UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
-v.-	:	
AHMED ABDEL SATTAR, et al.,	:	**S1 02 Cr. 395 (JGK)**
Defendants.	:	

———————————————————x

GOVERNMENT'S SENTENCING MEMORANDUM

(REDACTED)

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GOVERNMENT'S SENTENCING MEMORANDUM

Introduction

The Government respectfully submits this memorandum in connection with the sentencings of defendants Ahmed Abdel Sattar, Lynne Stewart, and Mohammed Yousry, which are currently scheduled for September 25, 2006. The conduct underlying the defendants' convictions for providing material support to terrorism, defrauding the United States, and conspiring to murder innocent civilians overseas warrants severe sentences within the ranges prescribed by the Sentencing Guidelines. For over two years, Sattar, Stewart, and Yousry were the hub of a communications network that enabled a convicted and imprisoned terrorist, Sheikh Omar Abdel Rahman, to perpetuate his position as the spiritual leader of his terrorist organization, the Islamic Group, despite his conviction for

seditious conspiracy to wage a war of urban terrorism against the United States based on a plan to blow up buildings and tunnels in New York City and despite the United States government's entirely appropriate efforts to cut Abdel Rahman off from the Islamic Group after that conviction. From their position at the hub of the communications network, the defendants received messages from leaders of the Islamic Group around the world, smuggled those messages to Abdel Rahman in prison, received Abdel Rahman's responses to those messages, relayed those responses back to the Islamic Group leaders, and, in the case of Abdel Rahman's withdrawal of support for the Islamic Group's cease-fire, even broadcast those responses to the news media for dissemination around the world. In other words, the defendants ensured that, even while incarcerated, Abdel Rahman would be able to continue providing spiritual leadership to the Islamic Group. In short, the defendants provided material support to a terrorist organization and to the commission of a terrorism crime.

It is important to recognize that the Islamic Group is not just some fledgling group that encourages peaceful political and social change. To the contrary, the Islamic Group is a powerful, well-established terrorist organization that advocates the violent overthrow — through random acts of horrific violence directed at innocent civilians, including tourists — of Egypt's secular government and the establishment, instead, of an Islamic state. To that end, the Islamic Group has orchestrated numerous acts of violence and terror, including the murder of 58 tourists visiting Luxor, Egypt in 1997. Moreover, the

Islamic Group's most militant leader, Rifa'i Taha aligned himself with Al Qaeda and Usama Bin Laden, joining forces in 2000 to threaten violence unless Abdel Rahman was released from prison.

The nature of the Islamic Group and all that it stands for was, of course, well known to the defendants. Indeed, although Stewart disavows being a terrorist and claims not to share the Islamic Group's views, the very reason that Stewart herself has given for engaging in the conduct underlying her criminal convictions — her desire, as Abdel Rahman's attorney, to keep him in the spotlight so that he could eventually be transferred to Egypt to serve his sentence there or even be released — necessarily depended on the Islamic Group's successful and violent overthrow of what Stewart herself saw as the corrupt government in Egypt. And that overthrow, as Stewart fully recognized, necessarily involved the death of innocent people — people at tourist sites, people in night clubs, people in stock markets, people who find themselves in the wrong place at the wrong time — to accomplish a perceived greater end. In Stewart's own words, that is what happens in an armed struggle: people die. In her view, it was only as a result of a violent uprising in Egypt that Abdel Rahman had any hope whatsoever of returning to Egypt as part of some trade.

In other words, and as demonstrated more fully below, the defendants' criminal conduct falls comfortably within the heartland of the terrorism-related activities that Congress has sought to punish severely and deter, and that conduct is therefore fully

deserving of sentences within the Guidelines ranges established by the Sentencing Commission.

The defendants nonetheless seek non-Guidelines sentences on a number of grounds, none of which withstand scrutiny. In particular, the defendants suggest that lesser sentences are warranted because their conduct was not really all that serious and no actual harm resulted from it. Of course, the fact that no apparent violence occurred as a result of Abdel Rahman's withdrawal of support for the cease-fire has nothing whatsoever to do with the severity of the defendants' criminal conduct. The fortuity that no violence occurred in the wake of Abdel Rahman's support for a return to violence provides no reason for punishing the defendants any less severely. Sending a "no harm, no foul" message certainly would not do much for deterring future terrorist behavior.

In a similar vein, the defendants attack the Government's motives for bringing this prosecution and suggest that the Government has overreacted to the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon. In particular, in classic "the best defense is a strong offense" fashion, Stewart and her supporters maintain that, before September 11, 2001, the Government would never have prosecuted an attorney for merely violating a Bureau of Prisons regulation. Yousry goes so far as to claim that he too is a "victim" of the attacks of September 11. If anything is "out of balance" about this prosecution, however, it is Stewart's and her supporters' failure to recognize and acknowledge the seriousness of the defendants' criminal conduct and the severity of the

potential consequences of providing material support to a terrorist organization. As Stewart was warned, violating the Special Administrative Measures by smuggling messages into and out of prison on behalf of a known terrorist could well have resulted in the loss of countless innocent lives. The Government obviously did not prosecute Stewart because she is a zealous advocate, but rather for blatantly and repeatedly violating the law. Stewart's refrain of, "I have gotten away with it before, so I will do it again, and again, and yet again," particularly when one is on notice that the stakes are high and getting higher, is certainly no excuse for these crimes. In the name of legal representation, Stewart repeatedly put herself above the law. She decided that her conduct was justified because it served a goal that she herself perceived was worth breaking the law for. Such behavior simply cannot be countenanced in a law-abiding society. Stewart's egregious, flagrant abuse of her profession, abuse that amounted to material support to a terrorist group, deserves to be severely punished.

Sattar's and Yousry's conduct is no less deserving of severe punishment, and their reasons for lesser sentences do not counsel otherwise. Sattar was a *de facto* member of the Islamic Group who aligned himself with Taha, the group's most militant leader. He assisted Taha in trying to bring about the violent upheaval of the Egyptian government and advocated the murder of Jewish people. Yousry, an expert on Abdel Rahman and the Islamic Group, was perhaps more knowledgeable than even his co-defendants on the violent history of the Islamic Group. He was also, in many ways, in the most powerful

position of the three defendants due to his access to and ability to communicate directly with Abdel Rahman. While proclaiming his opposition to everything Abdel Rahman and the Islamic Group stand for, he nevertheless chose to facilitate, and did facilitate, Stewart's and Sattar's efforts to end the Islamic Group's cease-fire in Egypt and to return to violence.

Accordingly, and as set forth more fully below, the Government respectfully submits that the defendants should receive sentences consistent with the Guidelines, and that their reasons for downward departures and non-Guidelines sentences should be rejected.

ARGUMENT

POINT I

THE LAW REGARDING SENTENCING IN THE WAKE OF *UNITED STATES* v. *BOOKER*, 543 U.S. 220 (2005), AND *UNITED STATES* v. *CROSBY*, 397 F.3d 103 (2d Cir. 2005)

In *United States* v. *Crosby*, 397 F.3d 103 (2d Cir. 2005), the Second Circuit explained that, in light of *United States* v. *Booker*, 543 U.S. 220 (2005), a district court must engage in a three-step sentencing procedure. First, the court must determine the applicable Sentencing Guidelines range, and in so doing, "the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence." *United States* v. *Crosby*, 397 F.3d at 112. "Judicial authority to find facts

relevant to sentencing by a preponderance of the evidence survives *Booker*." *United States* v. *Garcia*, 413 F.3d 201, 220 (2d Cir. 2005); *accord United States* v. *Gonzalez*, 407 F.3d 118, 125 (2d Cir. 2005). Moreover, "'the sentencing court [is] entitled to rely on any type of information known to it when determining an appropriate sentence.'" *United States* v. *Granik*, 386 F.3d 404, 414, n.7 (2d Cir. 2004) (quoting *United States* v. *Fagge*, 101 F.3d 232, 235 (2d Cir. 1996) (internal quotation marks and citation omitted)).

The second step of the post-*Booker* sentencing process is for the district court to consider whether a departure from the Guidelines range is appropriate. *Crosby*, 397 F.3d at 112.

Third, the sentencing court must consider the advisory Guidelines range, "along with all of the factors listed in section 3553(a)," and determine the sentence to impose. *Id.* at 113; *see Booker*, 543 U.S. at 245-46. Title 18, United States Code, Section 3553(a) provides that the "court shall impose a sentence sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection," and then sets forth seven specific considerations:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed —
>
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal

conduct;

(C) to protect the public from further crimes of the defendant;

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established [in the Sentencing Guidelines];

(5) any pertinent policy statement [issued by the Sentencing Commission];

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

Although the Sentencing Guidelines are no longer mandatory, they nevertheless continue to play a critical role in trying to achieve the "basic aim" that Congress tried to meet in enacting the Sentencing Reform Act, namely, "ensuring similar sentences for those who have committed similar crimes in similar ways." *Booker*, 543 U.S. at 252. Thus, the Second Circuit has instructed district judges to consider the Guidelines "faithfully" in sentencing, *Crosby*, 397 F.3d at 114, and has held that the applicable Guidelines range is "a benchmark or a point of reference or departure" for a district court

considering what sentence to impose on a defendant. *United States* v. *Rubenstein*, 403 F.3d 93, 99 (2d Cir.), *cert. denied*, 126 S. Ct. 388 (2005); *United States* v. *Fernandez*, 443 F.3d 19, 34, n.11 (2d Cir. 2006) (approving district court's decision "to employ the Guidelines range as a starting point and then to determine whether the arguments presented pursuant to the § 3553(a) factors warranted lightening of, or fashioning of an alteration to, the advisory Guidelines sentence (or, in other words, imposing a non-Guidelines sentence)") (internal quotation marks, brackets, and record citations omitted). The Circuit has also recognized that, in "the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable." *United States* v. *Fernandez*, 443 F.3d at 27. This is unsurprising, given that the Guidelines reflect the "accumulated wisdom and experience of the Judicial Branch." *Mistretta* v. *United States*, 488 U.S. 361, 412 (1989).

Stewart argues that the Guidelines "cannot serve as *any* type of benchmark for [her] sentence" (Stewart Mem. 25),[1] and asserts that "the focal point" of this Court's sentencing decision should be the so-called "parsimony provision" of Section 3553(a), which states that "[t]he court shall impose a sentence sufficient, but not greater than

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[1] "Stewart Mem." refers to the Sentencing Memorandum on Behalf of Defendant Lynne Stewart; "Sattar ltr." refers to Sattar's sentencing letter dated June 30, 2006; "Yousry 10/12/05 ltr." refers to Yousry's October 12, 2005 letter to the Probation Department; "Yousry 6/30/06 ltr." refers to Yousry's sentencing letter dated June 30, 2006; "Tr." refers to the trial transcript; "GX" refers to a Government exhibit at trial; and "DX" refers to a defendant's exhibit at trial.

necessary, to comply with the purposes set forth in paragraph (2) of this subsection." 18 U.S.C. § 3553(a). (Stewart Mem. 13). For the reasons set forth below, this Court should reject the claim that the parsimony provision should predominate over the Guidelines.

According to the Government's research, only one court of appeals, for the Sixth Circuit, has construed the parsimony provision in the manner Stewart suggests. *United States* v. *Ferguson*, No. 0-3998, 2006 WL 2265468 (6th Cir. Aug. 9, 2006) ("The 12-month sentence imposed upon Ferguson, in short, was both procedurally and substantively reasonable. . . . [T]he record amply demonstrates that the court evaluated all of those [statutory] factors, entertained a forceful argument for leniency, and balanced the relevant considerations in light of Congress's command that the sentence imposed be 'sufficient, but not greater than necessary, to comply with the purposes' articulated in § 3553(a)(2). Indeed, the district court twice quoted this so-called 'parsimony provision,' which this court has highlighted as the guidepost for sentencing decisions post-*Booker*.").[2] No other circuit court has yet analyzed or discussed the parsimony provision, let alone adopted the position urged by Stewart.[3] *Cf. United States* v. *Jimenez-Beltre*, 440 F.3d 514, 526 n.8 (1st Cir. 2006) (Lipez, J., dissenting) ("The so-called 'parsimony provision,' which requires that sentences be only as long as necessary to serve the

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[2] The *Ferguson* opinion on Westlaw has not yet been paginated.

[3] In the only court of appeals case that Stewart cites (Stewart Mem. 13), *United States* v. *Spigner*, 416 F.3d 708, 711 (8th Cir. 2005), the Eighth Circuit merely quoted the parsimony provision without analyzing or discussing it.

purposes listed in Section 3553(a)(2), has received scant attention from courts."); *United States* v. *Wilson*, 350 F. Supp. 2d 910, 923 (D. Utah 2005) (Cassell, J.) (noting that "the parsimony provision has played 'almost no role in caselaw'") (quoting Marc L. Miller & Ronald F. Wright, *Your Cheatin' Heart(land): The Long Search for Administrative Sentencing Justice*, 2 Buff. Crim. L. Rev. 723, 744 (1999)). The fact that *Booker* was decided only about 18 months ago does not undermine the significance of this near-silence. For one thing, the Supreme Court itself made no explicit reference to the parsimony provision in *Booker*. Nor did the Second Circuit discuss it in either *Crosby* or *Fleming*, its principal exegeses of *Booker*. Moreover, there have been literally hundreds of appellate decisions applying Section 3553(a) since *Booker* was decided, yet *Ferguson* appears to be the only one that applies the parsimony provision.[4] And although some district courts have relied on the parsimony provision in imposing sentences below the applicable Guidelines ranges (*see* Stewart Mem. 13), other district courts have held that the provision does not justify a below-Guidelines sentence. As discussed below, the latter result is more consistent with the Second Circuit's recent reaffirmation of the importance of the Guidelines and recognition that the Guidelines themselves incorporate the

[4] Moreover, the parsimony provision did not suddenly spring to force with the arrival of *Booker*. The provision was part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, §§ 212(a)(1)-(2) & 235(a)(1), 98 Stat. 1987, 2031 (Oct. 12, 1984) — the very law that created the Guidelines — and thus has applied to every sentencing since that law went into effect. Sentencing judges may have gained more discretion when *Booker* rendered the Guidelines advisory, but they were as required to apply the parsimony provision in the pre-*Booker* era as they are now.

provisions of Section 3553(a).

