

SDD:AAS/DMP F. #2015R00096

U.S. Department of Justice

United States Attorney Eastern District of New York

271 Cadman Plaza East Brooklyn, New York 11201

January 12, 2018

By ECF

The Honorable Margo K. Brodie United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

Re: United States v. Munther Omar Saleh and Fareed Mumuni

Criminal Docket No. 15-393 (MKB)

Dear Judge Brodie:

The government respectfully submits this letter regarding sentencing of defendants Munther Omar Saleh and Fareed Mumuni, scheduled for Tuesday, February 6, 2018.

On behalf of a foreign terrorist organization, the defendants in this case conducted separate but coordinated attacks on law enforcement in the United States while armed with knives. Saleh and a coconspirator were apprehended while charging at a law enforcement officer on a highway overpass in Queens, New York; Mumuni used a kitchen knife to repeatedly stab an agent from the Federal Bureau of Investigation ("FBI") in Staten Island, New York, before being subdued. These attacks were directed by the Islamic State of Iraq and al-Sham ("ISIS"), as Saleh was in direct communication with ISIS attack facilitators including Junaid Hussain, an ISIS recruiter located in Syria who was killed by an airstrike on August 24, 2015. Based on the gravity of this conduct and the extreme risk to public safety posed by these defendants, the government respectfully submits that the statutory maximum sentences of 53 years for Saleh and 85 years for Mumuni are appropriate in this case.

Together with this sentencing memorandum, the government submits a declaration from Harley Elmore, who is the director of training for a tactical group associated with the United States Department of Defense that trains U.S. Army Special Forces, U.S. Navy SEALs and other military personnel in the use of and defense against edged weapons. As Elmore explains, and as the government discusses in further detail below, the knife attacks carried out by Saleh and Mumuni had the potential to cause lethal damage and in

Mumuni's attack, in particular, the victim FBI Special Agent was saved from serious injury or death by luck and the swift action of his fellow agents.¹

I. Background

A. Islamic State of Iraq and al-Sham ("ISIS")

ISIS is a foreign terrorist organization that, since 2013, has claimed credit for numerous terrorist activities, including the November 2015 terrorist attacks in Paris, France, and the March 2016 suicide bombings in Brussels, Belgium, among many others. These terrorist activities are part of ISIS's broader goal of forming an Islamic state or "caliphate" in Iraq and Syria.

On or about October 15, 2004, the United States Secretary of State designated al-Qaeda in Iraq (AQI), then known as Jam 'at al Tawid wa' al-Jahid, as a Foreign Terrorist Organization (FTO) under Section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist entity under section 1(b) of Executive Order 13224. On or about May 15, 2014, the Secretary of State amended the designation of AQI as an FTO under Section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist entity under section 1(b) of Executive Order 13224 to add the alias Islamic State of Iraq and the Levant (ISIL) as its primary name. The Secretary of State also added the following aliases to the FTO listing: The Islamic State of Iraq and al-Sham ("ISIS" – which is how the FTO will be referenced herein), The Islamic State of Iraq and Syria, ad-Dawla al-Islamiyya fi al-Iraq wa-sh-Sham, Daesh, Dawla al Islamiya, and Al-Furquan Establishment for Media Production. On September 21, 2015, the Secretary added the following aliases to the FTO listing: Islamic State, ISIL, and ISIS. To date, ISIS remains a designated FTO. (Presentence Investigation Report, Munther Omar Saleh ("Saleh PSR") ¶ 7-8; Presentence Investigation Report, Fareed Mumuni ("Mumuni PSR") ¶ 7-8).

B. The Investigation of Munther Omar Saleh

In early 2015, members of the Joint Terrorism Task Force ("JTTF") in New York City and Newark, New Jersey began to investigate a group of likeminded individuals who sought to provide material support to ISIS. This group included, among others, Saleh,

The government expects that one or more of the victims will address the Court at sentencing.

² "Caliphate" is a term used to refer to ISIS's self-proclaimed system of religious governance, with Abu Bakr al-Baghdadi as the caliphate's self-proclaimed leader.

Mumuni, and several individuals from New Jersey including the brothers Alaa Saadeh and Nader Saadeh, and Samuel Topaz.³ (Saleh PSR ¶ 9; Mumuni PSR ¶ 9).

The investigation determined that Saleh was the spiritual leader of this group who frequently expressed radical ideology through social media postings. In particular, Saleh's online activities during this period demonstrated his support for ISIS. For example, Saleh's Twitter activity suggested that al-Qaeda was becoming too moderate and praised ISIS and the caliphate ISIS had been trying to establish in Iraq and Syria. In other tweets, Saleh praised ISIS's burning of a Jordanian air force pilot and beheading of a Japanese journalist; the Charlie Hebdo terrorist attack in Paris, France; and the terrorist attack in Garland, Texas—responsibility for which subsequently was claimed by ISIS—in which two individuals in body armor and carrying assault rifles began shooting outside a location that was hosting a cartoon contest featuring depictions of the Prophet Mohammed.⁴ (Saleh PSR ¶ 10, 12).

On March 23, 2015, Port Authority law enforcement officers observed Saleh crossing the George Washington Bridge on foot for the second time in two days and temporarily detained him at a Port Authority facility in New Jersey. There, FBI agents interviewed Saleh and obtained consent to view the contents of his computer, which included a file with the partial title "lock.aqeedah of IS in N"—which appeared to be a reference to a video Saleh had tweeted about translating. In addition, agents observed multiple files on Saleh's computer whose file names included the word "translation." Nevertheless, in that March 23, 2015 interview, Saleh denied translating ISIS propaganda or otherwise being involved in translating materials on behalf of ISIS. (Saleh PSR ¶¶ 14-17).

The JTTF investigation further confirmed Saleh's role in radicalizing his associates, most notably Nader Saadeh. On or about May 5, 2015, the FBI observed Saleh and others accompany Nader Saadeh to John F. Kennedy International Airport in Queens, New York, where Nader Saadeh boarded a flight to Jordan. Nader Saadeh intended to travel from Jordan to Syria to join ISIS. Upon arriving in Jordan, Nader Saadeh was apprehended by Jordanian authorities. The investigation revealed that Saleh played a critical role in providing logistical preparations for Nader Saadeh's trip to Syria via Jordan. The logistical assistance included reaching out to ISIS facilitators located in Syria for guidance and providing Nader Saadeh with contact information to facilitate his entry from Jordan into Syria. Notably, Saleh and Mumuni accompanied Nader Saadeh on a shopping trip to

As a result of the investigation, the Saadeh brothers and Topaz were apprehended by law enforcement authorities. They have all pleaded guilty to federal terrorism charges in the District of New Jersey. Alaa Saadeh was sentenced to 15 years' incarceration (the prior statutory maximum for 18 U.S.C. § 2339B); Nader Saadeh and Topaz are awaiting sentencing.

The perpetrators of the Garland attack were killed by law enforcement authorities.

purchase items that would be useful in ISIS-controlled territories, such as hiking boots and a compass. (Saleh PSR ¶ 50).

In addition to encouraging his associates to travel to Syria to join ISIS, Saleh prepared to conduct a terror attack in the New York metropolitan area on behalf of ISIS. On May 7, 2015, Saleh emailed himself information regarding the construction of a pressure cooker bomb, like that used in the Boston Marathon terrorist attack in 2013. Saleh had received these instructions from Syria-based ISIS attack facilitator Junaid Hussain.⁵ These instructions included lists of components that could be used to construct a pressure cooker bomb. (Saleh PSR ¶ 46; Mumuni PSR ¶ 11).

On the same date that Saleh received the bomb-making instructions, the FBI directed a confidential human source ("CHS 1") to initiate an online conversation with Saleh. During the conversation, Saleh asked CHS 1 where he/she was located. CHS 1 stated that he/she was in "dar al harb," which is a reference to the areas of the world where Islam is not the prevailing religion, and then he/she stated the "North east coast." Saleh asked whether CHS 1 was in America, and CHS 1 responded affirmatively. Saleh then stated, "Well I'm in NY and trying to do an Op." Also during the conversation, Saleh asked, "[W]ho is the akh [brother] who sent you to me?" CHS 1 responded that he/she was sent to Saleh by a "brother in Dawlah [ISIS]" and indicated that he/she was not "interested in specifics" and that "[w]e can cross that bridge later." Saleh responded at approximately 12:56 p.m.:

I understand akhi [my brother], but as the system works, example: abuFulan sent u, u have to tell me 'abu fulan sent me', i would go to abuFulan to confirm and then we can safely and freely, [this messaging application] is fully encrypted. . . . We can *talk* safely. . .

CHS 1 understood this statement to mean that Saleh was requesting that CHS 1 provide a specific person within ISIS who could serve as a reference for CHS 1 and vouch for CHS 1's affiliation with ISIS. CHS 1 provided a reference of another attack facilitator at approximately 1:02 p.m., and Saleh wrote at approximately 1:08 p.m., "Ok I'm just confirming might take some time for replies. Wait a bit in sha Allah [God willing]." Approximately two hours later, at 3:03 p.m., Saleh wrote, "Akhi [my brother] I'm very sorry, but I was ordered by dawlah [ISIS] officials not to talk to anyone until they produce an akh

Junaid Hussain, a British-born and English-speaking ISIS member, used messaging applications to encourage attacks in the United States and Europe against persons ISIS believed should be targeted for execution. Hussain also offered technical guidance on how to carry out attacks. On August 24, 2015, Hussain was killed in an airstrike in Raqqah, Syria, a city considered by ISIS to be its capital.

⁶ "Op" is shorthand for "operation" and likely refers to an effort to conduct a terrorist attack.

[brother] of authority to vouch for them." Saleh then ceased further contact with CHS 1. Saleh's final message indicated that he was taking direct orders from persons he believed to be ISIS officials ("dawlah officials") and that he could not communicate further with CHS 1 absent confirmation from such persons that CHS 1 himself/herself was an approved member of ISIS ("until they produce an akh of authority to vouch for them"). (Saleh PSR ¶¶ 20, 21; Mumuni PSR ¶ 10).

Continued law enforcement monitoring of Saleh's online activities and physical surveillance of Saleh established that, in the spring of 2015, Saleh was researching the construction of a destructive device as well as possible target locations. Between May 7, 2015 and June 13, 2015, Saleh searched online for potential components of an explosive device or tools for the construction of an explosive device, such as lamps, electrical cords, and vacuum cleaners. On or about May 19, 2015, law enforcement agents observed Saleh obtain a black digital wrist watch—which may serve as a timer for a destructive device⁷—at a store in Queens. (Saleh PSR ¶¶ 24, 28; Mumuni PSR ¶ 12).

