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14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,  
 17 Plaintiff,  
 18 v.  
 19 ENRIQUE MARQUEZ, JR.,  
 20 Defendant.  
 21  
 22

No. ED CR 15-00093-JGB

GOVERNMENT'S SUPPLEMENTAL POSITION  
 REGARDING SENTENCING; VICTIM  
 STATEMENTS

Hearing Date: October 23, 2020  
 Hearing Time: 9:00 a.m.  
 Location: Courtroom of the  
 Hon. Jesus G.  
 Bernal

23 The United States of America, by and through its counsel of  
 24 record, hereby submits its supplemental position regarding sentencing  
 25 for defendant Enrique Marquez, Jr.

26 The government's position regarding sentencing is based on this  
 27 supplemental position regarding sentencing and exhibits hereto (filed  
 28 concurrently herewith under seal); the government's opposition to

1 defendant's motion to withdraw his guilty plea, exhibits thereto, and  
2 corresponding proceedings; the government's previously-filed  
3 sentencing memorandum and exhibits thereto; the victims' statements  
4 and allocution; the United States Probation Office's Presentence  
5 Investigation Report and recommendation letter; the government's  
6 objections to the Presentence Investigation Report; the plea  
7 agreement; the files and records in this case; and such further  
8 evidence and argument as the Court may permit.

9 Dated: October 15, 2020

Respectfully submitted,

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**TABLE OF CONTENTS**

<u>DESCRIPTION</u>	<u>PAGE</u>
GOVERNMENT’S SUPPLEMENTAL SENTENCING MEMORANDUM.....	1
I. INTRODUCTION.....	1
II. THE GOVERNMENT’S SENTENCING GUIDELINES CALCULATIONS ARE CORRECT.....	3
III. DEFENDANT’S VARIANCE AND DEPARTURE REQUESTS ARE UNWARRANTED....	8
A. Defendant’s Criminal History Category Is Not Overstated.....	8
B. Downward Departure for “Aberrant Behavior” Does Not Apply.....	10
C. Defendant Is Not Entitled to a Mitigating Role Adjustment.....	11
D. Defendant Is Not Entitled to Any Reduction in Offense Level for “Substantial Assistance”.....	13
IV. DEFENDANT’S § 3553(A) ARGUMENTS DO NOT SUPPORT A SENTENCE LOWER THAN 25 YEARS’ IMPRISONMENT AND LIFETIME SUPERVISION....	14
A. The Nature and Seriousness of the Offenses Justifies a 300-Month Sentence.....	15
B. Defendant’s History and Characteristics Warrant a Substantial Sentence.....	17
C. A 25-Year Sentence is Consistent with Sentencing in Terrorism Conspiracy Cases.....	18
V. CONCLUSION.....	22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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26  
27  
28

**TABLE OF AUTHORITIES**

DESCRIPTION PAGE

**Cases**

United States v. Abu Ali, 528 F.3d 210 (4th Cir. 2008)..... 22

United States v. Awan, 607 F.3d 306 (2d Cir. 2010)..... 6, 7, 8

United States v. Chandia, 675 F.3d 329 (4th Cir. 2012)..... 7

United States v. Diaz, 884 F.3d 911 (9th Cir. 2018)..... 11

United States v. Dickey, 924 F.2d 836 (9th Cir. 1991)..... 11

United States v. El-Mezain, 664 F.3d 467 (5th Cir. 2011)..... 7

United States v. Fairless, 975 F.2d 664 (9th Cir. 1992)..... 11

United States v. Garey, 546 F.3d 1359 (11th Cir. 2011)..... 5

United States v. Haften, 881 F.3d 543 (7th Cir. 2018)..... 7

United States v. Jayyousi,  
657 F.3d 1085 (11th Cir. 2011)..... 6, 7, 9, 22

United States v. Meskini, 319 F.3d 88 (2d Cir. 2003)..... 4, 9

United States v. Pena, 930 F.2d 1486 (10th Cir. 1991)..... 11

United States v. Ressam, 679 F.3d 1069 (9th Cir. 2012).... 5, 8, 9, 22

United States v. Russell, 870 F.2d 18 (1st Cir. 1989)..... 11

United States v. Siddiqui, 699 F.3d 690 (2d Cir. 2012)..... 5

United States v. Takai, 941 F.2d 738 (9th Cir. 1991)..... 11

United States v. Tankersley, 537 F.3d 1100 (9th Cir. 2008)..... 4

United States v. Wright, 747 F.3d 399 (6th Cir. 2014)..... 5

**Statutes**

18 U.S.C. § 1001..... 19

18 U.S.C. § 2332b(g)(5)..... 5, 8

18 U.S.C. § 2339A..... 5, 19

18 U.S.C. § 2339B..... 19

18 U.S.C. § 3553(a)..... passim

**TABLE OF AUTHORITIES**

<u>DESCRIPTION</u>	<u>PAGE</u>
18 U.S.C. § 371.....	19
18 U.S.C. § 3771.....	17, 23
18 U.S.C. § 842.....	19
18 U.S.C. § 844(i).....	19
Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 730, 110 Stat. 1214, 1303 .....	4
Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 12004, 108 Stat. 1796, 2022 .....	4
<b><u>Other Authorities</u></b>	
U.S.S.G. § 3A1.4.....	passim
U.S.S.G. § 3B1.2.....	11, 13
U.S.S.G. § 3E1.1.....	14
U.S.S.G. § 5A.....	3
U.S.S.G. § 5H1.4.....	18
U.S.S.G. § 5K1.1.....	13, 14

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1 purchased two assault weapons for a terrorist, that terrorist and his  
2 wife would not have used those firearms to murder 14 people and wound  
3 22 survivors.

