patterson to a mosque
20 in San Diego to look for new recruits. Defendant also asked
21 Washington to send him copies of the JIS Protocol for defendant
22 to distribute in prison.

23 c. Between December 2004 and July 5, 2005, defendant wrote
24 a letter to Washington which stated the following: "Be careful
25 Akhi [brother], there are agents everywhere looking for Al-Qaida
26 recruiters or any other threat to national security. This is
27 another reason why I haven't commended any of our members already
28 out there to move forward. Their work must remain totally
charitable and educational. Your squad will be engaged on all
levels."

d. In March 2005, defendant wrote a letter to Washington
telling him that Patterson should keep his job at Los Angeles
International Airport and that "al-Bakistani" [referring to
Samana] "should also be a very beautiful asset."

e. In March 2005, defendant sent Washington a visitor's
slip to arrange for Patterson to visit defendant in prison.

f. In May 2005, defendant sent Washington a visitor's slip
for Samana to visit defendant in prison.

g. In June 2005, defendant sent Washington a letter saying
that defendant was sending Washington a "young comrade" who was a
"walking martyr." Defendant told Washington to place the recruit
"under your command" and that "global plight" would be "his
focus."

Defendant admits that the above-listed overt acts were in

1 furtherance of the conspiracy to retaliate against the
2 governments of the United States and Israel by attacking targets
3 in Southern California associated with the U.S. military and the
4 Jewish religion.
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