Significantly, the Sentencing Guidelines themselves incorporate the parsimony provision. *See* 28 U.S.C. § 994(b)(1) (directing that Guidelines shall comply with all "pertinent provisions" of Title 18). As Judge Cassell has noted in explaining the "[l]imited [e]ffect of the [p]arsimony [p]rovision":

> [T]he [Sentencing] Commission was itself bound by the parsimony provision . . . . [T]he Commission promulgated Guidelines that it viewed as parsimonious. If the Commission was mistaken and the ranges were not parsimonious, Congress could have simply rejected them. Congress, of course, did nothing of the sort.

United States v. *Wilson*, 350 F. Supp. 2d at 922-23; *see also United States* v. *Bailey*, 369 F. Supp. 2d 1090, 1092 n.4 (D. Neb. 2005) ("[U]sing my *Booker* discretion, I would read the 'parsimony' provision *with* the Guidelines heavily in mind, . . . and others who abhor Congress' harshness would read the 'parsimony' provision *without* the Guidelines much in mind. Tell me, honestly, dear readers, which *discretionary* approach is more consistent with (1) what Congress and the Commission intended, (2) how statutes (as a whole) are to be construed, (3) the remedy chosen by the Supreme Court in *Booker*, and (4) the proper role of federal judges under Article III?") (emphasis in original).

Recently, in *United States* v. *Rattoballi*, 452 F.3d 127 (2d Cir. 2006), the Second Circuit found unreasonable a sentence of five years' probation with one year of home confinement, where the Guidelines range was 27 to 33 months' imprisonment. The Court acknowledged that "the Guidelines are still generalizations that can point to outcomes that

may appear unreasonable to sentencing judges in particular cases," *id.* at 133, and that it has therefore "declined to adopt *per se* rules, opting instead to fashion the mosaic of reasonableness through case-by-case adjudication," *id.* But the Court held that, "[i]n calibrating [its] review for reasonableness, [it] will continue to seek guidance from the considered judgment of the Sentencing Commission as expressed in the Sentencing Guidelines and authorized by Congress." *Id.* The Court explained:

> The guidelines cannot be called just another factor in the statutory list, 18 U.S.C. § 3553(a), because they are *the only integration of the multiple factors* and, with important exceptions, their calculations were based upon the actual sentences of many judges. It bears noting that *the Sentencing Commission is an expert agency whose statutory charge mirrors the § 3553(a) factors that the district courts are required to consider.* 28 U.S.C. §§ 991(b), 994.

Id. (emphasis added; internal quotation marks, brackets, and citations omitted). Under the reasoning of the *Rattoballi* Court — which is consistent with that of Judge Cassell in *Wilson*, 350 F. Supp. 2d at 922-23 — the parsimony provision should not be elevated over the Guidelines because the Sentencing Commission already integrated that provision into the Guidelines. Despite the Sixth Circuit's decision in *Ferguson*, the logic of *Rattoballi* and the lack of any other circuit law in accordance with *Ferguson*, suggest that the Second Circuit would not interpret the parsimony provision as Stewart urges.

Stewart seems to view the parsimony provision as a statutory "straightjacket" that confines a court to one particular sentence in each case. But the general terms of Section 3553(a)(2) — for example, "the seriousness of the offense," "respect for law," "just

punishment," and "deterrence" — do not lend themselves to such a restraining effect. As one district judge wrote:

> What the hell does "not greater than necessary" *really* mean? Please do not refer me to 18 U.S.C. § 3553(a)(2) as if it provided a concrete answer for individual cases. Centering a sentence on the words "not greater than necessary" is the judicial equivalent of reading tarot cards — neither the legitimacy of the sentence nor the truth of the reading can be proved or disproved by rational means. More to the point, why should anyone trust one unelected judge like me to provide *ad hoc* definitions of this virtually meaningless and circular abstraction unencumbered by the lodestar of the Guidelines? *Booker* tells me to use discretion. It does not tell me to pick sentences out of the air by fixating on the phrase "not greater than necessary" as an excuse to sentence below the Guidelines.

United States v. *Tabor*, 365 F. Supp. 2d 1052, 1061 n.14 (D. Neb. 2005) (emphasis in original), *aff'd*, 439 F.3d 826, 830-31 (8th Cir. 2006) (rejecting defendant's argument "that, by considering the crack cocaine Guidelines, the district court violated 18 U.S.C. § 3553(a), which directs courts to impose sentences that are 'not greater than necessary'"). Sentencing judges are required to apply the parsimony provision, but certainly that cannot mean that the provision mandates one sentence only as "sufficient, but not greater than necessary," 18 U.S.C. § 3553(a), and renders all sentences above that one unreasonable. In fact, the Second Circuit has already ruled that "reasonableness," which is the standard of appellate review of sentences, encompasses a "range" rather than a single sentence. *See United States* v. *Rattoballi*, 452 F.3d at 133 ("reasonableness admits to 'a range, not a point'") (quoting *United States* v. *Cunningham*, 429 F.3d 673,

679 (7th Cir. 2005)); *Fernandez*, 443 F.3d at 34 (concluding that a sentence within the Guidelines range was within the "*broad range of reasonable sentences* that the District Court could have imposed in the circumstances presented") (emphasis added); *accord United States* v. *Jimenez-Beltre*, 440 F.3d at 519 ("Often there can be more than one reasonable way of assessing a factor and more than one reasonable result. Assuming a plausible explanation and a defensible overall result, sentencing is the responsibility of the district court."); *United States* v. *Saenz*, 428 F.3d 1159, 1164-65 (8th Cir. 2005) (concluding that "there is a range of reasonableness available to the district court in any given case"). Thus, the parsimony provision can only be viewed as an overarching interpretive framework for analysis of all the statutory factors that a court must consider in imposing sentence, including the Sentencing Guidelines.

In sum, current sentencing law requires this Court to begin its analysis with the advisory Sentencing Guidelines — the importance of which was reaffirmed in *Rattoballi* — and then consider the other sentencing factors enumerated in Section 3553(a) to determine whether any of them warrant a non-Guidelines sentence. For the reasons given below, the Government respectfully submits that the Court should answer the latter question in the negative and imposed Guidelines sentences on all three defendants.

POINT II

LYNNE STEWART SHOULD BE SENTENCED TO THIRTY YEARS' IMPRISONMENT

In light of Stewart's actions in providing material support to a terrorist

organization and to the commission of a terrorism crime, and in accordance with the Sentencing Guidelines and the recommendation of the Probation Office, the Government respectfully asks the Court to sentence Stewart to thirty years' imprisonment.[5] None of the factors she cites warrant a downward departure under the Guidelines or a non-Guidelines sentence.

A. The Nature And Circumstances Of Stewart's Offenses Of Conviction Are So Egregious That They Outweigh All Other Factors And Merit A Guidelines Sentence Of Thirty Years' Imprisonment

Stewart was convicted following a nine-month jury trial of conspiracy to defraud the United States, conspiracy to provide and conceal material support to a terrorist activity, providing and concealing material support to a terrorist activity, and making false statements to the government. The conduct which underlies those offenses spanned a period of more than two years in which Stewart repeatedly violated the law. Stewart's criminal conduct in this case does not warrant a sentence outside the Sentencing Guidelines range. Indeed, "the nature and circumstances of the offense[s]," 18 U.S.C. § 3553 (a)(1), as reflected in the evidence at trial and summarized below, are so egregious that they outweigh all other Section 3553(a) factors in determining the appropriate sentence for Stewart.

1. Sheikh Omar Abdel Rahman's Trial And Conviction

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[5] The Probation Department has calculated Stewart's Sentencing Guidelines range to be 360 months to life. Because Stewart's statutory authorized maximum sentence is 360 months, her Guidelines sentence is 360 months, the minimum under the range.

Stewart served as Sheikh Omar Abdel Rahman's defense attorney during Abdel Rahman's 1995 trial in the United States District Court in the Southern District of New York. In October 1995, the jury hearing that case convicted Abdel Rahman of engaging in a seditious conspiracy to wage a war of urban terrorism against the United States. The jury also found Abdel Rahman guilty of soliciting crimes of violence against the United States military and Egyptian President Hosni Mubarak and participating in a bombing conspiracy. In January 1996, Abdel Rahman was sentenced to life imprisonment. Since in or about 1997, Abdel Rahman has been incarcerated in various facilities operated by the United States Bureau of Prisons, including the Federal Medical Center in Rochester, Minnesota.

2. The Special Administrative Measures

Beginning in or about April 1997, United States authorities, in order to protect national security, limited certain of Abdel Rahman's privileges in prison, including his access to the mail, the media, the telephone, and visitors. At that time, the Bureau of Prisons, at the direction of the Attorney General, imposed Special Administrative Measures ("SAMs") upon Abdel Rahman, pursuant to a federal regulation. The stated purpose of the SAMs was to protect "persons against the risk of death or serious bodily injury" that could result if Abdel Rahman were free "to communicate (send or receive) terrorist information." Under the SAMs, Abdel Rahman could receive visits only from his attorneys and certain family members and could communicate by telephone only with

his legal spouse and his attorneys. Any correspondence to or from Abdel Rahman was required to be screened by the FBI to determine whether it contained either overt or covert requests for illegal activities or actual or attempted circumvention of the SAMs. In addition, the SAMs prohibited communication between Abdel Rahman and any member or representative of the news media. (GX 2-6, 11, 13).

The SAMs specifically provided that attorneys for Abdel Rahman were obliged to sign an affirmation, acknowledging that they and their staff would abide fully by the SAMs, before being allowed access to Abdel Rahman. Stewart and the other attorneys agreed in their affirmations, among other things, to "only be accompanied by translators for the purpose of communicating with inmate Abdel Rahman concerning legal matters." Moreover, since May 1998, Stewart and the other attorneys also agreed not to "use [their] meetings, correspondence, or phone calls with Abdel Rahman to pass messages between third parties (including, but not limited to, the media) and Abdel Rahman." (GX 3, 7).[6]

Stewart understood that without her agreement to abide by the SAMs and the other representations contained in her affirmations, she would not be permitted to visit or speak with Abdel Rahman. As the evidence at trial proved, Stewart, nevertheless, blatantly and repeatedly violated the terms of the SAMs and the SAMs affirmations she had signed under oath.

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[6] Stewart conceded in her testimony that she periodically received copies of the SAMs from the United States Attorney's Office and was familiar with their provisions. (Tr. 7681-86, 7689-90, 7691-93, 8042, 8065-67).

3. Stewart's Knowledge Of Abdel Rahman And The Islamic Group

Because of her representation of Abdel Rahman during his trial, Stewart came to know that Abdel Rahman was a spiritual leader of an international terrorist organization based in Egypt known as the Islamic Group, and that Abdel Rahman played a key role in defining and articulating the goals, policies, and tactics of the Islamic Group. Among other things, Stewart learned of Abdel Rahman's role and influential position within Islamic Group (GX 208T at 2 (recorded conversation during which Abdel Rahman implicitly acknowledges that he is *emir* of Islamic Group by referring to how he and his followers had agreed *not* to refer to him as such, and by commenting that "the media says what it wants" when he is told that media reported that he is not Islamic Group's *emir*)), the fact that his followers consulted with him regarding the propriety of acts of violence against tourists in Egypt (*see, e.g.*, GX 209T (recorded conversation during which Abdel Rahman tells follower that tourists do not enter Egypt under any "treaty of safety")), that Abdel Rahman preached violence (*see, e.g.*, GX 200T-04T, 211T (speeches)), that Abdel Rahman praised the assassination of Egyptian President Anwar Al-Sadat (*see, e.g.*, GX 201T, 204T, 211T), and that Abdel Rahman was convicted for his crimes of terrorism (*see, e.g.*, Tr. 2310 (judicial notice of Abdel Rahman's conviction)).

Stewart also testified at length at trial regarding her knowledge of Abdel Rahman, admitting that she knew that Abdel Rahman advocated violence (*see* Tr. 7471), was a prominent and high-ranking leader in the fundamentalist movement as early as the 1970s

(*see* Tr. 7472), was a person to whom his followers wrote to get his interpretation of Islamic law (*see* Tr. 7721), and was a person of great influence within the Islamic Group even after being sentenced and cut off from contact with the Islamic Group (*see* Tr. 8129-30, 8322).

After Abdel Rahman's conviction and sentence, Stewart learned that obtaining Abdel Rahman's freedom was a goal of his adherents and followers. She was aware that in January 1996, representatives of the Islamic Group had issued a threatening statement indicating that all American interests would be legitimate targets for its struggle until Abdel Rahman was released (Tr. 8327); that in April 1996, Mustafa Hamza, an Islamic Group leader, threatened to kidnap American citizens and target American interests around the world with bombings and sabotage to win the release of Abdel Rahman (Tr. 8355-58; GX 2611, 2627); that at the time Abdel Rahman was incarcerated in the Federal Medical Center in Springfield, Missouri (prior to his transfer to FMC Rochester) representatives of the Islamic Group issued a statement threatening the U.S. President and the Warden of that facility should any harm come to Abdel Rahman during his incarceration (Tr. 8327); and that in September 2000, an Arabic television station, *Al Jazeera*, televised a meeting of Usama Bin Laden, Ayman Al-Zawahiri, and Islamic Group leader Rifa'i Taha, in which the three terrorist leaders pledged *jihad* to free Abdel Rahman from incarceration in the United States and during which Mohammed Abdel Rahman, a/k/a "Asadallah," who is a son of Abdel Rahman, was heard encouraging

others to "avenge your Sheikh" and "go to the spilling of blood." (GX 2620, 2656). Stewart also possessed in her law office and knew about a portion of Abdel Rahman's will and a fatwa issued by him, in each of which he called on his followers to violently avenge his conviction and incarceration (GX 2638 (stating with respect to America, "Destroy their country and make it into pieces, ruin their economy, burn their company's (sic), destroy their interests, drown their ships, shoot down their airplanes, kill them on earth in the sea or in the sky, kill them everywhere you find them take them prisoners surround them and ambush them in any way you can, kill those infidels."), GX 2637 ("If they killed me and there is no doubt they will . . . don't let my blood go in vain . . . you must retaliate on them with violent revenge")).