4 Defendant tries to avoid responsibility for his conduct by  
5 comparing himself to Farook and arguing he is not responsible because  
6 he is less culpable. But relative culpability is neither exoneration  
7 nor an excuse. He cannot hide behind the killer that he befriended,  
8 assisted, and with whom he schemed. The fact that defendant did not  
9 participate in the San Bernardino attack does not exonerate him for  
10 his crimes. And despite his lack of prior convictions, the facts of  
11 this case reveal another disturbing truth: where defendant goes,  
12 serious federal crimes follow, including illegal weapons purchases,  
13 conspiracy to commit terrorist attacks, and immigration fraud.  
14 Worse, defendant's offenses are crimes of enablement and  
15 facilitation, helping and encouraging others to violate federal law.

16 The government strongly disagrees with defendant's suggestion  
17 that the Court should decline to apply the terrorism enhancement  
18 clearly applicable to his crimes as well as with defendant's  
19 § 3553(a) arguments. Defendant essentially argues for a 17-level  
20 variance from the government's and Probation Office's recommended  
21 sentence of 300 months (which itself is far below the guidelines  
22 range of a life sentence, and an even greater variance from the  
23 applicable guidelines if the offense level was not capped at level  
24 43). It is also a 17-level variance from the base offense level  
25 defendant agreed to in the Plea Agreement, even if the Court were to  
26 decline to apply the terrorism enhancement and even if defendant's  
27 criminal history category was calculated at level I. Neither  
28 defendant's offenses and history nor a careful comparison of

1 defendant's case with other terrorism cases supports the 20-year  
2 reduction that defendant seeks.

3 **II. THE GOVERNMENT'S SENTENCING GUIDELINES CALCULATIONS ARE CORRECT**

4 As defendant agreed in his Plea Agreement and as set forth in  
5 the government's sentencing brief and its objections to the PSR,<sup>1</sup> the  
6 appropriate base offense level in this case is 43. Additionally, as  
7 the government's sentencing brief and the PSR discuss, the terrorism  
8 enhancement clearly applies.<sup>2</sup> The terrorism enhancement's 12-level  
9 increase results in an adjusted offense level of 55 and a total  
10 offense level of 52, with a 3-level reduction for acceptance of  
11 responsibility. Because this is one of the "rare cases" in which an  
12 offense level greater than 43 results from the application of the  
13 guidelines, the "offense level of more than 43 is to be treated as an  
14 offense level of 43." U.S.S.G. § 5A cmt. n.2. Thus, defendant's  
15 offense level is correctly calculated at 43, and his criminal history  
16 category is correctly calculated as VI.

17 The terrorism enhancement was adopted by the Sentencing  
18 Commission at Congress's express direction. In 1994, Congress

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19  
20 <sup>1</sup> The government's sentencing brief and objections to the PSR  
21 also explain why the San Bernardino terrorist attack is relevant  
22 conduct in this case. The government will not repeat those arguments  
23 here, but notes that whether or not it is considered relevant conduct  
has no bearing on the sentencing guidelines calculation in this case.  
Also, even if it is not relevant conduct, which it is, it is still  
appropriate for the Court to consider under Section 3553(a).

24 <sup>2</sup> It is worth noting, however, that a base offense level of 43  
25 supports a life sentence, whether or not the 12-level terrorism  
26 enhancement applies and whether or not defendant's criminal history  
27 category is level I or VI. Even if, despite defendant's efforts to  
28 withdraw his guilty plea and minimize his conduct in his sentencing  
paper, the Court were to provide a 3-level reduction for acceptance  
of responsibility and declined to apply the terrorism enhancement,  
the total offense level would be 291-365 months' imprisonment with a  
criminal history category of I, and 360-life with a criminal history  
category of VI. Under any scenario, defendant's requested 60-month  
sentence is drastically and unjustifiably below the guidelines.

1 instructed the Commission to "provide an appropriate enhancement" for  
2 certain terrorist offenses. Violent Crime Control and Law  
3 Enforcement Act of 1994, Pub. L. No. 103-322, § 12004, 108 Stat.  
4 1796, 2022. In response, the Commission adopted an enhancement that  
5 provided for a 12-level increase in the offense level and a criminal  
6 history category of VI. U.S.S.G. § 3A1.4(a)(1995). Congress then  
7 directed the Commission to expand the application of that provision  
8 to apply to all federal crimes of terrorism. See Antiterrorism and  
9 Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 730, 110  
10 Stat. 1214, 1303; see also H.R. Rep. No. 104-518, at 123 (1996)  
11 (Conf. Rep.) (explaining that this provision was enacted "to expand  
12 the scope of the [terrorism] enhancement").

13 "Congress wanted to impose a harsher punishment on any  
14 individual who committed an offense that involved or intended to  
15 promote one of the enumerated terrorist acts and intended, through  
16 that offense, to influence the conduct of others." United States v.  
17 Tankersley, 537 F.3d 1100, 1113 (9th Cir. 2008). The Commission  
18 promulgated the current version of the terrorism enhancement,  
19 intending to have it apply "broadly" to terrorism crimes. U.S.S.G.  
20 app. C, amend. 565 (1997). The enhancement and its application notes  
21 collectively reflect a determination by Congress and the Sentencing  
22 Commission that "an act of terrorism represents a particularly grave  
23 threat because of the dangerousness of the crime and difficulty of  
24 deterring and rehabilitating the criminal, and thus that terrorists  
25 and their supporters should be incapacitated for a longer period of  
26 time." United States v. Meskini, 319 F.3d 88, 92 (2d Cir. 2003); see  
27 also United States v. Ressam, 679 F.3d 1069, 1090-91 (9th Cir. 2012)

28

1 (en banc) (outlining rationales supporting longer sentences for  
2 terrorism offenses).

