

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

UNITED STATES OF AMERICA,

v.

EL SHAFEE ELSHEIKH,
Defendant.

Case No. 1:20-cr-00239-TSE

Honorable T. S. Ellis, III

Sentencing Date: August 19, 2022

UNDER SEAL

**DEFENDANT’S POSITION ON SENTENCING
AND GUIDELINES OBJECTIONS**

El Shafee Elsheikh, by counsel, respectfully submits his objections to the Presentence Report and his position with respect to sentencing. For his conviction in the instant offense, Mr. Elsheikh will spend the rest of his life in federal custody. Indeed, the Court’s sentencing discretion is limited by the multiple statutorily mandated life sentences required for Counts 1 through 5. See 18 U.S.C. § 1203. Though the Court has the discretion to impose up to life for Counts 6 through 8. See 18 U.S.C. §§ 2332(b)(2), 2339A & 2339B.

Put simply, there is nothing that this Court can do to bring the victims back or restore their families’ losses. Instead, the only real choice this Court has left in sentencing Mr. Elsheikh is whether to recommend that he be placed in a prison environment that is appropriate *for him*—as the sentencing statutes require, see 18 U.S.C. §§ 3553(a) & 3621. Accordingly, given Mr. Elsheikh’s exemplary history while incarcerated and demonstrated lack of security risk, the defense respectfully asks this Court to recommend that the Bureau of Prisons (“BOP”) evaluate Mr. Elsheikh for designation to a Communications Management Unit (“CMU”) or other alternative placement short of condemning him to a life of solitary confinement at Florence ADX.

DISCUSSION

I. Objections To The Presentence Report

Before a sentencing Court can apply any given sentencing enhancement, the Court must first find, under a preponderance standard, that evidence supports such an enhancement. See *United States v. Grubbs*, 585 F.3d 793, 803 (4th Cir. 2009) (“[p]reponderance of the evidence is the appropriate standard of proof for sentencing purposes”); *United States v. Noe*, 191 Fed. Appx. 216 (4th Cir. 2006) (district court's use of preponderance of evidence standard in making factual findings supporting sentencing enhancements was constitutional).

Here, as made apparent below, the probation officer’s application of the Leadership Role enhancement, under U.S.S.G. §3B1.1(a), the Obstruction of Justice enhancement, under U.S.S.G. §3C1.1, and application of the Sexual Exploitation enhancement, under U.S.S.G. §2A4.1(b)(5), is unsupported by the evidence.

a. Leadership Role—U.S.S.G. §3B1.1(a)

Mr. Elsheikh objects to the application of the “Role in the Offense” enhancement under USSG §3B1.1(a) (leadership role) as it is applied to this case. PSR, ¶ 86, 98, 108, 117, 126. The Sentencing Guidelines provide for a four-level increase “[if] the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive[.]” U.S.S.G. §3B1.1(a). Application Note 2 to this guideline makes clear that “[t]o qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants.” U.S.S.G. § 3B1.1(c) (2000), comment. (n.2); see *United States v. Hodge*, 295 F. App’x 597, 603 (4th Cir. 2008).

In determining whether a defendant possessed a leadership or organizational role in a given case, the sentencing commission indicated that a sentencing court should consider seven

factors: “[1] the exercise of decision making authority, [2] the nature of participation in the commission of the offense, [3] the recruitment of accomplices, [4] the claimed right to a larger share of the fruits of the crime, [5] the degree of participation in planning or organizing the offense, [6] the nature and scope of the illegal activity, and [7] the degree of control and authority exercised over others.” *United States v. Sayles*, 296 F.3d 219, 224 (4th Cir. 2002) (citing U.S.S.G. § 3B1.1, cmt. N. 4). Applying these factors here, the only thing established by the government’s evidence is that, with the possible exception of Emwazi, all the members of the ISIS “Beatles” group were equal and co-dependent participants—working in tandem to achieve their common goals.

Indeed, the evidence at trial did not establish a discernable delineation of decision-making authority between the various “Beatles” members. To the extent that the government’s investigation established a leadership hierarchy, it is clear Mr. Elsheikh did not occupy this role. Indeed, in the numerous FBI debriefing sessions [REDACTED] clearly identified the leader of the “Beatles” group:

[REDACTED]

[REDACTED]. A released hostage, [REDACTED], also identified Emwazi as the person she believed to be the leader of the “Beatles” group responsible for her detention:

[REDACTED]

[REDACTED].¹

Moreover, [REDACTED], in [REDACTED] debriefings with the government, stated that in February 2014 the “Beatles” group [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]. In these negotiations, the “Beatles” group “[REDACTED]

[REDACTED]

[REDACTED]” [REDACTED]

[REDACTED]. *Id.* at 2.

The evidence adduced at trial and through the government’s investigation is muddled as to the specific identities of all the “Beatles”—as the Beatles always wore black masks and took steps to conceal their physical characteristics. Consequently, it cannot be proven, by a preponderance of the evidence, that Mr. Elsheikh exercised control and authority over others, possessed decision-making authority, or that his participation in the commission of the offense was any different from the other member of the group. As such, the 4-level leadership role enhancement under U.S.S.G. §3B1.1(a) should be removed.

b. Obstruction of Justice—U.S.S.G. §3C1.1

Mr. Elsheikh objects to applying the “Obstruction of Justice” enhancement under U.S.S.G. §3C1.1 (perjury, false document, false information to a judge) as applied to this case. PSR, ¶ 88, 99, 109, 118, 127. The Sentencing Guidelines provide for a two-level increase “[if] [] the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the

¹ [REDACTED]

administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction[.]” U.S.S.G. §3C1.1. Application Note 4 to this guideline provides a non-exhaustive list of conduct covered by the enhancement: committing perjury, producing a false document during a judicial proceeding, providing materially false information to a judge, or providing a materially false statement to a law enforcement officer that obstructed or impeded the official investigation or prosecution. U.S.S.G. §3C1.1, cmt. N.4 (A-G). However, the application notes also make clear that this enhancement

“[I]s not intended to punish a defendant for the exercise of a constitutional right... in applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.”

Id. cmt 2.

The Fourth Circuit has held that for a sentencing court to apply the obstruction of justice enhancement based upon perjury, the district court must find by a preponderance of the evidence that the defendant “(1) gave false testimony; (2) concerning a material matter; (3) with the willful intent to deceive (rather than as a result of confusion, mistake, or faulty memory).” *United States v. Jones*, 308 F.3d 425, 428 (4th Cir. 2002). Moreover, the “sentencing court also must specifically identify the perjurious statements and make a finding either as to each element of perjury or “ ‘that encompasses all of the factual predicates for a finding of perjury.’ ” *Id.* The same analysis applies under application note 4(f)—providing materially false information to a judge. See *United States v. Savage*, 885 F.3d 212, 225 (4th Cir. 2018) (citing the aforementioned *Jones* factors under an U.S.S.G. §3C1.1 cmt. N.4(F) analysis).

Alternatively, the production of a false document, under application note 4(c), “requires that either in producing or attempting to produce fabricated documents in the course of an

investigation, a defendant must consciously act with the purpose of obstructing justice.” *United States v. Thorson*, 633 F.3d 312, 321 (4th Cir. 2011). Regardless of which application note the Court chooses to apply, Mr. Elsheikh’s declaration and his attendant efforts to suppress his 2018 law enforcement interview and 2019 media statements did not amount to the obstruction of justice.

