

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

19 Cr. 676 (PGG)

ALEXEI SAAB,
a/k/a "Ali Hassan Saab,"
a/k/a "Alex Saab,"
a/k/a "Rachid,"

Defendant.

THE GOVERNMENT'S SENTENCING SUBMISSION

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INTRODUCTION

The defendant is a convicted terrorist who spent years training with and working for Hizballah and Hizballah's elite External Security Organization (the "ESO") to target U.S. and Israeli interests, including innocent civilians. After spending four years conducting missions for Hizballah in Lebanon, the defendant moved to the United States to become a sleeper agent primed to conduct attack-planning and terrorist missions in this community. He eventually obtained citizenship by hiding from U.S. authorities his connections to Hizballah and later took advantage of his fraudulent citizenship to enter into a sham marriage in an effort to obtain citizenship for another individual, lying under the penalty of perjury at multiple steps along the way. Despite his years of criminal conduct in this country threatening U.S. national security, including passing surveillance photographs back to a deadly terrorist organization knowing they would be used for future attack planning, the defendant brazenly and quite remarkably claims in his letter to the Court that he "had no bad intent against the United States." (Dkt. No. 278-1 ("Def. Ltr.") at 8). The defendant, it appears, still does not acknowledge the gravity of his conduct. Based on his crimes, the Sentencing Guidelines recommend the statutory maximum sentence of 240 months' imprisonment. To reflect the seriousness of the defendant's criminal activity, to protect the public from the defendant in the future, to achieve adequate deterrence, to ensure that the defendant does, finally, accept the seriousness of what he has done, and for all of the reasons further set forth below, all of the factors relevant to sentencing collectively support that recommendation.

In the 1980s, Hizballah, inspired and backed by Iran, commenced a campaign of terror focused on Israel and the United States. As a result, thousands of people have been murdered. Crucial to this effort, Hizballah developed the ESO, the group's external operations network,

which emerged as a potent hybrid threat with sophisticated counterintelligence and attack-planning capabilities. The security risks that Iran and its proxies pose to the United States have also increased dramatically since Hizballah's founding, as the Iranian government backs Hizballah and other proxies with hundreds of millions of dollars in aid on an annual basis, helping to position external attack plotters such as ESO operatives to carry out violence in the United States and elsewhere.

The defendant joined Hizballah in 1996 and was promoted in 2000 to the ESO, and as an ESO member he eventually established his cover as a sleeper cell operative in United States and engaged in countless ESO attack-planning missions. During his time working as a terrorist operative for the ESO, the defendant was squarely focused on furthering Hizballah's violent jihad. As a highly trained terrorist and spy, he helped ESO plan for potential attacks in New York, Boston, Washington, D.C., Turkey, and elsewhere. He spent years helping the organization prepare to strike strategic and vulnerable targets around New York City, such as federal facilities housing day care centers, critical infrastructure, counterterrorism command posts, and international airports. And this was after he had already helped Hizballah scout and carry out operations in Lebanon. During that period, prior to becoming a sleeper operative in the United States, the defendant surveilled and reported on Israeli troop movements, and carried out at least one bombing mission, planting an improvised explosive device ("IED") at a strategic position, where it eventually exploded and struck a convoy of Israeli troops. In addition, the defendant attempted to shoot and kill a suspected Israeli spy, firing at his target twice at close range despite the man's pleas for mercy.

Instead of engaging with any of his heinous conduct on behalf of a deadly terrorist group,

the defendant instead seeks to minimize his culpability at every turn, attempting to paint a picture of himself as a desperate and “traumatized teenager” lacking in opportunities (Dkt. No. 274 (“Def. Mem.”) at 4), who came to the United States “to leave the trauma of his life in Lebanon and Hezbollah behind him” and “to explore his new life of freedom in the United States and pursue his American dream” (*id.* at 3). Nothing could be further from the truth. The defendant is a sophisticated and college-educated software developer who did not travel from Lebanon to the United States to escape the trauma of Hizballah. Rather, he sought to bring the trauma that Hizballah has inflicted on scores of American and Israeli families to many more. Quite contrary to his claims that he was pursuing a “life of freedom” here (*id.* at 3), he instead sought to attack and undermine the very security of this country by scoping out civilian and government targets, providing actionable intelligence to Hizballah on trips back to Lebanon, and preparing to execute a deadly attack if called upon. The defendant’s willful refusal to engage with the gravity and consequences of his decision to train with and join a terrorist group, and then provide it with crucial information about targets in the United States, threads throughout his submission, evidences his unwillingness to accept responsibility for his years as a terrorist operative, and militates heavily in favor of a Guidelines sentence.

The threat arising from the defendant’s conduct will endure long past the termination of these proceedings. Although the defendant is now incarcerated, there is no way of knowing with certainty when or how Hizballah, Iran, and the ESO may use, or already have used, the intelligence the defendant collected to cause harm. And the defendant’s crimes have already inflicted harm upon others—those who have learned the terrifying reality that a sleeper agent working for a violent terrorist cell lived in their community, undetected, for years, and those he already injured

and attempted to kill in his prior attacks. Arrests of other ESO operatives in New York and Michigan, which are described in more detail below, also demonstrate that the defendant is only an example of the pervasive threat posed by this terrorist group to the United States, including the New York City region. Thus, the Court's sentence will send an important message to many who are watching. The only appropriate message for the Court to send under the circumstances of this case is that those who are caught helping the ESO to plan for the murder of civilians on behalf of Hizballah and Iran, on U.S. soil, will be punished to the maximum extent of the law. The Government submits that the Court should sentence the defendant to 240 months' imprisonment, as called for by the Guidelines.

THE OFFENSE CONDUCT

The defendant spent years training with—and deploying in service to—a murderous terrorist organization and positioned himself in New York City to participate in an attack if called upon by Hizballah. One of his core ESO sleeper cell missions was to wait, under cover, as part of a network of ESO operatives in the region that could be activated upon a terrorist leader's request. But the defendant did not sit idly while he waited for Hizballah to activate him. Quite the contrary, he put his years of training to use, as he helped the ESO and Iran prepare to execute terrorist attacks, providing a pipeline of actionable intelligence to a deadly terrorist group with a long track record of murdering Americans.

Among other things, the defendant developed a covert identity on ESO's command; gathered intelligence to identify the most vulnerable points of attack at various landmarks and critical infrastructure in New York City and elsewhere; provided surveillance photographs and detailed notes to Hizballah concerning these landmarks and infrastructure to maximize damage

and destruction in any future attack; attempted to shoot and kill a suspected Israeli spy in Lebanon; and alongside his brother Bassem Saab, who was also a Hizballah operative, planted an IED designed to target and kill Israeli soldiers. The defendant entered this country under false pretenses, and later falsely swore, under oath, that he had no connection to any terrorist organization when he sought to obtain citizenship. Years later, continuing his long pattern of criminal conduct, the defendant entered a fraudulent marriage so that his nominal wife could apply for naturalized citizenship based on their sham marriage, and he then later submitted scores of false documents to the Department of Homeland Security to help her naturalize. Put simply, the defendant was a criminal for over two decades, and is now, finally, facing sentence for what he has done.

I. Hizballah’s Longstanding Operations to Kill Americans and American Allies

Hizballah is a Lebanon-based Shia Islamic organization with political, social, military, intelligence, and terrorist components. (Trial Transcript (“Tr.”) at 560; December 19, 2022 Final Presentence Investigation Report (“PSR”) ¶ 16).¹ Dating back to at least the 1980s, Hizballah has maintained close connections with Iran. (Tr. 563; PSR ¶ 16). For example, in the early 1980s, Iran sent approximately 1,500 officers from its Quds Force, which is part of Iran’s Islamic Revolutionary Guard Corps, to support Hizballah and train its military in South Lebanon. (Tr.

¹ The defense informed the Probation Office that it objected to paragraphs 25 through 56 of the PSR. (PSR at p. 29). The Probation Office correctly rejected these objections because the defense did not provide any specific basis for its objections or specify statements allegedly false or misleading. In his submission, the defendant objects to paragraphs 45 and 48, but does not address the other purported objections. In any event, the Government respectfully submits that the Court should adopt the PSR as written based on the testimony and evidence adduced at trial, which is cited throughout this submission in addition to the PSR.

564-66; PSR ¶ 16). Although Hizballah had existed for years prior, the organization officially announced its existence in 1985 in an open letter describing its goals, including jihad, or armed military conflict, targeting Israel and the United States. (Tr. 569, 925-26; PSR ¶ 20). For example, Hizballah declared that its priorities included annihilating Israel. (Tr. 573; PSR ¶ 20). The letter described Hizballah's loyalty to the Supreme Leader of Iran at the time, Ayatollah Khomeini, and explained how Hizballah sees itself as, at least in part, in service to and with Iran against foreign powers that are set against them. (Tr. 572-73, 964-65; PSR ¶ 20). The letter describes the United States as the "root of all vice" and declares the United States as an enemy. (Tr. 572-73; PSR ¶ 20).

The ESO—which is also known as the Islamic Jihad Organization or "Unit 910"—is a component of Hizballah responsible for the planning and coordination of intelligence, counterintelligence, and terrorist activities on behalf of Hizballah outside of Lebanon. The ESO has engaged in terrorist activities on behalf of Hizballah since the early 1980s. (Tr. 631-32; PSR ¶ 17). ESO operatives are typically assigned a Lebanon-based "handler," sometimes referred to as a mentor, responsible for providing taskings, debriefing operatives, and arranging training. (Tr. 645; PSR ¶ 18). ESO handlers typically communicate with operatives via secretive means and often conduct targeted operations in stages, sending waves of one or more operatives with separate taskings such as surveillance, obtaining and storing necessary components and equipment, and attack execution. (Tr. 646; PSR ¶ 18).

Hizballah has a well-deserved reputation as a lethal organization bent on murdering Americans and American allies. (Tr. 631-32; PSR ¶ 20). In 1983, Hizballah coordinated a bombing of the U.S. Marine barracks in Lebanon, which killed 241 Marines, and a bombing of the

U.S. Embassy in Beirut, which killed 24 people. (Tr. 641; PSR ¶ 19). In 1992, Hizballah attacked the Israeli Embassy in Argentina, killing 29 people. Two years later, in 1994, Hizballah bombed a building in Buenos Aires used by the Asociación Mutual Israelita Argentina (AMIA) as a Jewish cultural center, killing 85 people. (Tr. 637; PSR ¶ 95).

In 1997, the U.S. State Department designated Hizballah, including but not limited to ESO, as a Foreign Terrorist Organization under Section 219 of the Immigration and Nationality Act. Hizballah has been continuously designated as a Foreign Terrorist Organization since 1997, and it remains so designated. (GX 1001).² In July and August 2006, Hizballah and Israel engaged in armed conflict (the “2006 War”), resulting in numerous casualties, after an incident on or about July 12, 2006, when Hizballah attacked Israeli Defense Forces personnel. (Tr. 681; PSR ¶ 24). In 2010, State Department officials described Hizballah as the most technically capable terrorist group in the world, and a continued security threat to the United States. (*See* PSR ¶ 25).

II. The Defendant Was Motivated by Hate and Intended Violence

While the defendant seeks to couch himself in his submission as a victim, his dedicated, violent conduct on behalf of Hizballah began more than 25 years ago and shows he was a trained and ruthless terrorist—anything but a victim. (Tr. 199; PSR ¶ 27). First, in the late 1990s, the defendant reported on Israeli troop movements to support ambush attacks. (PSR ¶ 30). Later, he attempted to murder an Israeli spy and planted an IED to kill Israeli soldiers. (Tr. 354, 382-84; PSR ¶ 40-42). Then, he began to train and transition to the ESO. By gaining specialized training to help Hizballah’s military to prepare to participate in acts of terrorism and violence against U.S.