3 Section 3A1.4 of the Sentencing Guidelines increases a  
4 defendant's offense level by 12 levels and elevates his criminal  
5 history to Category VI if the offense is "a felony that involved, or  
6 was intended to promote, a federal crime of terrorism." U.S.S.G.  
7 § 3A1.4. For purposes of § 3A1.4, "'federal crime of terrorism' has  
8 the meaning given that term in 18 U.S.C. § 2332b(g)(5)." U.S.S.G.  
9 § 3A1.4 cmt. n.1. Defendant does not dispute that his offense of  
10 conviction in Count 1, 18 U.S.C. § 2339A(a), is a "federal crime of  
11 terrorism" listed in 18 U.S.C. § 2332b(g)(5). Rather, he argues the  
12 Court should decline to apply the terrorism enhancement because  
13 defendant was not truly motivated by international terrorism or  
14 violent ideology when he committed the crimes in the same way as his  
15 co-schemer Rizwan Farook. (See generally Def.'s Sentencing Position  
16 at 33-43.)

17 Not only do defendant's self-serving comments now belie the  
18 substantial evidence in this case, including his descriptions to  
19 others of having been involved in terrorist plotting, his personal  
20 motive is immaterial. Section 3A1.4(a)'s application does not  
21 require a finding that the defendant was personally motivated by a  
22 desire to promote a federal crime of terrorism. Rather, the  
23 enhancement applies because defendant committed federal offenses that  
24 were calculated "to influence or affect the conduct of government by  
25 intimidation or coercion, or to retaliate against government  
26 conduct." United States v. Garey, 546 F.3d 1359, 1361 (11th Cir.  
27 2011). Calculation does not require "[l]ong-term planning." United  
28 States v. Wright, 747 F.3d 399, 408 (6th Cir. 2014); see also United

1 States v. Siddiqui, 699 F.3d 690, 709 (2d Cir. 2012). “Nor is it  
2 necessary that influencing the government be the defendant’s ultimate  
3 or sole aim.” Wright, 747 F.3d at 408 (citing United States v.  
4 Jayyousi, 657 F.3d 1085, 1114-15 (11th Cir. 2011); and United States  
5 v. Awan, 607 F.3d 306, 317 (2d Cir. 2010)). The calculation  
6 requirement focuses on whether the offense was planned or intended to  
7 achieve a stated object, regardless of the particular motive of the  
8 defendant. See Awan, 607 F.3d at 317. By way of example, “[a] hired  
9 assassin who kills a political leader at the behest of a terrorist  
10 organization can hardly disclaim that his crime was calculated to  
11 influence the conduct of government simply because he was motivated  
12 by greed rather than politics.” Id. at 318.

13 Defendant’s own descriptions of his conspiracy establish that,  
14 at a minimum, defendant knew Rizwan—for whom he purchased the weapons  
15 and explosive powder, and with whom he conspired—held anti-American  
16 and violent radical beliefs and had such intent when he stockpiled  
17 weapons, gear, ammunition, explosive powder, and planned with  
18 defendant to kill people. As with the assassin motivated by greed  
19 described in Awan, even if defendant were motivated by his friendship  
20 for Rizwan or his admiration for weapons (see, e.g., Def.’s  
21 Sentencing Position at 13-14, 31, 45), the enhancement still applies  
22 because it remains true factually and objectively that defendant  
23 aided a terrorist by providing weapons and explosives, and  
24 participated in plans to kill innocent people. The government need  
25 only prove that the offense was calculated to influence or affect the  
26 conduct of government by intimidation or coercion, or to retaliate  
27 against government conduct. See Awan, 607 F.3d at 316-18 (holding  
28 that government need not show defendant was personally motivated to

1 influence government, only that he intended to promote a crime  
2 calculated to have such an effect); United States v. Haften, 881 F.3d  
3 543, 545 (7th Cir. 2018) (affirming that the terrorism adjustment  
4 applied, stating “[a]ll that matters is that [defendant] did, in  
5 fact, commit a crime calculated to retaliate against the  
6 government.”); Jayyousi, 657 F.3d at 1114-15 (holding that terrorism  
7 adjustment, § 3A1.4, applies when purpose of defendants’ activity is  
8 calculated to promote a terrorism crime regardless of defendants’  
9 personal motivations); accord United States v. El-Mezain, 664 F.3d  
10 467, 571 (5th Cir. 2011) (citing with approval Awan and Jayyousi);  
11 see also United States v. Chandia, 675 F.3d 329, 340-41 (4th Cir.  
12 2012) (affirming application of terrorism adjustment where the court  
13 reasonably inferred that defendant intended to advance the terrorist  
14 organization’s purpose based on defendant’s knowledge about the  
15 terrorist organization). That standard is more than met here.

16 As the government’s April 2018 sentencing position details,  
17 defendant boasted about his involvement in terrorist plotting to  
18 other individuals online. (See Gov’t’s Sentencing Position at 4-21,  
19 Exs. 15-24.) His latest such admission was in November 2015, when he  
20 posted on Facebook: “No one really knows me. I lead multiple lives  
21 and I’m wondering when its all going to collapse on M[e].” (Id. at  
22 19, Ex. 24.) Defendant continued, “My life turned ridiculous”  
23 “[i]nvolved in terrorist plots, drugs, antisocial behavior, marriage,  
24 might go to prison for fraud, etc.” (Id.) There is no reason to  
25 credit defendant’s apparent position at sentencing that, although he  
26 was indeed involved in “drugs, antisocial behavior, marriage” and  
27 “fraud,” the only thing on his list that is untrue was his  
28 involvement in “terrorist plots.”

