

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

13-CR-6090

OMER FADHEL SALEH MOHAMMED,

Defendant.

**GOVERNMENT'S CALCULATION OF MAXIMUM SENTENCE
AND SENTENCING GUIDELINE RANGE**

THE UNITED STATES OF AMERICA, by and through its attorneys, William J. Hochul, Jr. United States Attorney for the Western District of New York and Anthony M. Bruce, Assistant United States Attorney, in anticipation of the defendant pleading guilty to all counts of the Indictment, and pursuant to the suggestion of the Court of Appeals in United States v. Pimentel, 932 F.2d 1029, 1034 (2d Cir. 1991), hereby sets forth the maximum potential sentence to which the defendant will be exposed, and the present position of the government as to the calculations under the Sentencing Guidelines which will apply in this case. This analysis is set forth for informational purposes only and forms no part of any plea agreement between the government and the defendant.

MAXIMUM SENTENCE

1) All four counts of the Indictment charges the defendant with violations of Title 18, United States Code, Section 844(e), maliciously conveying false information – bomb

threats – by use of a cellular telephone, the same being an instrument of interstate commerce, for which the maximum possible sentence for each count is a term of imprisonment of 10 years, a fine of \$250,000, or both, a mandatory \$100 special assessment and a term of supervised release of up to three (3) years.

2) The Court must require restitution in an amount yet to be determined as part of the sentence pursuant to Sentencing Guidelines §5E1.1 and Title 18, United States Code, Section 3663A.

ELEMENTS OF THE OFFENSE

3) If this case proceeded to trial, the government would be required to prove beyond a reasonable doubt that the defendant (a) willfully (b) made a threat or conveyed false information about an attempt (c) by instrument of commerce, in this case, a cellular telephone (d) to damage or destroy property (e) by means of an explosive.” *See United States v. Spruill*, 118 F.3d 221, 224–25 (4th Cir. 1997).

SENTENCING GUIDELINES CALCULATIONS

4) The government presently believes that the Sentencing Guidelines will apply to this case as follows:

BASE OFFENSE LEVEL

5) Guidelines § 2A6.1(a)(1) applies to the offenses of conviction and provides for a base offense level of 12.

SPECIFIC OFFENSE CHARACTERISTICS
USSG CHAPTER 2 ADJUSTMENTS

6) It is the position of the government that the following specific offense characteristics apply:

(a) the two level increase pursuant to Guidelines § 2A6.1(b)(2) because the defendant made more than two threats; and

(b) an additional four level increase pursuant to Guidelines § 2A6.1(b)(4)(A) because the offense resulted in a substantial disruption of public, governmental and business functions.

ADJUSTED OFFENSE LEVEL

7) Based on the foregoing, the adjusted offense level for the offenses of conviction is 18.

ACCEPTANCE OF RESPONSIBILITY

8) Assuming the defendant pleads guilty and allocutes to the satisfaction of the Court in a timely manner, thereby demonstrating acceptance of responsibility for his offense and permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, a 3 level decrease pursuant to U.S.S.G. § 3E1.1 is warranted.

CRIMINAL HISTORY CATEGORY

9) Based upon the information now available to the government, the defendant has 2 criminal history points, which are calculated as follows:

a. The defendant was convicted of Driving While Intoxicated upon his plea of guilty on May 11, 2010 and was placed on probation. However, on January 12, 2012, his probation was revoked and he was sentenced to four months in prison. That conviction results, pursuant to U.S.S.G. § 4A1.1(b), in two (2) criminal history points.

In accordance with the above, the defendant's Criminal History Category is II.

SENTENCING RANGE

10) Based upon the calculations set forth above, with a total offense level of 15 and criminal history category of II, the defendant's sentencing range would be a term of imprisonment of 21 to 27 months, a fine of \$4,000 to \$40,000, and a period of supervised release of 1 to 3 years.

11) The foregoing Sentencing Guidelines calculations are based on facts and information presently known to the government. Nothing in this document limits the right of the government to change its position at any time as to the appropriate Guidelines calculations in this action, and to present to the Court and Probation Department, either orally or in writing, any and all facts and arguments relevant to sentencing and to the defendant's offense level, criminal history category and sentencing range, which are available to the government at the time of sentencing. Nothing in this document limits the ability of the government to bring to the attention of the Court all information deemed relevant to a

determination of the proper sentence in this action and to recommend a sentence above the Sentencing Guidelines range. Further, this document does not limit the right of the government to take a position on any departure or non-Guidelines sentence which may be suggested by the Court, the Probation Department, or the defendant.

12) This document does not and cannot bind either the Court or the Probation Department either as to questions of fact or as to determination of the correct Guidelines to apply in this case. The sentence to be imposed upon the defendant will be determined solely by the Court. The government cannot and does not make any promise or representation as to what sentence the defendant will receive.

Dated: Buffalo, New York, December 11, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2013, I electronically filed with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant on this case:

Mark D. Hosken, Supervisory AFPD

s/LAURA ROGERS