² “GX” refers to the Government’s exhibits admitted at trial.

and Israeli soldiers and civilians, his violent intent was laid bare. (Tr. 200; PSR ¶ 47-48). In 2019, the FBI seized a laptop from the defendant’s apartment, the content of which underscores his decades-long alignment with Hizballah’s violent missions and operations. (See GX 205; Tr. 621; PSR ¶ 45). The defendant’s laptop provides a window into his state of mind. For example, the defendant used the laptop to view Hizballah propaganda promoting acts of terrorism, declaring death to Israel, and glorifying Hizballah “martyrs.” (*Id.*; PSR ¶ 45). Below are still images from one such video containing a speech by Hizballah’s current Secretary General, Hassan Nasrallah, in addition to video footage of rocket launches on civilian populations, and a recitation of the names of “martyrs,” glorifying those who died fighting on behalf of Hizballah’s terrorist mission:



(GX 205; Tr. 621-22, 948; PSR ¶ 45). The video was published by Al Manar, a distributor of Hizballah propaganda that is sanctioned in the United States as a Specially Designated Terrorist Entity, which the defendant searched for and used the laptop to follow. (See GX 1001).

Instead of acknowledging and accepting responsibility for his possession of these violent videos, the defendant seeks to minimize their relevance by referencing expert testimony that the metadata on the videos was ambiguous as to whether the defendant actually viewed them. (Def.

Mem. at 14).³ First, of course, the metadata does not disprove that he viewed them; it is merely inconclusive, and the defendant himself does not claim he didn't view them in his letter or submission (but instead focuses on their content). Beyond that, this argument ignores GX 201-E and 202-E, which are screenshots of emails showing that the defendant sent two of these Hizballah propaganda videos—videos glorifying Hizballah's violence in Lebanon and abroad—to another individual. These videos were not passively downloaded, sitting idly on the defendant's hard drive. The fact that he distributed this violent propaganda to others underscores his unyielding support to Hizballah during the time period he was operating as their sleeper agent.

In addition to consuming and distributing violence-glorifying media, the defendant's dedication to ESO also manifested in his attending Hizballah rallies. For example, the defendant admitted to the FBI that he attended multiple Hizballah rallies, including a large Hizballah rally in Lebanon on March 8, 2005 (the "Rally"). (Tr. 338; PSR ¶ 43). The FBI later retrieved Hizballah-related photographs on the defendant's electronics, including photographs of a speech at the Rally from Nasrallah, further evidencing that the defendant attended the Rally. (GX 210-12; PSR ¶ 44). During this speech, Nasrallah demanded that the United States stop "meddling" in Lebanon. (Tr. 607; PSR ¶ 44). Similarly, the defendant saved additional photographs on his hard drive, taken in March 2005, depicting the scene of the murder of former Lebanese Prime Minister Rafic Hariri, who was killed approximately three weeks earlier at that same Rally location. (GX 220-222; PSR ¶ 44). Thus, despite his efforts to gloss over his true motivation, the evidence demonstrates that

³ In his own letter to the Court, the defendant admits that he does not "completely disagree with the government in their characterization of these videos" but claims they are not as inculpatory as portrayed because the subject of the propaganda was the 33-day war between Hizballah and Lebanon. (Def. Ltr. at 7).

the defendant was a devoted member of Hizballah who embraced its violent ideology, and did so for years.

III. The Defendant's ESO Training and Recruitment

The breadth of the defendant's acts in support of Hizballah further demonstrates his devotion to the violent terrorist group and lays bare the self-serving nature of the contrary claims in his letter to the Court and defense counsel's submission. The defendant was recruited into Hizballah in 1996 and his relationship with his first handling agent, Ibrahim, began that same year. (Tr. 194-95; PSR ¶ 30). His first set of assignments was to surveil locations in Southern Lebanon that were associated with Israeli and Southern Lebanese Army troop positions. (Tr. 199; PSR ¶ 30). He surveilled soldier check points and security procedures, and then provided this information to Ibrahim in written reports to help facilitate Hizballah's IED operations against Israeli convoys in the area, which the defendant knew had been particularly successful for Hizballah in the past. (Tr. 199; PSR ¶ 30). In 1999, the defendant attended his first weapons training session with Ibrahim, where he received training in the use of pistols, AK-47s, M-16s, and grenades. (Tr. 200; PSR ¶ 31). During the training, he learned the particulars about the best uses for AK-47s and M-16s (Tr. 280-81; PSR ¶ 31), and, in particular, that M-16s were better for long-range and sniper shooting, while AK-47s were preferred for "spraying bullets" at targets. (Tr. 280-81; PSR ¶ 31). He also learned about the differences between automatic and semi-automatic rifles during his training, and how to throw grenades. (Tr. 200, 280-81; PSR ¶ 31).

In approximately 2000, the defendant began to transition to a new role within Hizballah—as an operative for ESO—and was assigned a new handling agent. (Tr. 200; PSR ¶ 32). Around this time, as he was beginning to transition to the ESO, he was introduced to his second handling

agent, known to the defendant as Wissam, whom he then met with 20 to 30 times over the ensuing four-year period. (Tr. 200-01; PSR ¶ 32). Under Wissam's watch, the defendant received training in countersurveillance and surveillance, counterintelligence, counterinterrogation, and explosives training. (Tr. 201; PSR ¶ 32). These trainings started in approximately 2003 and took place in person. (Tr. 202; PSR ¶ 32). He and other trainees would take significant steps to stay covert during training, including wearing masks and using aliases, so that they would not learn each other's identities. (Tr. 202-03, 308; PSR ¶ 32). These trainings molded the defendant into a tremendously valuable operative for Hizballah, with the ability to operate within Lebanon or globally in countries Hizballah considers its enemies.

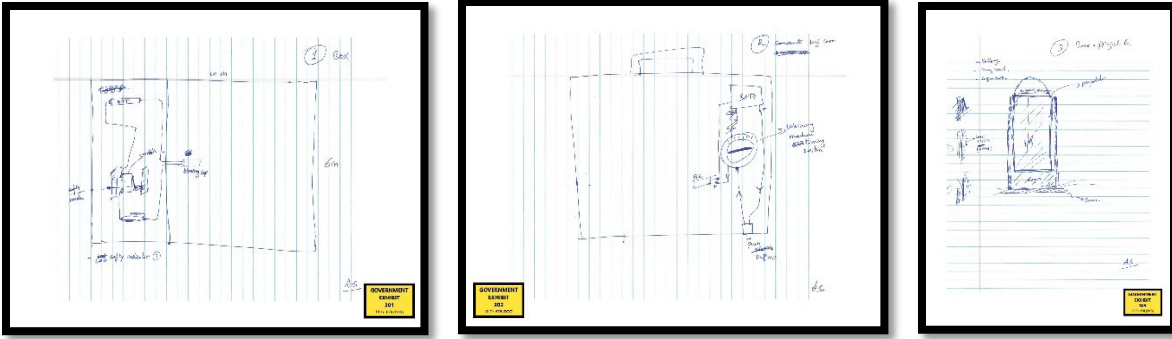
A significant focus of the defendant's training with Hizballah was the use of explosives. The defendant underwent three weeks of explosives training that "incorporated training [in] triggering mechanisms, explosive substances, detonators, and the assembly of circuits." (Tr. 204; PSR ¶ 34). As part of his training, the defendant conducted a field-training exercise where he built and tested IEDs. (Tr. 204-05; PSR ¶ 35). He was trained in how to create a homemade IED that could be manufactured using parts that he could purchase anywhere, and incorporating "homemade" explosive substances, as opposed to military explosives. (Tr. 205; PSR ¶ 35). He also constructed a "sticky bomb," meaning an explosive device that incorporated a magnetic attachment and mercury switch that would detonate upon movement. (Tr. 205; PSR ¶ 35). In addition to learning how to build such an explosive, the defendant detonated a sticky bomb during the training in a mountainous area outside of Beirut. (Tr. 205-06; PSR ¶ 35).

The defendant's explosives training was focused on the specific shapes of explosive charges that would be used to target different potential targets. (Tr. 252; PSR ¶ 36). Further, he

gained expertise in triggering mechanisms, circuits, and detonators, and in the construction of IEDs. (Tr. 252-53; PSR ¶ 36). The defendant also learned to create a “telescopic” device, meaning one used to target personnel. (Tr. 253; PSR ¶ 36). The defendant was trained in various types of explosive materials. More specifically, C4 was the explosive that was utilized in training and the defendant had discussed with his handler procuring ammonium nitrate—an explosive precursor that the defendant was once tasked with procuring for Hizballah in the United States—and RDX, an organic compound often used as an explosive. (Tr. 253-54, 434 (discussing defendant’s tasking to obtain fertilizer); PSR ¶ 36).

After this explosives training, as the defendant was traveling back to the United States from Lebanon, he got caught with explosives residue on his luggage. (Tr. 206; PSR ¶ 37). The defendant later admitted that this positive residue hit was from the explosives field training exercise. (Tr. 206; PSR ¶ 37). This admission was corroborated by the testimony of former FBI Special Agent Greg McHugh, who was working at JFK Airport on April 14, 2005, when the defendant flew into the United States from Istanbul. (Tr. 910-14; PSR ¶ 37). Mr. McHugh testified that he interviewed the defendant that day at JFK Airport, and the defendant admitted that he had been “detained by the Turkish authorities based on the [detection] of explosive residue.” (Tr. 913; PSR ¶ 37).

The defendant also demonstrated to the FBI during that interview just how thoroughly he had been trained in how to build and detonate explosives when he sketched the following three operative IEDs:



(GX 301, 302, 303; Tr. 270-76, 772-73; PSR ¶ 38). After Special Agent Anthony Cipriano testified about the defendant drawing the IEDs from memory, and what the defendant recounted about the training sessions relating to IED creation and detonation (Tr. 270-76; PSR ¶ 38), FBI Special Agent Bomb Technician (“SABT”) Brian Murtagh provided opinion testimony that these images drawn by the defendant depicted potentially viable devices if they were constructed as diagrammed. (Tr. 771; PSR ¶ 38). Specifically, SABT Murtagh reviewed these images and explained that, based on his considerable training and field experience with explosives, each of the diagrammed IEDs contained the minimum requirements required for a viable and operable IED, namely, a power source, an initiator, explosives, and a switch. (Tr. 745; PSR ¶ 38). SABT Murtagh further described how IEDs can “kill or maim people.” (Tr. 754; PSR ¶ 38). The sketches—combined with SABT Murtagh’s testimony contextualizing and explaining their contents—made clear to the jury that the defendant remembered how to construct IEDs in vivid detail *more than a decade* after his rigorous explosives training. Clearly, he received extensive and long-lasting training in how to become a killer for Hizballah.

The defendant also discussed certain aspects of his training in his interviews with the FBI—such as the fact that he went into a safe house where he had to change into a military uniform, before going to an underground classroom used for the training. (Tr. 252; PSR ¶ 39). The

defendant also detailed that he was taken to various different safehouses during his time training and performing operations for Hizballah. (Tr. 205, 206, 252; PSR ¶ 39).

IV. The Defendant Performs Dangerous and Violent Missions and Attacks for Hizballah in Lebanon

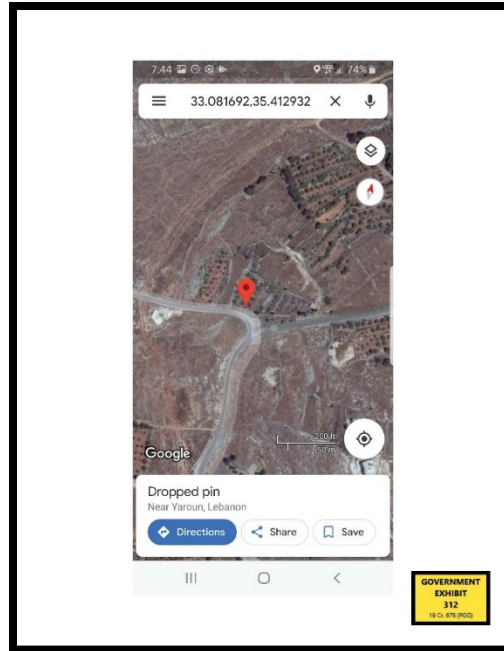
The defendant participated in at least two violent acts in Lebanon on behalf of Hizballah. As further detailed below, these acts shatter any claim by the defendant that his role for Hizballah was passive or that he was not a willing and active participant in Hizballah's violence and terrorism.