1 Even if defendant did not devise the precise plans for which he  
2 plead guilty in Count 1 until a few months after he purchased the two  
3 semi-automatic firearms for Farook (see Def.'s Sentencing Position at  
4 15-20), the purchase was nonetheless in furtherance of their plotting  
5 to commit terrorist attacks that ultimately culminated in picking  
6 innocent college students, commuters, and first responders as  
7 targets. In May or June of 2015, defendant admitted to a witness  
8 that he once was "becoming radical" and had purchased "guns" "to hurt  
9 people." (See Gov't's Opp'n to Def.'s Mot. to Withdraw Guilty Plea,  
10 GEX 1276.) When investigators asked defendant about a spreadsheet  
11 they had recovered from Farook's thumb drive under a tab labeled  
12 "marriage" that detailed weapons purchases in 2011, including  
13 ammunition and shooting expenses, defendant admitted in writing that  
14 he was "aware they would be used in a future terrorist attack." (See  
15 Gov't's Sentencing Position at 10-11, Ex. 5 at 1.) Therefore, even  
16 though the crime charged in Count 2 is not enumerated in 18 U.S.C.  
17 § 2332b(g)(5)(B), an upward departure is warranted, because the crime  
18 "was calculated to influence or to affect the conduct of government  
19 by intimidation or coercion, or to retaliate against government  
20 conduct." U.S.S.G. § 3A1.4 cmt. n.4; Awan, 607 F.3d at 315.

### 21 **III. DEFENDANT'S VARIANCE AND DEPARTURE REQUESTS ARE UNWARRANTED**

22 Defendant advances multiple arguments in support of his request  
23 for a 60-month sentence, but none justify the dramatic variances and  
24 departures that he seeks.

#### 25 **A. Defendant's Criminal History Category Is Not Overstated**

26 Because the crimes of terrorism are designed to "intimidate this  
27 nation and the world," Ressam, 679 F.3d at 1090, and "represents a  
28 particularly grave threat" to the security and well-being of the

1 nation, Meskini, 319 F.3d at 92, the application of the terrorism  
2 enhancement properly elevates defendant's criminal history category  
3 to VI. Defendant has not offered a persuasive justification for  
4 departure from that category.

5 The Ninth Circuit has declared that "[t]errorists, even those  
6 with no prior criminal behavior, are unique among criminals in the  
7 likelihood of recidivism, the difficulty of rehabilitation, and the  
8 need for incapacitation," and the seriousness of a terrorism offense  
9 is properly "taken into account in the criminal statutes and in the  
10 Sentencing Guidelines." Ressam, 679 F.3d at 1091 (citing Jayyousi,  
11 657 F.3d at 1117). Thus, in Ressam where the guidelines range was 65  
12 years to life, the Ninth Circuit vacated a 22-year sentence, for  
13 substantive unreasonableness, for a defendant convicted at trial of  
14 terrorism conspiracy and other crimes. Id. at 1097.

15 As the Second Circuit explained in Meskini (a terrorism case  
16 where the defendant had no prior criminal record), "Congress and the  
17 Sentencing Commission had a rational basis for creating a uniform  
18 criminal history category for all terrorists under § 3A1.4(b),"  
19 because even terrorists without criminal history have a unique  
20 capacity for recidivism and pose challenges to rehabilitation. 319  
21 F.3d at 92. The Second Circuit further held that downward departures  
22 that negate the Sentencing Commission's criminal history category  
23 elevation should be used only "in exceptional cases," as "the  
24 Guidelines are in no way irrational in setting the default for  
25 criminal history at a very high level." Id.

26 Defendant is far from the kind of "exceptional case" that might  
27 warrant a departure for an over-represented criminal history. By his  
28 own admission in various pleadings in this case, defendant engaged in

1 five years of criminal activities until his arrest in 2015: terrorism  
2 conspiracy; fraudulent acquisition of firearms; and visa and marriage  
3 fraud.<sup>3</sup> Although those crimes were charged together in the  
4 indictment, they—by defendant’s own assertions—represent different  
5 clusters of crimes that covered nearly the entire span of defendant’s  
6 adulthood. Now, nearly five years after his arrest, even after  
7 pleading guilty, defendant appears to minimize the seriousness of his  
8 participation in a terrorism conspiracy by characterizing it as  
9 “brief, speculative, vague, and hypothetical discussions” that “never  
10 evolved to . . . a ‘plan’” and lacked “corroborating information.”  
11 (Def.’s Sentencing Position at 18, 19.) On defendant’s history and  
12 record before this Court, defendant cannot claim to be an exceptional  
13 defendant for whom that rare departure from the criminal history  
14 category set by the terrorism enhancement is warranted.

15 **B. Downward Departure for “Aberrant Behavior” Does Not Apply**

16 For the same reason, defendant’s claim that the Court should  
17 depart downward for “aberrant behavior” fails. If participation in a  
18 conspiracy to commit two separate terrorist acts in Riverside City  
19 College (“RCC”) and SR-91 can ever be an “aberrant act” that warrants  
20 a downward departure, that argument is foreclosed by defendant’s own  
21 assertion that his illegal purchase of the two firearms that preceded  
22 the terrorism conspiracy had nothing to do with the conspiracy.  
23 Defendant’s commission of Counts One and Two, followed by marriage  
24

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25 <sup>3</sup> In addition to the guilty pleas to the terrorism conspiracy  
26 and false statement in the acquisition of firearms counts, defendant  
27 has acknowledged that he began engaging in visa and marriage fraud  
28 from November 2014 through December 2015 until defendant was arrested  
in this case. (See Def.’s Motion to Withdraw Guilty Plea at 41-42;  
Declaration of Enrique Marquez in support of Def.’s Motion to  
Withdraw Guilty Plea ¶¶ 20-22, 28.)