Here, the district court did not find that Mr. Elsheikh submitted a false or perjured statements when he offered his declaration to support his motion to suppress. Instead, the district court simply found that Mr. Elsheikh did not *sustain his burden of proof* regarding the claims he raised in his declaration. Indeed, at the evidentiary hearing regarding Mr. Elsheikh’s motion to suppress the district Court stated:

“THE COURT...His declaration is not going to cut it because it has not been subject to cross-examination. You understand that Ms. Ginsberg? MS. GINSBERG: Your Honor, if he does not testify, the declaration is admitted for whatever purpose— --THE COURT: Exactly. MS. GINSBERG: -- whatever weight it has. THE COURT: Whatever weight it may have because it was not cross-examined.”

United States v. Elsheikh, Nov. 17, 2021, Evidentiary Hearing Transcript (Day 2, pp. 162-63).

The district court further elaborated its reasoning in the memorandum opinion denying Mr. Elsheikh’s motion to suppress:

“Put simply, Defendant’s claims regarding the severity and frequency of abuse in SDF custody are not credible when weighed against other record evidence.” [FN 16] “It bears emphasizing that Defendant’s claims were presented in a self-serving declaration rather than on the witness stand at the evidentiary hearing, where they would have been subject to cross-examination.”

Dkt. 188, p. 16 (memorandum opinion). After reviewing the factual assertions made in Mr. Elsheikh’s declaration and determining that the record adduced during the evidentiary hearing did not support a finding by a preponderance of the evidence that Mr. Elsheikh’s statements should be suppressed, the district court concluded by ruling that:

“[T]he *Government has sustained its burden of establishing by a preponderance of the evidence that Defendant's will was not overborne and that his statements to the media in Syria in 2019 were voluntary. [FN 34]. It is worth noting, however, that this ruling does not bar Defendant from arguing to the jury that his statements were involuntary and therefore that the jury should assign them little or no weight.*”

Id. at 30 (emphasis added).

Simply put, the district court did not find that Mr. Elsheikh’s statements in his declaration were false. Instead, the Court determined the evidence that Mr. Elsheikh presented during the evidentiary hearing did not meet the evidentiary threshold, a preponderance standard, to warrant exclusion of his statements.

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Though the district court concluded that [REDACTED] did not rise to the level of proving that Mr. Elsheikh’s 2019 media interviews were coerced, and [REDACTED], they do lend support to Elsheikh’s claims and further demonstrate that a sentencing court could not find by a preponderance of the evidence that Mr. Elsheikh submitted a perjuries or false document to a tribunal. As such, the sentencing enhancement under §3C1.1 should be removed.

c. Sexual Exploitation—U.S.S.G. §2A4.1(b)(5)

Mr. Elsheikh objects to the application of the “Specific Offense Characteristics” enhancement under U.S.S.G. §2A4.1(b)(5) as it is applied to this case. PSR, ¶ 106. The Sentencing Guidelines provide for a six-level increase “[if] the victim was sexually exploited[.]” U.S.S.G. 2A4.1(b)(5). The basis for this enhancement is the capture or sale of female hostages into slavery, including Kayla Mueller, who along with other female prisoners, were transferred from an ISIS prison to the residence of Abu Sayyaf and his wife, Nisreen Assad Ibrahim Bahar (a.k.a. “Umm Sayyaf”) and were “threatened, beaten, tortured, raped, starved, and shown violent ISIS propaganda videos. Abu Bakr al-Baghdadi claimed Mueller as his slave and repeatedly raped her whenever he was at the Sayyaf residence.” PSR, ¶ 49.

The enhancement is supported by ISIS publications located during the May 15, 2015, military raid on the Sayyaf residence, *Id.* ¶ 49, FN 3, that justified the keeping of enslaved people. *Id.* However, there is no evidence that Mr. Elsheikh participated in the sexual abuse of any civilian hostage, nor is there any evidence that he assisted in holding hostages for that purpose. Mr. Elsheikh’s refusal to disavow ISIS’s practice of enslaving women, based on his interpretation of religious text, does not implicate him in the sexual crimes of other ISIS members. Notably, during the trial, an FBI agent testified that there was no evidence linking Mr. Elsheikh to the Sayyaf residence or that he was ever present within the home. There was no evidence that Mr. Elsheikh authored, or was in any way linked to, the publications found within the Sayyaf home. Moreover, in a government debriefing session, [REDACTED]

[REDACTED]

[REDACTED]

Though the fact of Kayla Mueller and the Yazidi women’s enslavement was a tragic aspect of ISIS’s campaign of terror; there is no evidence to support a sexual abuse Specific Offense Characteristics enhancement, much less by a preponderance, in Mr. Elsheikh’s case. As such, the sentencing enhancement under §2A4.1(b)(5) should be removed.

II. A Sufficient Sentence Under 18 U.S.C. § 3553(a)

In crafting an appropriate sentence, Congress has *directed* that federal courts “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing based on the statutory factors laid out in 18 U.S.C. § 3553(a).³ Indeed, the United States

³ Those factors include: (a) the nature and circumstances of the offense and the history and characteristics of the defendant, (b) the kinds of sentences available, (c) the guideline range, (d) the need to avoid unwarranted sentencing disparities, (e) the need for restitution, and (f) the need for the sentence to reflect the following: the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense, to afford adequate deterrence, to protect the

Supreme Court has held that sentencing courts are required to “consider what sentence is appropriate *for the individual defendant* in light of the [§ 3553(a)] sentencing factors.” *Nelson v. United States*, 555 U.S. 350, 351 (2009) (emphasis added). As such, consistent with both Congress’ and the Supreme Court’s direction, here a recommendation to the BOP to consider placing Mr. Elsheikh in a CMU rather than Florence ADX is warranted in this case.

Here, though this Court does not enjoy its’ normal discretion in determining the length of Mr. Elsheikh’s sentence, given the multiple mandatory life sentences, the Court does have the ability to make a recommendation to the BOP regarding Mr. Elsheikh’s placement within the federal penal system. See, e.g., 18 U.S.C. § 3621(b)(4)(B) (BOP can designate any facility determined to be “appropriate and suitable, considering,” *inter alia*, “any statement by the court that imposed the sentence . . . recommending a type of penal or correctional facility as appropriate”). Though any recommendation that this Court chooses to make is not binding, the BOP is statutorily required to consider such a recommendation when making its ultimate decision regarding Mr. Elsheikh’s placement. *Id.*, § 3621(b)(4)(B) & (b)(5).

The BOP’s stated goal is to “place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau’s mission to protect society,” U.S. Dep’t of Just., BOP Program Statement P5100.08 (2016),⁴ in conjunction with the relevant § 3553(a) factors. As applied to Mr. Elsheikh, it becomes clear that the Florence ADX is inappropriate.

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).

⁴ Available at: https://www.bop.gov/policy/progstat/5100_008.pdf

a. Mr. Elsheikh's Personal History & The Offense Conduct

Mr. Elsheikh, is currently 34 years old. He was born in Omdurman, Sudan as the second son of [REDACTED] and [REDACTED]. When Mr. Elsheikh was approximately 3 years old, he and his family were forced to flee Sudan as the result of a military coup that ousted the democratically elected government, replacing it with a totalitarian regime. The coup d'état led to more than 78,000 people being "purged" from the army, police and civil administration.⁵

As political refugees, the Elsheikhs and their extended family emigrated to Cairo, Egypt, where they resided for the next four years. During his time, Mr. Elsheikh had a tough, but loving childhood. Though his family was finically strained, he enjoyed the love and comfort of a large extended family, all of whom took turns looking after each other. Indeed, Mr. Elsheikh's aunts, uncles and cousins played a huge role in his upbringing. In discussing his childhood with counsel, Mr. Elsheikh stated that when he was a young child in Cairo, he was never alone. When his parents were working, or otherwise engaged, he spent time with his aunts, whom he described as being like second mothers. His young cousins were also a staple in his life and he never lacked a playmate or was left to fend for himself.