Stewart also knew in 1997, that six assassins claiming an association with the Islamic Group shot and stabbed a group of tourists visiting an archeological site in Luxor, Egypt and that 58 foreign tourists were killed along with four Egyptian security guards as a result of the attack. She learned that the Luxor massacre was carried out in Abdel Rahman's name and that leaflets were left at the scene saying the massacre was inspired by Abdel Rahman, in an effort to secure his release. (Tr. 8359).

Before committing the crimes for which she now stands convicted, Stewart also knew of other violent acts committed by the Islamic Group and the fact that it had been designated a foreign terrorist organization by the State Department. In addition to the atrocities at Luxor, Stewart knew that the Islamic Group had committed acts of violence

in Egypt and elsewhere directed at the Egyptian government, including the murders of innocent tourists and government officials. (Tr. 8127, 8320, 8349). Indeed, Stewart knew that in 1992, the Islamic Group began its violent quest to overthrow the secular government of Egypt and impose an Islamic state. (Tr. 8330, 8349; GX 2624). For example, she knew that: (1) in May 1995, the Islamic Group had claimed responsibility for the bombing of the port of Rjieka, Croatia to protest the detention of the group's spokesperson (GX 2624); (2) in June 1995, the Islamic Group had claimed responsibility for the attempted assassination of Egyptian President Hosni Mubarak in Ethiopia (Tr. 8331; GX 2624, GX 2627); (3) in November 1995, the Islamic Group had claimed responsibility for the bombing of the Egyptian embassy in Islamabad, Pakistan that resulted in the killing of 15 persons, including two Egyptian diplomats, and the wounding of more than 60 others (Tr. 8335-36; GX 2623, 2630); (4) in April 1996, the Islamic Group had claimed responsibility for the murder of 18 Greek tourists at a hotel in Cairo, Egypt (Tr. 8336-37, 8350-51; GX 2628); and (5) in attempting to apprehend the Islamic Group suspects responsible for murdering the 18 Greek tourists, four police officers were shot and killed and fourteen others were wounded (Tr. 8351-52; GX 2612, 2626). Stewart testified that she understood that the Islamic Group's targeting of innocent tourists was meant as an attack on the Egyptian tourist industry and was the group's way of striking "a blow against the [Egyptian] government." (Tr. 8349-50).

Finally, Stewart knew that in 1997, the Islamic Group had declared a unilateral

cease-fire against the Egyptian government, in order to persuade the Egyptian government to release imprisoned leaders of the Islamic Group. (Tr. 7640, 7646-47, 8124-27).

4. Stewart's Criminal Conduct

From March 1999 through July 2001, despite the requirements of the SAMs and her promises to abide by them, Stewart repeatedly lied to and deceived the Government and violated the SAMs by smuggling terrorist messages to and from Abdel Rahman and disseminating his terrorist statements to the media in the form of two press releases in June 2000, announcing his withdrawal of support for a cease-fire. As the Court noted, Stewart gained access to Abdel Rahman by "deceit and dishonest means": "signing and submitting false affirmations in order to gain access to the prison." *United States* v. *Sattar*, 395 F. Supp. 2d 79, 89 (S.D.N.Y. 2006). In addition, Stewart committed the crimes for which she now stands convicted with full knowledge of the Islamic Group's extensive violent history and Taha's continuing efforts to obtain Abdel Rahman's support to end the cease-fire with the Egyptian government and resume the violence and killing of the past.

a. The March 1999 Prison Visit

In March 1999, Stewart and Yousry made their first visit to Abdel Rahman at the Federal Medical Center in Rochester, Minnesota ("FMC Rochester"), where he had been transferred in January 1998. (GX 306; Tr. 2713). Prior to the visit, Stewart had signed and sent to the United States Attorney's Office for the Southern District of New York an

affirmation in which she stated, among other things, that she and her staff would abide fully by the SAMs, that she would be accompanied by translators only for the purpose of communicating with Abdel Rahman concerning legal matters, and that she would not use her meetings, correspondence, or telephone calls with Abdel Rahman to pass messages between third parties and Abdel Rahman. (GX 3). In so doing, Stewart knowingly and willfully lied in representing to the government she would abide by the SAMs. The evidence at trial proved that Stewart used her position as one of Abdel Rahman's attorneys and this visit to smuggle into Abdel Rahman a message seeking his support for Taha's position to end the Islamic Group's cease-fire.

Before this visit, Sattar had communicated with Taha, who requested that Sattar pass a message to Abdel Rahman seeking Abdel Rahman's support to end the Islamic Group's cease-fire and to resume the use of violence against the Egyptian government. (GX 1007X at 4-5). Under the terms of the cease-fire, the Islamic Group had suspended terrorist operations in Egypt in a tactical effort to persuade the Egyptian government to release Islamic Group leaders, members, and associates who were in prison in Egypt. (GX 1015X at 5-6; GX 1111X at 8-22). Taha was a vehement opponent of the cease-fire and sought Abdel Rahman's support in order to convince others within the Islamic Group to resume the use of violence against the Egyptian government.

Also prior to this visit, Sattar had received a letter from two individuals named Gamal Sultan and Kamal Habib, who requested a *fatwah* from Abdel Rahman as to

whether the Islamic Group should form a political party in Egypt. (GX 1005X at 2-4). Just before the visit, Sattar passed on these requests to Stewart and Yousry so that they could discuss them with Abdel Rahman during the visit and obtain his responses, despite the fact that to do so was in direct violation of the SAMs.[7]

During the course of the visit, on March 1 and 2, 1999, Stewart and Yousry relayed to Abdel Rahman the requests from Taha and from Sultan and Habib and received his responses. (GX 2415-6T; DX MY-550LT4). In response to Sultan's and Habib's letter, Abdel Rahman rejected the proposal that the Islamic Group form a political party, stating that the cease-fire was a "tactic" and not a "principle." (GX 2415-6T; *see also* GX 1007X at 3, 6-7). In response to Taha's request for Abdel Rahman's support in ending the cease-fire, Abdel Rahman stated that he had "no objection" to Taha's call for a resumption of the violence against the Egyptian government even though others were calling for a halt to the violence, but instructed that "[n]o new charter, and nothing should happen or be done without consulting me, or informing me." (GX 1007X at 4-5).

Following the visit, Stewart and Yousry provided Sattar with Abdel Rahman's responses. Sattar, in turn, relayed Abdel Rahman's messages to both Taha and Mustafa Hamza, another Islamic Group leader who supported the cease-fire. (GX 1007X at 3-7,

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[7] Both Stewart and Yousry testified that prior to each prison visit with Abdel Rahman, Yousry translated for Stewart all correspondence and documents that Sattar supplied to them for the visit. (Tr. 7916-17, 8593-94, 9827-28). They also each testified that after a prison visit Yousry would translate for Stewart any correspondence that Abdel Rahman dictated to him during the visit. (Tr. 7776-77, 8300, 9083-84, 9830-31).

9-10; GX 1009X at 2-3).

b. The May 2000 Prison Visit

Stewart and Yousry next visited Abdel Rahman at FMC Rochester on May 19 and 20, 2000. Three days before that visit, on May 16, 2000, Stewart signed an attorney affirmation falsely stating, among other things, that she and her staff would fully abide by the SAMs, that all correspondence to and from Abdel Rahman would be screened by the FBI before being disseminated, that she would be accompanied by translators only for the purpose of communicating with Abdel Rahman concerning legal matters, and that she would not use her meetings, correspondence, or telephone calls with Abdel Rahman to pass messages between Abdel Rahman and third parties, including the media. (GX 6, 7).[8] Stewart submitted the attorney affirmation to the United States Attorney's Office on May 26, 2000, ten days after she signed it, and six days after the May 2000 prison visit. In so doing, Stewart knowingly and willfully lied in representing to the government she had abided by the SAMs during the May 2000 visit with Abdel Rahman, and would continue to abide by the SAMs in the future. The evidence at trial proved that, on this visit, Stewart again used her position as one of Abdel Rahman's attorneys to smuggle a terrorist message to Abdel Rahman, seeking his support for Taha's position to end the

[8] Stewart testified that she signed the attorney affirmation, which was Government exhibit 7, on May 16, 2000 and agreed to abide by the SAMs. (Tr. 7691, 7693). Stewart conceded in her testimony that she "saw [the attorney affirmation] as an oath, . . . a promise to abide by the plain language of the SAMs . . . ." (Tr. 7717).

Islamic Group's cease-fire.

During the May 2000 visit, Stewart and Yousry smuggled into the prison a number of letters for Abdel Rahman. (GX 1706X at 46-48; GX 1707X at 27-28, 33-36). Among the correspondence was a letter from Sattar containing a message from Taha again seeking Abdel Rahman's support in ending the cease-fire. (GX 1707X at 33-36). In the letter, Sattar and Taha asked Abdel Rahman to take a "more forceful position," and to "dictate some points" that could be announced by Stewart to the media. (GX 1707X at 33-36).

On May 19, 2000, the first day of the visit, Yousry told Abdel Rahman and Stewart about the kidnappings by the Abu Sayyaf terrorist group in the Philippines and Abu Sayyaf's demand to free Abdel Rahman, to which Stewart replied, "Good for them." (GX 1706X at 27-28). Stewart then told Abdel Rahman that she believed he could be released from prison if the government of Egypt were changed. (GX 1706X at 30-32). Stewart also told Abdel Rahman that events like the Abu Sayyaf kidnappings in the Philippines are important, although they "may be futile," because it is "very, very crucial" that Abdel Rahman not be forgotten as a hero of the "*Mujahadeen*" (*jihad* warriors). (GX 1706X at 32). During the visit, Stewart also had Yousry read Abdel Rahman an inflammatory statement by Taha that had recently been published in an Egyptian newspaper. (GX 1706 at 50-55).

Also on May 19, 2000, Stewart had Yousry read to Abdel Rahman the letter from

Sattar with Taha's message.[9] Stewart, who had smuggled Sattar's letter into the prison concealed in a legal pad, handed the letter to Yousry shortly before Yousry read it to Abdel Rahman. When Stewart passed the letter to Yousry, she mentioned to him that Abdel Rahman would need to think about his response to the letter, and Yousry so informed Abdel Rahman. (GX 1707X at 27-28). Just before Yousry was about to read Taha's message to Abdel Rahman, Yousry spotted the prison guards patrolling outside the window of their meeting room and alerted Stewart to that fact. In order to distract the guards and conceal the fact that they were about to read a prohibited letter with a terrorist message to Abdel Rahman, Yousry instructed Stewart to talk to Abdel Rahman, as if they were engaged in a conversation. Stewart and Yousry then laughed while acknowledging that they would be "in trouble" if the prison guards discovered that they were reading Abdel Rahman a letter from Sattar and Taha. (GX 1707X at 29). Yousry then read to Abdel Rahman in Arabic Sattar's and Taha's message. (GX 1707X at 33-36). While Yousry read Sattar's and Taha's message to Abdel Rahman, Stewart and Yousry actively concealed that fact from the prison guards. To conceal the fact that Stewart was not participating in the meeting, among other things, Stewart instructed Yousry to make it look as if Stewart was communicating with Abdel Rahman and Yousry was merely translating, by having Yousry look periodically at Stewart and Abdel Rahman in turn,

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[9] Stewart testified that Yousry translated Sattar's letter, with Taha's message, to her before their visit with Abdel Rahman on May 19, 2000. (Tr. 7766).

even though Yousry was in fact reading. (GX 1707 at 29). Stewart also pretended to be participating in the conversation with Abdel Rahman by making extraneous comments about food and eating. Stewart contemporaneously observed to Yousry that she could "get an award in acting" for her distracting of the guards and concealment of Taha's and Sattar's message to Abdel Rahman. (GX 1707X at 33-36).[10]

On May 20, 2000, during the second day of the visit, Abdel Rahman dictated letters to Yousry in response to Taha's and Sattar's message. In his letters, Abdel Rahman stated that he did not support the cease-fire and he called on the Islamic Group to reevaluate it. (GX 1710 at 48-49; GX 1711X at 31-33). During Abdel Rahman's dictation, Stewart actively concealed the conversation between Abdel Rahman and Yousry from the prison guards by again engaging in covering noises. Among other things, Stewart again periodically interrupted the dictation with extraneous comments and

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[10] During the two-day May 2000 visit with Abdel Rahman, Stewart and Yousry engaged in covering noises and used forms of distraction to conceal their conversations with Abdel Rahman and the fact that they had smuggled into the prison various correspondence. Stewart and Yousry took such steps whenever they discussed matters relating to terrorism or were engaging in other conduct that violated the SAMs. For example, Stewart and Yousry also used "covering noises" to conceal their conversation with Abdel Rahman (1) during the reading to Abdel Rahman of Taha's Al-Azhar statement, urging violent revolution against the Egyptian regime by Egyptian youth (GX 1706X at 50-55), (2) just after Abdel Rahman finished dictating his responsive message stating, among other things, that Taha should be given his "natural right as the head of the group," (GX 1710X at 53), and (3) during the reading of the portion of Sattar's letter itself which explained the power and significance of Taha within the Islamic Group (GX 1707X at 36 ("He . . . asks for your straightforward opinion, sir, especially that you know that the man has massive weight among many brothers, and that if the regime worries about anyone, it is Abu Yasir.")).

stated explicitly that she would do so from time to time in order to keep the guards from realizing that she was not participating in the conversation. (GX 1710 at 53).