In addition, during May and June 2015, Saleh conducted Internet searches for various types of weapons, including a "Service Rifle," a "Special Operations Forces combat assault rifle," a "combat" tomahawk, a "U.S. Army Ranger-series fixed blade knife," a "tactical" axe, a "Smith & Wesson Model 41 semi-automatic pistol," as well as other firearms and ammunition, knives, and a crossbow. (Saleh PSR ¶ 19).

On May 28 and 31, 2015, Saleh conducted Internet searches for various notable New York City landmarks and tourist attractions, which may have been for the purpose of assessing potential targets in New York City for a terrorist attack. This conclusion was supported by Internet research in May 2015 concerning possible targets and killing innocent people. Specifically, on May 16, 2015, Saleh researched articles on the Internet titled "What Does Islam Say About Killing an Innocent Person?" and "Does Islam really allow the killing of innocent unbelievers?" (Saleh PSR ¶ 26, 29; Mumuni PSR ¶ 13).

During this period, Saleh was meeting with his associates to discuss his plan to conduct a domestic terror attack. On May 12, 2015, Saleh contacted Mumuni to indicate that Saleh had money and wanted to meet that day, stating Saleh had money that "talks," possibly referring to funding for an illegal transaction. During the same communication, Saleh agreed to meet with Mumuni in Staten Island at the "same place" in front of the courthouse. Saleh then proceeded to travel to Staten Island, where Mumuni lived, by subway and ferry. During this trip, he successfully eluded FBI surveillance. (Mumuni PSR ¶ 14).

Agents observed Saleh meet with Mumuni and at least two other individuals, including Samuel Topaz, on May 31, 2015 in lower Manhattan. During this meeting, Saleh and Mumuni confirmed they wanted to conduct an "Op" on American soil if they were

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⁷ <u>See</u> https://qz.com/505187/terrorists-around-the-world-love-this-classic-casio-wristwatch/ (last visited Jan. 10, 2018).

unable to travel to join ISIS. In particular, Saleh and Mumuni stated they wanted to find a way to attack the White House. Once they successfully helped Topaz travel to Syria to join ISIS, Saleh and Mumuni would conduct their "Op." Saleh admitted during this meeting that he was in touch with ISIS operatives in the Middle East—persons about whom Saleh was reluctant to directly discuss with the others. (Mumuni PSR ¶ 15).

In a phone call on June 1, 2015, Saleh and coconspirator Imran Rabbani discussed Saleh's meeting with Mumuni the previous day. Rabbani asked, "How was the meeting with your guys?" After Saleh asked for clarification, Rabbani responded, "I don't know . . . You got tea with them." After Saleh again asked for clarification, Rabbani stated, "Tea, wink, wink, tea" and added, "Your buddies, man, Staten Island." Saleh then responded, "Oh yeah, it was awesome" and added that the meeting was "motivating, it was great." (Mumuni PSR ¶ 15). The government believes that Saleh's glowing comments regarding a meeting in which he discussed conducting domestic terror attacks reflects his contemporaneous commitment to take decisive action.

Around this time, another confidential source ("CHS 2") approached Saleh. On June 11, 2015, Saleh met with CHS 2 near the World Trade Center in Manhattan, before traveling to Staten Island by ferry. As they passed the Statue of Liberty, Saleh told CHS 2 that a strong storm or blast would cause the Statue of Liberty to fall. After briefly touring Staten Island together, Saleh and CHS 2 returned to Manhattan by ferry. As they were walking in Manhattan, they observed a police officer. Saleh then remarked that he hated the police. During their conversation, Saleh also remarked that he wanted to live in Jordan, Palestine, Iraq, or Syria, but he lacked the financial means to do so. He further remarked that Iraq and Syria needed their own land for a caliphate and that people needed to stop trying to prevent a caliphate, which is good for all Muslims. Saleh then talked about watching videos of Shia Muslims executing Sunni Muslims and expressed hatred for Shia Muslims.

C. The Arrest of Munther Omar Saleh

During the night of June 12, 2015 through the early morning of June 13, 2015, law enforcement officers performed physical surveillance on Saleh and Rabbani. Saleh and Rabbani left from a mosque in a SUV vehicle (the "SUV") driven by an associate (the "Associate"). After briefly visiting a car wash, the SUV made several anti-surveillance maneuvers, including driving at a high speed through a parking lot with the lights turned off, going through stop signs without stopping, and then quickly accelerating behind a law enforcement vehicle performing surveillance on the SUV. At approximately 4:00 a.m., the SUV stopped for a red light signal at 20th Avenue, on an overpass above the Whitestone Expressway in Queens. An unmarked FBI surveillance vehicle (the "FBI Vehicle") was trailing the SUV. (Saleh PSR ¶ 32; Mumuni PSR ¶ 16).

Saleh and Rabbani simultaneously exited the SUV and took several steps towards the FBI Vehicle, and then returned to the SUV. At the time, Saleh had an unopened folding knife in his hand, which he then placed in his pocket. Moments later, Saleh and Rabbani again exited the SUV and ran from opposite sides of the SUV towards the FBI

Vehicle. In order to evade the attackers, the driver of the FBI Vehicle had to back his car into reverse off the overpass and into the intersection immediately before the overpass, at the risk of backing his vehicle into oncoming traffic. A backup law enforcement vehicle soon arrived, and responding law enforcement officers ordered Saleh and Rabbani to the ground at gunpoint. A pat down of Rabbani revealed a Smith & Wesson tactical folding knife tucked into his waistband. As discussed in the expert report of Harley Elmore, attached hereto as Exhibit A, the Smith & Wesson folding knife contained a built-in window breaker, making it easier to gain access to the FBI Vehicle and to attack the law enforcement officer inside the vehicle. (Elmore Rep. at 17 ¶ 5). Saleh was found in possession of the same folding knife he had previously held in his hand. (Saleh PSR ¶ 32; Mumuni PSR ¶ 16). Saleh's knife was also easily concealed, designed to be opened with one hand, and had a partially serrated blade. (Elmore Rep. at 17 ¶ 5). The investigation revealed that Rabbani and Saleh acquired these knives in the days leading to the attack on the FBI Vehicle.

In his recorded post-arrest statement, and after waiving his Miranda rights, Saleh stated he had pledged allegiance to ISIS and was a "full-fledged" member of ISIS as soon as the caliphate had been established. Saleh considered himself as an ISIS recruiter and was told that he had a "radicalizing gift." In particular, Saleh stated that Nader Saadeh would not have attempted to travel to join ISIS "if I didn't push him over man." (Saleh Post-Arrest Tr. at 468). When asked to cooperate with law enforcement authorities, Saleh refused. He said that, "in the end . . . me and them believe the same thing. I can't go against them. That's the bottom line for me." After being asked whether he was saying he could not work against ISIS because he was a part of ISIS, Saleh stated, "Yeah, that's pretty much what it is in the end. I am ISIS." (Saleh PSR ¶¶ 33, 38; Mumuni PSR ¶ 17).

During the post-arrest interview, Saleh further stated he was talking to individuals at the highest levels of ISIS. Saleh stated he was referred to someone in charge of planning terrorist attacks for ISIS—a reference to Junaid Hussain. Hussain provided Saleh with a document with instructions for making a pressure cooker bomb. Saleh remarked that the instructions seemed "pretty doable" to him, and that as long as he had a remote detonator and fireworks, he could assemble a pressure cooker bomb "instantly." Saleh stated he was asked by the "planner" to obtain a gun and assassinate someone on ISIS's behalf. Saleh had responded that he would find someone else to do the assassination. Saleh claimed in the post-arrest interview that this was his way of saying he personally would not conduct the assassination. (Saleh PSR ¶ 39).

Saleh stated he and Mumuni had watched ISIS videos together at Mumuni's house on Staten Island. He stated that he and Mumuni planned to travel for the purpose of joining ISIS. Saleh further stated that he and Mumuni had spoken about building a pressure cooker bomb. Near the end of the interview, Saleh admitted that Mumuni had told him that he was being followed by "deep tint" (referring to law enforcement) vehicles and stated that Mumuni wanted to "hit them." Notably, the JTTF did not identify Mumuni until the day prior to Saleh's arrest, and this was Saleh's only statement during the post-arrest interview suggesting that Mumuni posed a danger to law enforcement officers. (Saleh PSR ¶¶ 33, 40). Additionally, Saleh did not inform his interviewers in his post-arrest statement that he had

provided religious guidance to Mumuni sanctioning Mumuni to die while in the process of attacking members of law enforcement, as shown by messages later found in Saleh's phone.

Saleh further admitted he had purchased a knife within the week preceding his arrest and claimed the knife was for protection. He admitted he had the knife in his balled-up hand when he and Rabbani first stepped out of the SUV. Saleh also stated that Rabbani had the Smith & Wesson knife at the time and had received training on how to "scare people with a knife." (Saleh PSR ¶ 41).

Saleh further admitted that he had translated documents for ISIS. He admitted to lying in the March 2015 interview near the George Washington Bridge when he denied having translated documents on behalf of ISIS. (Saleh PSR ¶ 42).

While being taken to court for presentment, Saleh asked an FBI agent accompanying him whether he had always wanted to be an agent. The FBI agent responded affirmatively and asked whether Saleh had ever wanted to be an agent. Saleh responded, "No." When asked to explain, Saleh responded, "You and me are on the opposite sides of the battlefield." (Saleh PSR ¶ 43).

D. The Judicially Authorized Search of Saleh's Phone

A judicially authorized search of Saleh's phone yielded significant material corroborating Saleh's support for ISIS. For instance, documents and images found on the phone included articles about jihad and the Islamic State, an article titled "39 Ways to Serve and Participate in Jihad," issues of an ISIS publication called Dabiq Magazine, articles on the legitimacy of ISIS, an article on the Boston bombers, articles about the Garland, Texas attack, including a tweet by Junaid Hussain about the attack, and a screenshot of a graphic of radical cleric and Al Qaida in the Arabian Peninsula member Anwar al-Awlaki with quotes about jihad. (Saleh PSR ¶ 44).

Saleh's phone also contained materials relating to Saleh's plans to travel to Syria to join ISIS, to construct an explosive device, and to attack U.S. law enforcement on behalf of ISIS. For instance, the phone contained a screenshot of a tripadvisor.com itinerary and price for a flight from JFK Airport to Istanbul, Turkey, via Kiev, Ukraine; an image of Saleh's face photo-shopped onto the body of an ISIS fighter; an image of a headless Statue of Liberty holding the ISIS flag with New York City burning in the background and the words "COMING SOON"; an image of the World Trade Center burning during the attacks of September 11, 2001; images of guns, assault rifles, and other weapons; images relating to and instructions for making a pressure cooker bomb, a nail bomb, and a Molotov cocktail; instructions on how to use a cell phone as a trigger device; and images relating to al Qaeda's use of car bombs.

YouTube searches on Saleh's phone reflected his knowledge that he was being followed by law enforcement. Specifically, Saleh searched for the terms "being followed by black car," "being followed by cops," and "cops following me."