While in Egypt, Mr. Elsheikh's father applied as an asylum seeker with the United Nations, seeking to be relocated to a more permanent and stable country. In 1994, the United Kingdom accepted the Elsheikhs' U.N. asylum application, and Mr. Elsheikh, his parents, and his brother relocated to London, England. Unfortunately, however, none of Mr. Elsheikh's extended family, with whom he had spent his entire life, emigrated with him. Mr. Elsheikh no

⁵ Human Rights Watch (August 1998). "Global Trade, Local Impact: Arms Transfers to all Sides in the Civil War in Sudan. ||. The Civil War". World Report 1998: Sudan. 10 (4 (A)) (available at: https://www.hrw.org/legacy/reports98/sudan/Sudarm988-03.htm#P310_36140)

longer had his extended family network to rely upon, and his childhood took a turn. Roughly 6 years after immigrating to the United Kingdom, Mr. Elsheikh's parents divorced, and he and his siblings went to live with their mother. Unfortunately, given the nature of his father's work, and the family split, Mr. Elsheikh did not see much of his father going forward. His mother, who now had to work full time to support Mr. Elsheikh and his two brothers, spent most of the time out of the house, leaving the brothers to their own devices.⁶

It was during these formative years, as a young immigrant in an adopted country, that Mr. Elsheikh learned to fend for himself and taught himself life skills. It was a jarring experience to say the least. Mr. Elsheikh went from a large family network in Egypt to only himself and his two siblings. In school, Mr. Elsheikh was a quick study, learning his new native language, English, easily and was able to comprehend lessons from other subjects with relative ease. Unfortunately, his ability to make and keep friends was stymied by the "rivalry" between his local and school neighborhoods—each viewed the others' inhabitants with suspicion and prejudice. Mr. Elsheikh was able to complete primary and secondary school without incident, after which he enrolled in trade school—learning skills such as plumbing, bricklaying, and basic mechanical work. To help support himself, Mr. Elsheikh did random "gig" work—odd one-off jobs.

In 2009, Mr. Elsheikh started his personal study of religious Islamic texts. Up to and until that point, Mr. Elsheikh did not have much to do with his family's religion—Islam. Though he and his family identified as Muslims, no one in the family was particularly devout and Islam did not play a huge role in his or his family's lives. The genesis of Mr. Elsheikh's religious interests started when he started seeing his contemporaries, those with troubled pasts, leave the streets and ways of crime after finding a religious home for themselves. Inspired, Mr.

⁶ Mr. Elsheikh's youngest brother was born after the family moved to the United Kingdom.

Elsheikh determined what was missing from his life was a greater sense of purpose, meaning, and community—something that a religious home promised.

In 2010 and 2011, Mr. Elsheikh observed with horror the atrocities committed by Bashar al-Assad and his regime against the Syrian people. Indeed, Mr. Elsheikh followed the events in Syria almost as they were unfolding, however, he felt helpless and guilty—as he was living a relatively comfortable life in a stable country in the West. When the regime started bombing its own people, Mr. Elsheikh joined the efforts of his local Syrian aid organization—helping to collect food, clothing, and medication. Eventually, in 2012, Mr. Elsheikh elected to leave the United Kingdom and travel to Syria to fight against Assad and his regime.

Upon his arrival in Syria, Mr. Elsheikh initially joined the Jabhat al-Nusra front and participated in ground battles against Assad’s military forces. Eventually, given the changing geo-political landscape within Syria and the various of factions fighting one another, Mr. Elsheikh joined the Islamic State (“ISIS”) as a fighter. On January 4, 2018, Mr. Elsheikh and his co-defendant, Mr. Kotey, were captured in Syria by the Syrian Democratic Forces (“SDF”) while attempting to leave the country. Both Mr. Elsheikh and Mr. Kotey remained in SDF custody until approximately October 2019, when they were transferred to U.S. custody in Iraq.

Mr. Elsheikh was indicted on October 6, 2020 on one count of conspiracy to commit hostage-taking resulting in death (in violation of 18 U.S.C. § 1203), four counts of hostage-taking resulting in death (in violation of 18 U.S.C. §§ 1203 and 2), one count of conspiracy to murder United States citizens outside of the country (in violation of 18 U.S.C. § 2332(b)(2)), one count of conspiracy to provide material support to terrorists—hostage-taking/murder—resulting in death (in violation of 18 U.S.C. § 2339A), and one count of conspiracy to provide material support to a designated FTO resulting in death (in violation of 18 U.S.C. § 2339B). Dkt. 1. The

next day, both Mr. Elsheikh and Mr. Kotey were transported from the U.S. military detention center in Iraq to the Eastern District of Virginia. Mr. Elsheikh pled not guilty to all counts and elected to proceed to trial. Dkt. 24.

After presiding over a multi-day suppression hearing and the underlying multi-week jury trial, the facts of this case are known all too well to this Court and need not be restated here. Suffice it to say that the ISIS foreign hostage scheme, in which so many were killed and injured, was a tragic and needless endeavor without justification. Mr. Elsheikh was convicted on all counts on April 14, 2022. Dkt. 283.

b. Mr. Elsheikh's Time at the Alexandria ADC & Special Administrative Measures

Since Mr. Elsheikh's arrival in this country, he has been detained at the Alexandria Detention Center ("ADC") and kept under strict isolation—pursuant to the DOJ-imposed Special Administrative Measures ("SAMs"). These SAMs require that Mr. Elsheikh be held under far more stringent restrictions than almost all other inmates at the ADC. See **Exhibit 1**, Elsheikh SAMs. Indeed, under these measures, Mr. Elsheikh may not have any outside contact except with members of his legal defense team or immediate family. Apart from his lawyers, Mr. Elsheikh is limited to a single recorded video call per month, lasting roughly 45-minutes, with his immediate family. All of Mr. Elsheikh's outgoing communications (letters) must be approved by the United States Marshall Service before they are permitted to be sent. Mr. Elsheikh is not permitted any contact with other inmates at any detention center and must be held in isolation. These SAMs are solely administered by the DOJ and for the most part are immune from judicial scrutiny.

Indeed, Mr. Elsheikh is confined to a single-person cell 23 hours a day, with his single hour spent outside his cell split between taking a shower and participating in limited "rec" time.

Mr. Elsheikh’s “rec” time comprises of either walking in circles in the ADC’s gym or watching limited TV programming—again, both activities must be done in isolation. The reading material to which Mr. Elsheikh has access to is greatly curtailed by his inability to visit the ADC library and is most times limited to a small selection of books brought around on a “reading cart”—whose titles are normally randomly selected by the ADC staff.

Despite these severe restrictions, Mr. Elsheikh has never committed a major disciplinary violation within the ADC and has complied with the requirements of his SAMs. See **Exhibit 2**, ADC Jail Adjustment Report.

c. Judicial Recommendation to BOP Regarding Housing Designation

As previously stated, though this Court has little discretion in the ultimate sentence that Mr. Elsheikh receives—given the five mandatory life sentences on Counts 1 through 5—the Court retains its discretion in providing a non-binding recommendation to the BOP regarding Mr. Elsheikh’s housing location and conditions. See 18 U.S.C. § 3621 (b)(4)(B) (“The [BOP] may designate any available penal or correctional facility...considering...any statement by the court that imposed the sentence--recommending a type of penal or correctional facility as appropriate[.]”). Given Mr. Elsheikh’s established history as a model inmate, a judicial recommendation that asks the BOP to house Mr. Elsheikh in a facility other than Florence ADX, *to serve his life sentences*, comports with the requirements of 18 U.S.C. § 3553(a) to “impose a sentence sufficient, but not greater than necessary” to achieve the goals of sentencing.