A. The Defendant Plants an IED to Target an Israeli Convoy

First, in or about 1997 or 1998, the defendant planted an IED with his brother, Bassem Saab, targeting an Israeli troop convoy. (Tr. 354, 382-84; PSR ¶ 40). Specifically, the defendant and his brother were tasked with placing an IED at a particular location in Yaroun, Lebanon, where they knew Israeli troop convoys, and a particular high-ranking Israeli soldier, would often pass. (Tr. 354; PSR ¶ 40). The defendant and his brother obtained the IED from a "dead drop" location, a covert place where it was stored before the operation. (Tr. 354). The IED was an armed bomb that the defendant and his brother then left at the target site, for another team from Hizballah to later detonate. (Tr. 382-84; PSR ¶ 40). The defendant later admitted to the FBI that the IED mission was a success, and that it exploded and another, lower-ranking Israeli official had been injured in the attack. (Tr. 385; PSR ¶ 40). In his post-arrest statement, the defendant confirmed this example of his violent conduct on behalf of Hizballah. (See GX 700, 700-T; PSR ¶ 41). For example, the defendant described, in explicit terms, the entire IED mission, and how someone

from Hizballah left the IED for them to pick up. (GX 700-B, 700-G; PSR ¶ 41). He then again explained how the mission was a success. (GX 700-D; PSR ¶ 41).

In his sentencing submission, the defendant disputes his involvement in this attack, relying on the testimony of his expert, Thanasis Cambanis, and arguing that Cambanis “could not find proof of [the defendant’s] statement to the FBI.” (Def. Mem. at 16). This argument falls flat for several reasons. For starters, the defendant does not—and cannot—dispute that he admitted to conducting this attack in his interviews with the FBI (one of which was video recorded), nor does he provide any basis to doubt his damning admissions. Not only that, the defendant provided granular details about the IED mission: how he carried out the attack with his brother, Bassem; how his handler, Abu Saleh, had brought him and Bassem together, and told them it was unusual to have two operatives working together, but that it was a special mission and they were making an exception; how his handler brought out a map and the defendant and Bassem planned the mission’s logistics, chose the best location to attack, and agreed on the optimal way to execute the attack; how his brother obtained the IED from a “dead drop”; how the bomb was initially hidden in a potato bag; how it was not an armed bomb when they dropped it beside some rocks in the target location; how he later learned that another Hizballah team had subsequently armed it remotely; how three weeks later, the IED exploded but failed to kill the intended target, instead injuring a member of the convoy; and how the defendant confirmed the success of his mission by reading in a news article that the attack occurred. (Tr. 382-85). These detailed admissions were all further corroborated by the defendant’s statements in his video-recorded post-arrest interview about the attack. (See GX 700-B, 700-D). The defendant also admitted exactly *where* he placed this IED with his brother and pinpointed the location on a map, depicted below. (GX 312).

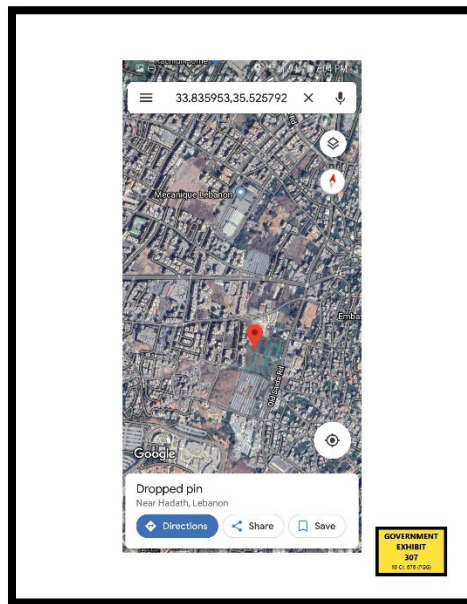


Beyond the vivid detail of the defendant’s admissions, and his video-taped confession, this attack is corroborated in two additional ways. Dr. Levitt, the Government’s Hizballah expert, testified that Hizballah *would* use “locals,” like the defendant, to carry out portions of IED attacks just like the one the defendant described. (Tr. 696). Dr. Levitt also noted that Hizballah would regularly use IEDs disguised in rocks and planted near curves in the road, hidden to maximize surprise and destruction—exactly as the defendant explained when describing this attack. (Tr. 696). Finally, while the defendant notes that his expert, Cambanis, did not identify a record of this specific attack in his research, Cambanis—on cross-examination—conceded that the data set included an attack that matches the exact description and timing provided by the defendant—namely, an attack in 1997 causing no fatalities and one injury, which occurred a few miles from the defendant’s hometown. (Tr. 981). Put simply, the defendant’s efforts to evade responsibility

for this IED attack are empty and easily rejected, and his inability or unwillingness to accept what he has done militate strongly in favor of a significant sentence.

B. The Defendant Attempts to Murder an Israeli Spy

At the direction of his Hizballah handler, the defendant also attempted to assassinate an individual he later learned was a suspected Israeli spy in or about 2003. The defendant was first tasked with stealing a vehicle that was later used for the mission. (Tr. 289; PSR ¶ 42). The defendant identified to the FBI the precise location where the attempted shooting took place (GX 307, depicted below), and how his firearm jammed when he tried to shoot his intended victim at close range (Tr. 290-92; PSR ¶ 42). The defendant explained to the FBI that this failure left his field mentor “distraught that the operation had not gone as planned,” and angry with the person responsible for preparing the firearm. (*Id.*). As Dr. Levitt testified, this attempted murder of an Israeli spy is entirely consistent with Hizballah’s tactics of kidnapping and killing suspected spies and collaborators. (Tr. 626-27).



Again, the defendant denies this episode, first arguing that “there was no evidence that [the defendant’s] handler told him the target was an Israeli Spy.” (Def. Mem. at 14). But the evidence adduced at trial is clear that the defendant himself told the FBI that he learned that the individual was an Israeli spy and the defendant provides no basis to cast doubt on his own admission. (Tr. 189, 290, 293). Next, the defendant claims that he “never testified that he received assassinations training before this incident.” (Def. Mem. at 14). Putting aside the fact that the defendant never testified at all during the trial, the defendant admitted to the FBI that he received weapons training, surveillance, and countersurveillance training—all important components that would benefit an ESO operative on a mission to assassinate an Israeli spy. The defendant further argues that he could not have committed the attempted assassination because “SA Cipriano never used publicly identifiable information to verify that there was an attempted assassination of an Israeli Spy in 2003.” (Def. Mem. at 14). This argument misses the mark. Even if Special Agent Cipriano had searched for publicly available information about this incident, it is hardly surprising that nothing would be reported publicly about a failed assassination attempt in 2003 by a terrorist group notorious for operating clandestinely.

The defendant next claims that “SA Cipriano said that [the defendant] described himself as a trainee” and “there is no proof that [the defendant] completed his training in the Islamic Jihad Organization (IJO).” (Def. Mem. at 14). Whether the defendant “completed his training” is a red herring for several reasons. First, the fact that an operative continues to undergo training—especially for an extremely well-funded and sophisticated terrorist organization like Hizballah—does not render that individual a “trainee.” Indeed, Dr. Levitt testified that Hizballah continues to train its operatives even after they are deployed abroad on missions. (Tr. 733). In any event,

whether the defendant still considered himself a “trainee” or not, he was executing the missions ESO tasked him to execute by conducting pre-operational surveillance at site after site and feeding that information back to Hizballah. And he was consistently showing his dedication to ESO’s cause, including by being willing to shoot someone whom he believed was a spy. Thus, even if this was, under the defense version of the facts, a “mere training exercise,” the fact remains that the defendant, in service of Hizballah, shot a loaded gun at close range in what the defendant himself told the FBI he believed was an actual assassination attempt.

In advancing this argument that he did not attempt to murder the Israeli spy—contrary to his own repeated, detailed admissions—the defendant next cites Dr. Levitt’s purported testimony that “he was unaware IJO trainees used small arms fire to do assassinations.” (Def. Mem. at 15). But the defendant’s attempt to cherry-pick from Dr. Levitt’s testimony is misleading and unavailing. Dr. Levitt testified, as described above, that ESO operatives continue to receive ongoing training and that ESO operatives carry out assassinations, including with small arms. (*See* Tr. 733). Moreover, even if the defendant were a trainee—and the evidence adduced at trial makes clear he was not simply a trainee, but a highly-trained operative—Dr. Levitt testified that “Hezbollah has tasked people who are in training, especially ones who are farther along in their training, to carry out missions.” (Tr. 690). Thus, the defendant cannot escape his corroborated admissions by selectively citing portions of testimony from the Government’s expert witness.

Finally, the defendant argues that the testimony of his own expert, Cambanis, shows that the attempted assassination did not occur. (Def. Mem. at 15). Specifically, the defendant references Cambanis’s testimony that “Hezbollah assassinations in Lebanon between 2000 and 2008 were bombing attacks” and not “small arms fire.” (*Id.*). But Cambanis also admitted that he

could not possibly know about every attempted assassination by Hizballah during this period (Tr. 978), and that Hizballah carries out much of its activities in a clandestine manner (Tr. 977; PSR ¶ 51). Moreover, Dr. Levitt testified that Hizballah regularly “assassinated” or “disappeared” collaborators or spies with no trace. (Tr. 627). Thus, Cambanis’s testimony does not undermine the defendant’s own detailed admission that he pulled the trigger in an attempt to murder an Israeli spy on behalf of ESO.

V. The Defendant’s Missions for ESO Outside of Lebanon

The defendant also conducted significant surveillance and training activity in the United States to further Hizballah’s ability to bomb the United States—where he moved in 2000 in what he disingenuously claims was an effort to “start a new life.” (Tr. 262-63; Def. Mem. at 4; PSR ¶ 49). Indeed, the defendant now claims he “was not tasked by Hezbollah to perform any activity on their behalf outside of Lebanon, not in the US, Europe, or elsewhere,” despite the reams of admissions and other evidence adduced at trial. (Def. Mem. at 7). As he admitted repeatedly to the FBI (and to the Government while represented by counsel in proffer sessions after his arrest), he was trained to focus on “soft spots” or structural weaknesses of the locations he surveilled. (Tr. 262-63; PSR ¶ 46). For example, when focusing on bridges, he would assess the composition of the bridge; what types of materials it was made out of; what type of bridge it was; and access roads to the bridge. (Tr. 263; PSR ¶ 47). This conduct, the defendant admitted, was all to position Hizballah to “cause the most destruction” in any future attack. (Tr. 190; PSR ¶ 47). And the defendant explained that he understood that the purpose of ESO was to work as a “countermeasure to retaliate in case there was a war between the United States and Iran.” (Tr. 282; PSR ¶ 47). Beyond his admissions, the defendant—who attended Hizballah trainings and rallies, consumed

Hizballah propaganda, and travelled constantly between the United States and Lebanon—conducted this operational work on behalf of Hizballah knowing its past and present violent methods and its stated aims to destroy Israel and attack the United States. (*See, e.g.*, Tr. 188, 338, 353, 437; GX 210-212; PSR ¶ 48).

The defendant surveilled over 40 locations in New York alone, along with locations in Boston, Washington, D.C., and elsewhere. (*See, e.g.*, Tr. 334; PSR ¶ 49). These included the New York Stock Exchange, the Empire State Building, the World Trade Center, Rockefeller Center, synagogues and Jewish community centers across New York City, the Verizon building, the AT&T building, Grand Central Station, the New York Port Authority Bus Terminal, and the United Nations headquarters. (Tr. 334). The defendant targeted numerous government facilities, including 26 Federal Plaza, the federal courthouses, and the U.S. Attorney’s Office in lower Manhattan. These buildings contain numerous sensitive features, such as government and military personnel, classified information, Joint Operations Command Centers used in connection with responses to terrorist attacks, and childcare facilities. The defendant surveilled each of New York’s local airports, bridges, and tunnels. (Tr. 334). And he surveilled the New York City subway system—an integral part of New York’s transportation infrastructure known to be teeming with civilians—and provided his Hizballah handlers with a subway map. (Tr. 338). The defendant’s surveillance of these targets had one unifying and terrifying purpose: to prepare Hizballah to kill New Yorkers.

In conducting this astonishing breadth of surveillance, the defendant closely hewed to his years of ESO training. For example, as depicted below in images and videos recovered from his

electronic devices, the defendant would focus on specific access points to bridges and take videos zooming in and out of specific parts of the bridges where bombs could be planted:



(GX 33, 57, 58).