A review of communications found on Saleh's phone with Mumuni revealed messages in which Saleh stated he was "[d]isgusted of these American pigs" and "can't stand living in this city," in which Saleh and Mumuni congratulated each other on Boko Haram's declaration of allegiance to ISIS, and messages in which Saleh discussed his translation of material for ISIS: "Me and a few akhs [brothers] got really touched by the recent group of multilingual akhs to translate IS [Islamic State] releases."

The phone also contained numerous communications with Junaid Hussain. Most of the older communications from Junaid Hussain had been deleted, but it is possible to infer their content from Saleh's responses, which were found in the phone.

For example, on May 1, 2015, Saleh wrote to Junaid Hussain, "Akhi [brother], abuDujana⁸ told me u can, in sha Allah, give me more details on how to make a bomb." Later that same day, Saleh wrote to Junaid Hussain, "I think I can make the bomb, put a timer on it, put it in the air force school which i am going to, 9 and get on a plane to Darul Islam [ISIS-controlled territories]."

Similarly, early during the morning of May 7, 2015, Saleh wrote a series of communications to Junaid Hussain between 6:39 a.m. and 8:54 a.m.:

(6:39 a.m.) Akhi [brother] please instruct me on the pressure cooker bomb.

(6:46 a.m.) I want to do it, but I promised an akh [brother] I would see him in the khilafah [caliphate], so I must first try to get to dawlah [ISIS] then if I'm stopped by no-fly list or if airport security think I'm suspicious or something, then in sha Allah [God willing] I'm doing istishhadi [martyrdom]. In sha Allah kheir.

(7:17 a.m.) So, in sha Allah, can I get the instructions?

(8:40 a.m.) Ok akhi, I will strike the kuffar [infidels] here in New York city, in sha Allah, my akh [brother]¹⁰ tried to go to

The government believes this is a reference to ISIS attack facilitator Reyard Khan, whose alias is "Abu Dujana." <u>See http://www.dailymail.co.uk/news/article-3168428/British-jihadi-posed-Ed-Balls-dreamed-Asian-Prime-Minister-killed-anti-ISIS-air-strike.html (last visited Jan. 10, 2018).</u>

⁹ Saleh was then attending Vaugh College of Aeronautics and Technology in Queens, New York.

The government believes this is a reference to Nader Saadeh, who was arrested after arriving in Jordan from the United States on or about May 5, 2015.

Jordan to take a bus to Darul Islam [ISIS-controlled territories], they captured him, only 2 days ago.

(8:43 a.m.) May Allah keep him patient and protect him. . .

(8:54 a.m.) Ameen ha rabb! [O' Lord] Akhi, I do not want to be a bother to you, but I need the instructions to begin my planning and to decide the best type of approach to atk [attack]

Saleh's phone also revealed conversations between Saleh and his ISIS contacts after his communications with CHS 1. After first hearing from CHS 1 on May 7, 2015, at approximately 3:08 p.m., Saleh wrote to Junaid Hussain in order to verify the bona fides of CHS 1. At 3:17 p.m., Saleh asked Junaid Hussain, "Akhi, Do u know the . . . account of abu Kambozz?" At 3:20 p.m., Saleh wrote to Junaid Hussain that "the Op I'm working on just grew, alhamdulilah [praise to God], may Allah make it successful and cause many crusader casualties." At 3:25 p.m., Saleh wrote to Junaid Hussain, "An akh i never met before messaged me telling me abu kambozz sent him to me, i remember abu dujana 11 referred me to the akh 'abukambozz' but i couldn't add him. I have to confirm with abukambozz before we can work any further." At 3:42 p.m., Saleh wrote to Junaid Hussain, "I just found out its abu khaled al kambodi's old . . . account." At 4:31 p.m., Saleh wrote to Junaid Hussain that "Our akh Abu Khalid al kambodi told me he didn't send anyone to me."

After learning that Abu Kambozz had not sent CHS 1 to him, Saleh wrote to CHS 1 at 4:46 p.m. and asked, "When was the last time u spoke to abuKambozz? At 4:53 p.m., Saleh wrote to CHS 1, "Ok, akhi, problem is abukambozz denied sending u." Finally at 5:03 p.m., Saleh wrote to CHS 1, "Akhi I'm very sorry but i was ordered by dawlah officials not to talk to anyone until they produce an akh of authority to vouch for them." At 5:04 p.m., Saleh forwarded that message to Junaid Hussain to tell Hussain what he had written to CHS 1. These communications were all found in Saleh's phone.

Also on May 7, 2015, in a communication found in his phone, Saleh wrote his ideas for attack plans to Junaid Hussain:

(5:21 p.m.) The plan will be clearer when the other few akhs i have make up their minds, either to perform hijrah [migrate] or join me in Op, since my akh was taken by Jordanian authorities (may Allah protect and free him) they wanted to join me.

(5:23 p.m.) But i was considering that The statue of liberty has a very weak point in its lower back and its tilting forward, if i can get a few pressure cooker bombs to hit the weak point, i think it

As described in footnote 8, the government believes this is a reference to ISIS attack facilitator Reyaad Khan.

will fall face down, along with the mushrikeen [those who worship one other than Allah] visiting it.

(5:25 p.m.) Or we can hit times square which would be easier, but if i can get more akhs, we can preform simultaneous attacks all around NYC.

Saleh then asked Junaid Hussain, "What would it take to make an IS wilayah [division] in America?" After Saleh received the pressure cooker bomb instructions from Junaid Hussain, Saleh wrote, "Akhi, jazak Allah kheir [may Allah reward you with goodness], the link you gave me for the explosives is really helpful."

Communications recovered from Saleh's phone further revealed that Junaid Hussain wrote to Saleh on May 10, 2015, "We start planning inshAllah." Saleh responded:

I have 3 more ikhwa [brothers], they wanna make hijrah [migrate], in sha Allah, i wanna see how everything works out for them first, because i take care of the hijrah process for my ikhwa, and i want this to be as big an big Op as it can be, they all Said if their hirjah fails, they wanna come perform an Op with me, we can potentially collectively carryout one huge unforgettable attack.

In later communications with Junaid Hussain, Saleh indicated that he would prefer to travel to join ISIS, but would conduct a terrorist attack if that didn't work: "Akhi, forgive me, i always wanted to reach darul Islam and do my work over there, so i want to go with my first plan, attempting hijrah, then if it doesn't work out i will perform an Op here in NY."

In a communication found in Saleh's phone, Junaid Hussain asked Saleh on May 12, 2015, "Are u close to Cali?" Junaid Hussain indicated, "We have addresses on kuffar [nonbelievers] in cali/That need to be killed/And in new York too." After Saleh expressed interest in the New York targets, Junaid Hussain wrote, "Akhi we can't give u addresses and then u pull out/These are high level targets akhi/We can't afford to loose the addresses/We need firm brothers that will carry out attacks over there." Saleh indicated that he was not yet ready to personally conduct that attack and that he would find somebody to do it:

I hate to undermine true Muslim authority when Allah bestowed it upon us, alhamdulilah [praise God], but my firmness still needs work, this would need long planning, and i've been interrogated and searched randomly so i fear they might find out about it, want me to see if another akh is up to it?

After Junaid Hussain responded affirmatively, Saleh wrote, "Ok in sha Allah, i'll try to find an akh. The following day, Saleh wrote the following messages that were recovered from his cell phone.

The ikhwa [brethren] are all in the process of making hijrah [travel to ISIS], hard to find someone who may perform the targeted atk [attack], i may do it if my hijrah [travel to ISIS] fails, in sha Allah kheir.

I'll tell u how everything turns out and what our abilities are later when everything becomes clearer, in sha Allah [God willing] akhi al kareem [my brother].

On June 1, 2015, Saleh wrote Junaid Hussain regarding whether it would be permissible for Saleh's contact to die while attacking the police with a pressure cooker bomb:

Akhi [brother] help us out, i have an akh [brother] who is planning on hitting a black car cop with a pressure cooker, the black car keeps following him, and he wants to avenge our akhs [brothers] who have been raided and blocked from hijrah [migration].

Is it permissible for him to do the attack and die purposely in the process?

Junaid Hussain responded that it would be permissible for Saleh's associate to conduct a suicide attack: "Yes akhi [brother] he can do an isthishadi [martyrdom] operation on the police akhi [brother]/If he has no other way to fight them he can do it." Saleh responded that he informed his contact of Junaid Hussain's guidance: "Alhamdulilah [praise be to God] i told him the same thing, jazak Allah kheir [may Allah reward your goodness]. Is it best if he makes a [martyrdom] video?" Junaid Hussain responded, "Yeh it's good if he makes one InshAllah/Send it to me don't make it public." Saleh agreed. Saleh's acknowledgement in these written communications with Junaid Hussain that he had passed on Junaid Hussain's guidance to conduct a suicide attack was corroborated by Saleh's guilty plea allocution in which he acknowledged advising Mumuni that it would be religiously permissible for Mumuni to attack law enforcement and die in the process, as detailed below.

Notably, the government found the following communication from Saleh to Mumuni on June 12, 2015—the day before Saleh's attack on the FBI Vehicle: "I decided to tell my parents 'i will be gone in much less than a year, in sha Allah, you have two choices, either you let me go to Darul Islam or you watch me kill nonMuslims here." (Mumuni PSR ¶ 19).

The search of Saleh's cell phone yielded other electronic communications with ISIS attack facilitators. On June 3, 2015, Saleh wrote to an ISIS attack facilitator he had previously referred to as a "mujahid" [guerilla fighter] that the defendant's coconspirators "are having high speed chases with soldiers of taghout [idolatry] confronting them face to face, and are being followed everywhere they go." Saleh continued, "Its not just one bro, its

five akhs [brothers] all spread apart across newyork and newjersey, who are being followed by black cars, had physical confrontation with the feds and planed for hijrah [migration] in sha Allah [God willing]. One of these dear akhs [brothers], was captured during hijrah, another decided he will become an istishhadi [martyr] in US in sha Allah [God willing], and the three others are low key people who are planning hijrah." Later, on June 9, 2015, Saleh wrote to the same individual "the brothers asked me to ask the mujahedeen [guerilla fighters] of our blessed khilafah [caliphate] two questions, if they can assist some brothers financially for hijrah, and if you akhs [brothers] know how to get to darul Islam [ISIS-controlled territory] while shaytan [devil] Feds on our backs."

In summary, these communications found in Saleh's phone demonstrated that Saleh was soliciting and receiving directions from multiple ISIS attack facilitators located in Syria and that he followed these directions, both in recruiting other potential foreign fighters or domestic terrorists and in making coordination efforts to attack members of U.S. law enforcement.