1 and visa fraud two years later, can in no way be considered an  
2 "atypical" behavior that this Court can regard with leniency. United  
3 States v. Russell, 870 F.2d 18, 20 (1st Cir. 1989).

4 The cases that defendant cites involved defendants who received  
5 lenient sentences after committing single criminal acts in the  
6 context of otherwise positive and upstanding life histories. See,  
7 e.g., United States v. Fairless, 975 F.2d 664, 667 (9th Cir. 1992)  
8 (single spontaneous and "crazed" act to commit bank robbery in  
9 depressive and suicidal state was "aberrant behavior" that justified  
10 departure); United States v. Takai, 941 F.2d 738, 741 (9th Cir. 1991)  
11 (downward departure for first-time smugglers who bribed immigration  
12 officials in a single act of aberrant behavior); United States v.  
13 Pena, 930 F.2d 1486, 1494 (10th Cir. 1991) (defendant was a mother  
14 with "long-term employment," "unique family responsibility," and no  
15 criminal history who committed a drug trafficking offense). Cf.  
16 United States v. Dickey, 924 F.2d 836, 837 (9th Cir. 1991) (while  
17 "single acts of aberrant behavior" may justify downward departure, it  
18 was not clear whether defendant's counterfeit currency crime was  
19 sufficiently atypical). In contrast, defendant's criminal behavior  
20 spanned five years and was by no means a single act of aberrant  
21 behavior warranting a downward departure or variance.

22 **C. Defendant Is Not Entitled to a Mitigating Role Adjustment**

23 Defendant fails to meet his burden to show that the nature of  
24 his participation in his terrorism conspiracy rendered him  
25 "substantially less culpable than the average participant" such that  
26 he should be accorded a reduction in his offense level. U.S.S.G.  
27 § 3B1.2(b) & cmt. n.3(A), (C) (emphasis added); United States v.  
28 Diaz, 884 F.3d 911, 914 (9th Cir. 2018). Defendant asks for a

1 minimal-role, four-level adjustment, arguing that he was a younger  
2 person under the strong influence of his co-conspirator when  
3 defendant participated in the conspiracy, and because he lacked  
4 "decision-making authority, independent discretion, or influence over  
5 Farook." (Def.'s Sentencing Position at 54.) But defendant's views  
6 of the conspiracy that he now essentially disavows as having taken  
7 place are belied by his own descriptions of the conspiracy to the FBI  
8 in December 2015 and in the preceding years to other individuals.

9 The government's April 2018 sentencing position (Dkt. 97)  
10 details that defendant was a full, willing, and motivated participant  
11 of the conspiracy who not only provided the agreement necessary for  
12 the conspiracy to attack RCC and SR-91, but also co-designed the  
13 attacks with Farook (PSR ¶ 14), purchased the two firearms and  
14 ammunition to facilitate the attacks (PSR ¶ 15), researched bomb-  
15 making and obtained explosive powder and other bomb-making materials  
16 (PSR ¶ 16), and visited RCC and SR-91 to sketch out how he and Farook  
17 would attack the two locations to maximize casualties (PSR ¶¶ 17-20).  
18 Defendant later boasted about his involvement in terrorist plotting  
19 to other individuals online, detailing at times the particular plans  
20 he participated in making to commit terrorist attacks. (See Gov't's  
21 Sentencing Position at 4-21, Exs. 15-24.) He admitted his  
22 involvement again in November 2015. (Id. Ex. 24.) Defendant even  
23 told a witness in person in 2015 that defendant had had some "dark  
24 times . . . becoming radical" and had purchased "guns" with Farook  
25 because they "wanted to hurt people"—an undeniable reference to the  
26 conduct underlying the terrorism conspiracy and straw-purchase  
27 counts. (See Gov't's Opp'n to Def.'s Mot. to Withdraw Guilty Plea,  
28 GEX 1276.)

1 Defendant's actual, admitted conduct in furtherance of the  
2 conspiracy satisfies at least four of the five non-exhaustive factors  
3 in the Guidelines' commentary to § 3B1.2. Unlike low-level drug  
4 couriers or getaway drivers for whom courts have accorded minor or  
5 minimal roles, defendant's self-description of his participation in  
6 the conspiracy shows that: (1) he "understood the [full] scope and  
7 structure" of the conspiracy; (2) he was integral "in planning or  
8 organizing the criminal activity"; (3) he "exercised decision-making  
9 authority or influenced the exercise of decision-making authority" by  
10 researching bomb-making, facilitating purchases of firearms and  
11 ammunition, and strategizing with Farook to maximize casualties when  
12 they would commit the attacks; and (4) his "participation in the  
13 commission of the criminal activity" was full and co-equal in "nature  
14 and extent" with Farook. See U.S.S.G. § 3B1.2 cmt. n.3(C).

15 Accordingly, defendant fails to establish that he was  
16 substantially less culpable than Farook or the average participant in  
17 a similar conspiracy.

18 **D. Defendant Is Not Entitled to Any Reduction in Offense Level**  
19 **for "Substantial Assistance"**

20 Defendant is wrong to suggest that the Court can effectively  
21 grant a § 5K1.1 substantial assistance departure without the  
22 government's motion by assessing defendant's "cooperation" with law  
23 enforcement in a § 3553(a) analysis. The government has not filed a  
24 § 5K1.1 motion in this case, nor will it file one. Defendant's  
25 request is improper.