Hizballah also trained the defendant in how to conduct this surveillance and how to best mask his activity from potential detection by law enforcement. (Tr. 266-67, 311-12; PSR ¶ 51). For example, the defendant would film an unrelated object before panning to the true object of his surveillance and would take video from a high altitude then zoom in on the target (*see* GX 94-97 (examples recovered from the defendant’s electronics))—tactics that Hizballah trained the defendant to use. (Tr. 285, 312; PSR ¶ 51). The content on the defendant’s devices demonstrates that he put his years of Hizballah training to use in the heart of New York City.

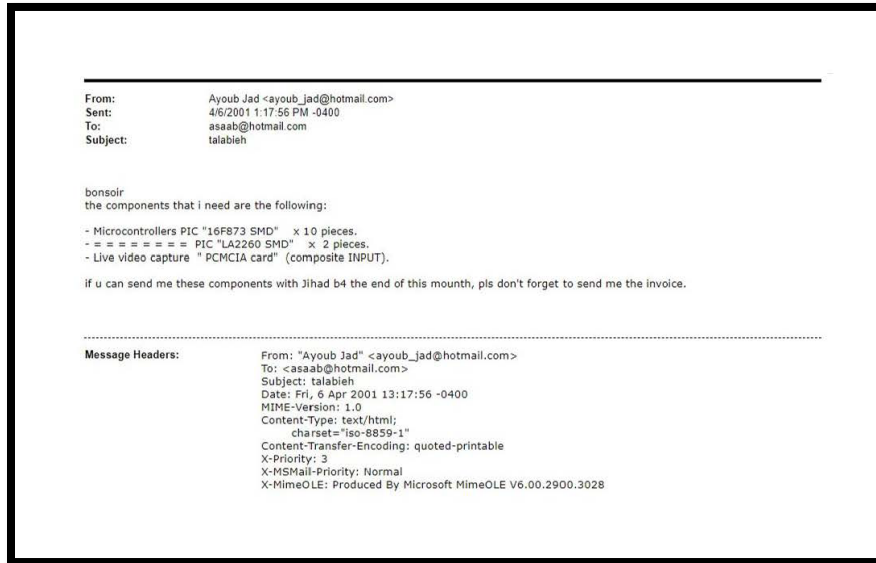
To maximize operational effectiveness for Hizballah, the defendant would also film and photograph “multiple vantage points of bridges in order to show different angles,” which was also corroborated by videos and pictures found on his devices. (Tr. 285; *see, e.g.*, GX 24-26 (photographs of different vantage points of the Brooklyn Bridge), GX 88-90 (videos of different vantage points of the Brooklyn Bridge); PSR ¶ 51). For photographs, the defendant would position someone in front of the true object of his surveillance and would sometimes take skyline

photographs with the object in the skyline. (Tr. 266-67; *see, e.g.*, GX 45; PSR ¶ 52). At trial, Dr. Levitt testified about how Hizballah’s attack-planning program relies on preoperational surveillance just like that conducted by the defendant. More specifically, Dr. Levitt testified about how Hizballah had operatives “collect preoperational surveillance” that could be used for future operations. (Tr. 643; PSR ¶ 53). Dr. Levitt explained that this surveillance was akin to “off-the-shelf, available planning” that they had available to act on quickly if needed. (Tr. 644; PSR ¶ 53). This, Dr. Levitt explained, “sets [Hizballah] apart from other organizations[.]” (Tr. 643; PSR ¶ 53).

The defendant was not just tasked with scoping out possible sites for attack and passing those details to his handlers in Lebanon; he was also tasked with opening a cover business in the United States so that he could obtain fertilizer, an explosive precursor, containing ammonium nitrate. (Tr. 434). As Dr. Levitt testified, Hizballah regularly uses explosives containing ammonium nitrate to perpetrate its murderous attacks. (Tr. 663). Indeed, in 2015, based on public reporting, British authorities in London seized thousands of icepacks filled with ammonium nitrate from four properties linked to Hizballah.⁴ The defendant also admitted to obtaining integrated circuit chips for Jad Ayoub, an individual he told the FBI was a member of Hizballah, by purchasing the chips online, and shipping them abroad to Ayoub. (Tr. 435-36). This admission was corroborated by the defendant’s emails including, as depicted below (GX 416), a message

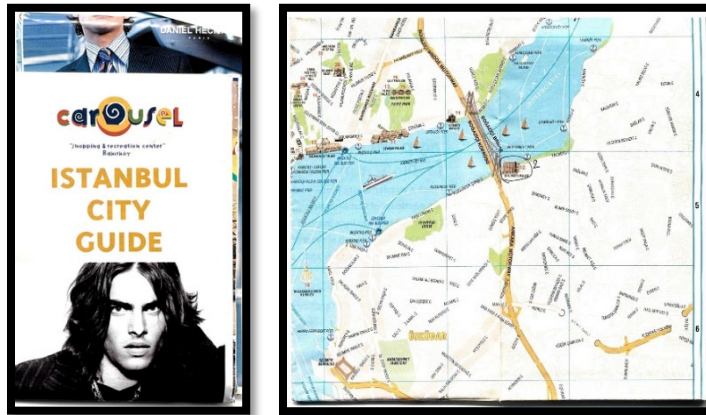
⁴ *See, e.g.*, Zachary Halaschak, Iran-linked terrorists caught stockpiling explosives in London, *Washington Examiner* (June 10, 2019), available at <https://www.washingtonexaminer.com/news/iran-linked-terrorists-caught-stockpiling-explosives-in-london>.

from Ayoub tasking the defendant with procuring microcontroller chips. SABB Murtagh explained in his testimony that microcontrollers are “used in advanced circuits” for sophisticated bombs (Tr. 754), just like the explosives the defendant learned to construct in his training. Here, the defendant was tasked with obtaining an item, which may have been used to construct an explosive, while he lived in the United States, and sending it to a known Hizballah operative.



The defendant also put his training to use for other missions overseas. In January 2005, the defendant traveled to Istanbul, Turkey, with instructions from one of his handlers to learn enough detail about the city to report on it to someone who had never been there. (Tr. 191; PSR ¶ 55). Hizballah paid for the trip, during which the defendant surveilled and took photographs of tourist locations, including religious sites, palaces, and street markets. (Tr. 255; PSR ¶ 55). On his way back to Lebanon, the defendant met one of his handlers in Syria, a country with strong ties to Hizballah and its leadership. (Tr. 261; PSR ¶ 55). From there, the defendant and his handler drove across the border between Syria and Lebanon, where his handler showed Syrian intelligence officers his identification so that they could pass. (Tr. 261; PSR ¶ 55). During this intelligence

operation, the defendant also purchased a map of Istanbul, on which he circled particular landmarks of interest and which the FBI later recovered in a search of his New Jersey residence, as depicted below. (GX 355). Notably, as Dr. Levitt testified, since 2005, Hizballah has carried out several attacks in Istanbul—with the most prominent being the attempted assassination of the Israeli Consul General. (Tr. 638).



In the face of this extensive and multi-faceted evidence corroborating the defendant's detailed admissions regarding his pre-operational surveillance for Hizballah in New York and elsewhere—including dozens of videos and images fitting the exact targets and mode of surveillance—the defendant continues to argue that Hizballah would not send a "trainee" to conduct these missions. (Def. Mem. at 15). But, as detailed above, the evidence at trial was clear that ESO did not send a mere trainee to conduct these missions. Rather, the defendant—having received dozens of sophisticated trainings and having been sent by Hizballah to the United States with concrete taskings—was no mere trainee; he was a full-fledged operative for a deadly terrorist group.

VI. Additional ESO Terrorist Activities in the Americas Region

The defendant was not the only Hizballah operative sent to the United States to collect intelligence and plan for future attacks on American soil or in the Americas region. As noted above, Hizballah's acts of terrorism in the region date back to at least 1994, when ESO personnel detonated a truck bomb near a Jewish community center in Buenos Aires, which killed 85 people and injured hundreds. More recent arrests indicate that Hizballah's efforts in both North and South America persist and pose severe risks to the public.

A. Ali Kourani

Ali Kourani was an ESO operative who was deployed to the United States, and in particular New York, to plan and execute acts of terrorism. His conduct and involvement with Hizballah and ESO mirrored the defendant's own conduct in many ways, and he provides the most applicable comparator case for the Court to consider in fashioning sentence. In a May 2019 trial in this District, Kourani was convicted of terrorism, sanctions, and immigration offenses for his illicit work as an undercover terrorist operative for ESO. Kourani surveilled many of the same targets as the defendant, including JFK Airport and law enforcement facilities in New York City, including the federal building at 26 Federal Plaza in Manhattan. *See United States v. Kourani*, 17 Cr. 417 (AKH). For his crimes, and as further detailed below, Kourani was sentenced to 40 years in prison.

B. Mohammad Hamdar

In November 2014, Peruvian counterterrorism police disrupted ongoing Hizballah attack plotting in Peru by arresting alleged ESO operative Mohammad Hamdar in Lima. *See State Dept. Country Reports on Terrorism 2019: Peru*, available at <https://www.state.gov/reports/country->

reports-on-terrorism-2019/peru__trashed/. Hamdar, like the defendant, is a dual Lebanese-American citizen. *Id.* Peruvian authorities believe Hamdar was surveilling vulnerable targets in preparation for an ESO attack. *See* Treasury Dept. Press Release: Treasury Targets Senior Hizballah Operative for Perpetrating and Plotting Terrorist Attacks in the Western Hemisphere, *available at* <https://home.treasury.gov/news/press-releases/sm737>. For example, Hamdar targeted places associated with Israelis and the Jewish community in Peru, such as the Israeli Embassy in Lima and areas frequented by Israeli tourists—similar to the target of Hizballah’s 2012 bombing attack on a bus of Israeli tourists in Bulgaria. *Id.*

Peruvian police found traces of nitroglycerine on Hamdar, and they seized from Hamdar’s home surveillance photographs of houses and restaurants that are popular with tourists, as well as military-grade explosives, explosive precursor chemicals, and detonators. *Id.*; *see also* Matthew Levitt, “Hezbollah’s Growing Threat Against U.S. National Security Interests in the Middle East” The Washington Institute for Near East Policy, March 22, 2016, *available at* <https://www.washingtoninstitute.org/uploads/Documents/testimony/LevittTestimony20160322.pdf>. Hamdar subsequently admitted to being a member of the ESO and to acting at the direction of the ESO in Peru, including conducting preoperational surveillance similar in nature to the surveillance carried out by the defendant in New York City.⁵ *Id.*

⁵ Public reporting indicates that Hamdar was recently acquitted by a panel of judges in Peru owing to alleged issues with his post-arrest confession. *See, e.g.*, Joseph Humire, “Peru’s Missed Opportunity Against Hizballah,” *available at* https://www.realclearworld.com/articles/2023/05/02/perus_missed_opportunity_against_hezbollah_897090.html (last visited May 5, 2023). Reporting also indicates that the prosecution is appealing the decision. *See id.*

C. Samer El Debek

On June 1, 2017, the FBI arrested Samer El Debek near Detroit based on charges relating to El Debek's membership in the ESO. According to the complaint charging El Debek in this District, 17 Mag. 4154, El Debek was a dual Lebanese-American citizen, like the defendant, recruited to join the ESO in late 2007 or early 2008—around the same time as the ESO's recruitment of the defendant, and close in time to the onset of the Hizballah retaliation campaign ignited by the murder of Imad Mughniyeh, a high-ranking Hizballah official credited with founding the ESO. (*See* El Debek Compl. ¶ 1(c)). El Debek traveled to Thailand in May 2009—around the same time the defendant traveled to China to look for suppliers of ammonium nitrate—at the direction of the ESO to clean up explosive precursors in a house in Bangkok that others in the ESO had abandoned because of surveillance. (*Id.* ¶¶ 21-22). Like the defendant, El Debek conducted preoperational surveillance for the ESO. Whereas the defendant targeted New York City, the ESO sent El Debek to take photographs in Panama at locations such as the U.S. and Israeli Embassies and the Panama Canal. (*Id.* ¶ 29).