E. The Arrest of Fareed Mumuni

Following the arrests of Saleh and Rabbani, the government uncovered the electronic communications from Saleh's phone that showed that Mumuni posed a grave threat to public safety. Accordingly, the government took action to foil any effort by Mumuni to construct a destructive device or otherwise to attack members of law enforcement. On June 15, 2015, the government obtained a search warrant for Mumuni's residence in Staten Island and cellular telephone. (Mumuni PSR ¶ 20).

On the morning of June 16, 2015, FBI agents went to Mumuni's home to execute the search warrant. After the FBI agents gained entry to Mumuni's residence, Mumuni came down the stairs from the second floor and first feigned compliance with the directives of law enforcement before he charged at an agent with a kitchen knife as the agents attempted to clear the house. While repeatedly saying words in Arabic, Mumuni stabbed one of the agents multiple times in the side before Mumuni was subdued and taken into custody. Although the agent was wearing body armor, that armor is designed to stop bullets, not blades, and will not typically stop thrusts or stabbing attacks. (Elmore Rep. at 14 ¶ 7). The agent was saved from serious injury or death only by his magazine carrier, which carries spare ammunition. The metal magazine carrier deflected and chipped the point of Mumuni's knife while he was thrusting it into the agent's side. While agents initially attempted to subdue Mumuni to the ground, he reached for an agent's firearm and attempted to pull the trigger. Mumuni, however, was unable to fire the weapon before FBI agents ultimately subdued him. (Mumuni PSR ¶¶ 20, 21).

After Mumuni's arrest, Mumuni's mother consented to a search of her car, which she stated that she permitted Mumuni to use. Inside, agents recovered a duffel bag containing another large kitchen knife. (Mumuni PSR \P 22).

In his post-arrest statement, after waiving his <u>Miranda</u> rights, Mumuni stated that he and Saleh had repeatedly discussed ISIS. Mumuni admitted that he had pledged allegiance to ISIS and that he had plans to travel to ISIS-controlled territories. Mumuni stated he and Saleh were both working to raise money to travel for joining ISIS and that he had researched flights from New York to Turkey. (Mumuni PSR ¶ 23).

Mumuni admitted that he and Saleh had talked about how to make and use a bomb. Saleh told Mumuni that he knew how to make a pressure cooker bomb and that Saleh would give the bomb to Mumuni to detonate. (Mumuni PSR ¶ 24).

Mumuni stated that, if intervention by law enforcement prevented him from travelling to join ISIS, he would fight. He was aware that "you guys," referring to law enforcement, were following him "24-7." He told Saleh that he was frustrated and that "if I don't get to Islamic State then you guys try to stop me, I'm going to defend myself. I wasn't going to get taken down." Mumuni said he was willing to die fighting, that he would rather die than be arrested, and that he would be dying as a martyr for ISIS. (Mumuni PSR ¶ 25).

Mumuni informed the interviewing agents that he kept the knife used in the attack in his bedroom in case the police came to his home. He started keeping the knife in his bedroom once the police started following him. It seemed obvious to him that law enforcement was following him when "shaded black cars [were] just coming in every direction in front of my house." Mumuni stated that he also kept a knife in a duffle bag in his car to be used in the event of a car stop by law enforcement. Mumuni told investigators he knew it was law enforcement at his door on the day of his attack because nobody else similarly bangs on the door. He admitted to grabbing the knife from his bed, going down the stairs, and attacking law enforcement officers with the knife. (Mumuni PSR ¶ 26).

Mumuni stated that he and Saleh had a conversation in which they discussed from a religious perspective whether Mumuni could fight law enforcement agents and die in the process. According to Mumuni, Saleh checked with somebody else and told Mumuni it would be better for Mumuni to stay alive but that it was permissible for him to die in the process—a likely reference to Saleh's online conversations with Junaid Hussain on June 2, 2015. (Mumuni PSR ¶ 27). This statement makes clear that Saleh and Mumuni worked closely together on coordinated attack plans in support of ISIS.

F. The Indictment

On August 10, 2015, a grand jury in the Eastern District of New York returned an indictment charging Saleh and Mumuni with conspiring and attempting to provide material support to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B, conspiring to attack law enforcement officers, in violation of 18 U.S.C. § 371, and assault of a federal officer, in violation of 18 U.S.C. § 111(a)(1). Additionally, Mumuni was charged

in the same indictment with attempted murder of federal law enforcement officers, in violation of 18 U.S.C. § 1114(3).¹²

G. The Guilty Pleas

On February 9, 2017, Mumuni pleaded guilty before Your Honor to all charges absent a plea agreement. In relevant part, Mumuni admitted under oath that he had sought to "join ISIS and defend Islam." He admitted that he "did deliberately and intentionally attempt to kill a law enforcement officer by [lunging] at him with a knife knowing that if I succeeded in my attempt I could kill him." (Mumuni Plea Tr. at 25, 28).

On February 10, 2017, Saleh pleaded guilty before Your Honor to all charges absent a plea agreement. In relevant part, Saleh admitted that he had put Nader Saadeh in touch with an "ISIS recruiter who can help him to get into Syria" from Jordan. Saleh also admitted that Mumuni had asked Saleh "if it was religiously permissible for him to attack law enforcement officers with a dangerous weapon," and Saleh "sent him a text, telling him I believed it was permissible for him to do so." (Saleh Plea Tr. at 27-28). Saleh, however, did not admit that he was conducting an attack on law enforcement at the time of his arrest, but rather stated that he was simply trying to impede law enforcement from conducting surveillance of him so that he could continue with his efforts to support ISIS.

As detailed in the government's January 5, 2018 letter to the Probation Department, the government generally concurs with the Probation Department's Guidelines calculation, with the exception that the maximum statutory sentences are as follows: 85 years for Mumuni and 53 years for Saleh. See 18 U.S.C. §§ 111(a)(1), 371, 1114(3), 2339B. The effective Guidelines sentences for each defendant are the statutory maxima. (Saleh PSR ¶ 120; Mumuni PSR ¶ 92).

III. Argument

A. Statutory Maximum Sentences Are Appropriate

In addition to the range recommended by the Guidelines, 18 U.S.C. § 3553(a) requires the Court to consider a number of factors in imposing sentence, including (among others) the nature and circumstances of the offense and the history and characteristics of the defendant (§ 3553(a)(1)); the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide a just punishment for the offense (§ 3553(a)(2)(A)); and the need for the sentence to afford adequate deterrence to criminal conduct (§ 3553(a)(2)(B)) and to protect the public from further crimes of the defendant

Rabbani was charged as a juvenile and subsequently transferred to adult status in a separate but related matter before the Court. <u>See United States v. Rabbani</u>, 15-CR-302 (MKB). On August 19, 2016, the Court sentenced Rabbani to 20 months' imprisonment.

(§ 3553(a)(2)(C)). While the defendants engaged in related and overlapping conduct, each must be treated individually, taking into account the 3553(a) factors.

In this case, the sentences imposed must reflect the seriousness of the defendants' conduct, deter the defendants specifically from committing further crimes, deter others from traveling to join ISIS or conducting attacks on behalf of or at the direction of ISIS, and promote respect for the law. These factors all counsel in favor of statutory maximum sentences for both defendants.

B. The Criminal Conduct Is Exceptionally Serious

As shown by the facts of this case and the expert report of Harley Elmore, the conduct in this case is exceptionally serious. In brief, the defendants each carried out knife attacks that had the potential to—and in Mumuni's case, very nearly did—cause serious injury or death. The defendants each committed these knife attacks on law enforcement after being deterred by constant law enforcement surveillance from carrying out their goal of committing a deadly terrorist attack on American soil on behalf of ISIS. In addition, Saleh encouraged multiple individuals, including a juvenile, to support ISIS and either participate in the domestic terror attack or travel to Syria to wage jihad with ISIS, while Saleh and Mumuni both facilitated the travel of other coconspirators to join ISIS. Each aspect of this conduct warrants a serious sentence; taken together, the appropriate sentence is the statutory maximum for each defendant.

<u>First</u>, each defendant was responsible for a potentially lethal knife attack on law enforcement. While Saleh in particular has appeared to minimize his conduct by claiming in his plea allocution and in subsequent letters to the Court that he merely intended to determine why members of law enforcement were following him and that he intended to impede their investigation of Saleh and his coconspirators so that he could continue unimpeded his support for ISIS, the circumstances surrounding his arrest show that Saleh and Rabbani were thwarted in an attack on law enforcement while armed with dangerous weapons. Moreover, Saleh and Rabbani nearly caused vehicular homicide by causing the driver of the FBI Vehicle to reverse blindly into a multilane intersection with ramps to and from the Whitestone Expressway.

As an initial matter, the fact that Saleh and Rabbani were armed with knives and not guns does not make their conduct any less serious. Elmore explains that it is commonly accepted that a law enforcement officer must be at a distance greater than 21 feet from an assailant armed with an edged weapon such as a pocketknife to successfully defend himself or herself with a firearm. Indeed, the average assailant armed with an edged weapon can cover 21 feet of ground within 1 to 1.5 seconds, which is insufficient time for law enforcement officers to draw their weapons, aim, and fire effective shots. (Elmore Rep. at 10-11). In this regard, Elmore demonstrates that edged weapons such as knives are more dangerous than guns when an assailant is the aggressor and in close proximity of a law enforcement victim.

Here, both Saleh and Rabbani obtained their weapons in the days leading to the attack, at the same time that Saleh, Mumuni, and the other coconspirators were discussing conducting attacks on law enforcement as a way of supporting ISIS. Moreover, as Elmore explains, Rabbani's weapon, a Smith & Wesson tactical knife, had a spear point designed for thrusting attacks and a partially serrated blade effective for cutting through clothing and other fibrous materials. Notably, Rabbani's knife could be opened with one hand, making an attack faster and less telegraphic. It also contained a built-in window breaker, making it easier to gain access to the FBI Vehicle and to attack the law enforcement officer inside the vehicle. (Elmore Rep. at 17 ¶ 5). Likewise, Saleh's knife was also easily concealed, designed to be opened with one hand, and had a partially serrated blade. (Id.).

As Elmore opines, Saleh and Rabbani "obtained knives that could be easily carried, easily concealed, easily deployed and deadly in its application. [Had the] second FBI agent not been present and realized the attack was occurring the [agent] in the car would have been outnumbered and extremely vulnerable to a deadly attack." (Elmore Rep. at 17 ¶ 7). Elmore further explains that, in such an attack, Rabbani could have used the window breaker feature of his knife to break a window in the FBI Vehicle, causing

... the Agent [to] be confined in a tiny space, working through the [Observation-Orientation-Decision-Action] loop based on the window stimulus. At this point he would have given away force, space and time. Some of his most vulnerable timers [targets within the circulatory and respiratory systems] and switches [nerves and connective tissue], those in the neck and upper thoracic region would have been extremely easy to access from the car window. This position would have provided the Agent with little or no possible method of defense.