After the visit, Stewart and Yousry smuggled out of the prison Abdel Rahman's dictated letters in response to Taha's and Sattar's message. Once back in New York, Stewart and Yousry provided the letters to Sattar, who relayed Abdel Rahman's message to Hamza and Taha. (GX 1093X at 1-5; GX 1094X at 6-7).[11]

c. The Press Releases

Following the May 2000 visit, Sattar spoke about the release of Abdel Rahman's statement with Yousry, Taha, and Yassir Al-Sirri, the head of the London-based Islamic Observation Center, who like Sattar functioned as a facilitator of communications for Islamic Group members world-wide. (GX 1101X, 1102X, 1268X, 1103X). During a June 4, 2000 telephone conversation with Taha, Sattar told Taha that the release of Abdel Rahman's statement would not impact Sattar but "it will have an impact on the person who issued the statement." (GX 1101X at 8). On the next day, June 5, 2000, Sattar spoke with Yousry about issuing Abdel Rahman's message in a press release. During their conversation, Sattar stated that he had spoken with Stewart about the content of the press release, and he instructed Yousry also to speak with Stewart about it, since Yousry was the one who had spoken directly with Abdel Rahman. Yousry suggested that the three of

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[11] Stewart testified that, after the visit, Yousry translated for her Abdel Rahman's response to Sattar's and Taha's letter. (Tr. 8300).

them meet to discuss the press release. (GX 1102X at 2-5). On June 11, 2000, Sattar spoke with Al-Sirri about Abdel Rahman's withdrawal of support for the cease-fire, and about how to time the press release in order to maximize the amount of news coverage in the Middle East. (GX 1268X at 7).

On June 13, 2000, Stewart and Sattar relayed Abdel Rahman's withdrawal of support for the cease-fire to Reuters reporter Esmat Salaheddin, who was based in Cairo, Egypt. (Tr. 5569-70, 5572, 5605-06).[12] In issuing Abdel Rahman's directive, Stewart told Salaheddin that "Abdel Rahman is withdrawing his support for the cease-fire that currently exists." (Tr. 5574, 5617; GX 9).[13] By disseminating Abdel Rahman's pro-violence directive, Stewart gave Taha and his co-conspirators in his pro-violence wing of the Islamic Group the support they had long desired but had been unsuccessful in obtaining. Knowing that she was violating the SAMs, defrauding the government, and providing material support to a terrorist group by issuing such a statement, Stewart also told Salaheddin, "They [U.S. authorities] may bar me from visiting him because of this announcement." (Tr. 5574; GX 9). The following day, Reuters and various Middle Eastern newspapers published articles about Abdel Rahman's withdrawal of support for

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[12] Stewart testified that she met with Sattar and Yousry and discussed the press release before it was disseminated. She also testified that, on June 13, 2000, Sattar came to her office and they called Salaheddin in Egypt and Stewart then read Abdel Rahman's statement to him. (Tr. 7808-09, 8282-83, 8294).

[13] Stewart admitted in her testimony that Salaheddin correctly reported her statements to him conveying Abdel Rahman's withdrawal of support for the cease-fire. (Tr. 8296-97, 8311).

the Islamic Group's cease-fire in Egypt. (GX 9; GX 1115 at 2).[14]

Stewart's statements to Sattar's wife, Lisa, and to Yousry, following the dissemination of Abdel Rahman's statement to Salaheddin on June 13, 2000, provided further proof that Stewart was conspiring to violate the SAMs and defraud the United States, and providing material support to a terrorist organization and, thus, was well aware that she was committing serious crimes that could endanger the lives of innocent people. After discussing with Lisa Sattar the widespread media coverage given to Abdel Rahman's statement, Stewart told Lisa Sattar of her concern that she would not be able to "hide" from the United States Attorney's Office the fact that she had issued the press release and that there would be consequences for her as a result of her actions. (GX 1115X at 2-3). Similarly, while discussing with Yousry the fact that there were members of the Islamic Group blaming Sattar in the Arabic media for disseminating Abdel Rahman's statement and calling it a fabrication, Stewart stated that she was "risking her whole career" in disseminating Abdel Rahman's statement and that she was not doing it "lightly." (DX LS-701T at 5-6; DX MY-1713 at 5-6).

Stewart's dissemination of Abdel Rahman's withdrawal of support for the cease-fire and its publication in the media created turmoil within the Islamic Group between the

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[14] Stewart attempted to conceal her dissemination of Abdel Rahman's statement — withdrawing his support for the cease-fire — from the Government by issuing it to a single Reuters reporter based in Egypt. Stewart acknowledged in her testimony that she wanted Abdel Rahman's statement released to the Arabic press in the Middle East and did not release it to the American media. (Tr. 8290-93).

pro-cease-fire and pro-violence factions. (GX 111X at 4-22; GX 1114X at 2; GX 1250X at 1-4). Because of the turmoil, Stewart and Sattar issued Abdel Rahman's reaffirmation of his withdrawal of support for the cease-fire on June 21, 2000, by relaying it to Salaheddin. (GX 2663; GX 1151X at 1-3; GX 1152X at 1-4; GX 1153X at 1-4; GX 1155X at 1-3).[15] The statement that Stewart released stated that Abdel Rahman was "withdrawing his support for the cease-fire that currently exists." The statement went on to state Abdel Rahman's opposition to the cease-fire:

> "Sheikh Omar had concluded that the unilateral truce observed by the Islamic Group since the Luxor slaughter of 58 foreign tourists and four Egyptians had brought no advantage to Egypt's biggest militant group."
>
> "There is absolutely nothing moving forward. The thousands of people who are in prison in Egypt are still in prison. The military trials continue. Executions are taking place."
>
> "The people who launch[ed] the ceasefire have good faith, but . . the [Egyptian] government has shown no good faith."
>
> "He wants people not to place hope in this process because nothing is moving forward."

(Tr. 5573-74 (quoting GX 524H)).

Stewart issued the reaffirmation of Abdel Rahman's withdrawal of support for the cease-fire (*see* GX 2663 ("I do withdraw my support for the Initiative")) *after* she

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[15] In her trial testimony, Stewart admitted releasing Abdel Rahman's reaffirmation of his withdrawal of support for the cease-fire. (Tr. 8395-99).

indisputably gained specific knowledge that Taha (and others) had taken Stewart's first announcement as reflecting Abdel Rahman's support of a return to violence and the pro-violence faction of the Islamic Group, which Taha headed. Specifically, at the time she issued the reaffirmation, Stewart knew that: (1) Taha had stated, based on Stewart's first announcement of Abdel Rahman's withdrawal of support for the cease-fire, that the Islamic Group "leaders might end the unilateral truce they announced two years ago to stop operations"[16] and that Taha had also stated, in response to a question of whether the "Luxor incident might be repeated," that Egyptian youths "will definitely act" (GX 2312-45BT); (2) Abdel Rahman's withdrawal of support for the cease-fire was viewed as supportive of the pro-violence faction of the Islamic Group and as "favorable to Taha," who was described as a "[prominent] leader" of the "hard-line" faction within the Islamic Group that supports "military operations" (GX 2312-49T); (3) "when the traditional leaders of [the Islamic Group] launched their peaceful initiative in July 1997, the protests by some of their colleagues and members of the Shura Council living abroad grew until [Abdel Rahman] issued a statement from his jail in support of this Initiative. As a result of this support, the opponents to the Initiative found themselves in a difficult position for they could not object to [Abdel Rahman's] instructions and directives and had to change their position"; (4) "[e]ven the most radical among them, such as Rifai Ahmad Taha,

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[16] The article identified Taha as "Abu Yasir," the Islamic Group's "military official," and "one of the fourteen fundamentalist leaders accused of involvement in cases of violence." (GX 2312-45BT).

bowed to the wish of the majority and preferred to remain silent"; and that Abdel Rahman "is the General Emir of the Islamic Group" and "his stature makes it hard [for] his opponents to object to his opinion" (GX 2312-47BT); (5) the withdrawal of support for the cease-fire by Abdel Rahman, the Islamic Group's "spiritual leader," could cause the Islamic Group to "end" "the truce that it had announced unilaterally two years ago" (GX 2312-45AT); and (6) the pro-cease-fire faction in the Islamic Group reacted vehemently to the withdrawal of support for the cease-fire (*see* GX 2312-50T, 2312-47AT, 2312-55T, 2312-57T).[17]

Indeed, *after* issuing the reaffirmation despite knowing all this, Stewart told Abdel Rahman she was "very pleased" and offered to "do more" of the same for Abdel Rahman. (*See* GX 1731T at 33-34 (6/23/00 prison call)). Thus, from the fact that Stewart *again* disseminated worldwide Abdel Rahman's withdrawal of support for the cease-fire, even after learning not only of the turmoil within the Islamic Group that her first announcement caused, but of how the first announcement was being interpreted in the Middle East, by terrorists, as support of a return to violence, and how the cease-fire possibly came into existence because of Abdel Rahman's support and how his "stature

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[17] Each of these newspaper articles — GX 2312-45AT, 2312-45BT, 2312-47AT, 2312-47BT, 2312-49T, 2312-50T, 2312-55T, 2312-57T — were marked as having been approved for reading to Abdel Rahman by Stewart, from which one could conclude, and the jury undoubtedly did conclude, that Stewart was familiar with their contents. Indeed, Yousry testified that he told Stewart about the reactions to her first press release as reported in the media. (*See* Tr. 7817-18).

makes it hard [for] his opponents to object to his opinion," she clearly knew and understood that the press releases were intended as support for those within Islamic Group who sought to end the cease-fire and to resume the violence and killings that had occurred before.

d. The July 2001 Prison Visit

Once the Government learned that Stewart had issued Abdel Rahman's statements to the media in violation of the SAMs (and after the Government was ordered not to initiate a criminal investigation into her conduct), Stewart was required to sign a revised attorney affirmation. (Tr. 2341-2356; GX 10-13). Stewart refused to sign the revised affirmation until May 2001. (GX 12).[18] On May 7, 2001, Stewart signed and faxed to the United States Attorney's Office in the Southern District of New York an affirmation in

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[18] Yet another example of Stewart's deceit and dishonesty occurred during the period when she was not permitted to visit with or speak to Abdel Rahman prior to May 2001. In January 2001, Sattar learned from Abdel Rahman's wife during a telephone conversation, that Abdel Rahman was refusing to eat and to take his insulin and medication and that the medical staff at FMC Rochester had asked her to try to persuade him to take his medication. (GX 1219X). During that same telephone call, Abdel Rahman's son, Abdullah, told Sattar that he wanted to publicize that Abdel Rahman was being denied his medication. (GX 1219X at 25). After that telephone call, Sattar spoke with Stewart about issuing a press release announcing that Abdel Rahman was being denied his insulin and medication by the Bureau of Prisons. (GX 1220X). Sattar told Stewart that in fact Abdel Rahman was refusing to take his medication and, despite the fact that such a press release would constitute a total fabrication and could lead to violent retaliation by Abdel Rahman followers, Stewart approved it. (GX 1220X at 10-12). Sattar and Al-Sirri then prepared and released to the media a press release in which they announced, in part, "The Sheikh's defense committee learned today that the Sheikh abstained from eating. He only eats what keeps him barely alive. He was denied his right to take his insulin, which a diabetic needs." (GX 1221X at 11; GX 1224X).

which she agreed to abide fully by the terms of the SAMs then in effect. Among other things, Stewart also agreed that during visits with Abdel Rahman she would be accompanied by translators only for the purpose of communicating with Abdel Rahman concerning legal matters, that she would allow those meetings to be used only for legal discussions with Abdel Rahman, and that she would not use her meetings, correspondence, or telephone calls with Abdel Rahman to pass messages between Abdel Rahman and third parties, including the media. (GX 12). When Stewart sent the signed affirmation to the United States Attorney's Office, she knowingly and willfully lied in representing to the government she would abide by the SAMs.

On July 13 and 14, 2001, Stewart and Yousry visited Abdel Rahman at FMC Rochester for the first time since their visit in May 2000. During this visit, Stewart, Yousry, and Sattar, acting together, again violated the SAMs and Stewart violated her affirmation. At the behest of Sattar, Stewart and Yousry smuggled a message to Abdel Rahman from his son, Mohammed Abdel Rahman, which urged Abdel Rahman to continue to support an end to the cease-fire and the resumption of violence in Egypt. They also smuggled in to Abdel Rahman messages and correspondence from other persons. (GX 1229X at 2-3, 6; GX 1716X at 62-63; GX 1720X at 14-22).

During this visit, Stewart and Yousry also violated the SAMs by telling Abdel Rahman that Sattar had been informed that the *U.S.S. Cole* had been bombed on Abdel Rahman's behalf and that Sattar was asked to convey to the United States government the

threat that more terrorist acts would follow if the United States government did not free Abdel Rahman. (GX 1717X at 11-13). While Yousry was informing Abdel Rahman about these things, Stewart again actively concealed the conversations between Yousry and Abdel Rahman from the prison guards, by, among other things, shaking a water jar and tapping on the table while explaining to the others that she was "just doing covering noises." (GX 1717X at 12).

5. Stewart's Motivation

Stewart engaged in these reprehensible acts with an affirmative intent to help foment violence in Egypt that would result in a change of Government, which could serve Stewart's twin goals of seeing the overthrow of what she viewed as a corrupt government and obtaining Abdel Rahman's freedom. The evidence at trial established that Stewart approved of the use of violence as a means of obtaining Abdel Rahman's freedom and her motive, in violating the SAMs, smuggling terrorism messages to and from Abdel Rahman, and twice issuing his withdrawal of support for the cease-fire, was the violent removal from power of the Egyptian government as a means of achieving those goals.

In its case-in-chief, the Government proved that Stewart approved of the use of violence as a means of obtaining Abdel Rahman's freedom. During the May 2000 prison visit, after being told by Yousry that the Abu Sayyaf terrorist group in the Philippines took hostages and demanded Abdel Rahman's freedom in exchange for the release of the hostages, Stewart applauded the hostage taking by saying, "Good for them," regarding the

kidnappers' actions. (*See* GX 1706X at 27). Stewart went on to explain:

> things like that in the Philippines, even though it may be futile and not be successful, they still keep your name . . . as someone that eh, the *Mujahideen* eh, consider their own hero. It is very, very crucial.

(1706X at 32 (ellipsis in original, signifying pause)). Similarly, in a recorded call in October 2000, after being told that Abdel Rahman had issued the *fatwah* to kill Jewish people, Stewart reacted ultimately by stating that it was her position that Abdel Rahman's message would get out "no matter what." (GX 1193X at 13). Furthermore, Stewart stated that the *fatwah* should not be disavowed by Abdel Rahman's lawyers and that she would have supported disavowal of the *fatwah* only if the *fatwah* had been against, rather than in support of, violence. (*See* GX 1193X at 12 ("[I]f it had been something like, 'I wish that the Palestinians would stop throwing rocks,' I mean, then we would say this is a fraud and a terrible travesty.")). Thus, it is clear that Stewart approved of the use of violence if it benefitted Abdel Rahman.