According to Jack Donson, a former BOP security classification officer and recognized expert on matters regarding the BOP, Florence ADX is a federal penal institution in Fremont County, Colorado which is referred to as:

“a “super-max [prison],” [] only one of its kind in the federal system. Upon activation, it replaced the mission of the former Marion, Illinois Control Unit which was created after

the brutal murders of two BOP staff members by the Aryan Brotherhood in separate incidents on the same day in 1983. The super-max concept involves total isolation, which is the true meaning of “Solitary Confinement.” The purpose is to incapacitate, isolate, and eliminate contact between inmates while limiting the contact with staff. Inmates are locked in a small cell (approximately 75 Sq. Ft.) twenty-three hours a day aside from being shackled in handcuffs and leg irons to be moved to a caged-in shower area. The cell, desk, and mattress platform are made of concrete and food is delivered to the cell where inmates eat near an open toilet. Recreation is offered one hour daily based on the availability of staff and is conducted a small caged in area. All programming is done through a closed-circuit TV.”

Exhibit 3, pp. 4-5, ¶12, *Donson Declaration*.

Absent a judicial recommendation to the contrary, “Mr. Elsheikh faces the likely possibility of being designated to the Florence ADX based on his status as an international terrorist in combination with the SAMs.” Ex. 3, p. 10, ¶25.⁷ As stated below, this outcome is both unwarranted and overly punitive—especially because no matter where Mr. Elsheikh is housed, he will still be placed under very restrictive SAMs that all but guarantee a more severe, and isolated, punishment.

BOP’s practice of subjecting its inmates to the type of confinement practiced at Florence ADX has come under increased scrutiny in recent years. Indeed, in “2012, eleven inmates filed a federal class-action against the BOP in *Cunningham v. Federal Bureau of Prisons*. The suit alleged chronic abuse and failure to accurately diagnose prisoners who were mentally ill. The case included seven inmates who allegedly died by suicide while housed in the ADX.” Ex. 3, p. 6, ¶15; *Id.* ¶17 (“[i]n 2017, the DOJ-Inspector General issued a report entitled Review of the Federal Bureau of Prison’s Use of Restrictive Housing of Inmate with Mental Illness. The results

⁷ Admittedly, even if the Court was to grant Mr. Elsheikh’s request for a judicial recommendation to be housed at a facility other than Florence ADX, the BOP is not legally required to follow judicial recommendations.

of the review determined the BOP was not forthcoming about its practices of solitary confinement and the detrimental impact isolation has on a person's mental health.”).

In fact, Florence ADX recently made headlines when in 2020, “a British Magistrate refused to extradite Julian Assange to the United States in part because of the possibility he would be subject to solitary confinement and special administrative measures.” *Id.* ¶18. Eventually, the British high court allowed for Assange's extradition, but only after it received assurances that he would not be imprisoned at Florence ADX. See *U.S. Says Assange Won't Face Supermax Prison If Extradited*, Katharine Gemmill, BLOOMBERG (last visited 8.11.2022).⁸

As highlighted by Mr. Donson's declaration to the Court, Ex. 3, Mr. Elsheikh is not the type of individual that Florence ADX was intended to house:

“In my professional opinion, there is simply no technical public policy mandate for Mr. Elsheikh to be housed in the Florence ADX because he has the security classification points commensurate with minimum security and his SAMS communication restrictions can be accomplished in a CMU.”

Ex. 3, p. 9, ¶22; *Id.*, p. 4, ¶10 (“[Maximum custody] classification is for individuals who, by their behavior, have been identified as assaultive, predacious, riotous, serious escape risks, or seriously disruptive to the orderly running of an institution.”).

Indeed, under the BOP's own security assessment scoring system, Mr. Elsheikh's score is “commensurate with minimum security because he is void of the typical classification factors that elevate a person's classification such as a serious history of violence (Note: BOP policy excludes scoring the instant offense as a history item) or escape and predatory prison behavior.” *Id.* ¶11. Moreover, the BOP's own policy statements would seem to exclude Mr. Elsheikh from designation to ADX Florence, given his positive detention history: “USP Marion/ADX Florence

⁸ Available at: <https://www.bloomberg.com/news/articles/2021-10-27/u-s-says-assange-won-t-face-supermax-prison-if-extradited>

...units are designed for male inmates who have demonstrated an inability to function in a less restrictive environment[s.]” BOP, Program Statement 5100.08 (Inmate Security Designation and Custody Classification), at 92.⁹ However, given the nature of the current offense, the BOP is nevertheless likely to designate Mr. Elsheikh to Florence ADX. Ex. 3, p. 10, ¶25.

At present, Mr. Elsheikh is already showing signs that his intense isolation is having a negative impact on his physical and mental well-being:

“The pre-sentence report indicates that Mr. Elsheikh has already expressed that his isolation has been “challenging mentally” so it is unknown how his mental health would deteriorate further given prolonged isolation. A concern I have from the pre-sentence investigation is regarding his hospitalization during pre-trial detention which included heart palpitations. It would be a sound correctional practice from a treatment perspective to have the BOP provide a mental health evaluation prior to a designation to the Florence ADX...”

Ex. 3, p. 6, ¶16.

Clearly, sending Mr. Elsheikh, an individual who is already showing signs of mental and physical deterioration from his present and past detention to Florence ADX is not an appropriate sentence. This point is clearer when considering BOP’s own policy on classification that states “Inmates currently diagnosed as suffering from serious psychiatric illnesses should not be referred for placement at either USP Marion or ADX Florence.” *Id.*, p. 7, ¶16.

A reasonable alternative exists for those inmates that must be designated to a secure facility that would comply with the requirements of the SAMs. Indeed, the BOP operates two facilities specifically designed for inmates whose activities or offenses trigger a need for tightly monitored communications with the outside world: the communications management units (CMUs) at USP Marion, Illinois, and USP Terre Haute, Indiana. The stated purpose of the CMUs “is to provide an inmate housing unit environment that enables [BOP] staff to more

⁹ Available at: https://www.bop.gov/policy/progstat/5100_008.pdf

effectively monitor communication between inmates in CMUs and persons in the community.” See BOP, Program Statement 5214.02 (Communications Management Units), at 1;¹⁰ Ex. 3, p. 7, ¶21 (“[u]nlike the Florence ADX, CMUs allow programming and some human interaction in an administrative (high security) environment. It does not involve the isolation issues of solitary confinement that negatively impact a person’s mental health and sanity. *It can accomplish the goals for SAMs in an environment that is more commensurate with Mr. Elsheikh’s security needs.*”) (emphasis added).

Given Mr. Elsheikh’s exemplary history while incarcerated and the lack of any objective criteria that would warrant his designation to Florence ADX, the defense requests that this Court make a recommendation to the BOP that is in line with the proffered recommendation set forward below:

“The court recommends initial designation to a facility other than the Florence ADX. The court’s recommendation is based on the determination that other placement options can provide programming and limited interaction in a setting that can meet Mr. Elsheikh’s security needs and still provide for communications monitoring. Total isolation is unnecessary considering the characteristics of the defendant when weighed against the needs of the government. In addition, it is also recommended the BOP formulate a communications plan with the Department of the Treasury to alleviate some of the logistical concerns on the receipt and transfer of funds to his trust fund account. If the BOP is unable to comply with this placement recommendation, the court requests a written justification regarding the non-compliance.”