(Elmore Rep. at $17 \, \P \, 6$).

Similarly, Elmore's report illustrates the extreme dangerousness of Mumuni's attack on the FBI agent. Mumuni attacked the agent and stabbed him three times with such force that he broke the tip of his knife off, meaning "he was using enough force to do potentially lethal damage to the Agent." (Elmore Rep. at $14~\P$ 7). Mumuni's effort to stab the agent was, fortunately, foiled by the agent's magazine carrier for spare ammunition, which deflected Mumuni's stabbing motions. The magazine carrier bore "deep grooves" from the stabbing attack, reflecting the force that Mumuni was using. (Id.). Had Mumuni had more time or more training, he likely would have struck the agent in a different location, potentially causing serious damage or death. As Elmore writes, "[G]iven enough time [Mumuni] would have changed targets and began to actually stab more vital targets on the Agent, severely injuring or killing him." (Elmore Rep. at $14~\P$ 8). Moreover, Mumuni's attack did not end with the stabbing of the agent; Mumuni attempted to grab and fire one of the agent's firearms while he was being subdued.

Given both defendants' pre-planning of the separate but coordinated attacks, as manifested by their agreement to attack members of law enforcement with lethal force, the acquisition of knives by Saleh and Rabbani several days before the attack in Queens, Saleh's contact with ISIS attack facilitators such as Junaid Hussain for guidance on conducting domestic terror attacks and attacks on U.S. law enforcement, and Mumuni's preparations by secreting knives in his bedroom and in his car, Saleh and Mumuni are both responsible for each of the attacks on law enforcement. See, e.g., United States v. Parkes, 497 F.3d 220, 232 (2d Cir. 2007) (discussing coconspirator liability for murder that was a necessary or natural consequence of underlying conspiracy to rob drug dealers).

Although Saleh argued in his objections to the PSR that he is not responsible for Mumuni's attack on law enforcement, which took place several days after Saleh was arrested, Saleh, Mumuni, and their coconspirators had been aware for weeks that they were under surveillance by law enforcement, and developed a plan to attack law enforcement. Accordingly, Saleh and Rabbani obtained the knives that they used in their attack, while Mumuni readied himself by stashing kitchen knives in his bedroom and in his car in the event that law enforcement came to his home or conducted a car stop while he was driving. Saleh then obtained religious guidance from Junaid Hussain that it would be permissible for Mumuni to die while attacking law enforcement. Thus, Saleh is accountable for Mumuni's attack as well as his own.

Moreover, even though Mumuni's conduct may ostensibly appear more egregious because of the viciousness of his attack, Saleh is equally culpable. Indeed, Saleh recruited and radicalized Mumuni, Rabbani, and the New Jersey coconspirators, and later provided Mumuni with Junaid Hussain's guidance regarding the attack planning that gave Mumuni free reign to attack law enforcement cognizant that Mumuni might die in the process.

Second, as set forth in more detail above, Saleh and Mumuni are responsible for planning a domestic terror attack on American soil that was foiled only because of the extraordinary efforts of the New York JTTF. As set forth above, Saleh obtained instructions from Junaid Hussain for constructing a pressure cooker bomb, like that used in the Boston Marathon terrorist attack in 2013; told a confidential source that he wanted to conduct an "Op" in New York; searched online for potential components of an explosive device or tools for the construction of an explosive device; obtained a black digital wrist watch—which may serve as a timer for a destructive device—at a store in Queens; conducted Internet searches for various types of weapons such as guns and knives; researched various notable New York City landmarks; and researched whether Islam permitted the killing of innocent people.

Saleh then had multiple meetings with coconspirators, including Mumuni, in which they discussed conducting an attack on American soil, such as attacking the White House. As noted above, Saleh's phone contained images of potential destruction and terror, including an image of a headless Statue of Liberty holding the ISIS flag with New York City burning in the background and the words "COMING SOON" as well as images relating to and instructions for making a pressure cooker bomb, a nail bomb, and a Molotov cocktail,

and instructions on how to use a cell phone as a trigger device. While Saleh had a right to possess violent images, this Court similarly has a right and an obligation to consider them, in the context of Saleh's history and characteristics, in imposing an appropriate sentence. See 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.").

Saleh later told Junaid Hussain that he was waiting to determine whether the coconspirators were able to travel to Syria to join ISIS, because if they were unable to travel—for example, if they were on a no-fly list—then they would instead help Saleh and Mumuni conduct the terror attack on American soil. Saleh told Junaid Hussain that he was thinking of attacking the Statue of Liberty or Times Square, or if his coconspirators were able to participate in the attack, conducting coordinated attacks across New York City.

Likewise, Mumuni admitted in his post-arrest statement that he had discussed with Saleh committing a domestic terrorist attack. Mumuni stated that Saleh told Mumuni that he knew how to make a pressure cooker bomb and that Saleh would give the bomb to Mumuni to detonate.

The defendants' efforts to conduct this type of terror attack on American soil were thwarted by the constant law enforcement surveillance, which prevented them from carrying out the attack.

Third, both defendants are also responsible for extremely serious conduct in facilitating the travel of New Jersey coconspirator Nader Saadeh from the United States to Jordan, where he sought to reach Syria to wage jihad on behalf of ISIS, as well as the travel of other coconspirators to attempt to join ISIS. Indeed, as noted above, Saleh admitted in his post-arrest statement that Nader Saadeh would not have traveled to join ISIS but for Saleh's recruitment efforts. Accordingly, Saleh and Mumuni's actions demonstrate the intent to send personnel to join a foreign terrorist organization and to wage violent jihad on behalf of the foreign terrorist organization. Moreover, Saleh bears additional responsibility for recruiting numerous persons to support ISIS—by his own count in his post-arrest statement, Saleh recruited "way more than tens" of persons to support ISIS (Saleh Post-Arrest Tr. at 457)—including the New Jersey coconspirators, Rabbani, and Mumuni. Saleh's communications with Junaid Hussain and other ISIS attack facilitators show that he sought to send these radicalized individuals either to wage violent jihad in Syria or to conduct terrorist attacks on U.S. soil.

All of this conduct is extremely serious on its own, and collectively, warrants a maximum sentence because of the seriousness of the conduct and also to incapacitate the defendants—and others who might consider engaging in similar acts—from ever carrying out terrorist acts in the future.

C. Significant Sentences Are Warranted for General and Specific Deterrence

The sentences in this case should be sufficiently serious to deter the defendants from committing future crimes, as well as deter others contemplating similar criminal conduct from joining a foreign terrorist organization to wage violent jihad or from conducting attacks in the United States on behalf of or at the direction of a foreign terrorist organization.

Indeed, the need for deterrence is especially important in the context of a terrorism offense. Terrorism is a crime with high recidivism rates and rehabilitation is notoriously difficult. See, e.g., United States v. Meskini, 319 F.3d 88, 91-92 (2d Cir. 2003) (noting the link between "the difficulty of deterring and rehabilitating" terrorists and the conclusion that "terrorists and their supporters should be incapacitated for a longer period of time"). As Second Circuit Judge John M. Walker has stated, "[i]n no area can the need for adequate deterrence be greater than in terrorism cases, with their potential for devastating loss of innocent life." United States v. Stewart, 590 F.3d 93, 181 (2d Cir. 2009) (Walker, J., concurring). In this case, there is a strong demand for both individual and general deterrence.

With respect to individual deterrence, each defendant has demonstrated a deeply vested commitment to violent jihad. Saleh, as noted, recruited numerous individuals to support terrorism, including by traveling to fight on behalf of a foreign terrorist organization and by conducting a domestic attack on law enforcement in the United States. Saleh also appeared to minimize his own conduct charging at a law enforcement officer, when he characterized as merely trying to scare off law enforcement from continuing to surveil him. Moreover, the end result of that supposed "scaring off" was so that Saleh could work unimpeded to further the cause of jihad. Likewise, Mumuni expressed his willingness to die in an attack in the United States, and at his plea allocution characterized his support of ISIS as defending Islam. (Mumuni Plea Tr. at 25, 26). In light of these facts, the Court must also give serious consideration to the need to protect the public from further crimes of the defendants (§ 3553(a)(2)(C)). The government respectfully submits that this factor, when considered together with the seriousness of the defendants' conduct, warrants imposition of statutory maximum sentences of 53 and 85 years respectively.

The Guidelines themselves show that the imposition of statutory maximum sentences (which are also the effective Guidelines sentences) in this case would be appropriate for deterrence purposes, by enhancing the defendants' criminal history category by 12 levels for a crime of terrorism and by placing the defendants in Criminal History Category VI. As the Second Circuit has explained, "Congress and the Sentencing Commission had a rational basis for concluding 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." Meskini, 319 F.3d at 92. The Court continued, "even terrorists with no prior criminal behavior are unique among criminals in the likelihood of recidivism, the difficulty of rehabilitation, and the need for incapacitation." Id.

Equally important in this case is general deterrence. Simply put, the sentence imposed should send a message to all would-be terrorists that if they seek to provide material support to a foreign terrorist organization, maintain contacts with high-ranking members of such organizations, and conduct potentially lethal attacks on law enforcement in the United States, or any other type of domestic attack on behalf of a foreign terrorist organization, they will be caught, prosecuted, and then imprisoned for significant periods.

D. <u>Sentencing Proportionality Weighs in Favor of Significant Sentences</u>

In this case, statutory maximum sentences would be proportionate with sentences imposed for other directed actors in the United States. For example, the following relatively recent terrorism cases in this district involving plots to attack U.S. nationals or public infrastructure resulted in life sentences:

- United States v. Adis Medunjanin, 10 Cr. 19 (JG) (E.D.N.Y. 2012)
 (defendant sentenced to life imprisonment after traveling overseas and receiving training and direction from al-Qaeda and conspiring to detonate bombs on New York City subways); and
- <u>United States v. Russell Defreitas</u>, <u>Abdul Kadir and Kareem Ibrahim</u>, 07 Cr. 543 (DLI) (E.D.N.Y. 2011) (all three defendants sentenced to life imprisonment for their roles in a plot to destroy infrastructure at John F. Kennedy International Airport).

Notably, the bombings of the New York City subway and JFK Airport were unconsummated. Unlike these other sentenced terrorists, however, the defendants in this case carried out actual attacks.