26 While defendant spoke with the FBI at length following the  
27 December 2, 2015 terrorist attack, made admissions to his crimes, and  
28 described his history with Rizwan Farook, the government has not

1 presented to this Court that defendant has provided sufficient  
2 "substantial assistance in the investigation or prosecution of  
3 another person who has committed an offense." U.S.S.G. § 5K1.1. A  
4 sentencing benefit under "substantial assistance" is not available  
5 for admissions of defendant's own criminal conduct, however fulsome  
6 those admissions may be; such admissions are captured by the  
7 acceptance of responsibility provisions of U.S.S.G. § 3E1.1.

8 In the absence of a § 5K1.1 motion from the government, a basis  
9 for granting a variance or departure for substantial assistance is  
10 not before the Court. Defendant cannot seek to circumvent the text  
11 and intent of the Guidelines by asking the Court to speculate on the  
12 nature and value of the information defendant provided to the  
13 government in a § 3553(a) analysis. The government has not submitted  
14 a § 5K1.1 motion because it has determined that defendant has not  
15 merited such a motion. U.S.S.G. § 5K1.1. Despite the absence of  
16 such a motion, defendant urges the Court to depart downward by  
17 speculating on the nature and value of defendant's assistance. Any  
18 such departure would be without factual or legal basis.

19 **IV. DEFENDANT'S § 3553(A) ARGUMENTS DO NOT SUPPORT A SENTENCE LOWER**  
20 **THAN 25 YEARS' IMPRISONMENT AND LIFETIME SUPERVISION**

21 The government's and Probation Office's recommended sentence of  
22 25 years' imprisonment is appropriate and sufficient but not greater  
23 than necessary to meet the goals of sentencing as provided in 18  
24 U.S.C. § 3553(a). (See Gov't's Sentencing Position at 38-46.) The  
25 government strongly disagrees with defendant's § 3553(a) arguments,  
26 particularly regarding the nature and circumstances of his offenses,  
27 defendant's history and characteristics, and the need for unwarranted  
28 sentencing disparities. Defendant seeks what amounts to a 17-level

1 variance from the government's and the Probation Office's recommended  
2 sentence of 300 months (which itself is below the guidelines range of  
3 a life sentence) in requesting a sentence of 5 years. Consideration  
4 of the § 3553(a) factors do not support the 20-year reduction that  
5 defendant seeks.

6 **A. The Nature and Seriousness of the Offenses Justifies a 300-**  
7 **Month Sentence**

8 The government has already provided the Court a full description  
9 of the nature and circumstances of defendant's offense conduct in the  
10 government's April 2018 sentencing brief and its opposition to  
11 defendant's motion to withdraw his guilty plea. As the Court is now  
12 well aware, defendant met with the FBI on December 6-17, 2015, and  
13 made comprehensive and meticulous admissions of his criminal conduct  
14 with Rizwan Farook. (See Gov't's Opp'n to Def.'s Mot. to Withdraw  
15 Guilty Plea, GEX 1-332.) During those twelve days of interviews,  
16 defendant described in detail his consumption of Islamic extremism,  
17 his research into methods of terrorism and weapons of mass assault,  
18 his acquisition of firearms, explosives, and explosives paraphernalia  
19 with Farook, and the specific plans that defendant and Farook made  
20 from 2011 through November 2012 to commit terrorist attacks at RCC  
21 and SR-91. (Id.) During the same meetings with the FBI, defendant  
22 voluntarily accompanied agents to the RCC campus and specific  
23 locations on SR-91 to identify and describe where and how he and  
24 Farook intended to commit terrorist attacks so as to maximize human  
25 casualties. (Id. GEX 232-55; Gov't's Sentencing Position, Exs. 1, 2  
26 (videos of defendant's visits to RCC and SR-91 with law  
27 enforcement).)

1           During and since those interviews, the FBI—in conjunction with  
2 other law enforcement agencies—compiled evidence corroborating  
3 defendant’s criminal conduct, some of which appears in exhibits to  
4 the government’s sentencing position. (See Gov’t’s Sentencing  
5 Position, Exs. 3-33.) The corroborating evidence includes  
6 defendant’s online statements to other individuals as recently as  
7 November 2015, less than a month before his arrest in this case.  
8 (Id. Exs. 15-24.)

9           Despite the overwhelming strength of evidence and the  
10 seriousness of the offense conduct, defendant inaccurately minimizes  
11 his plan as “brief, speculative, vague, and hypothetical  
12 discussions,” which “never evolved to such a degree that they might  
13 even be characterized as a ‘plan,’” and that the “details of the  
14 plans were only set forth by [defendant] to the federal agents [in  
15 December 2015] as hypothetical inferences.” (Def.’s Sentencing  
16 Position at 18, 19.) This revisionist rhetoric stands in stark  
17 contrast to the lengthy, detailed, and repeated statements he gave to  
18 the FBI, as well as to the statements that defendant made to multiple  
19 individuals, including a witness to whom defendant said in 2015 that  
20 he was “becoming radical” and had purchased “guns” with Farook  
21 because they “wanted to hurt people.” (Gov’t’s Opp’n to Def.’s Mot.  
22 to Withdraw Guilty Plea, GEX 1276.) As the Court found when denying  
23 defendant’s motion to withdraw his guilty plea, defendant “lacks  
24 credibility as a witness,” and his words alone—whether in any  
25 declaration or pleadings—cannot be credited. (Order Denying Def.’s  
26 Mot. to Withdraw Guilty Plea (Dkt. 268) at 3.)

27           Defendant’s provision of weapons and explosives, and terrorist  
28 plotting with Rizwan Farook, had devastating consequences on December

1 2, 2015, when Rizwan Farook and Tashfeen Malik used the weapons to  
2 kill 14 people and injure, terrorize, and traumatize countless  
3 others, leaving behind an IED made with defendant's explosive  
4 powder.<sup>4</sup>

5 The clear, incontrovertible record before this Court  
6 demonstrates the seriousness of defendant's conduct and the  
7 justification for a 25-year sentence.