But the evidence of Stewart's support for the use of violence to further her goals did not end there. During Stewart own trial testimony, even more proof was adduced that demonstrated that Stewart was motivated to bring about a violent upheaval in Egypt resulting in a change in the government and thereby the release of Abdel Rahman. This proof consisted of Stewart's statements to journalists Joseph Fried (Tr. 8376-77), George Packer (Tr. 8380-83), and Greta Van Susteren (GX 554X).

Stewart simply believed in the use of violence to achieve her goals. During her

testimony, Stewart acknowledged that she believed in "directed violence," that is "violence directed at institutions that perpetrate capitalism, racism and sexism and at the people who are their appointed guardians and accomplished by popular support," but opposed "anarchistic violence" and admitted that she had made such a statement to Fried in the past. (Tr. 8376-77). In other words, Stewart believed in the use of violence when it had a purpose that she believed in and agreed with.[19]

Stewart also testified about her views on the use of terroristic violence against innocent, non-combatant civilians. Simply stated, she did not understand why it was wrong. Stewart acknowledged in her testimony that she told journalist Packer:

> I am pretty inured to the notion that in a war or in an armed struggle people die. They're in the wrong place, they're in a night club in Israel, they're in a stock market in London, they're in the Algerian outback, whatever it is. People die. So, I have a lot of trouble figuring out why that is wrong, especially when people are sort of placed in a position of having no other way.

(Tr. 8381).

Additional compelling evidence, which proved that Stewart's motive was to win Abdel Rahman's freedom by bringing about a violent upheaval in Egypt, was Stewart's television interview with Greta Van Susteren in May 2002, which was conducted

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[19] When asked to identify the institutions against which Stewart believed violence was appropriate, she stated the "banking institutions" and the "New York City Board of Education." (Tr. 8369).

approximately four weeks after Stewart had been arrested and charged in this case. During that interview, Stewart explicitly spoke about freeing Abdel Rahman by overthrowing the Egyptian government. Stewart told Van Susteren:

> The Sheikh is facing life in prison. His only hope of ever getting out of prison is if the political conditions in Egypt change. And if they change in some way . . . if his party were to sweep into power in Egypt and Mubarak were sent to where he should go — a corrupt and terrible leader that has stolen millions from this government, from your pocket and mine — if he were swept away and the Sheikh's people were in power you don't think they'd trade somebody something to get him out?

(GX 554X).

Stewart's reference during the interview to Abdel Rahman's "party" was deliberately misleading. As noted above, Stewart knew full well that Abdel Rahman had no political party and in fact had rejected the proposal that the Islamic Group form a political party. (GX 2415-6T, *see also* GX 1007X at 3, 6-7). When she mentioned "his party" and "the Sheikh's people" to Van Susteren, Stewart was referring to Abdel Rahman's terrorist organization, the Islamic Group, and when she referred to his "party" and "people" sweeping "into power," Stewart did not mean through the political process or elections, which she knew was not their way, but by means of violent revolution. As noted, Stewart knew that Abdel Rahman's "party," the Islamic Group, had used deadly violence to oppose the Mubarak government in the past and had a history of targeting and killing foreign tourists as a means of attacking that government. In Stewart's view, the

Egyptian government of Hosni Mubarak was "corrupt" and an institution against which "directed violence" could and should be used. Indeed, Stewart told Fried in an interview – and admitted in her testimony – that in her view the fundamentalist movement in Egypt, meaning the Islamic Group and groups like it, was the only thing that could bring about meaningful change in Egypt and was the "best hope for Egypt." (Tr. 8377-78).

6. The Nature And Circumstances Of Stewart's Offenses Warrant Thirty Years' Imprisonment

Based on Stewart's criminal conduct spanning a more than two-year period in which she repeatedly lied in SAMs affirmations, smuggled terrorist messages to and from Abdel Rahman, and disseminated Abdel Rahman's pro-violence directive withdrawing his support for the cease-fire and urging the return to the violence and killings of the past, a Guidelines sentence of thirty years' imprisonment is warranted.[20]

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[20] As part of her argument against a sentence of imprisonment, Stewart suggests that she would not have been prosecuted but for the events of September 11, 2001. (Stewart Mem. at 42-43). This claim is frivolous. Stewart's criminal conduct and the start of the criminal investigation of Stewart preceded the events of September 11, 2001 and, as the Court repeatedly instructed the jury, the prosecution of Stewart, Sattar and Yousry had nothing to do with what transpired on September 11, 2001. As the evidence established and the jury found, Stewart committed serious crimes – conspiracy to defraud the United States, providing material support to a conspiracy to murder, conspiracy to provide material support to a conspiracy to murder, and making false statements – for which she was properly prosecuted and convicted.

B. A Guidelines Sentence Is Also Warranted Because Stewart Perjured Herself At Trial

Stewart's pattern of deceit and dishonesty did not end with her arrest in this case. As described below, Stewart attempted to obstruct and impede justice during her trial when she testified in her own defense and committed perjury in the process. Under Section 3553(a)(1), this additional conduct buttresses the propriety of a 30-year sentence for Stewart.

1. Applicable Law

Section 3C1.1 of the Sentencing Guidelines mandates a two-level upward adjustment of the offense level if "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense." U.S.S.G. § 3C1.1. This provision applies to a defendant who commits perjury, or who provides "materially false information to a judge or magistrate." U.S.S.G. § 3C1.1, comment. (nn.4(b), 4(f)).

Perjury occurs when a witness "gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States* v. *Dunnigan*, 507 U.S. 87, 94 (1993). The commentary to Section 3C1.1 defines "material" as "evidence, fact, statement or information that, if believed, would tend to affect or influence the issue under determination." U.S.S.G. § 3C1.1, comment. (n.6). Before imposing an adjustment for obstruction of justice, the sentencing court must find that the defendant "'consciously

act[ed] with the purpose of obstructing justice.'" *United States* v. *Case*, 180 F.3d 464, 467 (2d Cir. 1999) (quoting *United States* v. *Stroud*, 893 F.2d 504, 507 (2d Cir. 1990)). In doing so, the court must "review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same." *United States* v. *Dunnigan*, 507 U.S. at 95; *see also, e.g., United States* v. *Case*, 180 F.3d at 467.

In its findings, the sentencing court need not exhaustively parse the evidence, nor must the court "recite any magic words to assure that [it has] applied the appropriate standard." *United States* v. *Walsh*, 119 F.3d 115, 121 (2d Cir. 1997). Rather, "[w]here the district court finds that the defendant has 'clearly lied' in a statement made 'under oath,' the 'court need do nothing more to satisfy *Dunnigan* than point to the obvious lie and find that the defendant knowingly made a false statement on a material matter.'" *United States* v. *Lincecum*, 220 F.3d 77, 80 (2d Cir. 2000) (quoting *United States* v. *Williams*, 79 F.3d 334, 337-38 (2d Cir. 1996)); *see United States* v. *Catano-Alzate*, 62 F.3d 41, 42 (2d Cir. 1995) ("[s]eparate findings of fact" are not required, so long as "a general finding of obstruction . . . tracks those factual predicates necessary to support a finding of perjury") (internal quotation marks omitted). The court may draw all reasonable inferences both from the words used and all of the relevant circumstances. *See United States* v. *Reed*, 88 F.3d 174, 179 (2d Cir. 1996) (court should "view the facts not piecemeal but in conjunction" in determining whether conduct was obstructive).

For sentencing purposes, perjury need only be proved by a preponderance of the evidence. U.S.S.G. App. C, Amend. 566 (Nov. 1, 1997); *see United States* v. *Khedr*, 343 F.3d 96, 102 (2d Cir. 2003). An upward adjustment for obstruction of justice is "mandatory once its factual predicates have been established." *United States* v. *Friedman*, 998 F.3d 53, 58 (2d Cir. 1993) (citations and internal quotation marks omitted); *see Dunnigan*, 507 U.S. at 98; *see also United States* v. *Shonubi*, 998 F.2d 84, 88 (2d Cir. 1993) (district court erred as matter of law in declining to enhance sentence after having found factual predicate for obstruction of justice).

Perjury may be established by testimony inconsistent with the jury's verdict. As the Second Circuit explained in *United States* v. *Bonds*, 933 F.2d 152 (2d Cir. 1991), it is appropriate to regard the jury's verdict as having "necessarily determined" the falsity of a defendant's testimony when: (1) the defendant testified that he lacked guilty knowledge; and (2) the jury subsequently convicts the defendant. *See id.* at 155. Moreover, where the false testimony "concern[s] [the defendant's] own state of mind — a matter about which he was peculiarly knowledgeable" — it is "reasonable" to conclude from the jury's verdict that the defendant intentionally lied. *See id.*

A guilty verdict "'binds the sentencing court to accept the facts necessarily implicit in the verdict.'" *United States* v. *Hourihan*, 66 F.3d 458, 465 (2d Cir. 1995) (quoting *United States* v. *Weston*, 960 F.2d 212, 218 (1st Cir. 1992), *abrogated on other grounds*, *Stinson* v. *United States*, 508 U.S. 36 (1993)). Under this principle and the reasoning of

Bonds, the defendants' denials of having agreed to obstruct justice or tamper with a witness were necessarily determined to be false by the jury's guilty verdicts. Because that testimony concerned the defendants' own state of mind and participation in the charged acts, moreover, it is more than reasonable to conclude that the jury found that they testified falsely because they meant to lie and not because of accident or mistake. *See United States* v. *Bonds*, 933 F.2d at 155; *see also United States* v. *Brown*, 311 F.3d 886, 889 (8th Cir. 2002) (affirming obstruction of justice enhancement where defendant "testified on the central issues at trial, and the presentence report identified specific ways that testimony was contrary to the jury's verdict"); *United States* v. *Johnson*, 302 F.3d 139, 154 (3d Cir. 2002) ("Because several portions of Johnson's sworn testimony [including his denial of knowledge that his coat contained narcotics] were irreconcilably inconsistent with the jury's verdict, we cannot conclude that the District Court clearly erred in finding that a § 3C1.1 enhancement was required."); *United States* v. *Esparza*, 291 F.3d 1052, 1055 (8th Cir. 2002) (enhancement affirmed "without an explicit finding of perjury by the district court" where defendant's "testimony [that he did not know his trailer contained narcotics] was obviously material and plainly inconsistent with the jury's verdict").

2. Discussion

In this case, Stewart intentionally testified falsely and committed perjury when she testified, among other things: (1) that it was understood by the United States Attorney's

Office and Abdel Rahman's attorneys that the Special Administrative Measures contained a "bubble" which permitted Abdel Rahman's attorneys to issue press releases containing Abdel Rahman's statements as part of their representation of him (Tr. 7717, 7832, 8080-81),[21] and (2) that she did not know who Islamic Group leader Taha was until learning about him during the course of her trial (Tr. 7650, 7738, 7791).

Stewart's claim, that she was entitled to issue Abdel Rahman's statements, went to the heart of her defense that she was merely acting in her capacity as Abdel Rahman's attorney and providing him with the zealous representation to which he was legally and ethically entitled. The jury rejected that defense in finding her guilty on all charges and, in doing so, "necessarily determined" the falsity of this testimony. *United States* v. *Bond*, 933 F.2d at 155.

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[21] Stewart testified on direct examination:

> I understood this to mean that we were permitted to do the necessary legal work to vigorously defend Sheikh Omar Abdel Rahman, who was incommunicado, held without a voice, and that the decisions that we had to make with regard to that were recognized under the SAMs as being ethical considerations, the way law was practiced, the way people were defended. And that within that bubble there was leeway granted and indeed the practice by my co[-]counsel, Mr. Clark and Mr. Jabara, seemed to indicate or at least indicated definitely to me that press releases were within that bubble, that making press releases in his name was not something that was actionable under the SAMs.

(Tr. 7832-33).

Stewart, of course, knew that she was committing perjury by offering such testimony. At the time she testified and certainly beforehand, Stewart was well aware that the SAMs explicitly and unequivocally prohibited Abdel Rahman from communicating with the media, including through his attorneys. (GX 6). In signing the affirmation, Stewart promised that she would not "use [her] meetings, correspondence, or phone calls with Abdel Rahman to pass messages between third parties (including, but not limited to, the media) and Abdel Rahman." (GX 7). During her testimony, Stewart conceded that the language employed in the SAMs and SAMs affirmations regarding communications between Abdel Rahman and the media was "clear" and "unambiguous." (Tr. 8065-67).

Moreover, during her interview with Greta Van Susteren, which was conducted approximately four weeks after Stewart was arrested and charged, Stewart was repeatedly asked whether she had promised the government that she would not issue Abdel Rahman's statements to the media. Stewart admitted that she had made such a promise and never claimed that she was entitled to issue such statements as part of her legal representation of Abdel Rahman. (GX 554X). Stewart's testimony with respect to her ability to issue Abdel Rahman's statements to the media was clearly perjurious and fabricated to create a defense to the conspiracy to defraud the United States charge in Count One and the false statement charges in Counts Six and Seven.

Stewart also committed perjury when she testified that she had no knowledge of who Taha was until learning about him during her trial. (Tr. 7650, 7738, 7791). The

evidence introduced at trial proves otherwise. As the evidence demonstrated, Stewart first smuggled messages between Taha and Abdel Rahman during her visit to Abdel Rahman with Yousry in March 1999. During that visit, Taha inquired of Abdel Rahman as whether the Islamic Group should continue to adhere to the cease-fire that the Islamic Group had unilaterally entered into in 1997. In response, Abdel Rahman instructed Taha to adhere to the cease-fire and directed, "No new charter, and nothing should happen or be done without consulting me, or informing me." During the May 2000 visit, Stewart again smuggled a letter into the prison containing a message explicitly attributed to Taha, "one of the Islamic Group leadership members in Egypt," which supported a violent revolution in Egypt. (GX 1706X at 55). The statement that called for a more forceful position on the cease-fire was attributed to Abu Yasir, rather than Taha, but the letter itself indicated his position in the Islamic Group, *i.e.*, that he had "massive weight among many Brothers," and that the Egyptian regime worried about him. (GX 1707X at 35). Abu Yasir was another name for Taha, and Stewart knew that this was the same person because she possessed in her office a handwritten translation of an *Al Hayat* newspaper article dated October 26, 1998, that discussed "Refai Taha (Abu Yasser), member of the 'Islamic Group' Shura Council." (GX 2671).