Ex. 3, p. 11, ¶26.

A judicial recommendation of this sort would be keeping in line with the dictates of 18 U.S.C. § 3553(a) to “impose a sentence sufficient, but not greater than necessary,” and ensure that Mr. Elsheikh’s BOP housing designation is not overly punitive.

¹⁰ Available at: https://www.bop.gov/policy/progstat/5214_002.pdf

CONCLUSION

Mr. Elsheikh respectfully requests that the PSR be amended in conformity with the corrections and objections detailed above. Moreover, Mr. Elsheikh requests that this Court provide a recommendation to the BOP in conformity with the housing designation proffered above.

Respectfully Submitted,

EL SHAFEE ELSHEIKH,
By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2022, I filed the foregoing pleading through the ECF system, which shall then send an electronic copy of this pleading to all parties in this action.

/s/
Zachary A. Deubler, Esq.

Exhibit 1

Under Seal

Exhibit 2



City of Alexandria, Virginia
Sheriff's Office



MEMORANDUM

DATE: AUGUST 10, 2022
TO: WHOM IT MAY CONCERN
FROM: CHRISTINE FARROW
INMATE CLASSIFICATION COUNSELOR
SUBJECT: JAIL ADJUSTMENT REPORT
RE: ELSHAFEE ELSHEIKH

Inmate Elsheikh has been incarcerated at the William G. Truesdale Adult Detention Center since October 7, 2020. He has not incurred any major disciplinary violations during that time. He is currently housed at the Maximum-Security Custody level in our facility. If you have any other questions or concerns regarding Inmate Elsheikh's adjustment status, I may be reached at 703-746-5082.

A handwritten signature in black ink, appearing to read "Christine Farrow".

Christine Farrow
Classification Counselor

Exhibit 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

v.

El Shafee Elsheikh

Defendant

Docket No.: 0422 1:20CR00239-002

HONORABLE T.S. ELLIS, III

DECLARATION OF JACK T. DONSON

STATEMENT OF EXPERTISE

1. I am the Founder and President of My Federal Prison Consultant, LLC which provides Continuing Legal Education (CLE), consulting, and expert testimony on matters regarding the Federal Bureau of Prisons (BOP). For the last eleven years I have submitted expert witness opinions and testified in federal district courts throughout the country regarding federal prison issues.

2. I worked in the field of corrections for more than thirty-four years, with twenty-three years employed by the BOP working in security classification, correctional programs, treatment, and re-entry. Since retirement, I actively follow policy initiatives and have attended conferences, including the U.S. Sentencing Commission conference trainings. I serve on the ABA and National Association of Criminal Defense Lawyers' (NACDL) Corrections Committees advising on Federal prison issues. In my capacity as Director of Programs and Case Management Services for FedCURE, I have had regular contact with BOP central office administrators regarding inmate and policy issues.

3. During most of my career, I managed a caseload of approximately 150 inmates as a Correctional Treatment Specialist. In that capacity, I was responsible for the development and monitoring of inmate correctional treatment plans, inmate counseling, security classification,

DEFENDANT'S
EXHIBIT

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program monitoring and re-entry. I held assignments as a Case Management Coordinator (CMC) and Correctional Programs Officer (Unit Manager) and had several collateral administrative responsibilities including training staff, writing local policy, conducting facility audits, and monitoring institutional programs including the screening the classification data of new designations. I have experience working with international terrorists and have had inmates on my caseload who served time in the Florence ADX. In addition, my general correctional experience is comprehensive having worked with Minimum (camp), Low, Medium, Administrative (pre-trial and high security), and Witness Security populations. I hold a bachelor's degree in Sociology/Anthropology and a Master of Science Degree in Criminal Justice. Aside from consulting, I have been a Lecturer at Marywood University where I taught several Criminal Justice courses including a course entitled The American Prison. A true and correct copy of my curriculum vitae is attached.

CASE EVALUATION

4. I was retained by DiMuroGinsbeg, P.C. on behalf of El Shafee Elsheikh to explain the living conditions within the Florence ADX (Administrative Maximum) facility and offer my professional opinion on his classification and suggestions for an alternate designation aside from the ADX, which can accommodate his security needs and Special Administrative Measures (SAMs) requirements. This information can provide context from a correctional treatment perspective to assist in the sentencing phase of his case. I have consulted with counsel and reviewed case information including the draft Presentence Report (PSR) and the Department of Treasury's Global Terrorism Sanctions Regulations License of Attorney Zachary Deubler.

BOP CLASSIFICATION SYSTEM (BRAVO)

5. The BOP classifies facilities into several categories including Minimum (Camp), Low FCI, Medium FCI, and High Security (USP). There are also administrative facilities such as the Metropolitan Correctional Centers (MCC), Metropolitan Detention Centers (MDC), and Federal Medical Centers (FMC), which house all security levels, as well as facilities with specialized missions such as the Florence ADX, USP Thompson (Special Management Unit), and several

reintegration and communications management units.

6. After sentencing, defendants are assigned a security classification using a system referred to as BRAVO (Bureau Risk Assessment Verification and Observation) to determine the appropriate degree of control and supervision required for facility designation. The tool is an objective assessment based on several readily assessable criteria which include age, history of violence, escape, criminal history score, and severity of the instant offense. Each factor has a corresponding security point value that, when totaled, determines a security level. Below is a chart indicating the breakdown of the security points in the BOP classification manual (CPD/CPB, Number P5100.08, Inmate Security Designation and Custody Classification):

Security Level	Male	Female
MINIMUM	0-11 Points	0-15 Points
LOW	12-15 Points	16-30 Points
MEDIUM	16-23 Points	N/A
HIGH	24+ Points	31+ Points

7. It should be noted that in my professional opinion in scoring thousands of inmate classifications, Mr. Elsheikh has only eleven security points which is actually commensurate with minimum security inmates housed in camp environments. (See Exhibit One- BP-337, Inmate Load and Security Designation form).

8. However, security points alone do not determine a security level as the classification manual also includes subjective factors, which are referred to as “Public Safety Factors” (PSF) that can enhance the security scoring to increase a person’s classification to a higher security level. For instance, a sentence requiring over thirty years to serve, such as a Life sentence, will automatically assign a high security classification.

9. Aside from a person’s security level classification, the BOP also assigns a “custody level classification” defined in the classification manual as:

“Custody Classification: The review process to assign a custody level based on an inmate’s criminal history, instant offense, and institutional adjustment. A custody level (i.e., COMMUNITY, OUT, IN, and MAXIMUM) dictates the degree of staff supervision required for an individual inmate.”

10. A custody level is discretionary unlike the security classification which is determined by the input of the classification factors into BRAVO. Custody levels are assigned based on the mission of the designated facility and ordinarily inmates designated to the Florence ADX are assigned “Maximum” custody. The classification manual defines maximum custody as:

*“Maximum Custody: This classification is for individuals who, by their behavior, have been identified as **assaultive, predacious, riotous, serious escape risks, or seriously disruptive to the orderly running of an institution.**”*

While the BOP considers all people with life sentences to be an escape risk they often exercise their discretion to house Lifers in medium security facilities, provided their behavior warrants such discretion. It has always been the general philosophy when the BOP classification system was developed to house inmates in the least restrictive setting commensurate with their security needs.

11. Here, based on the objective BRAVO system, Mr. Elsheikh could end up with security points commensurate with minimum security because he is void of the typical classification factors that elevate a person’s classification such as a serious history of violence (Note: BOP policy excludes scoring the instant offense as a history item) or escape and predatory prison behavior. However, in my professional opinion, Mr. Elsheikh will be classified as High security due to the “sentence length” PSF.