PROCEDURAL HISTORY

The FBI arrested the defendant on July 9, 2019 on a Complaint. (*See* Dkt. No. 1). On September 19, 2019, a Grand Jury sitting in this district returned Indictment 19 Cr. 676 (PGG), charging the defendant in nine counts with: (1) conspiring to provide material support to Hizballah, in violation of 18 U.S.C. § 2339B; (2) providing material support to Hizballah, in violation of 18 U.S.C. § 2339B; (3) conspiring to receive military-type training from Hizballah, in violation of 18 U.S.C. §§ 371, 2339D; (4) receiving military-type training from Hizballah, in violation of 18 U.S.C. § 2339D; (5) unlawfully procuring citizenship or naturalization to facilitate an act of

terrorism, in violation of 18 U.S.C. § 1425(a); (6) conspiring to commit marriage fraud, in violation of 8 U.S.C. § 1325(c) and 18 U.S.C. § 371; (7) citizenship application fraud, in violation of 18 U.S.C. § 1546(a); (8) naturalization fraud, in violation of 18 U.S.C. § 1015(a); and (9) making false statements, in violation of 18 U.S.C. § 1001.

Trial proceeded on April 25, 2022 on seven of the nine counts in the Indictment as follows: (1) conspiring to provide material support to Hizballah, in violation of 18 U.S.C. § 2339B (“Count One”); (2) providing material support to Hizballah, in violation of 18 U.S.C. § 2339B (“Count Two”); (3) receiving military-type training from Hizballah, in violation of 18 U.S.C. § 2339D (“Count Three”); (4) conspiring to commit marriage fraud, in violation of 8 U.S.C. § 1325(c) and 18 U.S.C. § 371; (“Count Four”); (5) citizenship application fraud, in violation of 18 U.S.C. § 1546(a) (“Count Five”); (6) naturalization fraud, in violation of 18 U.S.C. § 1015(a) (“Count Six”); and (7) making false statements, in violation of 18 U.S.C. § 1001 (“Count Seven”).⁶ On May 11—the sixth day of deliberations—the jury returned a partial verdict. (Tr. 1356-60; CX 13, 14). The jury returned a guilty verdict on Counts Three, Four, and Seven; a not guilty verdict on Counts One, Five, and Six; and did not reach a unanimous verdict on Count Two. (*Id.*).

Following trial, the defendant filed motion for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. (Dkt. No. 239). The defendant’s sole argument in the motion was that the Government failed to prove that the defendant knew that Hizballah was a designated foreign terrorist organization at the time he received this training. (*Id.*). The Government

⁶ On December 23, 2021, the Government informed the Court and defense counsel that it would not be proceeding on Count Three or Count Five of the Indictment. (Dkt. No. 148). Accordingly, the Counts have been renumbered to reflect the charges on which the Government did not proceed at trial.

responded to this argument and also addressed in its opposition the application of 18 U.S.C. § 3286(b) to the statute of limitations on Count Three, given concerns raised by the Court after the jury returned its verdict. (*See* Dkt. No. 242). On September 28, 2022, the Court denied the defendant's Rule 29 motion. (*See* 9/28/22 Tr. ("Rule 29 Decision")). In denying the motion, the Court noted, among other things, that a reasonable jury could have concluded that (i) the defendant's "receipt of explosive training created a foreseeable risk of death or serious physical injury," (*id.* at 26); and (ii) "Saab knew or reasonably should have known -- at the time he conducted [] surveillance -- that death or serious bodily injury was a potential result of his surveillance activities," (*id.* at 29).

THE GUIDELINES RECOMMEND 240 MONTHS' IMPRISONMENT

Based on an offense level of 40 and Criminal History Category VI, the Sentencing Guidelines recommend the statutory maximum sentence of 240 months' imprisonment. The Probation Office recommends that the Court impose a sentence of 180 months' imprisonment. (PSR at p. 31).

I. The Terrorism Enhancement Applies

As recognized by the Probation Office (PSR ¶ 77), the terrorism enhancement clearly applies to the defendant's conviction for receipt of military-type training from Hizballah, in violation of 18 U.S.C. § 2339D. As relevant here, U.S.S.G. § 3A1.4(a) provides that, "[i]f the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels." Application Note 1 to U.S.S.G. § 3A1.4 provides that, "[f]or purposes of this guideline, 'federal crime of terrorism' has the meaning given that term in 18 U.S.C. § 2332b(g)(5)." Section 2332b(g)(5), in turn, defines a "federal crime of terrorism" as an offense

that “(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and (B) is a violation of” certain enumerated statutes, including 18 U.S.C. § 2339D, the offense of which the defendant was convicted in Count Three. 18 U.S.C. § 2332b(g)(5).

The first prong of Section 2332b(g)(5) is satisfied in light of the defendant’s receiving weapons and surveillance training from a foreign terrorist group bent on the destruction of Israel and on attacking the United States. (Rule 29 Decision at 2-3 (rejecting the defendant’s Rule 29 motion and noting that at trial, the Government offered evidence that the defendant “received extensive training from Hizballah in surveillance, countersurveillance, the use of firearms, and the creation and use of explosives” and noting that the defendant “was tasked by Hizballah with putting this training into practice by, among other things, surveilling landmarks in New York City as potential targets for future terrorist attacks by Hizballah”). This training was intended to arm the defendant with a skillset that would make him valuable to Hizballah and allow him to serve its principal aims—namely, fighting America, and its ally Israel, and serving as a bulwark and forward operating presence for the group’s benefactor, Iran. In other words, this training was clearly “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S.C. § 2332b(g)(5).

Furthermore, the defendant’s violent training was time and again put into direct use to further Hizballah’s terrorist aims. At first, the defendant supported Hizballah’s Lebanon-based insurgency against Israel in Southern Lebanon by conducting surveillance directed at targeting Israeli troops and participating in the planting of an IED. (Tr. 354; PSR ¶ 40; Rule 29 Decision at 18 (“Agent Cipriano testified about the mission that Saab and his brother carried out for Hizballah

when they obtained and planted an IED, including the fact that Saab later learned that the IED had successfully detonated and injured an Israeli official. (Tr. at 353, 382-385; PSR ¶ 40.); *id.* (“In his interviews with Agent Cipriano, Saab also described how he was aware that in his early surveillance of Israeli troops that his surveillance work would be ‘used to facilitate Hizballah’s IED operations against Israeli convoys’ in Yaroun, which he described as ‘particularly devastating.’ (Tr. at 199).”). And indeed, the defendant’s own stated purpose for joining Hizballah and seeking training from the group—namely, to retaliate against Israel for “the unbearable conditions of Israeli occupation,” (Def. Mem. at 7), and “to fight to liberate southern Lebanon from Israeli occupation,” (*id.* at 3)—only underscores how his willing receipt of military training from Hizballah tied into the broader aims of the group.⁷ Over time, the defendant’s military-type training was put to further use by the ESO to provide Hizballah and Iran with options and intelligence should they seek to strike the United States on its own turf. Training and preparation for such an attack—which Hizballah has a long track record of perpetrating against Americans in countries around the world, (Tr. 631-32; PSR ¶ 19-25)—clearly was intended “to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S.C. § 2332b(g)(5).

⁷ Notably, that the defendant’s conduct was directed—initially—at a foreign government is of no consequence, as the statute does not specify that the conduct need be directed against the U.S. government, just “government conduct.” See *United States v. Awan*, 607 F.3d 306, 317 (2d Cir. 2010) (remanding decision where district court did not apply the enhancement even though the defendant provided funding to terrorist group engaged in violence against Indian Government). Simply put, the defendant’s decision to join Hizballah to retaliate against Israel (and, later, the United States) for its conduct in Lebanon provides another basis for the application of § 3A1.4(a).

Notably, while the defendant’s military-type training for Hizballah is easily sufficient to satisfy the terrorism enhancement, the Court is not limited to that conduct in assessing whether “the offense . . . involved, or was intended to promote, a federal crime of terrorism.” U.S.S.G. § 3A1.4. Rather, “a defendant’s offense ‘involves’ a federal crime of terrorism when his offense includes such a crime, *i.e.*, the defendant committed, attempted to commit, or conspired to commit a federal crime of terrorism as defined in 18 U.S.C. § 2332b(g)(5), *or his relevant conduct includes such a crime.*” *United States v. Awan*, 607 F.3d 306, 313-14 (2d Cir. 2010) (emphasis added). Here, the defendant’s relevant conduct—meaning conduct sharing a “common purpose” with the conduct underlying his conviction at trial on Count Three, namely in that all of this conduct was committed in furtherance of the defendant’s dedication to Hizballah—includes his pre-operational surveillance on scores of civilian and government targets in the United States, his provision of actionable intelligence to Hizballah during trips to Lebanon, and his preparation for violent attacks on those targets (certain of which was also, arguably, part of his military-type training, as in part detailed in the Government’s opposition to the defendant’s Rule 29 motion). *See* U.S.S.G. § 1B1.3 Application Note 9(A) (“For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, *common purpose*, or similar *modus operandi*.” (emphasis supplied)); (*see also* Rule 29 Decision at 19 (“This attempted assassination also qualifies as “terrorist activity,” and thus provides another means by which the jury could have reasonably concluded that Saab was aware of Hizballah’s terrorist activities, given that he directly participated in such activities on behalf of Hizballah.”)). The defendant’s relevant conduct was thus

demonstrably “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S.C. § 2332b(g)(5).

The second prong of the enhancement is satisfied because the specific statutes enumerated in Section 2332b(g)(5) include “18 U.S.C. § 2339D (relating to military-type training from a foreign terrorist organization).” The offense of conviction thus involved (and was intended to promote) a federal crime of terrorism.

Case law in this Circuit further confirms that the terrorism enhancement squarely applies here. Courts in this Circuit have applied the enhancement to Section 2339D convictions. *See, e.g., United States v. Kourani*, 6 F.4th 345, 357 n.4 (2d Cir. 2021) (district court applied terrorism enhancement to Section 2339D conviction in case involving Hizballah-trained operative sent to the United States to conduct surveillance); *United States v. Doe*, 323 F. Supp. 3d 368, 383 (E.D.N.Y. 2018) (applying terrorism enhancement to defendant convicted of violating Section 2339D, among other statutes). More generally, a long, consistent line of cases in this Circuit have found that where, as here, an individual engages in activity for the benefit of a foreign terrorist group that, like Hizballah, is bent on influencing and affecting, or retaliating against, the conduct of U.S. and western governments, and the offense of conviction is, as with Section 2339D, enumerated in Section 2332b(g)(5), the terrorism enhancement applies by its terms. *See, e.g., United States v. Alimehmeti*, 16 Cr. 398 (PAE) (S.D.N.Y.), Dkt. 133 at 9 (rejecting challenge to application of terrorism enhancement to material-support offense involving defendant’s attempt to facilitate travel of undercover agent to join ISIS, and specifically rejecting argument that Government had failed to show defendant’s conduct was directed at impacting government conduct, based on finding that “Alimehmeti was aware of the undercover’s purported affiliation

with ISIS and that his actions were aiding that cause”); *United States v. Ullah*, 18 Cr. 16 (RJS) (S.D.N.Y.), Dkt. 116 at 10-13 (finding that terrorism enhancement applied, and rejecting defense argument that defendant’s conduct was not calculated to affect government conduct, where defendant had attempted to carry out lone-wolf attack in the name of ISIS without having any direct contact with members of ISIS); *United States v. Clark*, 20 Cr. 76 (NRB) (S.D.N.Y.) (applying terrorism enhancement, and rejecting defense argument that it resulted in overstated offense level and criminal history category, in case involving defendant who supported ISIS through disseminating propaganda online); *United States v. El Bahnasawy*, 16 Cr. 376 (RMB) (S.D.N.Y.) (applying terrorism enhancement over defense objection where defendant was convicted of conspiring to carry out terrorist bombing on behalf of ISIS in New York City); *United States v. Rahimi*, 16 Cr. 760 (RMB) (S.D.N.Y.) (applying terrorism enhancement where defendant was convicted of carrying out terrorist bombings in Chelsea neighborhood of Manhattan and New Jersey); *see also United States v. Awan*, 607 F.3d 306, 317 (2d Cir. 2010) (remanding for reconsideration where district court did not apply the enhancement even though the defendant provided funding to terrorist group).