The proof also established that, following the issuance of the first press release, and before the issuance of the second press release, an *Al Hayat* newspaper article — marked "approved by Stewart" to be read to Abdel Rahman — contained statements

attributed to Taha, and the article noted, "The Egyptian authorities regard Taha, alias Abu Yasir, as the Group's military official." (GX 2312-45BT). Two other newspaper articles published at that time and both marked "approved by Stewart" to read to Abdel Rahman referred to Taha as leading the faction of the Islamic Group that rejects the cease-fire and Taha as threatening the United States and talking about ending the cease-fire in light of Abdel Rahman's withdrawal of support for it. (GX 2312-49T; GX 2312-45AT).

Thus, when Stewart testified that she first learned who Taha was during the course of her trial and did not know who he was during the course of her criminal conduct, she deliberately lied to the jury. Stewart committed perjury with respect to this matter because she understood that her admission of knowledge of who Taha was and the role he played in the Islamic Group constituted strong evidence of Stewart's complicity in providing material support to the Islamic Group's pro-violence faction and to the conspiracy to murder persons outside the United States.

Coupled with her dangerous and deceitful conduct as detailed above, Stewart's trial perjury justifies a Guidelines sentence of thirty years' imprisonment.

C. Applying The Terrorism Enhancement In U.S.S.G. § 3A1.4 To Increase Stewart's Criminal History From I to VI Does Not Overstate Her Criminal History

Pursuant to the terrorism enhancement set forth in Section 3A1.4 of the Sentencing Guidelines, Stewart's Criminal History Category is increased from I to VI. Stewart argues that such an increase would "grossly overstate" her Criminal History status. She

further argues that such an increase prevents the Court from making an individualized sentencing determination, thereby "undermin[ing] the structure of the Guidelines." (Stewart Mem. 112-15). Stewart's arguments lack merit.

Under the Guidelines, if the crime of conviction "is a felony that involved, or was intended to promote, a federal crime of terrorism," U.S.S.G. § 3A1.4 requires that the sentencing court (1) increase the defendant's offense by 12 levels or to offense level 32, whichever is greater; and (2) increase the criminal history to Category VI. The Second Circuit has recognized that U.S.S.G. § 3A1.4 "legitimately considers a single act of terrorism for both the offense level and the criminal history category." *United States* v. *Meskini*, 319 F.3d 88, 92 (2d Cir. 2003); *see also United States* v. *Salim*, 287 F. Supp. 2d 250, 322 n.100 (S.D.N.Y. 2003) (citing *United States* v. *Meskini*, 319 F.3d at 92). The Second Circuit reasoned that "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 (emphasis added). Accordingly, the Court also concluded that, "[c]onsidering the serious danger posed by all forms of terrorism, the Guidelines are in no way irrational in setting the default for criminal history at a very high level." *Id.*

Stewart seeks a non-Guidelines sentence pursuant to Section 3553(a) because of

her lack of criminal history. However, the Second Circuit specifically found that Section 3A1.4's criminal history enhancement is applicable even for someone without any criminal history:

> Congress and the Sentencing Commission had a rational basis for creating a uniform criminal history category for all terrorists under § 3A1.4(b), because 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.

Meskini, 319 F.3d at 92 (emphasis added); *see also United States* v. *Lindh*, 227 F. Supp. 2d 565, 571 (E.D. Va. 2002) ("Although the defendant has no prior criminal criminal record, he is appropriately categorized in Criminal History Category VI, rather than I, pursuant to U.S.S.G. § 3A1.4.").

To be sure, the Second Circuit in *Meskini* recognized that, to the extent a sentencing court determines that Section 3A1.4 "over-represents the seriousness of the defendant's past conduct or the likelihood that the defendant will commit other crimes," the court has the discretion to depart downward. *Meskini*, 319 F.3d at 92 (quoting U.S.S.G. § 4A1.3). But Stewart should not receive such an exceptional departure. The evidence at trial demonstrated that Stewart's recurrent criminal conduct, motivated by her beliefs and ideologies (as discussed above), was not deterred even by Government intervention. For example, Stewart smuggled messages to Abdel Rahman during the July 2001 prison visit even after her June 2000 press releases caused the Government to bar her from visiting or communicating with Abdel Rahman until revised attorney

affirmations had been put in place. Similarly, after Stewart learned in October 2000 that Abdel Rahman had issued the *fatwah* to kill Jewish people, she stated that it was her position that Abdel Rahman's message was going to get out "no matter what." (GX 1193X at 13).

In sum, Stewart's offense conduct was not isolated to one single event; rather, it showed a pattern of purposeful and willful conduct, in which she played a central role in repeated fraudulent attempts to pass messages to and from Abdel Rahman. Moreover, Stewart compounded her underlying criminal conduct by perjuring herself at trial, and, to this day, has neither accepted responsibility nor shown any remorse for her offenses. The concern about recidivism that underlies the Criminal-History-Category enhancement of U.S.S.G. § 3A1.4 is well-founded with respect to Stewart, and this Court should not offset that enhancement with a horizontal departure.

D. Neither Stewart's Medical Condition Nor Mental Health Warrants Either A Departure Under U.S.S.G. § 5H1.4 Or A Non-Guidelines Sentence

Stewart asserts that her medical conditions — specifically, breast cancer, diabetes, hypertension, and sleep apnea — warrant either a downward departure, pursuant to U.S.S.G. § 5H1.4, or a non-Guidelines sentence. (Stewart Mem. 57-68). Stewart also asserts that her mental health condition warrants a non-Guidelines sentence. For the reasons stated below, the Court should reject Stewart's arguments.

1. A Departure Under U.S.S.G. § 5H1.4 For Stewart's Medical Condition Is Unwarranted

The Sentencing Guidelines "provide considerable guidance as to the factors that are apt or not apt to make a case atypical, by listing certain factors as either encouraged or discouraged bases for departure." *Koon* v. *United States*, 518 U.S. 81, 94 (1996). Discouraged factors are not necessarily inappropriate bases for departure but should be relied upon only "in exceptional cases." *Id.*

Health-based departures for physical condition are "discouraged" under the Sentencing Guidelines. Section 5H1.4 of the Guidelines provides:

> Physical condition or appearance, including physique, is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range. However, an extraordinary physical impairment may be reason to impose a sentence below the applicable guideline range; *e.g.*, in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

U.S.S.G. § 5H1.4. Thus, in order to be entitled to a departure based on physical condition, a defendant must demonstrate that he suffers from an "extraordinary physical impairment." *See also Sapia* v. *United States*, 433 F.3d 212, 219 (2d Cir. 2005) (post-*Booker* case, citing U.S.S.G. § 5H1.4 and holding that "[e]xcept for extreme situations, physical condition is not a basis for downward departures"); *United States* v. *Persico*, 164 F.3d 796, 806 (2d Cir. 1999) ("The standards for a downward departure on medical grounds are strict."). In considering a downward departure based on the defendant's physical health, the Second Circuit has stressed that the determinative issue is whether the

Bureau of Prisons ("BOP") can monitor and treat adequately the defendant's medical condition. *See, e.g.*, *United States* v. *Martinez*, 207 F.3d 133, 139 (2d Cir. 2000) (affirming denial of downward departure where there was "no evidence in the record that [the defendant's medical condition] is of a type that cannot be adequately cared for within the prison system"); *United States* v. *Persico*, 164 F.3d at 806 (holding that downward departure under U.S.S.G. § 5H1.4 "requires medical conditions that [the] Bureau of Prisons is unable to accommodate"); *United States* v. *Altman*, 48 F.3d 96, 104 (2d Cir. 1995) ("the BOP's ability to monitor a defendant's health condition countenances against a departure under U.S.S.G. § 5H1.4"). The post-*Booker* case law is consistent with this viewpoint. *See Harris* v. *United States*, Nos. 00 Cr. 105 (RPP), 04 Civ. 1113 (RPP), 2005 WL 1925435, at *6 (S.D.N.Y. Aug. 10, 2005) ("the standard for a downward departure based on a defendant's physical condition is not met unless a defendant can show that the Bureau of Prisons cannot accommodate his medical condition") (citing *United States* v. *Altman*, 48 F.3d at 104); *see Gutierrez* v. *United States*, Nos. 04 Civ. 6529 (DAB), 02 Cr. 1312 (DAB), 2005 WL 2207026, at *5 (S.D.N.Y. Sept. 6, 2005) (denying downward departure because defendant "neither claims nor provides any evidence that such health problems cannot be adequately addressed in one of the Bureau of Prison's many medical facilities.") (citing same); *see also United States* v. *Lucaina*, 379 F. Supp. 2d 288, 293 (E.D.N.Y. 2005) (denying downward departure where the defendant's "ailments are not extreme or unusual, and there is no evidence that the bureau of prisons is not equipped to

deal with them") (citing *United States* v. *Martinez*, 207 F.3d at 139).

Stewart has not demonstrated that the BOP would be unable to minister to her medical needs. She merely argues that the BOP provides the "lowest standard of care" (Stewart Mem. 65), and that, as such, Stewart is subject to a "serious yet avoidable risk to [her] health" (Stewart Mem. 66). However, Stewart's physical condition, is one that can be cared for by the BOP.[22] Once in the custody of the BOP, Stewart would be designated to a appropriate facility to accommodate her physical condition. (Ltr. from Barbara J. Cadogan, Health Systems Administrator, Bureau of Prisons, dated July 28, 2006, at 1).[23] At such a facility, she would be treated by chronic care units located at the facility, which would include a diabetic care clinic and a hypertension care clinic, among others. (*Id.* at 1-2). If necessary, the BOP would also set up a plan to treat any breast cancer issues, which would include mammograms on an as-needed basis and could also include visits a contract oncologist. (*Id.* at 2). The BOP also has an extensive drug formulary and could provide Stewart with the prescription medications, or appropriate substitutions, that she

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[22] In fact, other cases from this District recognize that departures were inappropriate where the defendants suffered from physical ailments that were arguably more severe than Stewart's illnesses. *See, e.g.*, *Gutierrez* v. *United States*, 2005 WL 2207026, at *5 (refusing to depart where defendant "reportedly ha[d] 'advanced diabetes,' high blood pressure, 'severe renal failure' and glaucoma, has suffered two strokes, and is relegated to a wheelchair and requires the use of a dialysis machine"); *see also United States* v. *Lucaina*, 379 F. Supp. 2d at 292 (denying departure where 82-year-old defendant suffered from diabetes, arthritis, high blood pressure, coronary artery disease, and other age-related maladies).

[23] A copy of this letter is attached to this memorandum as Exhibit 1.

states she has required in the past for treatment (*i.e.*, Norvasc, Lovastatin, Lisinopril, Hydrochlorothiazide, Armidex and Anastrozole). (*Id.*). The BOP would also be capable of administering these drugs daily, as many times as medically required. (*Id.*). As to Stewart's sleep apnea treatment requirements, to the extent that she would need a CPAP device, the BOP makes this device available for patients who need it. (*Id.*).

Accordingly, Stewart's request for a downward departure under Section 5H1.4 based on Stewart's physical condition should be denied.

2. A Non-Guidelines Sentence, Pursuant To 18 U.S.C. § 3553(a)(2)(D), Based on Stewart's Medical Condition Is Unwarranted

Stewart argues that "[her] medical conditions, in tandem with the mandate of § 3553(a)(2)(D), compel a non-Guidelines sentence that does not include any term of imprisonment." (Stewart Mem. 66-67). However, that Section does not mandate a non-Guidelines sentence in this case, let alone a sentence that does not include any term of imprisonment.[24]

Section 3553(a)(2)(D) states that a sentencing court shall consider the need for the sentence imposed "to provide the defendant with the needed educational or vocational

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[24] As discussed above, under the Guidelines — which must also be considered pursuant to Section 3553(a)(4) — medical conditions continue to be relevant only in extraordinary circumstances. Thus, it is still the case post-*Booker* that medical circumstances should not result in a substantial variance from the Guidelines range unless there is something unique or unusual about those circumstances. Otherwise, it would not be possible to accommodate all of the other requirements of Section 3553(a), such as the need for specific and general deterrence and the need to avoid unwarranted sentencing disparities.

training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). When a defendant's health problems can be adequately addressed through the BOP medical facility, however, neither a downward departure nor a non-Guidelines sentence is warranted. *See Gutierrez*, 2005 WL 2207026, at *5; *see also United States* v. *Castillo*, 430 F.3d 230, 241 (5th Cir. 2005) (post-*Booker* case, holding that defendant's HIV-positive status was not ground for departure under § 5H1.4, and that, because "the Bureau of Prisons could adequately treat Castillo's medical condition, the downward departure also failed to advance the objectives of § 3553(a)(2)(D)").

For reasons already explained above, the BOP could adequately treat Stewart's medical condition. Therefore, imposing a downward departure or a non-Guidelines sentence would not advance the objectives of Section 3553(a). Accordingly, the Court should deny Stewart's request for a non-Guidelines sentence based on her medical conditions.[25]

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[25] To the extent that Stewart is arguing that she should receive a non-jail sentence because the medical care that the BOP could provide, although adequate, is not as good as the medical care she could receive outside prison, the Court should be wary of granting a downward departure or imposing a non-Guidelines sentence on that basis. Such relief would tend to benefit defendants of higher socio-economic status, who have insurance and/or could afford to pay for private health care, and would often be unavailable to defendants of lower socio-economic status, who lack insurance and could not afford to pay. Of course, socio-economic status is a prohibited sentencing factor. U.S.S.G. § 5H1.10.