8 **B. Defendant's History and Characteristics Warrant a**  
9 **Substantial Sentence**

10 Despite his high intellectual ability, defendant has taken pains  
11 to present a portrait of himself as an unthinking, gullible follower  
12 who lacked agency, guidance, and mental fortitude, but nothing in  
13 defendant's personal history meaningfully mitigates—much less  
14 counteracts—against the 25-year sentence warranted to achieve the  
15 goals of sentencing. While there appears to have been health and  
16 relationship difficulties in defendant's life, that is so for  
17 countless people who do not engage in federal crime, let alone  
18 repeatedly. Nothing in defendant's history and characteristics is so

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20 ///

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22 <sup>4</sup> The government filed statements of some of the victims  
23 publicly and under seal as lettered Exhibits to its sentencing  
24 position paper filed in April 2018. The government herewith files  
25 additional statements obtained to date under seal as Exhibits AA-CC,  
26 and requests the Court to consider them because they are relevant to  
27 the factors the Court is to consider under § 3553(a), and pursuant to  
28 the Crime Victims' Rights Act, codified at 18 U.S.C. § 3771. As  
discussed in the government's sentencing position at 35-38, victim  
statements speak to the nature and circumstances of the offense and  
directly address "the need for the sentence imposed to reflect the  
seriousness of the offense, to promote respect for the law, and to  
provide just punishment for the offense." See 18 U.S.C. § 3553(a).

1 extraordinarily mitigating that it justifies defendant's repeated  
2 criminal behavior and the dramatic sentencing windfall he seeks.<sup>5</sup>

3 Defendant's life experiences may help explain defendant's  
4 motivations for forming and maintaining his relationship with Rizwan  
5 Farook and for engaging in immigration fraud. But it remains the  
6 case that defendant willingly, resourcefully, and persistently  
7 committed the offenses of conviction, as well as the visa and  
8 marriage fraud offenses, over a five-year period, during which  
9 defendant held multiple jobs, exhibited high levels of intelligence  
10 and social functioning, and showed keen awareness of the criminality  
11 of his actions. While the government in no way would minimize the  
12 challenges that individuals with difficulties in upbringing and  
13 mental health face each day, defendant's history and characteristics  
14 are not of particularly unusual nature—in comparison to other  
15 defendants who appear before this Court for sentencing—to warrant a  
16 variance from the already below-guidelines sentence the government  
17 and Probation recommended.

18 **C. A 25-Year Sentence is Consistent with Sentencing in**  
19 **Terrorism Conspiracy Cases**

20 Contrary to defendant's assertions, imposing the government's  
21 recommended sentence of 25 years—rather than granting the  
22

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23 <sup>5</sup> In an apparent argument for mitigation, defendant claims prior  
24 to arrest "he was consuming large quantities of alcohol, illegal  
25 drugs, and over-the-counter medications." (Def.'s Sentencing  
26 Position at 18, 19.) Such substance abuse, however, does not justify  
27 a reduction in his sentence. As recognized by the Sentencing  
28 Commission, "[d]rug or alcohol dependence or abuse ordinarily is not  
a reason for a downward departure. Substance abuse is highly  
correlated to an increased propensity to commit a crime." U.S.S.G.  
§ 5H1.4. Instead of supporting a reduction in sentence, the  
Sentencing Commission recommends conditions of supervised release  
that include substance abuse treatment. *Id.* The Probation Office's  
and the government's sentencing recommendations are in accord.

1 extraordinary variance requested by defendant—would avoid unwarranted  
2 sentencing disparities.

3 Defendant's reliance on his summary of 76 terrorism-related  
4 cases across the United States is greatly misplaced. (See Def.'s  
5 Sentencing Position at 109-13, Ex. J.) Those 76 cases represent an  
6 assortment in which defendants variously pleaded to one or more  
7 charges of 18 U.S.C. §§ 371, 842, 844(i), 1001, 2339A, and 2339B.  
8 For the reasons outlined below, many of those cases are not analogous  
9 here:

- 10 • In at least 10 cases, the defendants received dramatically low  
11 sentences, despite the applicability of the terrorism  
12 enhancement, because the defendants cooperated with the  
13 government and, in some cases, testified against other  
14 defendants, as evident from the pleadings publicly accessible on  
15 their dockets. (See, e.g., United States v. Ahmed, 0:09-CR-50  
16 (D. Minn.) (36 months); United States v. Doe, 1:14-CR-612  
17 (E.D.N.Y.) (24 months); United States v. Esse, 0:14-CR-369 (D.  
18 Minn.) (probation).)
- 19 • In at least 9 cases, the defendants pleaded to either  
20 misdemeanors, § 371 charges (which come with 5-year maximum  
21 sentences), or § 1001 charges (which come with 8-year maximum  
22 sentences in terrorism cases). (See, e.g., United States v.  
23 Abdulkadir, 0:16-CR-02 (D. Minn.) (probation; misdemeanor);  
24 United States v. Abood, 3:15-CR-256 (N.D. Tex.) (48 months;  
25 § 1001); United States v. Blair, 5:15-CR-40031 (D. Kan.) (15  
26 months; § 371); United States v. Coffman, 3:15-CR-16 (E.D. Va.)  
27 (54 months; § 1001); United States v. Kodaimati, 3:15-CR-1298  
28 (S.D. Cal.) (96 months; § 1001).)