Defense counsel’s sole argument for why the terrorism enhancement purportedly should not apply—because “[me]re military training is not intended to coerce a government or intimidate a civilian population” (Def. Mem. at 18)—is factually and legally without merit, as established above. There can be no serious dispute—and the defense registers none—that the primary purpose of Hizballah training its operatives in explosives, surveillance, counter-surveillance, and weapons was to further its stated mission of fighting the United States and Israel by violent means. Indeed, both Hizballah experts testified at trial about Hizballah’s regional and global aims and how the

group has repeatedly sought to coerce the Israeli government to end its occupation in Lebanon and attack American interests globally. The defendant's argument—set forth in one conclusory sentence—completely ignores the aims of Hizballah in providing highly specialized and deadly training to its operatives and to those operatives employing that training on behalf of Hizballah and the ESO.

Further highlighting the emptiness of the defense argument, Congress, in passing Section 2339D, was clear about the harms of “mere” training and the extent to which such training ties into the broader goals and aims of terrorist groups. For example, in the lead-up to the enactment of the statute, Senator Kyl quoted the testimony of Justice Department officials, as follows:

It is critical that the United States stem the flow of recruits to terrorist training camps. A danger is posed to the vital foreign policy interests and national security of the United States whenever a person knowingly receives military-type training from a designated terrorist organization or persons acting on its behalf. Such an individual stands ready to further the malicious intent of the terrorist organization through terrorist activity that threatens the security of United States nationals or the national security of the United States. Moreover, a trainee's mere participation in a terrorist organization's training camp benefits the organization as a whole. For example, a trainee's participation in group drills at a training camp helps to improve both the skills of his fellow trainees and the efficacy of his instructors' training methods. Additionally, by attending a terrorist training camp, an individual lends critical moral support to other trainees and the organization as a whole, support that is essential to the health and vitality of the organization.

Congressional Record (daily ed.) 150, Cong. Rec. 25,834 (2004), S11996/December 8, 2004, available at <https://www.govinfo.gov/content/pkg/CREC-2004-12-08/pdf/CREC-2004-12-08.pdf>. Thus, “a trainee's”—accepting the defendant's own characterization for purposes of this argument—“mere participation in a terrorist organization's training camp benefits the organization

as a whole” and its terrorist mission—which, in the case of Hizballah, is to coerce, intimidate, and impact governments with which it disagrees. *See id.*

When Congress mandated that the U.S. Sentencing Commission establish a Guidelines enhancement for terrorism offenses, it did so for the purpose of ensuring that defendants convicted of such crimes, like the defendant, receive punishment commensurate with the extraordinary nature of their conduct. *See United States v. Mumuni*, 946 F.3d 97, 112 & n.64 (2d Cir. 2019) (citing Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 120004, 108 Stat. 1796, 2022). The resulting enhancement—U.S.S.G. § 3A1.4(a)—thus reflects Congress’s intent that defendants convicted of terrorism offenses serve sentences that are appropriate in light of their uniquely dangerous crimes and risk of recidivism:

The import of this enhancement “could not be clearer”: It reflects Congress’ and the Commission’s policy judgment “that an act of terrorism represents a particularly grave threat because of the dangerousness of the crime and the difficulty of deterring and rehabilitating the criminal, and thus that terrorists and their supporters should be incapacitated for a longer period of time.”

United States v. Stewart, 590 F.3d 93, 172-73 (2d Cir. 2009) (Walker, J., concurring in part) (quoting *United States v. Meskini*, 319 F.3d 88, 91-92 (2d Cir. 2003)); accord *United States v. Caesar*, 10 F.4th 66, 79 (2d Cir. 2021). The Court should reject defense counsel’s attempts to circumvent congressional intent and the plain terms of the Guidelines. The terrorism enhancement plainly applies in this case.

II. The Offense Level and Guidelines Range Calculations

In light of the foregoing, the Guidelines recommend a sentence of 240 months’ imprisonment calculated as follows:

- Pursuant to U.S.S.G. § 3D1.2(b), Counts Four and Seven (the fraud-related offenses) are grouped into a single Group because they involved two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan. (PSR ¶ 68).
- Pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the Group is the offense level, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, for the most serious of the counts comprising the Group, *i.e.*, the highest offense level of the counts in the Group, which is level 11. (PSR ¶ 74).
- Pursuant to U.S.S.G. § 2X5.1, with respect to Count Three (the receipt of military-type training terrorism offense), if an offense is a felony for which no Guideline has expressly been promulgated, the most analogous offense Guideline should be applied. The most analogous offense Guideline is U.S.S.G. § 2M5.3. Pursuant to U.S.S.G. § 2M5.3, the base offense level for Count Three is 26. (PSR ¶ 75).
- Pursuant to U.S.S.G. § 2M5.3(b)(1), because (i) the offense charged in Count Three involved dangerous weapons, firearms, and explosives, and (ii) the offense charged in Count Three involved the provision of material support or resources with the intent, knowledge, or reason to believe they were to be used to commit or assist in the commission of a violent act, two levels are added.
- Pursuant to U.S.S.G. § 3A1.4(a), because the offense charged in Count Three is a felony that involved, and was intended to promote, a federal crime of terrorism, 12 levels are added. (PSR ¶ 76).
- The combined offense level is determined by taking the offense level applicable to the Group with the highest offense level and increasing the offense level by the amount indicated in the table at U.S.S.G. § 3D1.4. Here, the combined offense level is 40.

Because the terrorism enhancement under U.S.S.G. § 3A1.4 applies, the defendant is in Criminal History Category VI. (PSR ¶ 75). At offense level 40 and Criminal History Category VI, the Guidelines recommend a sentencing range of 360 months' to life imprisonment. However, the statutorily authorized maximum sentence is less than the minimum of the applicable Guidelines range; therefore, the Guideline term of imprisonment is the statutory maximum of 240 months. *See* U.S.S.G. § 5G1.2(b). Count Three, the receipt of military-type training offense, carries a mandatory 10-year sentence, which is the statutory minimum term of imprisonment for the

defendant.

ARGUMENT

I. The Section 3553(a) Factors Support a Guidelines Sentence

The Section 3553(a) factors support the imposition of the Guidelines sentence of 240 months' imprisonment.

A. The Nature and Circumstances of the Defendant's Crimes

The indisputably serious nature of the defendant's conduct, and the need to impose just punishment, weigh decidedly in favor of a Guidelines sentence. *See* 18 U.S.C § 3553(a)(1), (a)(2)(A). The defendant trained with one of the world's most lethal terrorist organizations, Hizballah, learning the ins and outs of how to murder civilians and soldiers alike. He performed mission after mission for Hizballah, consistently showcasing his dedication and loyalty to the group's ideals and murderous aims. He then spent years lurking in the shadows as a terrorist supporting Hizballah's objectives of targeting Americans and Israelis around the world. The defendant's violent intentions are reflected in the Hizballah propaganda that he consumed in private, while leading a double life in the United States to cover up his activities as a lethal spy with extensive training in the use of military-grade weapons. Indeed, while purporting to live a law-abiding life as a businessman in New York City, the defendant collected and then shared attack-planning information for the ESO and waited patiently for orders to attack here, in this community. That no such order came does not mitigate the defendant's years of carefully planned, sophisticated, and gravely serious conduct on behalf of a violent group bent on the murder of Americans and Israelis.

The defendant's calculated and cold-blooded conduct on behalf of Hizballah was not the result of a momentary lapse in judgment; he built up to and then engaged in this conduct over many years. The defendant started on this path by demonstrating his value to Hizballah as a college student in Lebanon in 1996. His first set of assignments was to surveil locations in Southern Lebanon that were associated with Israeli and Southern Lebanese Army troop positions, and then provided this information to Hizballah to help facilitate IED operations against Israeli convoys in the area, which the defendant knew had been particularly successful for Hizballah in the past. (Tr. 199). In 1999, the defendant attended his first of several weapons training sessions, where he received training in the use of pistols, AK-47s, M-16s, and grenades (Tr. 200; PSR ¶ 31), the particulars about the best uses for AK-47s and M-16s (Tr. 280-81; PSR ¶ 31), the differences between automatic and semi-automatic rifles (Tr. 280-81; PSR ¶ 31), and how to throw grenades (Tr. 200, 281; PSR ¶ 31).

Moreover, the defendant leveraged his expertise and training to artfully position himself for a new elite role within Hizballah—as an operative for ESO. (Tr. 200; PSR ¶ 32). Given ESO's violent mission and global reach, the defendant received training in countersurveillance and surveillance, counterintelligence, counterinterrogation, and explosives training. (Tr. 201; PSR ¶ 32). There is no doubt that these trainings equipped the defendant to be a tremendously valuable and dangerous operative for Hizballah, with the ability to operate within Lebanon or globally, and to patiently collect information and procure and prepare explosives for attacks in countries that Hizballah considers its enemies. Indeed, the defendant was so well-trained that, in 2019, years after he attended this training, he was still able to draw from memory three operative IEDs that he had learned to construct. The breadth of the defendant's training and his ability to recall it with

such detail speak to the seriousness of his conduct and the ongoing danger the defendant presents today.

Beyond his training in Lebanon, the defendant also participated in at least two violent acts in Lebanon on behalf of Hizballah, which counsel in favor of a serious sentence in this case. First, in or about 1997 or 1998, he planted an IED with his brother targeting an Israeli troop convoy. (Tr. 354, 382-84; PSR ¶ 40). The IED mission was a success, as it exploded and another, lower-ranking Israeli official was injured in the attack. (Tr. 385; PSR ¶ 40). At the direction of his Hizballah handler, the defendant also attempted to assassinate a suspected Israeli spy in or about 2003. The defendant was no passive character in this story but—time after time—took the initiative and impressed his Hizballah handlers, so much so that they were willing to send him overseas for the group.

The serious nature of the defendant's conduct is further underscored by the defendant's steadfast dedication to Hizballah and the ESO. The defendant demonstrated his devotion to the group and its violent mission by attending Hizballah rallies and consuming Hizballah propaganda. For example, the defendant attended multiple Hizballah rallies, including a large Hizballah rally in Lebanon on March 8, 2005. (Tr. 338; PSR ¶ 43). Similarly, the defendant saved additional photographs on his hard drive, with metadata establishing that they were also taken in March 2005, depicting the scene of the murder of former Lebanese Prime Minister Rafic Hariri, who was murdered by Hizballah approximately three weeks earlier at that location. (GX 220-222; PSR ¶ 44). As noted above, defendant also had a series of Hizballah propaganda videos on his hard drive. (GX 201-02, 205). They include, among other things, videos with eulogies for Hizballah

“martyrs” and videos of Secretary General Nasrallah speaking to Hizballah members regarding ongoing war with Israel. (*Id.*).

The defendant’s involvement with Hizballah was not limited to training consuming Hizballah propaganda. As a sophisticated, well-trained ESO operative positioned under deep cover in the United States, the defendant was part of an emerging threat posed by the ESO in the Americas region. And the defendant understood all along that the purpose of ESO was, in his own words, to work as a “countermeasure to retaliate in case there was a war between the United States and Iran.” (Tr. 282; PSR ¶ 47). The defendant conducted this operational work on behalf of Hizballah knowing its past and present violent methods and its stated aims to destroy Israel and attack the United States. (*See, e.g.*, Tr. 188, 338, 353, 437; GX 210-212; PSR ¶ 48). Indeed, the gravity of the defendant’s conduct is further demonstrated by the fact that he shared specific information with his Hizballah handlers in response to their taskings, fully aware of Hizballah’s track record, capabilities, and relationship to Iran. ESO’s operations in the United States served—and continue to serve—as a crucial node in Iran’s proxy network, and Iran has backed this threat by funding Hizballah with hundreds of millions of dollars per year in funding. (Tr. 610). ESO provides Iran with a global footprint, and the defendant willingly served as one of ESO’s foot soldiers. It bears repeating that one of the biggest threats posed by the defendant, which is a part of his conduct most worthy of severe punishment, was his stealthy presence in the United States, under cover of normalcy, waiting to be activated to participate in an attack. And while he now claims, incredibly, that his “only goal was to explore his new life of freedom in the United States and pursue his American dream” (Def. Mem. at 3), this is demonstrably false. The defendant—by his own admission on several different occasions—was ready, willing, and able to perpetrate

violence on behalf of Iran and Hizballah. His self-serving claims that he was here to pursue the “American dream” are belied by the record and frightening in what they reveal about his current mindset and unwillingness to accept responsibility for what he has done.