3. Neither A Non-Guidelines Sentence Nor A Departure Based On Stewart's Mental Health Condition Is Warranted

Stewart argues that she is entitled to a non-Guidelines sentence that does not include any incarceration because of her mental health condition. Stewart appears to base her argument on two main assertions, which rest on a letter submitted by Dr. Stephen Teich. First, she asserts that she had "major traumatic and stressful events, both personal and professional, occurring in the period prior to and throughout her involvement with the legal matters of the Sheik," focusing primarily on the 1995 suicide of a former client. Second, she contends that she would benefit from "insight-oriented psychotherapy" rather than incarceration. (Stewart Mem. 68-71). Stewart also cites to Title 18, United States Code, Sections 3553(a)(1) and 3553(a)(2)(B) in support of her argument.

Stewart's argument fails. She is not entitled to a departure under the Guidelines and is not entitled to a non-Guidelines sentence under Title 18, United States Code, Sections 3553(a)(1) or 3553(a)(2)(B). Section 5H1.3 of the Guidelines cautions that "[m]ental and emotional conditions are not ordinarily relevant in determining whether a departure is warranted, except as provided in Chapter Five, Part K, Subpart 2 (Other Grounds for Departure)."[26] U.S.S.G. § 5H1.3. Though ordinarily irrelevant, the Second Circuit has held that mental and emotional conditions can be taken into account in

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[26] Nor has Stewart alleged any mental or emotional conditions that would authorize any departure under Section 5K2, such as coercion and duress, *see* U.S.S.G. § 5K1.12, or diminished capacity, *see* U.S.S.G. § 5K1.13.

"situations that are 'extraordinary.'" *See United States* v. *Rivera*, 192 F.3d 81, 85 (2d Cir. 1999) (citing *United States* v. *Lara*, 76 F.3d 499, 501 (2d Cir. 1990)); *United States* v. *Barton*, 76 F.3d 499, 501 (2d Cir. 1990) (recognizing the district court's authority to depart for "extraordinary mental or emotional condition"). For example, the Second Circuit has concluded that "district courts may properly grant a downward departure on the ground that extreme childhood abuse caused mental and emotional conditions that contributed to the defendant's commission of the offense." *United States* v. *Rivera*, 192 F.3d at 85.

Here, Stewart does not argue she is entitled to a departure under Sections 5H1.3, but in any event, she has failed to allege any extraordinary situation warranting a downward departure. Stewart's assertions regarding her experience with her former client's suicide and general issues with self esteem and self awareness are insufficient to warrant a departure. *See United States* v. *Rivera*, 192 F.3d at 86 (finding that reports of defendant having been beaten frequently as child, having his hands burned, being made to kneel on rice in corner, and being struck with extension cord, did not rise to extraordinary level that can be assumed to cause mental or emotional pathology).

Neither is Stewart entitled, pursuant to Title 18, United States Code, Section 3553(a)(1) or (a)(2)(B), to a non-Guidelines sentence of no incarceration. Section 3553(a)(1) requires the court to consider "the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). Although "the history and characteristics of the

defendant" certainly include the defendant's mental and emotional condition, nothing in the language of the statute mandates a non-Guidelines sentence, let alone a sentence of no incarceration, based on the defendant's mental or emotional condition alone, regardless of whether the condition presents a serious mental health problem. The court must merely "consider" the defendant's characteristics in determining an appropriate sentence.

As to Section 3553(a)(2)(B), Stewart's argument also fails. That section requires the court to "consider the need for the sentence imposed to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). Stewart appears to argue that because of her mental and emotional condition, she would not be deterred by any incarceration, but would rather benefit from psychotherapy instead. To the extent that Stewart asserts that the BOP would be unable to provide her with any necessary psychotherapy, Stewart is incorrect.[27] Once in the custody of the BOP, Stewart would be screened to determine whether any mental health treatment is necessary. (Ltr. from Dr. Gerard Bryant, Psychology Services Administrator, Bureau of Prisons, dated Aug. 1, 2006 ("Bryant Ltr."), at 1).[28] If she requires treatment, the BOP would be able to provide her with ongoing psychological and psychiatric treatment, including psychotherapy, group therapy and education, psychiatric clinic evaluation, and psychiatric medication, among other

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[27] To the extent that Stewart is asserting that she would commit the same crime again regardless of any term of imprisonment, this assertion only further supports her failure to accept responsibility for her conduct.

[28] A copy of this letter is attached to this memorandum as Exhibit 2.

things. (*Id.* at 2-3). Indeed, the "insight oriented therapy" recommended by Dr. Teich (Stewart Mem. 71), would be available to Stewart, if deemed necessary, and such treatment would be consistent with medical community standards. (Bryant Ltr. at 1-2).

In any event, although Stewart asserts that her mental and emotional condition was affected by her experience with her former client's suicide and her general self-esteem and self-awareness issues, she does not allege how that condition contributed to the offense conduct in this case. For example, she broadly asserts that "[her] commitment to the protection of her client, the Sheik, in prison was magnified by emotions from her perceived failure to protect her former client." (Stewart Mem. 69). However, she fails to state specifically how her mental or emotional condition affected the actual criminal conduct in this case.

In short, nothing about Stewart's mental health is sufficiently unusual or compelling to warrant a reduction of her sentence. Accordingly, Stewart is not entitled to a downward departure under Section 5H1.3 or a non-Guidelines sentences under Section 3553(a) on the basis of her mental health condition.

E. A Guidelines Sentence Of Thirty Years' Imprisonment For Stewart Would Avoid "Unwarranted Sentence Disparities" In Accordance With 18 U.S.C. § 3553(a)(6)

Section 3553(a) directs a sentencing court "to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Stewart asserts that her case is unique (*e.g.*, Stewart

Mem. 25), but the facts, stripped to their essence, belie that claim. She conspired to provide, and provided, personnel to a terrorist murder conspiracy by making Abdel Rahman available to participate as a leader of that conspiracy. Her conduct is therefore similar to — and in some instances worse than — that of other defendants who have been found guilty of providing material support to terrorism, particularly other defendants who have provided themselves, or recruited or enabled others, to participate in terrorist violence. Thus, pursuant to Section 3553(a)(6), this Court should sentence Stewart so as to avoid unwarranted disparities with the sentences imposed on the defendants in other material-support cases.[29]

The bullet-point paragraphs below describe other material-support cases and the

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[29] Citing Section 3553(a)(6), Stewart argues that she should receive a sentence without imprisonment because Ramsey Clark and Abdeen Jabara were not prosecuted. (Stewart Mem. 80-82). First, Clark and Jabara are irrelevant under Section 3553(a)(6), which requires the court "to avoid unwarranted sentence disparities among defendants . . . who *have been found guilty* of similar conduct." 18 U.S.C. § 3553(a)(6) (emphasis added). Second, this Court's prior rulings on Stewart's selective-prosecution motions and arguments have recognized the dissimilarities between Stewart, on the one hand, and Clark and Jabara, on the other hand. *See United States* v. *Sattar*, 395 F. Supp. 2d 79, 103 (S.D.N.Y. 2005) (denying renewed selective-prosecution argument). (*See also* Order dated Sept. 1, 2004 (denying renewed selective-prosecution motion); Order dated July 1, 2004 (denying selective-prosecution motion)). *See also United States* v. *Sattar*, 314 F. Supp. 2d 279, 311-14 (S.D.N.Y. 2004) (denying vindictive-prosecution motion).

As part of her Section 3553(a)(6) argument, Stewart also discusses "Government officials who have breached security protocols by mishandling classified information." (Stewart Mem. 82-84). Such individuals, who were or would have been charged with offenses other than providing material support to a terrorist act or organization, cannot be said to "have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), within the meaning of the statute.

sentences imposed. This is not a selective listing; instead, we have endeavored (with the assistance of the Department of Justice's Counterterrorism Section, which monitors all terrorism-related cases) to provide information about *all* material-support cases in which any defendant has been sentenced as of the date of this memorandum. We are including both cases charging material support to a terrorist act, in violation of 18 U.S.C. § 2339A, and those charging material support to a designated foreign terrorist organization ("FTO"), in violation of 18 U.S.C. § 2339.

The following four paragraphs discuss the cases that are the most similar to Stewart's, *i.e.*, those in which defendants were convicted after trial of essentially providing or attempted to provide themselves, or recruiting or enabling others, to participate in terrorist violence:

- *United States* v. *Uzair Paracha*, 03 Cr. 1197 (SHS) (S.D.N.Y.), *see* 2006 WL 12768 (S.D.N.Y. Jan. 3, 2006) (explaining court's prior rulings on pre-trial and trial issues): Uzair Paracha was convicted after trial of conspiring to provide, and providing or attempting to provide, material support or resources to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B.[30] Paracha tried to help Majid Khan, an Al Qaeda

[30] Paracha was also convicted of conspiring to make or receive a contribution of funds, goods, or services to a specially designated terrorist, in violation of 50 U.S.C. App. § 1705(b) and 31 C.F.R. §§ 595.204 & 595.205; making or attempting to make a contribution of funds, goods, or services to a specially designated terrorist, in violation of 50 U.S.C. App. § 1705(b) and 31 C.F.R. §§ 595.204 & 595.205; and committing identification document fraud with the intent to commit an act of international terrorism, in violation of 18 U.S.C. §§ 1028(a)(7) & 1028(b)(4).

operative, obtain a travel document that would have allowed Khan to re-enter the United States to commit violent acts of terrorism. Paracha came to the United States, posed as Khan in telephone conversations with the Immigration and Naturalization Service ("INS"), called Khan's bank, used the Internet to try to obtain information about Khan's immigration paperwork, agreed to use Khan's credit card to make it appear that Khan was in the United States, and planned to check Khan's post office box in Maryland, to which Khan had asked the INS to send his travel document. On July 20, 2006, Paracha was sentenced to 30 years' imprisonment.

- *United States* v. *Ahmed Omar Abu Ali*, No. CRIM.A. 05-53GBL (E.D. Va.), *see* 395 F. Supp. 2d 338 (E.D. Va. 2005) (ruling on defendant's motions to suppress evidence and dismiss indictment): Ahmed Omar Abu Ali, a 24-year-old U.S. citizen, moved to Medina, Saudi Arabia, to study at the Islamic University. In June 2003, he was arrested by Saudi authorities as part of a major crackdown following the May 2003 Riyadh bombings. Investigation revealed that Abu Ali had sought out and joined an Al Qaeda cell in Medina, where he received training in weapons, explosives, and document forgery. He, along with other members of the cell, began to develop plans for several potential terrorist attacks against the United States, including a plot to assassinate President Bush and a plot to hijack aircraft transiting the United States and use them in 9/11-style attacks. Abu Ali was convicted after trial on all counts, including providing and conspiring to provide material support to a foreign terrorist

organization (Al Qaeda), in violation of 18 U.S.C. § 2339B; providing and conspiring to provide material support to terrorists, predicated on a plot to kill the President, in violation of 18 U.S.C. § 2339A; and conspiracy to assassinate the President, in violation of 18 U.S.C. § 1751. On March 29, 2006, Abu Ali was sentenced to 30 years in prison.

- *United States* v. *Mokhtar Haouari*, S4 00 Cr. 15 (JFK) (S.D.N.Y.), *aff'd sub nom. United States* v. *Meskini*, 319 F.3d 88 (2d Cir. 2003): Mokhtar Haouari was convicted after trial of conspiring to provide material support to Ahmed Ressam's Millennium plot to bomb Los Angeles International Airport ("LAX"), in violation of 18 U.S.C. §§ 371 & 2339A.[31] Ressam was arrested on December 14, 1999, as he tried to enter the United States from Canada with the components of a powerful explosive device, which he had prepared using skills and supplies he acquired in terrorist training camps in Afghanistan; he was planning to bomb LAX at the Millennium.[32] Haouari provided

[31] Haouari was also convicted of various fraud charges.

[32] Ressam was convicted after trial of nine counts, including conspiring to commit an act of terrorism transcending national boundaries, in violation of 18 U.S.C. §§ 2332b(a)(1)(B) and 2332b(c); transportation of explosives, in violation of 18 U.S.C. §§ 842(a)(3)(A), 844(a), and 2; and carrying an explosive during the commission of a felony, in violation of 18 U.S.C. § 844(h)(2). *United States* v. *Ahmed Ressam*, No. CR99-666C (W.D. Wash.). Based on these convictions, he faced a Guidelines range of 65 years' to life imprisonment. After his conviction but before sentencing, Ressam entered into a cooperation agreement with the Government and provided substantial assistance, primarily by testifying at Haouari's trial and by testifying or providing information that was used in several prosecutions in other countries. But Ressam later violated his agreement and ceased cooperating, which required the Government to dismiss two terrorism cases in which he was an essential witness. As a result, the Government asked

material support by giving Ressam money and false identification documents, helping him obtain a credit card in another name, and recruiting a third man (Abdelghani Meskini, who is discussed below) who was to meet Ressam in the United States, provide him with additional money and a telephone, and serve as his driver and translator.[33] On January 16, 2002, Haouari was sentenced to 24 years' imprisonment.

- *United States* v. *Masoud Ahmad Khan, et al.*, No. CRIM.03-296-A (E.D. Va.), *see* 309 F. Supp. 2d 789 (E.D. Va. 2004) (ruling on defendants' motions for judgment of acquittal): Masoud Ahmad Khan, Seifullah Chapman, and Hammad Abdur-Raheem were members of the Dar al-Arqam Islamic Center in Falls Church, Virginia, and participated, in 2000 and 2001, in paintball and paramilitary training with the encouragement of Dar al-Arqam's spiritual leader, Sheikh Ali al-Timimi. Soon after the terrorist attacks of September 11, 2001, a meeting was held at the home of a co-defendant. During this meeting, Al-Timimi encouraged those in attendance to go to Pakistan to receive military training from Lashkar-e-Taiba ("LET"), to be able to fight against American troops soon expected to arrive in Afghanistan.[34] This

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the court to sentence him to 35 years' imprisonment. Ressam received a sentence of 22 years, and the Government has appealed the sentence, arguing that it is unreasonably low.

[33] Haouari did not know Ressam's specific plan but knew or consciously avoided knowing that Ressam was going to commit a bombing.