Additionally, in the following cases, courts imposed life sentences on terrorists convicted of crimes similar to the crimes of conviction in this case:

- <u>United States v. Mustafa Kamel Musta</u> ("Abu Hamza"), 04 Cr. 356 (KBF) (S.D.N.Y. 2015) (defendant who worked as al-Qaeda cleric and recruiter who facilitated hostage-taking in Yemen, sentenced to life imprisonment);
- <u>United States v. Sulaiman Abu Ghayth</u>, 98 Cr. 1023 (LAK) (S.D.N.Y. 2014) (al-Qaeda spokesperson sentenced to life for conspiring to kill Americans and conspiring to provide material support to terrorists);
- <u>United States v. Faisal Shahzad</u>, 10 Cr. 541 (MGC) (S.D.N.Y. 2010) (defendant sentenced to life imprisonment for failed attempt to bomb Times Square, New York);

- <u>United States v. Mohammed Mansour Jabarah</u>, 02 Cr. 1560 (BSJ)
 (S.D.N.Y. 2008) (defendant sentenced to life imprisonment upon a guilty plea to conspiring to bomb U.S. Embassies in Singapore and the Philippines); and
- <u>United States v. Richard Reid</u>, 02 Cr. 10013 (WGY) (D. Mass. 2003) (defendant sentenced to three life terms upon a guilty plea to attempting to destroy with explosives an in-flight commercial aircraft).

The Court should also consider the related cases of defendants who sought to conduct attacks during the summer of 2015 while similarly acting at the direction of Junaid Hussain. In the Western District of North Carolina, defendant Justin Sullivan agreed with Junaid Hussain to conduct attacks on behalf of ISIS. Sullivan agreed to buy an AR-15 rifle at a gun show and to shoot to death as many people as possible at a club or concert in North Carolina. After a silencer Sullivan ordered was delivered to his house and opened by his parents, Sullivan asked an undercover FBI agent to kill Sullivan's parents. When agents subsequently searched Sullivan's house, they discovered a .22 Marlin rifle loaded with 14 rounds and a travel bag containing a black ski mask and lock picking tools. Sullivan was sentenced to life imprisonment.

In the District of Massachusetts, defendants David Wright and Nicholas Rovinski conspired to conduct attacks on law enforcement. Coconspirator Usaamah Rahim communicated with Junaid Hussain about conducting a domestic attack. Following the example of the attacks in Garland, Texas, Wright identified Pamela Geller—the organizer of the Prophet Muhammad contest in Garland, Texas—as a beheading target. Wright, Rovsinki, and Rahim researched knives, saws, cutting tools, and weapons on the Internet. In May 2015, Junaid Hussain communicated instructions to Rahim concerning the murder of Geller, to occur on July 4, 2015. However, Rahim decided that he could not wait until July 4 and, during a call on June 2, 2015, told Wright that he wanted to "go after" the "boys in blue" (referring to police officers). Wright encouraged Rahim's plan to attack police and die as a martyr. Less than two hours later, Rahim was killed after lunging towards police officers and FBI agents with a large fighting knife and refusing to drop his weapon. Wright and Rovisnki were arrested soon thereafter. Rovinski pleaded guilty and cooperated with the government. After testifying at Wright's trial, which resulted in a conviction, Rovinski was sentenced to 15 years' incarceration. While the government sought life imprisonment, Wright was sentenced to 28 years' incarceration. 13

At his sentencing hearing, Wright claimed that he never meant any harm and that he had pretended to support ISIS to gain attention; at the time of his arrest, Wright weighed more than 500 pounds. <u>See http://www.pantagraph.com/news/national/manconvicted-of-plotting-to-behead-blogger-to-be-sentenced/article_96f414fb-107c-53d7-a2cb-f6d4e90f81bf.html (last visited January 6, 2018).</u>

In this case, the defendants not only helped others travel and attempt to travel to join ISIS, but also participated in coordinated but separate attacks on law enforcement. Taking these actions at the direction of ISIS attack facilitators, the defendants came extremely close to severely injuring or killing one or more FBI agents. As the sentences in the other Junaid Hussain-directed cases illustrate, in particular the Justin Sullivan matter, other federal judges have found it appropriate and necessary to impose life sentences in order to reflect the seriousness of the criminal conduct and the threat to public safety.

Few cases better illustrate the importance of providing just punishment, protecting the public, and ensuring specific and general deterrence than this one. A group of homegrown violent extremists who supported ISIS were in communication with ISIS attack facilitators and recruiters in Syria. One member of the conspiracy was apprehended in Jordan as he tried to travel to Syria to join ISIS. Other members of the group, including the two defendants in this case, were planning to kill Americans and obtained deadly weapons to carry out their attack. Both defendants participated in separate but coordinated attacks on law enforcement. But for the actions of the New York Joint Terrorism Task Force, innocent lives would likely have been lost in June 2015. The sentence imposed by the Court should send a clear and unequivocal message: if you plot to kill Americans and provide material support to ISIS, you will receive the maximum sentence available under the law.

IV. Conclusion

For all these reasons, the government respectfully requests that the Court sentence the defendants to statutory maximum sentences (53 years for Saleh and 85 years for Mumuni) in order to provide just punishment, protect the public, promote respect for the law, and provide adequate deterrence to others contemplating similar acts.

Respectfully submitted,

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cc: Clerk of the Court (MKB) (by ECF)
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Anthony Ricco, Esq., counsel for defendant Mumuni (by ECF)

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

MUNTHER OMAR SALEH,

also know as

"Abu Omar al Ramli" and

"Abu Omar ar-Ramli" and

FAREED MUMUNI,

Defendants.

The state of the s

DECLARATION

No. 15-CR-393 (MKB)

DECLARATION OF HARLEY ELMORE

My name is Harley Elmore, I own and operate a martial arts academy, Warriors Way Martial Arts, in Wichita Falls, Texas and am a contractor for the Department of Defense as the Director of Training for Sayoc Tactical Group (STG). Over the last several years I designed and developed an "Integrated Combatives Program" for the Oklahoma Council on Law Enforcement Education and Training ("CLEET") that is used to train peace officers certified in the State of Oklahoma. In 2016, we certified the first group of STG – LEO Instructors who now teach this program at their perspective departments across the state. As part of developing the Integrated Combatives Program, the "CLEET" academy adopted a policy on the use of lethal force that recognizes edged weapons as an alternative to firearms as an acceptable means of lethal force.

Over the last decade I have worked closely with the Wichita Falls SWAT team to help provide training in Officer survival to include edged weapons defense, empty hand control methods as well as pistol and rifle skills.

I have held the position of Director of Training in STG since 2010 until present. Before that I held the position of lead Instructor from approximately 2003 until 2010. STG is an organization that focuses

primarily on their research and development of methodologies and tactics for the use of force in extreme close quarters. STG primarily trains U.S. military special operators in tactics and techniques for resolving close quarters combat. As part of STG I have trained U.S. Army Special Forces groups, U.S. Navy SEALs and other U.S. Department of Defense Special Command elements on, among other things, the use of and defense against edged weapons. During this training I have portrayed hostile actors armed with edged weapons in hard contact roleplay scenarios that include defending against armed assault entry teams.

I served as a full-time contractor for Special Operations Command where I was attached to a training pipeline for U.S. Army Special Forces. I worked with STG to create a course on "Logical Order of Thought" or "LOT" which is a system for making decisions to engage in physical conflict based on logical considerations instead of fear, anger or other emotional responses, including the consideration of second and third order of effects. During this pipeline, I trained operators in the use of edged weapons, empty hand skills, building improvised weapons, threat recognition, the critical elements of Force, Time and Space, the Reactionary Gap, the OODA loop and Signature Reduction as it pertains to violence. I also built scenarios in which operators where placed in ordinary urban environments and faced with the threat of impending violence, to create the opportunity for the logical and judicious use of violence.

With my wife, I have owned and operated a martial arts academy called Warrior's Way since 1999. Our 11,000-ft. facility currently runs about 450 active students and has over the years trained thousands of children, teens and adults. We have roughly a dozen affiliate schools across the country in Texas, Oklahoma, Arkansas, Louisiana, Tennessee, Alabama, New York, Connecticut and Arizona. I currently travel around the U.S. and the U.K. teaching martial arts seminar to civilian martial artists.

I am also a custom knife maker and knife designer and create and sell knives to various U.S. Department of Defense elements. My knives have also been featured in the television show "NCIS: LA" and the show "Chance" on Hulu. I also worked on NCIS: LA as a consultant for improvised weapons, choreographed a fight scene and trained actresses in the use of an improvised weapon.

My martial arts education and training includes being certified in the Filipino martial arts, Maphilindo Silat and Jeet Kune Do by Bruce Lee's protégé, Dan Inosanto. There are approximately 20 people in the world who have achieved the Full Instructor level, a Master Level, and are certified in all three arts. Master ranks signify that the holder of the title can teach any element of the martial art system and guide the system into the future. They also have authority to change any elements of the system to adapt to the needs of the individual and changes in culture or technology.

Sayoc Kali, the parent organization to STG, is a blade oriented system originating from the Philippines. I am a Tuhon, the highest rank of proficiency you can achieve. There are approximately 8 people in the world who have earned the title of Tuhon in this system. I was personally trained by the founder and head of the system, the late Chris Sayoc Sr. This system concentrates on the use of edged weapons as the primary method of installing skill sets. Its curriculum includes blade designs and fabrication, improvising edged weapons, the physiological effects on various targets within the human body, building maps or "vital templates" of the human body. The study of Reactive, Reflexive, Conditioned and Correct responses to edged weapon attacks. Understanding Force, Space and Time in relationship to violence and the OODA loop. The Logical Order of Thought as it pertains to the use of force and second and third order of effects of violence.

I have also achieved Black Belts (Instructor ranking) in many other martial arts systems from around the world and am capable of teaching and training students in those systems as well.

1. The information contained in this declaration is based on my own personal knowledge and experience from specializing in the application and defensive aspects of edged weapons as well as information gained in my training and teaching United States Military Special Forces personnel and members of United States Law Enforcement. The information below is provided to establish the lethality of edged weapons, The Mechanisms of Violence and how they pertain to this case, The OODA loop and how it effects everyone in the situation, understanding the Rules of Engagement (ROE) for Law Enforcement, and The Tueller Drill and the fallacy of "bringing a knife to a gunfight".

2. Use of Force Concepts: To address many of the variables I believe to be in play during these encounters, it is first necessary to discuss and define what some of those factors are.

Mechanisms of Violence – In a violent encounter, there are only three mechanisms of applying violence: force, space and time. If you have all three elements in your favor you're sure to win. If only two, odds are still in your favor. But if you only have one, it's very unlikely that you will win the altercation.

<u>Force</u> – this is the ability to injure the opponent. It ranges from simple physical and verbal intimidation (the threat of Force) to the actual injuring or killing the opponent.

<u>Space</u> – Controlling Space is another critical mechanism. You simply cannot apply Force unless you are close enough to do so. This ranges from rolling around on the ground fighting to longer ranges where firearms would be employed.

<u>Time</u> – This factors in because you must have enough time to deploy the force or to bridge the space between you. If the opponent is too close he may be able to stop you from drawing a weapon or even from getting away. Controlling time is one of the things that limits the opponent's capabilities.