CONDITIONS IN ISOLATION AT THE FLORENCE ADX

12. ADX Florence, referred to as a “super-max,” is the only one of its kind in the federal system. Upon activation, it replaced the mission of the former Marion, Illinois Control Unit which was created after the brutal murders of two BOP staff members by the Aryan Brotherhood in separate incidents on the same day in 1983. The super-max concept involves

total isolation, which is the true meaning of “Solitary Confinement.” The purpose is to incapacitate, isolate, and eliminate contact between inmates while limiting the contact with staff. Inmates are locked in a small cell (approximately 75 Sq. Ft.) twenty-three hours a day aside from being shackled in handcuffs and leg irons to be moved to a caged-in shower area. The cell, desk, and mattress platform are made of concrete and food is delivered to the cell where inmates eat near an open toilet. Recreation is offered one hour daily based on the availability of staff and is conducted a small caged in area. All programming is done through a closed-circuit TV.

13. Amnesty International has obtained pictures of some of the facilities at ADX, which I am including here:



The inside of a cell in a General Population Unit at ADX © Private



An outdoor recreation cage for prisoners in the Step Down Program at ADX © Private

14. A review of the BOP website on August 8, 2022, indicated there were 344 inmates housed at the ADX. The facility is subdivided into separate units with specialized missions but there is no official public policy that I am aware of that outlines the details of the individual unit missions. My opinions on the ADX are based on experience working for the agency, reading court declarations, reports from organizations such as the Department of Justice (IG), the BOP website and Amnesty International. The government has acknowledged that international terrorists are housed in the “Special Security Unit” known as “H Unit.” Most, if not all prisoners in H Unit, are under SAMs for reasons related to national security.

15. The isolation of solitary confinement for prolonged periods has been a controversial subject for decades. In 2012, eleven inmates filed a federal class-action against the BOP in *Cunningham v. Federal Bureau of Prisons*. The suit alleged chronic abuse and failure to accurately diagnose prisoners who were mentally ill. The case included seven inmates who allegedly died by suicide while housed in the ADX.

16. The pre-sentence report indicates that Mr. Elsheikh has already expressed that his isolation has been “challenging mentally” so it is unknown how his mental health would deteriorate further given prolonged isolation. A concern I have from the pre-sentence investigation is regarding his hospitalization during pre-trial detention which included heart

palpitations. It would be a sound correctional practice from a treatment perspective to have the BOP provide a mental health evaluation prior to a designation to the Florence ADX control unit which is standard procedure for institution transfers and a similar isolated environment to the H Unit. In addition, the above referenced policy on classification, Chapter 7, page 18 specifically states, *“Inmates currently diagnosed as suffering from serious psychiatric illnesses should not be referred for placement at either USP Marion or ADX Florence.”*

17. In 2017, the DOJ-Inspector General issued a report entitled Review of the Federal Bureau of Prison’s Use of Restrictive Housing of Inmate with Mental Illness. The results of the review determined the BOP was not forthcoming about its practices of solitary confinement and the detrimental impact isolation has on a person’s mental health. Attorney General Horowitz released a video regarding the findings of the report which were critical of the BOP’s significant inadequacy in the implementation of mental health policy.

<https://youtu.be/bnKcpO40eeU>

18. Prolonged isolation directly impacts mental health and was prohibited by the United Nations General Assembly in a resolution adopted in December of 2015 referred to as “The Mandela Rules” regarding the minimum rules for the treatment of prisoners. According to an article in The Journal of the American Academy of Psychiatry and the Law, “solitary confinement is recognized as difficult to withstand ; indeed, and psychological stressors such as isolation can be as clinically distressing as physical torture.” In 2020, a British Magistrate refused to extradite Julian Assange to the United States in part because of the possibility he would be subject to solitary confinement and special administrative measures. On July 7, 2021, the British High Court agreed to allow the U.S. to appeal this decision with the understanding that he would not be subject to imprisonment at ADX if he is extradited.

19. On many occasions while working in the federal system, I personally noticed a drastic deterioration in the inmates on my caseload when isolated for as little as four months in our special housing unit (SHU). When I worked in a federal pre-trial facility, I was responsible for the case management of inmates pending authorization into the federal witness protection program referred to as “WITSEC.” The inmates were placed in single cells within the SHU until the BOP Central Office and DOJ Office of Enforcement Operations (OEO) authorized

placement into one of the BOP Protective Custody Units. This required an FBI Polygraph examination, U.S. Marshals Interview, and U.S. Attorney threat assessment. After prolonged isolation, I made numerous referrals to the psychology services department due to deteriorating mental health issues which manifested in incident report behavior, anger, and overall frustration and hopelessness. My direct observations of the mental effects of isolation were in an environment where there was much more human contact than an individual faces in the ADX (H Unit) environment.

COMMUNICATIONS MANAGEMENT UNIT (CMU)

20. Program Statement 5214.02, Communications Management Units is the governing BOP policy on CMUs. These are described as units where inmates reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. The purpose of a CMU *“is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between inmates in CMUs and persons in the community.”* In addition, the Program Statement describes several sources for CMU referrals two of which are:

- (i) The BOP Counter Terrorism Unit (CTU)
- (ii) Recommendations from law enforcement agencies or the court

21. Unlike the Florence ADX, CMUs allow programming and some human interaction in an administrative (high security) environment. It does not involve the isolation issues of solitary confinement that negatively impact a person’s mental health and sanity. It can accomplish the goals for SAMs in an environment that is more commensurate with Mr. Elsheikh’s security needs. I am aware of international terrorists being housed in CMUs which is also supported by the DOJ audit report entitled Audit of the Federal Bureau of Prisons’ Monitoring of Inmate Communications to Prevent Radicalization # 20-042 - March 2020. It was clear from this audit that the BOP has been housing SAMs inmates in facilities other than the ADX. It was equally clear from the audit that international terrorists were also housed in units throughout the country. While working in a protective custody unit, I even had a SAMs inmate on my case load who was involved with Osama bin Laden and other al-Qaeda members.

POLICY AND CLASSIFICATION CONSIDERATIONS

22. The BOP has almost unlimited discretion regarding facility designation. The agency's historical philosophy has been to place an offender in the least restrictive setting to meet their security and correctional program needs. Their discretion is outlined in the classification manual which allows them to designate offenders both above and below the scored security level. When I worked for the BOP, on more than one occasion I had terrorists on my caseload relative to the first World Trade Center bombing in a pre-trial facility and I am also aware that the BOP does house inmates with terrorism convictions in medium security general population settings when appropriate. I recently have worked with several inmates sentenced to Life who were housed in medium, Federal Correctional Institution (FCI) environments. In my professional opinion, there is simply no technical public policy mandate for Mr. Elsheikh to be housed in the Florence ADX because he has the security classification points commensurate with minimum security and his SAMS communication restrictions can be accomplished in a CMU. It should be noted Christine Farrow, Inmate Classification Counselor of the Alexandria's Sheriff's Office provided a letter to counsel which indicated Mr. Elsheikh has not incurred any major disciplinary infractions in the 1 year and 10 months he has spent in detention at the Alexandria ADC, which demonstrates his ability to follow rules.