- 1 • In at least 10 cases, a significant portion of the defendants'  
2 conduct involved raising funds for foreign terrorist  
3 organizations ("FTOs"), but without specific plans for violence.  
4 (See, e.g., United States v. Abdullahi, 1:14-CR-230 (E.D. Va.)  
5 (144 months); United States v. Hor Aki & Amera Aki, 3:10-CR-251  
6 (N.D. Ohio) (75 & 40 months); United States v. Yusuf, 3:10-CR-  
7 4551 (S.D. Cal.) (96 months); United States v. Hassan, 0:10-CR-  
8 187 (D. Minn.) (120 months).)
- 9 • In at least 10 cases, the defendants pleaded to only one count  
10 of 18 U.S.C. § 2339B, which at the time of those offenses  
11 carried a statutory maximum sentence of 15 years, and the  
12 defendants received the maximum or near-maximum sentences.  
13 (See, e.g., United States v. El-Mezain, 3:04-CR-240 (N.D. Tex.)  
14 (180 months); United States v. Saadeh, 2:15-CR-558 (D.N.J.) (180  
15 months); United States v. Teausant, 2:14-CR-87 (E.D. Cal.) (144  
16 months).)
- 17 • In many other cases where the defendants received lower  
18 sentences despite § 2339B convictions, the relevant factors were  
19 significantly different from this case. (See, e.g., United  
20 States v. Van Haften, 3:15-CR-37 (W.D. Wisc.) (120 months after  
21 a competency determination process); United States v. Musse,  
22 0:15-CR-49 (D. Minn.) (120 months for a defendant who was  
23 defendant no. 6 (out of the seven charged) and substantially  
24 less culpable); United States v. Khweis, 1:16-CR-143 (E.D. Va.)  
25 (240 months for a defendant who traveled to join ISIS but  
26 quickly returned upon regret); United States v. Young &  
27 Dakhalla, 1:15-CR-98 (N.D. Miss.) (144 & 96 months for a couple  
28

1 who attempted to travel to join ISIS after conversion to  
2 Islam).)

3 In clear contrast to the above cases, defendant's conduct  
4 involved actively conspiring to commit specific acts of terrorism  
5 using high-powered firearms and explosives in Riverside County to  
6 incur mass casualties and purchasing two firearms as part of that  
7 conspiracy. The object and means of defendant's conspiracy were thus  
8 even more serious than those defendants who agreed or attempted to  
9 travel overseas to join an FTO but without specific plans to commit  
10 acts of violence. Therefore, in assessing the sentencing disparity  
11 factor, the Court should compare this case specifically with more  
12 egregious cases where the defendants pleaded to more than one count  
13 and made specific plans to commit violent acts involving firearms and  
14 explosives. (See, e.g., United States v. Daud, 0:15-CR-49 (D. Minn.)  
15 (360 months for conduct including conspiracy to commit murder);  
16 United States v. Elhuzayel & Badawi, 8:15-CR-60 (C.D. Cal.) (360  
17 months each for terrorism co-conspirators who plotted to travel to  
18 join ISIS and discussed committing violent jihad in Orange County);  
19 United States v. Elfgeeh, 6:14-CR-6147 (W.D.N.Y.) (270 months for  
20 recruiting others to travel abroad for terrorism and purchasing two  
21 firearms and silencers); United States v. Mohamud, 2:15-CR-95 (S.D.  
22 Ohio) (264 months for plotting to kill Americans after overseas  
23 travel for terrorism); United States v. Morgan, 1:14-CR-194  
24 (M.D.N.C.) (243 months for terrorism conspiracy involving firearm  
25 possession).)

26 When compared with the sentences imposed in analogous cases, the  
27 government's recommended 300-month sentence is well within the norm  
28 of sentences imposed in terrorism conspiracy cases and does not

1 represent an unwarranted sentencing disparity. Even if defendant can  
2 point to outlier cases where defendants received substantially lower  
3 sentences for similar conduct, sentencing courts in the main have  
4 stayed close to the guidelines range (which in this case is higher  
5 than the requested 300 months). Several courts of appeals have even  
6 vacated sentences that were reduced based on comparisons to  
7 defendants not similarly situated. See Ressam, 679 F.3d at 1095 (22-  
8 year sentence found to be substantively unreasonable because of  
9 recidivism, danger, and sentencing disparity concerns); Jayyousi, 657  
10 F.3d at 1117-18 (sentence of 17 years and 4 months was substantively  
11 unreasonable because sentence failed to protect the public from  
12 further crimes); United States v. Abu Ali, 528 F.3d 210, 265 (4th  
13 Cir. 2008) (30-year sentence found to be substantively unreasonable  
14 after conspiracy to inflict mass civilian casualties and assassinate  
15 public officials in the U.S., because of recidivism concerns and  
16 impermissible comparisons to other terrorism-related cases).

17 Accordingly, here, the particular facts of this case and the  
18 relevant § 3553(a) factors—including the grave threat that the  
19 offense conduct represents, defendant’s own history, the need to  
20 deter defendant and others from similar crimes, the need to protect  
21 the public, and the need to avoid unwarranted disparities –  
22 necessitate the imposition of a 300-month sentence and lifetime  
23 supervision.

24 **V. CONCLUSION**

25 The government respectfully requests that this Court impose the  
26 sentence recommended by the Probation Office of 300 months’  
27 imprisonment, followed by a lifetime of supervised release (with the  
28 terms and conditions recommended by the Probation Office, including

1 drug and mental health treatment), and a special assessment of \$200.  
2 The government also requests defendant be ordered to pay restitution,  
3 in amounts to be determined at a deferred restitution hearing. See  
4 18 U.S.C. § 3771(6).

5 Dated: October 15, 2020

Respectfully submitted,

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