How forces of violence work in concert – Each of these elements is an important aspect of violence. One would need force otherwise they could be standing in front of the assailant and have all the time in the world yet he wouldn't be able to apply enough Force to stop an assailant. If he has force, even superior Force, yet has not time, he fails. An ambush is a perfect example of this. The person being ambushed has no time to apply his force, instead he is being acted upon. If you have force and time, yet the opponent is outside the effective range of your force, then it is useless. People within castles in ancient days often faced superior force and time, yet they controlled space with effective use of fortifications. All techniques, tactics and procedures should be geared towards controlling these mechanisms and denying the opponent access to them.

Speed, surprise and violence of action - Is a tactic used to gain an advantage when engaging an opponent. It represents the physical manifestation of force, space and time. All things being equal, whoever has speed, surprise and violence of action, wins. It's how people win the fight.

Speed - If you move quickly you will control time and space.

Surprise – If you catch the opponent off guard they will be unable to respond or resist.

<u>Violence of Action</u> – To have this you must have an overwhelming potential for force so that the opponent realizes that resistance is useless or if they do resist, they can be easily overcome by that superior level of force.

Force Multipliers – in essence, tools increase the amount of force we can apply to a task. A lever allows us to lift more than we could empty handed. Weapons are also a form of force multiplier. For instance, with a firearm a small, weak and scared individual may overcome a much larger, stronger and more trained individual. To do so empty handed would be almost impossible. But weapons multiply the amount of force we are able to deliver to another human. A blade gives even the small, weak or untrained the ability to maim or kill another human being with a touch. The same knife used in kitchens to cut up meat will also carve muscle, nerves and arteries of another human with no more effort than carving a Thanksgiving turkey.

<u>Wound Channel</u> – Refers to the physical path of destruction a weapon creates when it enters and travels through the human body. A blade cuts and tears its way into the human body, damaging tissue in organs, arteries, nerves, etc. Any twisting, turning or pumping of the blade while inside the body dramatically increases the wound channel, thus increasing the internal damage and likely hood of greater injury or death.

<u>Target Fixation</u> – During a violent attack it is common for a person to become target fixated, meaning to pick one target and repeatedly, even if unsuccessful, to strike, stab or shoot it. In empty hand striking, It's common for someone who's angry to repeatedly strike or attempt to strike someone in the face, even if a

kick to the groin would be just as effective and easier to accomplish. Both targets are valid, both would injure the opponent but the attacker has become fixated on one particular target and will not even attempt to search for another target. The same thing happens with blades, which is why it is common to see someone receive multiple stab wounds all in the same area of the body.

3. The OODA Loop — When a law enforcement officer is faced with engaging a potential threat there are many variables at play during the encounter. How and when an officer chooses to use force is a complex thought process that happens in a very short interval of time. The OODA Loop describes the process a person goes through during their reaction time, which is the interval between the presentation of a stimulus and the initiation of muscular response to that stimulus. The phrase OODA loop refers to the decision cycle of *Observe*, *Orient*, *Decide*, *and Act*, developed by military strategist and United States Air Force Colonel John Boyd. Boyd applied the concept to the combat operations process in order to quickly adjust to the ever-changing environment. Due to the fact that decision making is a recurring cycle of observe-orient-decide-act, any individual that can process this cycle more quickly, observing and reacting to unfolding events more rapidly than an opponent will have an advantage and more than likely win in an altercation. As Boyd states, "In order to win, we should operate at a faster tempo or rhythm than our adversaries—or, better yet, get inside [the] adversary's Observation-Orientation-Decision-Action time cycle or loop and gain an advantage." The OODA loop applies to law enforcement, criminals, and even bystanders. To understand how the OODA Loop effects each one we must define what happens during the four phases.

<u>Phase One - Observation</u> – This is the process of gathering information. This process can be interrupted by becoming distracted, exhausted or being overwhelmed by the amount of information coming in.

<u>Phase Two - Orientation</u>- The Second O, orientation is drastically effected by our cultural upbringing, by our personal experiences, our societal standards and norms and any training we have undergone. These are our personal filters and bias. They all help determine how we interpret the

information we observed and subsequently what kind of decision and action we will take. Also, if the stimulus we have observed is foreign to us, we will lack the experience to formulate good decisions. During this phase of the loop people are also vulnerable to the process of Cognitive Dissonance, where there is a contradiction between a person's beliefs and an action taken and realized by him. When their mental image of what is happening and what is actually happening do not match, creating confusion, mental stress and "freezing". Often later expressed as "I just couldn't believe it!"

<u>Phase Three - Decision</u> — This process is the filtering of all the possible options that can one has at his disposal. This is affected by Rules of Engagement, one's moral standing regarding the decision and the second and third order of effects of this decision such as will he be fired, ridiculed, imprisoned, how will others think of him, etc.

<u>Phase Four - Action</u> – This is the physical motion carrying out the Decision. This is effected by terrain, athleticism, training, skill, etc. This where the physical skill sets of training pay off.

At the beginning of an engagement with a potential suspect a law enforcement officer has an incredibly large amount of information they must filter through their OODA Loop to make logical decisions. Their "observe phase" must filter through questions like: "Is that the suspect? Are they armed? What type of weapon? What are my options? Do I need cover or space? Do I need to physically engage? Shoot? Call for backup?" This is all happening while listening to communication on his radio and feeling the tactile cues of his teammates making entry. These questions are the beginning of the whole process and happen in a very short amount of time. Once he starts getting answers to these questions the orientation phase quickly begins which will lead to decisions and the subsequent actions. Much of what he does in a situation is based on the Rules of Engagement (ROE.) These are the directives issued that specify the circumstances and limitations under which force can be applied. He will rely on what his departmental policies say to do in this type of situation. He will also refer to what his training says to do and what his Sergeant would say to do. The ROE are different depending on the answers to the questions above. If they do not see a weapon, their ROE will change. In general, once a suspect is believed to be unarmed

and compliant, a transition occurs and weapons are lowered or holstered to allow for placing the suspect under arrest by physical means. However, if the officer has reason to believe the suspect has a weapon their ROE will change and that in turn make their OODA Loop process very different and his orientation, decision and action towards the situation could involve the use of force.

4. Disrupting the OODA Loop process - Both the officer and suspect are going through the OODA Loop process. Both are trying to gain an advantage in the situation. If one of them can find the opportunity to use any or all of the mechanisms of violence to disrupt the others OODA Loop process they will have that advantage. Law enforcement officers use many tactics to affect the speed of the OODA Loop on suspects. These tactics are often employed around the country and have proven to be very effective. Officers often utilize surprise to serve an expected warrant to catch suspects off guard. If they can disrupt the suspects OODA Loop process the suspect will not have time to complete their loop and or begin the action phase, which greatly reduces the chances of the officer being injured. They will also use the deployment of overwhelming speed of violence before suspect can complete his OODA loop. For example, the use of Flash bangs or other reactionary devices to distract, disorient and momentarily stun the assailant into inaction. Officers also use night time or early morning entries into suspect's homes, catching them asleep or exhausted and unprepared. Or the use of a "no knock" entry where law enforcement can serve warrants without having to "knock and announce." These tactics are used to create cognitive dissonance in the suspect by creating a situation where there is a contradiction between what the suspect thought was happening and what is actually happening. When these tactics are employed they are so overwhelming that the suspect is "frozen" and so caught off guard that by the time they realize what is occurring, they conclude that the only effective action is surrender. If the suspect doesn't make the rational decision of surrender, law enforcement had the advantage of time and space and is already in a superior position so that the suspect poses a limited threat. This process is often referred to as "Speed, Surprise and Violence of Action". It is the physical management of Force, Space and Time. Criminals also use similar tactics on officers. When a suspect uses concealment of a weapon it will affect the

officer's OODA Loop process also resulting in cognitive dissonance. When the officer does not see a weapon, their ROE changes. They are expecting to now transition from lethal force to placing the suspect under arrest. Cognitive dissonance happens when the concealed weapon becomes apparent and there is the contradiction between what the officer thought was happening and what was actually happening. When this happens it is often too late for the officer to transition back to lethal force. This gives the suspect the advantage of time. The only way the officer will win the altercation is if he has the physical space and or a form of force (training, strength or protective gear) available to him. Many criminals use this tactic as well, by throwing down one weapon so that an officer will drop his guard and shift his expectations and his ROE, then the suspect draws a second weapon to take advantage of the officer.

5. Advantages and Disadvantages of Edged Weapons - There are many reasons why the knife is still a viable and useful weapon after many centuries of weapons advancement. It's easy to obtain. It's easy to conceal. It's easy to carry multiple weapons. It's easy to use by the inexperienced, unskilled or even with limited athletic ability. They are extremely common place, in every kitchen, every workplace, every garage, etc. They do not malfunction, need no for reloading. They are hard to stop and gain control of once an attack begins. They are extremely fast and non-telegraphic because they require no power, so no "wind up". It's very difficult to see due to thinness of the blade and the hand postures are the same as empty hand strikes, so people often believe they are being punched when in actuality they are being stabbed.

Edged weapons are deadly and can easily be used to kill or injure even the most athletic opponents. They are an excellent force multiplier. To understand why, we must examine what exactly a knife does to the human body. Effective targeting in the human body breaks down into two primary categories. They are timers and switches. Even people who don't know exactly what they are aiming for still hit these targets very effectively.

<u>Timers</u> are targets within the circulatory and respiratory systems and once one is cut or punctured, the terminal process begins. If a "timer" is hit and not medically managed, the victim will eventually go into shock and die because when arteries are cut they begin the process of exsanguination, whereby shock ensues due to blood loss. The time frame of this is determined by the exact target hit, what that target supplies blood to within the body and the number of targets that have been damaged. One severed femoral artery is terrible, two is much worse.

Switches are nerves and connective tissue such as tendons. Severed nerves no longer send the signal for an arm or leg to work. Severed tendons are no longer capable of mechanically moving the affected body part. These targets break the body down mechanically and render it less capable or inoperable.

As an assailant stabs and slashes another human, they are inadvertently hitting these systems. Generally, in an attack both timers and switches are likely to occur. Some of the things that make targeting these systems more effective are to use a knife that is capable of reaching those targets more easily. So, a longer blade would more easily reach into deep arteries and organs like the heart and lungs. A larger blade is also generally wider, creating a much larger wound channel. This larger wound channel, combined with the increased penetration due to the longer blade, greatly increase the odds of successfully hitting one or more vital targets. However, even smaller blades are capable of hitting such incredibly effective timers like the femoral arteries, the carotid arteries, the subclavian artery, and the esophagus. Along with switches like the femoral nerve or the bicep tendon. All of which are easily accessible with the average pocket knife.

