

conduct.

In his memorandum, Solano asserts that because he does not have any prior criminal history, the guidelines, as a result of the application of the terrorism enhancement, overstate his true criminal history. In support of this argument, he cites the case of *United States v. Thavaraja*, 740 F. 3d 253 (2nd Cir. 2014). In *Thavaraja*, the court affirmed a sentence of 108 months' by determining that it was not substantively unreasonable. Importantly, this conviction for material support was at a time when the statutory maximum sentence was 15 years (180 months), unlike the current 20-year (240 months) statutory maximum. Thus, the court departed from 180 months to 108, not from 240 months.¹

Further, this case can be distinguished from Solano in that the sentencing court focused on unique facts, including that the defendant's conduct was motivated to assist a minority population involved in an ongoing civil war in Sri Lanka; and, that the defendant had never been to the United States until he was extradited to face these charges. *Id.* at 256-258.

Solano's attempt to detonate a bomb in a crowded mall in Miami is nothing like the facts in *Thavaraja*. Solano's criminal conduct was not in a civil war of a foreign country; he was living in the United States for over twenty years under a protected status due to the conditions of his native Honduras.

The second case cited by Solano is *United States v. Benkahla*, 501 F. Supp. 2d 748 (ED Va. 2007). In this case, the defendant was convicted of various counts including making false statements to a grand jury. Because the investigation involved terrorism, the sentencing court

¹ *Thavajara* was convicted of a second count which carried a statutory maximum of five years. The court could have made the sentences consecutive, thus, totaling 240 months.

sentence is reasonable and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 29, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/Karen E. Gilbert
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