And much of what the defendant has done had a direct impact on this community. To further ESO’s global mission, the defendant conducted surveillance in the United States, thus providing the group with the ability to bomb targets here at a moment’s notice. (Tr. 262-63; PSR ¶ 53). Again, he was trained to focus on “soft spots” or structural weaknesses of the locations he surveilled (Tr. 262-63; PSR ¶ 46), to position Hizballah to “cause the most destruction” in any future attack (Tr. 190; PSR ¶ 47). And he put that training to use; the defendant surveilled over 40 locations in New York alone, along with locations in Boston, Washington D.C., and elsewhere. (*See, e.g.*, Tr. 334; PSR ¶ 49). The defendant’s surveillance of targets across this country and elsewhere had one simple but terrifyingly dangerous purpose: to equip Hizballah with the ability to maximize its capacity to kill New Yorkers.

Beyond scoping out possible sites for attack and passing those details to his handlers in Lebanon, the defendant was also tasked with opening a cover business in the United States so that he could obtain fertilizer, an explosive precursor, containing ammonium nitrate (Tr. 434; PSR ¶ 36), which as Dr. Levitt testified, Hizballah regularly uses in its murderous attacks (Tr. 663). The defendant also obtained integrated circuit chips for Jad Ayoub, an individual he told the FBI was a member of Hizballah, by purchasing the chips online, and shipping them abroad to Ayoub. (Tr. 435-36). That is, the defendant—while living in the United States—sent a Hizballah operative an integral part of an explosive device. (Tr. 754). Far from pursuing the “American dream,” he

instead took advantage of the opportunity he had fraudulently obtained to live in the United States by helping arm its enemies with intelligence and materials to attack Americans.

Further, the defendant's missions on behalf of ESO were not limited to Lebanon and the United States and the seriousness of his conduct extended internationally, as he willingly put his training to use for a range of missions overseas. For example, and as described above, in approximately January 2005, the defendant traveled to Istanbul, where he surveilled and took photographs of tourist locations, including religious sites, palaces, and street markets and provided detailed information about Istanbul to his handler. (Tr. 255, 261, GX 355; PSR ¶ 55). Notably, as Dr. Levitt testified, since 2005, Hizballah has carried out several attacks in Istanbul—with the most prominent being the attempted assassination of the Israeli Consul General. (Tr. 638).

Collectively, the defendant's years of activities for Hizballah and the ESO placed—and indeed, continues to place—an untold number of civilians around the world in danger. As the Probation Office recognized, the defendant's "conduct in the instant offense was egregious, heinous, and threatening." (PSR at 33). Ms. O'Boyle's claims in her mitigation report that no one was harmed as a result of the defendant's conduct are simply wrong. (Dkt. No. 274-1 ("O'Boyle Report") at 6). Putting aside the defendant's involvement in an IED attack that injured an Israeli soldier, to the extent available evidence of physical injury resulting from his crimes is lacking, that is a "fortuity." *Stewart*, 590 F.3d at 175 (Walker, J., concurring in part and dissenting in part). As the Second Circuit has instructed, "we are not relegated to wait[ing] until there are victims of terrorist attacks to fully enforce the nation's criminal laws against terrorism." *Id.* (internal quotation marks omitted). "Congress has been unmistakably clear that, as a general matter, the achievement of actual harm may aggravate the seriousness of a terrorism crime but that the absence

of proven harm does not mitigate such a crime.” *Id.*

As in *Stewart*, the absence of more concrete injuries “is in no sense attributable” to the defendant. *Id.* He targeted the United States despite the fact that this country provided him the privilege of citizenship. And the harm resulting from his actions is ongoing, as he provided information to the ESO that Hizballah could use to support an attack at any time. Therefore, the nature and seriousness of the defendant’s conduct amply support the sentence recommended by the Guidelines.

B. The Need for Specific Deterrence and to Protect the Public from Further Crimes of the Defendant

Having already been convicted of a terrorism offense, the defendant must be deterred from committing any future such offenses. *See Stewart*, 590 F.3d at 172-73; *Meskini*, 319 F.3d at 91-92 (“[A]n act of terrorism represents a particularly grave threat because of the dangerousness of the crime and the difficulty of deterring and rehabilitating the criminal, and thus . . . terrorists and their supporters should be incapacitated for a longer period of time.”). Here, the Probation Office concluded that the defendant poses a “significant danger to the community” and this danger warrants a serious incarceratory sentence. The Probation Office is correct in its recognition of the grave potential danger posed by the defendant. The defendant’s actions, statements, and consumption of jihadist propaganda reflect a steadfast commitment to violence and radical extremist ideology that underscores the risk that he poses to society. *See* 18 U.S.C. § 3553(a)(2)(B)-(C). That the defendant has consistently sought to minimize his conduct underscores his continued refusal to accept responsibility for his conduct, even after his conviction, and only further cements the need for specific deterrence here. *See, e.g., United States v. Cox*, 458 F. App’x 79, 83-84 (2d Cir. 2012) (noting approvingly that the district court had found heightened

risk of recidivism based, in part, on defendant's inability to fully accept responsibility). And the defendant's decision to commit a second series of federal crimes—as discussed below—further speaks to the need to deter him from additional crime in the future. For all of these reasons, the risk of recidivism and the need to protect the public weigh in favor of incapacitating the defendant through a lengthy prison sentence, and reinforce the conclusion that any variance from the recommended Guidelines is wholly unwarranted in this case.

One of the reasons that the defendant poses an ongoing risk is that he has learned—and, most significantly, passed to Hizballah while acting as a sleeper spy in this country—information about U.S. infrastructure and the manner in which the FBI conducts counterintelligence and law enforcement investigations that would be valuable to any enemy of the United States. In this regard,

[e]spionage differs from all other crimes in one unique, highly significant respect. The purpose of espionage is political: to undermine the government of the United States with a view to its destruction. This goal is shared by all enemies of this country. Countries antagonistic to the United States who would not offer asylum to murderers or thieves very likely will open their doors to one who shares their political purpose inimical to the United States.

United States v. Kostadinov, 572 F. Supp. 1547, 1551 (S.D.N.Y. 1983). In short, if the defendant decides to engage in ongoing criminal conduct after he is released, the defendant's work as an ESO spy will serve him, and our enemies, well. And the defendant admitted his continued efforts to reach out to Hizballah members and/or his handling agents even after the spring of 2004. Indeed, he admitted to the FBI at least two such efforts—the most recent of which took place in 2010, when he met with Bilal Khanafer, a Hizballah supporter, during which he asked about his handler and recalled “potentially attempt[ing] to contact” his handling agent by phone. (Tr. 304-05). The defendant also admitted meeting with his former handling agent in 2006 and attempting to contact

him again in 2008. (Tr. 208-09). Accordingly, any claim from the defendant that he turned over a new leaf when he moved to the United States in 2000, or that he chose to leave Hizballah for good in 2005, is undermined by his admissions to the contrary. His continued effort to minimize his devotion and service to Hizballah is deeply troubling, and speaks to the need to sufficiently deter him from future criminal conduct that will threaten U.S. national security.

In arguing for the mandatory minimum 10-year sentence for the defendant, Ms. O'Boyle also states that specific deterrence does not militate in favor of a lengthier sentence since "research shows that it is the certainty of punishment, not the length of the sentence that provides general deterrence, as most potential drug offenders are not knowledgeable about sentencing policy and the length of prison terms imposed for such crimes and they do not believe that they will be caught." (O'Boyle Report at 12). Even putting aside that this is not a case about "potential drug offenders" but a convicted terrorist, Ms. O'Boyle's argument is little more than a generalized critique of the utility of specific deterrence in connection with *any* sentence. But courts are required to consult the sentencing factors established by Congress in Section 3553(a), and specific deterrence is one of those. And, as further discussed below, the defendant's conduct was not an aberration or a one-off. Quite the contrary, the defendant not only engaged in years of terrorism activity, in multiple countries, but then also decided to engage in another series of serious federal crimes. The defendant's efforts to minimize the need for specific deterrence in this case should be rejected and, instead, viewed as militating in favor of a severe sentence.

In sum, the defendant's status as a Hizballah operative and spy who has collected valuable information that could be used against the United States, and his continued criminal conduct for years after unlawfully becoming a U.S. citizen, demonstrate the substantial risk of dangerous

recidivism and a pressing need to continue to protect the public—around the world—from the defendant. These considerations strongly support a Guidelines sentence here.

C. The Need to Achieve General Deterrence and Promote Respect for the Law

“[T]here is no danger to society greater than that of terrorism, no danger greater than that posted by those that think they can impose their will on others through senseless and incomprehensible violence.” *United States v. Raishani*, 17 Cr. 421 (S.D.N.Y.) (RA), Dkt. No. 62 at 25-26. The defendant did not just join ranks, train, and execute missions for any terrorist group; he did so with an organization with a track record of killing innocent civilians, including Americans, in attacks across the world. Moreover, “given the increasingly common nature of terrorism-related crimes,” general deterrence should “play a large part in the court’s considerations” at sentencing. *United States v. Doe*, 323 F. Supp. 3d 368, 390 (E.D.N.Y. 2018). This case and others like it make clear that Hizballah’s ESO is one of the Iran proxies currently posing significant security risks in the Americas region and elsewhere. Thus, using general deterrence to mitigate the threat posed by the ESO is an important feature of this sentencing.

For example, in January 2019, the U.S. Director of National Intelligence assessed that “Hizballah most likely maintains the capability to execute a range of attack options against US interests worldwide,” and that “Iran almost certainly will continue to develop and maintain terrorist capabilities as an option to deter or retaliate against its perceived adversaries.”⁸ These are precisely the types of things that the defendant did for the ESO in this country. Hizballah’s continued pursuit of terrorism through the ESO and other means underscores the importance of

⁸ See <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf>.

general deterrence, and the need to promote respect for the law, at this sentencing. People all over the world considering joining the ESO, obtaining military training from ESO, or supporting Hizballah and other terrorist groups seeking to harm the United States, must understand that, if apprehended, they will be punished to the maximum extent of the law.

Notably, the Court's sentence in this case will not be the first time that a terrorist is held accountable for supporting the ESO in the United States. In the most factually similar case to the defendant's prosecution, *United States v. Kourani*, Judge Hellerstein sentenced an ESO operative convicted at trial with committing similar conduct to the defendant to 40 years' imprisonment. In describing the rationale for his sentence, Judge Hellerstein explained:

It's hard to think of a more serious offense than to engage in terrorism against the United States and against its foreign policy. Hizballah came into our visible existence when it blew up our military barracks in Beirut that had been established to provide peace in that country. And it's continued in many different forms, spawning different acts of terrorism by different organizations, which has much affected the lives of all of us for decades now. That kind of punishment is serious. It needs deterrence against others doing it; it needs a high sentence to promote respect for the law, that the law is adequate to protect our citizenry, and to protect the public from further crimes of the defendant. Because if he were not adequately punished, he will be dangerous.

United States v. Kourani, 17 Cr. 417 (AKH), Sent. Tr. at 69; *see also United States v. Kourani*, 6 F.4th 345 (2d Cir. 2021) (affirming sentence and rejecting arguments that it was substantively unreasonable). The sentence in *Kourani* provides the most relevant data point for the Court here; both in terms of needing to avoid an unwarranted sentencing disparity, *see* 18 U.S.C. § 3553(a)(6), and to reflect the nature of this case and the reality of the defendant's conduct. Just as in *Kourani*, the Court should send a strong message to those considering training with terrorist organizations and providing them with intelligence for attacks on American soil.

II. The Court Should Impose Consecutive Terms of Imprisonment on Each Count to Achieve an Appropriate Sentence

By committing each of the three crimes at issue in this sentencing, the defendant caused distinct and serious harms that warrant significant punishment. Accordingly, the Court should craft the sentence recommended by the Guidelines by imposing the statutory maximum sentence on each of the defendant's three crimes, and ordering that those sentences run consecutively.

“The presumption when Congress creates . . . distinct offenses is that it intends to permit cumulative sentences.” *Garrett v. United States*, 471 U.S. 773, 793 (1985). “If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment” to be imposed for all counts of conviction, “then the sentence imposed on one or more of the other counts shall run consecutively.” U.S.S.G. § 5G1.2(d). *See, e.g., United States v. McLeod*, 251 F.3d 78, 82 (2d Cir. 2001) (“If this ‘total punishment’ exceeds the highest statutory maximum on any count, the Guidelines require that the sentences run consecutively, to the extent necessary to achieve the ‘total punishment.’”). “The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).” 18 U.S.C. § 3584 (b).