6. Edged weapons vs. Firearms - One of the oldest most popular standards for law enforcement when facing an assailant armed with an edged weapon is the Tueller Drill, often referred to as the 21-foot rule. The 21-foot rule was developed by Lt. John Tueller, a firearms instructor with the Salt Lake City

Police Department. This drill explains that an Officer with a holstered pistol must be at least 21 feet away from an assailant who charges him with an edged weapon in order to draw and fire effective shots into the charging assailant. Over the development of this drill it was found that the average assailant could cover the 21 feet within 1-1.5 seconds. Officers within the 21-foot distance are stabbed by the assailant and lack the time to complete their own weapons draw. Although this drill doesn't consider variables like terrain, it is a baseline for considering the speed in which an edged weapon can be employed, even at what appear to be considerable distances.

Each weapons platform such as rifles, pistols, knives, grenades, missiles, etc. all have a specific range in which they are best employed. For instance, when fighting within a vehicle, knives are preferable to grenades. At the extremely close range, where punching and grabbing are likely to occur, a knife is often the best weapon of choice. With rifles, only the very tip of the weapon is dangerous, the rest is a giant lever that can be grabbed, shoved into the person holding, pulled or pushed so that the muzzle is offline (no longer on the target), or even smashed between two people in a struggle. Whereas a knife in close range, is fast, difficult to see, even more difficult to control and if grabbed, cuts into the hand and severs the tendons necessary to maintain a grip.

Event 1: Fareed Mumuni

I have been asked to assume certain facts to be true.

Assailant Characteristics

Male 5'10" tall 260 pounds

21 years old

Weapon

Kitchen knife, as depicted in photographs bearing Bates numbers FM0000139-142, attached.

Environment

couch against far wall, accessible by front door of residence through short alcove, and by

Furnished living room of single family home, well lit by artificial and natural lighting, to include

stairwell from second floor of residence at opposite end of the room from alcove. No substantial

obstructions in center of room, distance across room less than 20 feet.

Victim Characteristics

Male

iviait

220 pounds

39 years old

FBI SWAT Special Agent armed with M4 rifle on one-point adjustable sling, wearing visible, tactical

body armor with "FBI" patches and carrying handgun in a strong-side holster. Victim was one of several

law enforcement officers present for the execution of a search warrant.

Additional Potentially Relevant Facts - Assailant stored Weapon under his pillow in his bed, and retrieved

Weapon from that location before descending stairs to confront Victim. Victim had been permitted entry

to residence after knocking and announcing presence outside the residence. Assailant's family members

were generally compliant with Victim prior to attack. Assailant approached Victim in living room after

descending stairs and moving across living room. Attack initiated by Assailant at less than 20 feet after

briefly feigning compliance with verbal command to sit on the couch.

Assailant also kept second knife, similar to Weapon, concealed in automobile.

My Expert Opinion

I think the best way to analyze the scenario is to compare and contrast the of advantages and

disadvantages of the Agent / SWAT team and Mumuni. At first glance, it might seem like a police officer

with a rifle and bullet proof vest might have all the advantages. But let's examine the event based on the use of force concepts we have outline above.

To compare the Agent Advantages / Disadvantages

- 1. The Agent and the SWAT team gave up the advantages of Force, Space and Time by knocking and announcing they were there. This is when Mumuni was first alerted of their presence, starting his OODA loop.
- 2. The Agent and SWAT team were then held outside the door dealing with and removing the family from the front room and doorway, which caused a bottleneck and prevented rapid entry into the residence.

 Allowing Mumuni time to decide on a course of action and to arm himself with the knife he kept under his pillow, please refer to image FM0000142. Based on the fact that Mumuni came down stairs, armed with a concealed weapon, and the selection of that weapon was long enough to have maximum deadly effect, he had already completed his OODA loop and was in the Action phase of the loop.
- The Agent finally makes entry into the home and observes Mumuni coming down the stairs, apparently compliant and unarmed. The Agent is still in the Observe phase of the loop.
- 4. When Mumuni appears to be unarmed and compliant the Agent recognizes no weapon present and lowers his weapon and decides to affect an empty-handed arrest. The Agent is now in the Orient and Decide phase of the loop.
- 5. Mumuni rushes the Agent, surprising him and tackling him to the ground, bridging the distance faster than the Agent's OODA loop can process, in essence, faster than he can recognize the weapon, FM0000139-142, the change in threat and transition back to a lethal force option. Mumuni is repeating his action phase, repeatedly stabbing the Agent. the Agent is back in the Observe phase of the loop. He is trying to process this change in events. He may also be experiencing cognitive dissonance at this time, where what is happening isn't what he expected to happen, causing him to lose time. And, based on the Tueller drill and the relatively close distance to the agent, drawing a weapon during that time and distance is highly improbable.

- 6. At grappling range on the ground, the Agent's rifle is no longer a viable option. However, Mumuni is able to drive his blade into the Agent three times before the Agent, with the help of the SWAT team, can gain control of the weapon arm and begin to limit the amount of damage it can inflict.
- 7. The Agent's armor is designed to stop bullets, not blades. These types of armor will not stop thrusts or stabbing types of attacks. Luckily for the Agent, his magazine carrier that carries spare ammunition, stopped the stabbing attacks, please refer to image FM0000164. Mumuni stabbed the carrier so hard that he broke the tip of his knife off which means he was using enough force to do potentially lethal damage to the Agent.
- 8. I believe is was target fixation and lack of training that caused Mumuni to repeatedly stab into the ammunition carrier and that given enough time he would have changed targets and began to actually stab more vital targets on the Agent, severely injuring or killing him.
- 9. I believe that due to the delayed entry, Agents gave away any tactical advantage they had. At the same time the concealment, speed, surprise, proximity and lethality of the knife attack gave Mumuni force, space and time advantages and made him an incredibly dangerous assailant.

Event 2: Munther Omar Saleh

I have been asked to consider certain facts to be true.

Assailant Characteristics (multiple)

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Assailant #1
Male
6'2" tall
200 pounds
20 years old
Weapon
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Folding knife 1 (black handle), as depicted in photographs bearing Bates numbers IR0004456 and IR0004457, attached.

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Assailant #2
Male
5'9" tall
150 pounds
17 years old
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Weapon

Folding knife 2 (Smith & Wesson), as depicted in photograph bearing Bates numbers IR0001960, attached.

Environment

Commercial city street in outer borough of major metropolitan area, early morning hours, limited artificial light, no natural light. Limited vehicular and pedestrian traffic.

Victim Characteristics

Male

5'11"

200 pounds

45 years old

Federal Task Force Officer, assigned to surveillance ("SO"), single occupant of automobile. Armed with handgun, wearing concealed body armor.

Additional Potentially Relevant Facts - The confrontation took place before dawn, after an all-night surveillance during which the assailants engaged in overt counter surveillance vehicular maneuvers, including driving at high rate of speed and tailgating an unmarked law enforcement surveillance vehicle. Shortly before 5:00am, Assailant #1 and Assailant #2 exited a Sport Utility Vehicle stopped at a red light, one on the rear driver's side and one on the passenger's side. The driver remained in the vehicle. Assailant #1 and Assailant #2 took a few steps towards the SO vehicle, which was about 20 feet away, briefly retreated and then got back into their SUV. They then again exited their SUV and briskly advanced towards the SO vehicle, one on either side of the SO vehicle. The SO quickly put his car in reverse and backed up rapidly as the two assailants sprinted towards the SO vehicle. As the SO vehicle backed up, the two assailants were intercepted by a responding FBI Special Agent who was driving an unmarked vehicle (with law enforcement lights flashing) and wearing visible tactical body armor. The

assailants were within approximately five feet of the SO vehicle before they were ordered to the ground at gunpoint by the responding agent. Both assailants were compliant after being ordered to the ground.

Folding knives were recovered from each assailant. Folding knives (as depicted in attached photos) were not immediately visible to the SO or responding agent, but were recovered from the assailants from concealed locations on their persons incident to arrest.

My Expert Opinion

I think the best way to analyze the scenario is to compare and contrast the of advantages and disadvantages of the Agent and Saleh.

- 1. The Agent is in a car, providing seemingly relative safety and a fast escape. But it is less maneuverable than people on foot, especially on a bridge. Being in the car means the Agent is confined which begins to limit the Agent's options. Should the Agent be caught inside the car, bound by limited space, a seatbelt, etc. he would be at a severe disadvantage. Once the car is immobile, the Agent has given up Space.
- 2. The Defendants have the huge advantage of numbers. Here the Agent is facing the possibility of much greater Force. This also doubles the amount of information, the Agent must Observe and Orient. At this time the Defendants are in the Action phase of the OODA loop, three beats ahead of the Agent. They developed a plan and tested it with the previous stops and exits tactic. They then decided to stop their car and take away the elements of time and space by deciding to stop on a bridge.
- 3. The Agent must Observe and Orient to key elements, do they have weapons? What is their intent? And do they have a delivery method of that intent?
- 4. Defendants charging at Agent indicate their intent. However, without observing a weapon and owning enough time complete his OODA loop, he may have been caught inside the car. Believing there is no lethal force attempt the Agent would have been constrained by his Rules of Engagement and would not have attempted to exit the vehicle, draw a weapon or run them over.

- 5. One Defendant had a Smith & Wesson knife, IR0001960. This knife is equipped with a blade that folds, making it incredibly easy to conceal yet still long enough to reach a wide variety of timers and switches within the human body. The blade had a spear point, designed to be used in thrusting type movements and a partially serrated blade which is more effective when cutting through materials such as clothing. This knife is designed to be opened with one hand, making an attack faster and less telegraphic in nature. A draw and opening from a pocket could easily be missed by an Agent. The knife also contained a built-in window breaker. This would have allowed the defendants to gain access to the car immediately. The other defendant also was armed with a folding knife, IR0004456 and IR0004457, which also possessed many of the same qualities as the other folder. Easily concealed, designed to be opened with one hand and a partially serrated blade.
- 6. If the window had been broken, the Agent would be confined in a tiny space, working through the OODA loop based on the window stimulus. At this point he would have given away force, space and time.
 Some of his most vulnerable timers and switches, those in the neck and upper thoracic region would have been extremely easy to access from the car window. This position would have provided the Agent with little or no possible method of defense.
- 7. It is my opinion that the defendants suspected something like this could occur and obtained knives that could be easily carried, easily concealed, easily deployed and deadly in its application. I believe that the second FBI agent not been present and realized the attack was occurring the SO in the car would have been outnumbered and extremely vulnerable to a deadly attack.

Pursuant to 28 U.S.C § 1746, I declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Dated: December 20th, 2017

Wichita Falls, Texas

HARLEY ELMORE

Subscribed and sworn to before me this day, the

January 2018 of December, 2017:

Name:

NOTARY PUBLIC STATE OF TEXAS

BONITA C PATTERSON
Notary Public, State of Texas
Notary J.D. # 186960-5
My Commission Expires 05-01-2018





