GLOBAL TERRORISM SANCTIONS REGULATIONS

23. Based on the complexities of the above regulations, there is the potential for further isolation upon designation due to the lack of human interaction by way of telephonic communication and visiting. Without some proactive guidance by the court, the transfer of the money in his current prison account will impeded the ability to communicate with his family who do not reside in the United States. Thus far, he has been able to participate in regular telephone calls and video visitation which is unlikely to be facilitated within the ADX due to the intricacies of the OFAC regulations which only license Attorney Deubler to transfer money to

Mr. Elsheikh's trust fund account to pay for necessities. It is my understanding it took several months for counsel to obtain the appropriate OFAC license which will expire after sentencing. This raises the likely possibility that Mr. Elsheikh will not only be isolated in H Unit, but he will not have the necessary funds for regular communication with his family.

24. The BOP attempts to comply with judicial recommendations regarding defendant placement and tracks its compliance at approximately 74%. The BOP historically responded in writing to the court when it was not able to comply with recommendations, however, that practice was discontinued in what the agency referred to as REDMAP (Reduction and Elimination in Duties Management Assessment Project) initiatives. At the time of REDMAP, the BOP circulated a memorandum that it would continue to provide responses to the court for non-compliance upon request from the sentencing judge.

CONCLUSION & RECOMMENDATIONS

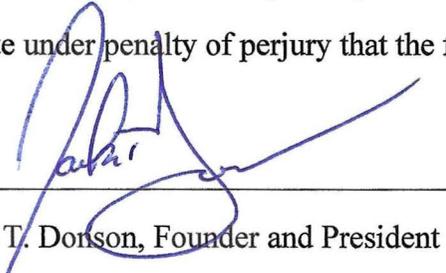
25. Mr. Elsheikh faces the likely possibility of being designated to the Florence ADX based on his status as an international terrorist in combination with the SAMs. From a classification perspective, he does not have a violent and predatory *prior* criminal history as the instant offense appears to be his first conviction. During his pre-trial detention, he has maintained good conduct, has not attempted escape, and does not appear to have the ties to the ISIS network to effectuate an escape. It is clear from a historical and philosophical perspective, the BOP attempts to confine individuals in the least restrictive setting to accommodate their security needs. With communication being the paramount issue in this case due to SAMS, it is well within the agency policy and past practices to place Mr. Elsheikh in an administrative environment other than the Florence ADX. The potential short and long-term negative effects from prolonged isolation should outweigh the need for ADX placement simply due to SAMs requirements. From a correctional treatment perspective, the BOP has other options aside from the Florence ADX which can restrict communication and provide for his security needs. Therefore, such placement options could be best facilitated by a judicial recommendation which is non-binding on the BOP but may cause the

agency to consider other designation options more deliberately within the policy parameters and exercise its discretion accordingly.

26. Therefore, I recommend that the Court consider a judicial recommendation as follows:

The court recommends initial designation to a facility other than the Florence ADX. The court's recommendation is based on the determination that other placement options can provide programming and limited interaction in a setting that can meet Mr. Elsheikh's security needs and still provide for communications monitoring. Total isolation is unnecessary considering the characteristics of the defendant when weighed against the needs of the government. In addition, it is also recommended the BOP formulate a communications plan with the Department of the Treasury to alleviate some of the logistical concerns on the receipt and transfer of funds to his trust fund account. If the BOP is unable to comply with this placement recommendation, the court requests a written justification regarding the non-compliance.

I state under penalty of perjury that the foregoing is true and correct.



Jack T. Donson, Founder and President

August 11th, 2022

BP-A0337
JUNE 10

INMATE LOAD AND SECURITY DESIGNATION CDFRM

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

INMATE LOAD DATA				
1. REGISTER NUMBER: 11685-509				
2. LAST NAME Elsheikh		3. FIRST NAME El Shafee		4. MIDDLE
5. SUFFIX		6. RACE B		7. SEX M
8. ETHNIC ORIGIN NH		9. DATE OF BIRTH 12/18/1983		
10. OFFENSE/SENTENCE Conspiracy to Commit Hostage Taking Resulting in Death, etc. (8 realted counts)				
11. FBI NUMBER 905831AH5			12. SSN NUMBER	
13. STATE OF BIRTH N/A		14. OR COUNTRY OF BIRTH Sudan		15. CITIZENSHIP None
16. ADDRESS-STREET No fized address				
17. CITY X		18. STATE X		19. ZIP X
20. OR FOREIGN COUNTRY X		21. HEIGHT FT IN		22. WEIGHT LBS
23. HAIR COLOR		24. EYE COLOR		
25. ARS ASSIGNMENT: A-HLD				
SECURITY DESIGNATION DATA				
1. JUDGE Honorable T. S. Ellis, III		2. REC FACILITY TBD		3. REC PROGRAM
4. USM OFFICE ED/VA		5. VOLUNTARY SURRENDER STATUS 0 = NO (-3) = YES IF YES, MUST INDICATE: 5a. VOLUNTARY SURRENDER DATE: 5b. VOLUNTARY SURRENDER LOCATION:		
6. MONTHS TO RELEASE : N/A		7. SEVERITY OF CURRENT OFFENSE 0 = LOWEST 1 = LOW MODERATE 3 = MODERATE 5 = HIGH 7 = GREATEST		
8. CRIMINAL HISTORY SCORE 0 = 0-1 2 = 2-3		4 = 4-6 6 = 7-9		8 = 10-12 10 = 13 +
8a. SOURCE OF DOCUMENTED - PRESENTENCE INVESTIGATION REPORT or - NCIC III		9. HISTORY OF VIOLENCE MINOR SERIOUS NONE 0 0 >15 YEARS 1 2 10-15 YEARS 1 4 5-10 YEARS 3 6 <5 YEARS 5 7		
10. HISTORY OF ESCAPE OR ATTEMPTS MINOR SERIOUS NONE 0 0 >15 YEARS 1 3 (s) >10 YEARS 1 3 (s) 5-10 YEARS 2 3 (s) <5 YEARS 3 3 (s)		11. TYPE OF DETAINEE 0 = NONE 1 = LOWEST/LOW MODERATE 3 = MODERATE 5 = HIGH 7 = GREATEST		
12. AGE 0 = 55 and over 2 = 36 through 54		4 = 25 through 35 8 = 24 or less		13. EDUCATION LEVEL 0 = Verified High School Degree or GED 1 = Entrolled in and making satisfactory progress in GED Program 2 = No verified High School Degree/GED and not participating in GED Program
13.a HIGHEST GRADE COMPLETED		14. DRUG/ALCOHOL ABUSE 0 = NEVER/>5 Years 1 = <5 Years		
15. SECURITY POINT TOTAL		16. PUBLIC SAFETY FACTORS A-NONE B-DISRUPTIVE GROUP (males only) C-GREATEST SEVERITY OFFENSE (males only) F-SEX OFFENDER G-THREAT TO GOVERNMENT OFFICIALS H-DEPORTABLE ALIEN		
I-SENTENCE LENGTH (males only) K-VIOLENT BEHAVIOR (females only) L-SERIOUS ESCAPE M-PRISON DISTURBANCE N-JUVENILE VIOLENCE O-SERIOUS TELEPHONE ABUSE		17. REMARKS Projected for Life Sentence, High security with security points commensurate with Minimum (11), SAMS issue, appropriate for CMU-		
18. OMDT REFERRAL (YES/NO) no		19. SECURITY POINT TOTAL 11		
20. PUBLIC SAFETY FACTORS A-NONE B-DISRUPTIVE GROUP (males only) C-GREATEST SEVERITY OFFENSE (males only) F-SEX OFFENDER G-THREAT TO GOVERNMENT OFFICIALS H-DEPORTABLE ALIEN		21. SECURITY POINT TOTAL c h I		

FILE IN SECTION 2 UNLESS APPROPRIATE FOR PRIVACY FOLDER

SECTION 2

PDF

Prescribed by P5100

Replaces BP-S337 of FEB 02

Exhibit One

Exhibit 3A



Jack Thomas Donson
Email: jack@mfpcllc.com
Telephone (212) 461-2252

Personal Information

Education: BS-Sociology/Anthropology, MS-Criminal Justice
Offices in New York & Pennsylvania

Personal Statement

I have worked directly with the incarcerated for over 35 years at the county, state and federal levels. I educate justice professionals on federal prison system policy and process to obtain better outcomes in representation and legislation. Most of my career, I managed a caseload within the trenches of the federal prison system as a Correctional Treatment Specialist. I also served in administrative capacities conducting facility audits, involvement in local and national policy writing work groups, program oversight and training institutional staff in classification and correctional programs. My unique perspective on federal justice issues is derived from applying policy in diverse prison environments including Pre-trial (administrative/high security), Minimum, Low, Medium, & Witness Security units. I received three national awards during my federal service and over thirty other monetary performance awards for other prison related accomplishments. I have a pulse on the agency and my understanding of BOP policy, nuances and culture is extraordinary.