As an initial matter, the defendant's conviction under Section 2339D requires a 10-year prison term. *See* 18 U.S.C. § 2339D(a). The seriousness of the defendant's conduct underlying this terrorism crime is detailed above, and more than supports that 10-year sentence.

But the defendant's criminal conduct does not end there, with Count Three. Far from it. In his letter to the Court, the defendant claims that he fully accepts responsibility for the marriage fraud charges he was convicted of at trial. (Def. Mem. at 8). The defendant, however, minimizes his conduct, claiming that it seemed to him to be “harmless and victimless” and was born from his

“financial hardship.” (*Id.*). This is far from true acceptance of responsibility and, again, is an effort to blame others and minimize his own culpability. The defendant, in 2012, fraudulently married a woman (“CC-1”) with the express purpose of obtaining citizenship for CC-1. (PSR ¶ 57). This is hardly a victimless crime. Instead, the victims are all of those individuals who choose to *not* take the path the defendant took, and instead pursue citizenship lawfully, and the public at large, defrauded by the defendant’s efforts to illegally obtain citizenship for CC-1. *See Azizi v. Thornburgh*, 908 F.2d 1130, 1141 (2d Cir. 1990) (“Immigration marriage fraud is certainly not a ‘victimless crime.’ Those who engage in it unfairly cut in front of those aliens lawfully waiting in line to emigrate here. This kind of marriage fraud undermines the sovereign power of the United States to control who may be allowed resident status.”). Indeed, the entire underpinning of the legal immigration system is that people follow the law, and that they do not, for example, do exactly what the defendant did—enter into fraudulent marriages for the purpose of illegally obtaining citizenship—but, instead, earn their way to citizenship and naturalization. *See id.* To claim that his crime was “victimless” and “harmless” is simply untrue.

Moreover, the defendant’s decision to enter into this fake marriage in 2012—and to continue in his efforts to uphold it as legitimate up to his arrest in 2019—must be viewed in the context of this case. First, the defendant was brazen enough to enter into this marriage despite knowing he had successfully operated as a sleeper terrorist agent in the United States for years prior. The defendant knew he had worked on behalf of Hizballah and the ESO inside the United States and elsewhere, yet he still chose to risk detection, and break the law again, by marrying CC-1 for money. This demonstrates both his unflagging willingness to engage in criminal activity, and a troubling likelihood of recidivism in the future. Beyond that, this is not the defendant’s first

foray into illegal immigration. Although the Government elected to dismiss Count Five because of statute of limitation issues, the defendant lied on his own naturalization forms in denying any ties to Hizballah. (*See* Compl. ¶ 20(c)). The Court can and should consider this brazen conduct in fashioning the appropriate sentence. *See, e.g., United States v. Reese*, 33 F.3d 166, 174 (2d Cir. 1994) (“[W]hen determining sentence, a sentencing court is free to consider hearsay evidence, evidence of uncharged crimes, dropped counts of an indictment and criminal activity resulting in acquittal.”). The auspices of citizenship, and the U.S. passport and passport card that came with it, served as critical features of the defendant’s cover identity and facilitated international travel in furtherance of his terrorist activities by obfuscating his substantial ties to Lebanon. “For terrorists, travel documents are as important as weapons,” and “[t]he challenge for national security in an age of terrorism is to prevent the very few people who may pose overwhelming risks from entering or remaining in the United States undetected.” *The 9/11 Commission Report* at 383-84, <https://www.9-11commission.gov/report/911Report.pdf>. The defendant serves as a ready example of the significance of this challenge for law enforcement and intelligence services. He procured a visa, and later a naturalization certificate, a U.S. passport, and a U.S. passport card, all under false pretenses and while acting on behalf of Hizballah and the ESO as a sleeper cell operative in the United States.

And it bears emphasizing that, knowing that he had successfully hidden as a terrorist operative for years and knowing that he had falsely obtained U.S. citizenship by lying about his ties to Hizballah, the defendant still elected to enter into a fake marriage in 2012 and keep up the false pretenses for years after. While the defendant attempts to distract from this conduct by claiming it is “victimless” and “harmless,” and blaming his financial situation, this is merely an

effort to distract from what actually happened—a recidivist criminal engaged in another series of serious crimes. There is simply no reason to believe he will not do the same, again, if given the opportunity in the future, and the conduct, standing alone and particularly in the context of this case, merits serious punishment.

Related to his marriage fraud but constituting a separate criminal offense and count of conviction, the defendant then perjured himself in his effort to obtain citizenship for CC-1 based on his fraudulent marriage. This too constitutes a serious federal crime, and one that further supports the Guidelines sentence. Among other things, it demonstrates that the defendant's self-serving statements now should be disregarded by the Court. The defendant has demonstrated, time and again, that his word cannot be trusted. Beyond that, in the context of this case—involving a defendant who was in this country under false pretenses, having lied to gain entry here only to then execute missions for a terrorist organization bent on harming the United States and its allies—the defendant's decision to engage in this conduct is particularly egregious. After entering into a fake marriage, he took yet another step in perjuring himself in CC-1's applications for naturalization. This conduct is serious for several reasons, including that it took place years after the marriage itself (which gave the defendant ample time to reconsider his decision) and because the defendant and CC-1 engaged in years of efforts to mislead authorities into thinking their marriage was legitimate by maintaining a façade of a real relationship. (*See* Compl. ¶¶ 34-40). What is more, the defendant and CC-1 employed the assistance of others, convincing at least one individual (identified as CC-2 in the Complaint) to also engage in perjury. (*Id.* ¶¶ 38-40). Particularly in the circumstances of this case—involving a defendant who spent years as a terrorist; lied to get into and stay in this country; and then entered into a sham marriage—the defendant's decision to

perjure himself in connection with CC-1's efforts to obtain citizenship deserves serious consequences and reinforces the appropriateness of the Guidelines sentence.

III. The Defendant's Remaining Sentencing Arguments Are Meritless

Hoping to escape accountability for his crimes and the harm that he has caused, the defendant presents a series of meritless arguments in an effort to obtain leniency. Indeed, the defendant goes so far as to complain to the Court that his case has been a "rough experience" for *him* and that he "can't even explain how he endured some of the hardest hardships, which I never thought would or I could face." (Def. Mem. at 8). Not once does the defendant acknowledge or apologize to the countless victims *he* harmed or may have harmed or targeted with his conduct; explain why his "hardest hardships" of facing prosecution for the crimes he committed should outweigh the lives he hoped to help Hizballah take; or adequately explain why he lied to gain citizenship not once, but twice, for himself and then for another individual. The Court should reject the defendant's brazen and empty arguments for leniency.

A. Voluntariness of the Defendant's Admissions

Despite extensive litigation on this topic before trial and the Court's decision on the same, the defendant continues to assert meritless claims about the voluntariness of his admissions to the FBI before and after his arrest. For example, the defendant again alleges that he did not feel free to walk out of the room during the first interview on March 14, 2019. (Def. Mem. at 12). Similarly, the defendant appears to insinuate that there was error in the questioning agents not telling him in advance of that interview that they were investigating him for terrorism or that his statements could be used against him. (*Id.* at 11-12).

As it already has done, the Court should reject these arguments and, instead, should view this as another troubling effort by the defendant to evade responsibility and minimize his conduct. Prior to trial, after extensive briefing and oral argument, the Court rejected the very arguments the defendant is now asserting. In its written ruling, the Court held that the FBI's first interview of the defendant, on March 14, 2019, was not a custodial interrogation because the record reflected that, even accepting as true the defendant's own account of the interview, a reasonable person would have felt he was free to leave the encounter. (*See* Dkt. No. 135 at 18-20). The Court reached the same conclusion with respect to the remaining pre-arrest interviews, which the defendant voluntarily appeared for after communicating with the interviewing agents and after scheduling the interviews "at times that were convenient to him," leaving each interview after it was done and remaining unrestrained throughout. (*Id.* at 20-23). The defendant now seeks to re-litigate some of these issues, in the hopes that they will merit some leniency from the Court. These arguments only further evidence a dangerous and troubling unwillingness and inability to accept the Court's decisions and the reality of his conduct and, if anything, militate in favor of a Guidelines sentence.

B. The Defendant's Incarceration Before Sentencing Does Not Merit Leniency

The defendant also argues that his conditions of confinement warrant leniency. (Def. Mem. at 18-22). The defendant claims that the nature of his incarceration first at MCC and then MDC, both of which included extended periods of lockdown during the COVID-19 pandemic, favor a below-Guidelines sentence. (*Id.*). This argument is without merit, as the lockdowns were the result of reasonable and temporary steps by these facilities to protect inmates such as the defendant, and they are similar to actions the entire country has taken in order to slow the spread of the virus. While, to be sure, the Court can consider pre-sentence conditions of confinement in fashioning the

appropriate sentence, *see United States v. Carty*, 264 F.3d 191, 196-97 (2d Cir. 2001), courts typically grant variances or departures only where “the conditions in question [were] extreme to an exceptional degree and their severity [fell] upon the defendant in some highly unusual or disproportionate manner.” *United States v. Mateo*, 299 F. Supp. 2d 201, 208 (S.D.N.Y. 2004). The defendant does not, and cannot, show that the conditions at MCC or MDC impacted him in an exceptional or more severe manner than any other inmates at these facilities. Moreover, courts have routinely denied leniency arguments at sentencing on the basis of the conditions in these same facilities and the Court should do so here. *See, e.g., United States v. Zhong*, 26 F.4th 536, 565 (2d Cir. 2022) (affirming district court’s rejection of leniency on the basis of the conditions at MDC during COVID and noting “our recognition that the ‘severity of the conditions of confinement’ is a ‘not unreasonable’ basis for a shorter sentence, does not mean a district court must impose a lower sentence in such a scenario”) (internal citation omitted); *see also United States v. Melendez-Rojas*, 17 Cr. 434 (ARR) (E.D.N.Y. Feb. 8, 2022) (rejecting analogous argument and noting that conditions at the MDC and the COVID-19 pandemic “could not possibly warrant any show of leniency”). The defendant’s conditions of confinement are simply not a basis for the significant downward departure or variance he now seeks in this case. *See United States v. Robinson*, 799 F.3d 196, 199 (2d Cir. 2015) (finding no error in district court’s denial of a downward departure despite defendant’s allegations of pre-trial confinement facility having, among other things, unsanitary food preparation, no heating system, leaks, insect infestations and violent gang members housed with non-gang affiliated inmates).⁹

⁹ This is particularly salient in this case because much of the delay in advance of trial (and sentencing) has been at the defendant’s request. He chose to proffer with the Government after

Ultimately, this argument, like the others advanced by the defendant, does not warrant any variance from the Guidelines sentence, in light of the array of aggravating circumstances discussed above. The defendant is a trained Hizballah operative who acted as a sleeper agent on U.S. soil, poised to attack and kill Americans at any moment. While waiting in the United States to be called upon, he surveilled some of our nation's most important national security buildings and infrastructure, and provided actionable intelligence back to Hizballah for attack planning purposes. He repeatedly subverted our country's immigration system to facilitate his terrorist activity and for raw greed. And he refuses to accept responsibility for what he did. His crimes are exceedingly serious, and he remains dangerous. The Guidelines call for a sentence of 20 years, and that sentence should be imposed.

his arrest and then sought repeated adjournments of pre-trial motion schedule. *See, e.g.*, Dkt. Nos. 20 (seeking an adjournment of conference and motion deadlines for ongoing plea discussions); 61 (seeking an adjournment of deadline for second round of pre-trial motions); 85 (seeking adjournment of deadline for filing motion in response to Government's February 8, 2021 disclosure); 111 (seeking leave to file an additional round of motions after oral argument); 129 (seeking an adjournment of the January 10, 2022 trial date because motions remained pending at the time). Indeed, before the Court granted the defendant's last adjournment request—which came on the eve of trial scheduled for January 2022—the Court specifically confirmed with the defendant himself that he wanted to delay the trial. (*See* Jan. 5, 2022 Tr. at 32-33). Of course, the defendant was within his right to request these delays; they just should not inure to his benefit now.