In 2011, I retired and founded “My Federal Prison Consultant”, LLC, after witnessing people being taken advantage of by high priced, predatory and uninformed prison consultants.

In 2014, I co-founded a company with Walt Pavlo of Forbes called “Prisonology” which provided training on federal prison topics to Federal Defenders and CJA Panel Attorneys. We also conducted several training sessions with federal judges and probation officers.

I serve pro bono on several non-profit organizations helping marginalized populations and their families navigate the prison system. (FedCURE/Out4Good/Choosing Integrity)

I am a member of the Corrections Committees of the National Association of Criminal Defense Lawyers (NACDL) and the American Bar Association (ABA) where I serve as the chair of a sub-committee on federal prison policy.

DEFENDANT'S
EXHIBIT

3A

I have testified in federal district courts throughout the United States and the United Kingdom. I was a lecturer at the University level and have taught several courses including “The American Prison.”

My passion is prison reform and my mantra is that many proactive prison reforms can be accomplished under the existing policy and statutory framework through leadership, accountability and transparency. My analytical ability in combination with my practical experience provides me with insight which is advantageous for clients, attorneys, legislators, the media and reform organizations. I have personally appeared on many national media outlets and have been quoted repeatedly in major print media outlets. I have authored chapters in two ABA Books and have had Op Eds published in The Hill as a “Opinion Contributor” and Bloomberg Law Insights as an “Outside Editor.”

Recent Work Experience

My Federal Prison Consultant, LLC- President & Founder, I support counsel, clients and families on technical policy issues and general support on all aspects of the BOP. I testify around the country on issues relevant to mitigation. July 2011-Present www.mfpcllc.com

Prisonology, VP- Operations & co-founder, Develop CLE’s which are conducted with federal defenders, judges and CJA panel attorneys. September 2014-2022, www.prisonology.com

FedCURE, Director of Programs and Case Management Services, I assist the incarcerated and their families relative to federal prison issues pro bono . July 2011-present, www.fedcure.org

Out4Good, LTD, Executive Director- In charge of developing the “Correcting Corrections in America initiative”, April 2013-present (On a hiatus while initiatives on hold pending funding & Africa CLODS project) www.out4good.org

Marywood University, Lecturer PA- Criminal Justice Professor- courses entitled: “Community Corrections,” “Shadow and Service” and “The American Prison.” January 2013-January 2019

Choosing Integrity, Board Member – CI staff have been visiting federal prisons and local jails for the past 10 years pro-bono offering classes in Forgiveness and mentoring the incarcerated. We recently were tasked with coordinating the Pike County, PA commissioners’ re-entry task force. <https://www.choosingintegrity.org/about/>

Prior Work Experience:

Federal Bureau of Prisons, Correctional Treatment Specialist & Case Mgt. Coordinator- I was responsible for the counseling, classification and re-entry preparation. I coordinated several institution programs and trained staff in classification & correctional programs related areas.

- Special expertise with high profile Organized crime figures, the Witness Protection (WITSEC) program & White-Collar Crime offenders
- Alternate Case Management Coordinator 1991 to 2011

- Assignments (TDY) in the Regional Office, Philadelphia, PA. (CIM Coordinator/Correctional Programs), New York City Community Corrections Office (processing designations and halfway house referrals) & several National (DC) policy writing work groups
- Annual Training Instructor in the areas of security designation and classification, Central Inmate Monitoring (CIM,), FOIA/Privacy Act & Victim Witness program.
- Member of Hostage Negotiations Team in the capacity of Lead Negotiator.
- Received 3 **National** Awards for Excellence in Administration & Detention Procedures National Correctional Treatment Specialist of the Year & Excellence in Training Award.
- Taught Institution familiarization orientation to new staff & was assigned as a mentor and trainer for college interns and newly appointed case managers and counselors
- Held assignments as Camp Administrator, Case Management Coordinator, Unit Manager and held the position of Assistant Case Management Coordinator.
- Liaison for US Parole Commission, US Marshals, FBI and ICE
- Worked in minimum, low, medium, administrative (including high security) & Witness Security (WITSEC) units

Federal Bureau of Prisons Correctional Officer- Responsible for working various corrections posts throughout the prison including inmate housing units, compound and perimeter patrol. (Medium facility-FCI)

Commonwealth of Pennsylvania, Probation and Parole Officer- Supervised a caseload of adults and juveniles. Appeared in court on a weekly basis, prepared pre-sentence reports, submitted parole recommendations to the court, provided community supervision of offenders and managed the work release and ARD programs. I interned with Scranton District Office of the Commonwealth of PA Board of Probation and Parole.

: **Army National Guard**, SGT, Easton, PA 1986-1995 (Trained in Germany & Holland)

- **Military Police** (MP-95 Bravo), Ft. McClellan, AL
- **Stinger Missile Gunner** (16 Sierra), Ft. Gordon, Ga.

Education

Marywood University, Scranton, Pennsylvania

- **Master of Science in Criminal Justice** 1997 (Concentration in Public Administration)

East Stroudsburg University, East Stroudsburg, Pennsylvania

- **Bachelor's Degree in Sociology/Anthropology** 1985

Awards

- 1998 National Community Corrections Award
- 1990 National Correctional Treatment Specialist of the Year
- 1991 National Excellence in Annual Training Award
- Received thirty-two other monetary personal achievement awards

Other Activities/memberships

- Testified on Capitol Hill to the Colson Task Force on Federal Corrections
- AOUSC Instructor 2019 Austin, Tx (Winning Strategies Seminar-BOP Mental Health)
- Published an Article on BOP Restrictive Housing in the Federal Sentencing Reporter
- Authored Chapter's in Elizabeth Kelly's books on Autism Spectrum Disorders (2019) & Suicide and Its Impact on the Criminal Justice System (2021)- (ABA)
- Provide training on Federal prison issues to federal defenders & CJA Panel
- Developed and provided federal prison training to federal judges and USPO's
- Numerous media appearances for commentary on CNN and Fox News
- NACDL Corrections Committee since 2011
- ABA Corrections Committee 2012- Chair of Standing sub-committee on BOP Policy
- Monthly contributor to the Sentencing Partners Newsletter from Joaquin & Duncan
- Authored articles published in the "News & Views" (AO) and "The Debt Beat"
- Member of the U.S. Ombudsman Association (USOA)
- Member of the PA Prison Society
- Overall offender advocacy & general Federal prison & legislative reform efforts
- Hiking, Fishing, Leisure Travel
- Chairman of the Milford UMC Finance Committee

References, testimonials and award letters available upon request and at www.mfpcllc.com