[34] Al-Timimi was charged in a separate case and was convicted after trial of aiding, abetting, inducing, and counseling others to conspire to carry firearms in furtherance of crimes of violence, in violation of 18 U.S.C. §§ 2 & 924(n); soliciting others to levy war against the United States, in violation of 18 U.S.C. § 373; aiding,

encouragement was significant enough that four of those who attended this meeting, including Khan, left the United States and traveled to an LET training camp less than a week after this meeting. Khan completed training but did not travel to Afghanistan. Khan, Chapman, and Abdur-Raheem were convicted after trial of various charges, including providing or conspiring to provide material support to LET, in violation of 18 U.S.C. § 2339A, and were sentenced on July 29, 2005. Khan — who trained at the LET camp, intended to fight with the Taliban against the U.S., and later helped an LET agent in the U.S. buy a remote-controlled plane — was sentenced to ten years' imprisonment for providing material support to LET; that sentence was concurrent with terms of five and ten years' imprisonment on various other counts, and consecutive to a mandatory life sentence for three convictions under 18 U.S.C. § 924(c). Chapman was sentenced to ten years' imprisonment for his material-support conviction; that sentence was concurrent with terms of five and ten years' imprisonment on other counts, and consecutive to a mandatory 55-year sentence for two convictions under 18 U.S.C. § 924(c). Abdur-Raheem was sentenced to 52

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abetting, inducing, and counseling others to conspire to levy war against the United States, in violation of 18 U.S.C. §§ 2 & 2384; aiding, abetting, inducing, and counseling others to attempt to aid the Taliban, in violation of 18 U.S.C. § 2 & 50 U.S.C. § 1705; aiding, abetting, inducing, and counseling others to conspire to violate the Neutrality Act, in violation of 18 U.S.C. §§ 2 & 960; aiding and abetting the use of firearms in connection with a crime of violence, in violation of 18 U.S.C. § 924; and aiding and abetting the carrying of explosives during the commission of a felony, in violation of 18 U.S.C. § 844. He was sentenced, on July 13, 2005, to life in prison.

months' imprisonment for his material-support conviction, concurrent with terms of 52 months' imprisonment on other counts.[35]

The following two paragraphs describe other material-support cases in which defendants were convicted after trial:

- *United States* v. *Mohammed Ali Hasan al-Moayad and Mohammed Mohsen Yahya Zayed* (E.D.N.Y.): Mohammed Ali Hasan al-Moayad and Mohammed Mohsen Yahya Zayed were convicted after trial of conspiring to provide, and providing, material support to Al Qaeda and Hamas. Both were charged with violations of 18 U.S.C. § 2339B and related offenses in connection with an undercover operation in which they were to facilitate a $2 million donation to fund violent *jihad*. To establish his *bona fides* and obtain this donation, Al-Moayad boasted to law enforcement authorities in Germany that he had strong connections to Al Qaeda and Hamas, a financing network that extended into Brooklyn, and that before September 11, 2001, he provided recruits and more than $20 million to Usama Bin Laden. On July 28, 2005, Al-Moayad was sentenced to 75 years in prison. On September 1, 2005, Zayed was sentenced to 45 years in prison.
- *United States* v. *Hemant Lakhani* (D.N.J.): Hemant Lakhani attempted to sell a

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[35] Defendant Ibrahim Ahmed Al-Hamdi was charged with various counts, including a violation of 18 U.S.C. § 2339A. He pled guilty to violations of 18 U.S.C. § 924(c) and 18 U.S.C. § 844. On April 9, 2004, he was sentenced to ten years' imprisonment.

shoulder-fired, surface-to-air missile to a FBI cooperating witness for the purported purpose of downing a U.S. civilian airliner as part of *jihad* against the U.S. In July 2003, Lakhani and the cooperating witness traveled to Russia to meet with the missile's suppliers who, unbeknownst to Lakhani, were undercover agents from the Russian Federal Security Service. The Russian agents gave Lakhani a replica missile, which Lakhani arranged to ship to the U.S. out of St. Petersburg as medical equipment. In negotiations with the Russian agents, Lakhani expressed interest in purchasing 50 more surface-to-air missiles and a large quantity of C-4 plastic explosive. Lakhani was charged with attempting to provide material support to terrorists, in violation of 18 U.S.C. § 2339A, and illegal brokering of defense weapons, in violation of 22 U.S.C. § 2778. He was convicted at trial and sentenced, on September 12, 2005, to 47 years in prison.

In stark contrast to Stewart's argument that her sentence should not include any prison time, the following 16 paragraphs demonstrate that even material-support defendants who pled guilty (sometimes to reduced charges) or who cooperated with the Government have been sentenced to multi-year terms of imprisonment:

- *United States* v. *Carlos Enrique Gamarra-Murillo* (M.D. Fla.): Carlos Enrique Gamarra-Murrillo sought to buy weapons, including M-16 assault rifles, M-60 machine guns, grenade launchers, grenades, and Stinger anti-aircraft missiles, for the FARC, a designated foreign terrorist organization. He made a substantial down

payment, with the balance to be paid in cash and cocaine. Gamarra pled guilty to illegally brokering weapons, in violation of 22 U.S.C. § 2778, and attempting to provide material support to the FARC, in violation of 18 U.S.C. § 2339B. On August 8, 2005, he was sentenced to 25 years in prison.

- *United States* v. *Iyman Faris* (E.D. Va.), *aff'd*, 388 F.3d 452 (4th Cir. 2004), *cert. granted and judgment vacated*, 544 U.S. 916 (2005), *aff'd on remand*, 162 Fed. Appx. 199 (4th Cir. 2005) (unpublished): Iyman Faris pled guilty to conspiring to provide, and providing, material support to Al Qaeda, in violation of 18 U.S.C. §§ 371 & 2339B, for providing the terrorist organization with information about possible United States targets for attack. Among other things, Faris was tasked by Al Qaeda operatives overseas to assess the Brooklyn Bridge as a possible post-9/11 target of destruction. He also provided sleeping bags, cell phones, and cash to Al Qaeda. Faris, who initially provided information and assistance to law enforcement personnel, was sentenced, on October 28, 2003, to 20 years' imprisonment.
- *United States* v. *Jeffrey Leon Battle, et al.* (D. Ore.): In late 2001 to early 2002, defendants Jeffrey Leon Battle, Patrice Lumumba Ford, Muhammad Ibrahim Bilal, Ahmed Ibrahim Bilal, and Maher Mofeid Hawash attempted to enter Afghanistan through China and Pakistan to fight alongside the Taliban against the United States and allied forces. Co-defendant October Martinique Lewis channeled money to Battle during the course of his trip, including his later travel to the Republic of Korea and

then to Bangladesh to join the evangelical Islamic group Tabligh Jamaat as a way of entering Pakistan and ultimately Afghanistan. The original charges against the defendants included conspiring to provide material support to foreign terrorist organizations, in violation of 18 U.S.C. § 2339B. Battle and Ford each pled guilty to one count of seditious conspiracy and, on November 24, 2003, were each sentenced to 18 years in prison. Ahmed and Muhammed Bilal each agreed to cooperate with the Government, each pled guilty to one count of violating IEEPA and one count of a firearms conspiracy, and, on February 9, 2004, they were sentenced to ten and eight years in prison, respectively. Hawash agreed to cooperate with the Government, pled guilty to one count of violating IEEPA, and was sentenced on February 9, 2004, to seven years in prison. Lewis agreed to cooperate with the Government, pled guilty to five counts of money laundering, and was sentenced on December 1, 2003, to three years in prison. All four of these defendants cooperated against Battle and Ford, among others.

- *United States* v. *Elkin Alberto Arroyave-Ruiz, et al.* (S.D. Tex.): Nine defendants were charged, seven have pled guilty, and five have been sentenced on charges relating to a deal in which the defendants attempted to procure $25 million worth of weapons for the terrorist organization Autodefensas Unidas de Colombia ("AUC") in exchange for cocaine. Elkin Alberto Arroyave-Ruiz and Edgar Fernando Blanco-Puerta, both purporting to be high-ranking members of the AUC, were arrested in a

sting operation in Costa Rica, while they were preparing to inspect a purported cache of weapons. Simultaneous with that operation, broker Uwe Jensen was arrested in the United States. Romero-Panchano was responsible for soliciting AUC members to participate in the weapons-for-drugs deal. Fanny Cecilia Barrera de Amaris inspected a cache of weapons on behalf of the AUC during the course of the deal. All five of these defendants were indicted for conspiring to provide material support or resources to a designated foreign terrorist organization ("FTO"), in violation of 18 U.S.C. § 2339B, and a drug conspiracy. Blanco-Puerta and Jensen each pled guilty to both charges; the other three pled guilty to the material-support conspiracy. On May 31, 2006, Blanco-Puerto was sentenced to 15 years' imprisonment for the material-support conspiracy and life imprisonment for the drug conspiracy; Jensen was sentenced to 168 months' imprisonment on each count; and Arroyave-Ruiz was sentenced to 15 years' imprisonment for the material-support conspiracy. On December 1, 2005, Barrera de Amaris was sentenced to 61 months' imprisonment, and Romero-Panchano was sentenced to 36 months' imprisonment. Romero-Panchano's sentence included consideration by the court of his cooperation and substantial assistance to the United States in the investigation of the case.

- *United States* v. *Enaam M. Arnaout*, No. 02 CR 892 (N.D. Ill.), *see* 282 F. Supp. 2d 838 (N.D. Ill. 2003) (ruling on defendant's objections to PSR and declining to apply terrorism enhancement under U.S.S.G. § 3A1.4): Arnaout was the Executive Director

of Benevolence International Foundation ("BIF"), which purported to be a charity based in Chicago. He had a long-standing relationship with Usama Bin Laden and his associates. Arnaout's indictment charged him with seven counts, including providing material support to organizations engaged in violent activities, in violation of 18 U.S.C. § 2339A, and racketeering, in violation of 18 U.S.C. § 1962. It described a multi-national criminal enterprise that, for at least a decade, used charitable contributions from innocent Americans to support Al Qaeda, the Chechen *mujahideen*, and armed violence in Bosnia. The indictment alleged that BIF operated, with Arnaout and other individuals and entities, as a criminal enterprise that engaged in a pattern of racketeering activity. The objectives of the enterprise were to raise funds and provide other material support for the violent activities of mujahideen and terrorist organizations, including Al Qaeda and Hezb e Islami. Arnaout pled guilty to a racketeering conspiracy, admitting that donors of BIF were misled into believing that their donations would support peaceful causes when in fact funds were spent to support violence overseas. He also admitted to providing various items to support fighters in Chechnya and Bosnia-Herzegovina, including boots, tents, uniforms, and an ambulance. On February 17, 2006, Arnaout was sentenced to ten years in prison.

- *United States* v. *Naji Antoine Abi Khalil* (E.D. Ark.): Naji Antoine Abi Khalil pled guilty to violations of 18 U.S.C. § 2339B, 50 U.S.C. § 1705, and 18 U.S.C. § 371, after he attempted to provide night-vision equipment and infrared aiming devices to

Hizbollah. On February 2, 2006, he was sentenced to 60 months' imprisonment.

- *United States* v. *Sami Amin Al-Arian* and *Hatim Naji Fariz*, No. 8:03CR77T30TBM (M.D. Fla.), *see* 308 F. Supp. 2d 1322 (M.D. Fla. 2004) (ruling on defendants' motion to dismiss, or to strike portions of, indictment), *mot. to modify ruling denied*, 329 F. Supp. 2d 1294 (M.D. Fla. 2004): Sami Amin Al-Arian and Hatim Naji Fariz were indicted (along with co-defendants) on numerous charges for using facilities in the United States, including the University of South Florida, to serve as the North American base for the Palestinian Islamic Jihad ("PIJ") (which was named a Specially Designated Terrorist ("SDT") in January 1995 and was designated a foreign terrorist organization ("FTO") in 1997). Sami Al-Arian was on the Shura council of the PIJ. The charges included providing material support to the PIJ, in violation of 18 U.S.C. § 2339B; conspiring to murder persons abroad, in violation of 18 U.S.C. § 956(a)(1); and racketeering conspiracy, in violation of 18 U.S.C. § 1962(d). Following several months of trial and lengthy deliberations, the jury was unable to reach a verdict on three of the four most serious charges against Al-Arian and Fariz (including racketeering conspiracy and conspiracy to provide material support) and other charges, and the jury acquitted them of conspiracy to murder persons abroad and several substantive travel-act, material-support, and money-laundering charges. Each of them subsequently pled guilty to knowingly conspiring to make or receive contributions of funds, goods, and services to an SDT, in violation of 18 U.S.C. § 371.

On May 1, 2006, Al-Arian was sentenced to 57 months' imprisonment. On July 26, 2006, Fariz was sentenced to 37 months' imprisonment.

- *United States* v. *Hassan Makki* (E.D. Mich.): Hassan Makki was part of an organization that smuggled low-taxed and untaxed cigarettes from North Carolina and the Cattaraugus Indian Reservation in New York to Michigan in order to evade Michigan State cigarette tax. To accomplish their goals, the co-conspirators produced counterfeit tax stamps, obtained counterfeit credit cards, laundered money, obstructed justice, and committed arson. Makki was a supporter of the designated foreign terrorist organization Hizballah, and admitted that he knowingly provided more than $2,000 to Hizballah's "orphans of martyrs" program to benefit the families of those killed in Hizballah terrorist operations or by Hizballah's enemies. Makki pled guilty to providing material support to Hizballah, in violation of 18 U.S.C. § 2339B, and conspiring to violate the racketeering laws, in violation of 18 U.S.C. § 1962(d). On December 16, 2003, he was sentenced to 57 months' imprisonment.
- *United States* v. *Mahmoud Youssef Kourani* (E.D. Mich.): Mahmoud Youssef Kourani pled guilty to conspiring to provide material support to Hizballah, in violation of 18 U.S.C. §§ 371 & 2339B, in connection with his hosting of meetings at his home during which a guest speaker from Lebanon solicited donations to Hizballah's "orphans of martyrs" program to benefit the families of those killed in Hizballah terrorist operations or by Hizballah's enemies. On June 14, 2005, Kourani was

sentenced to 54 months in prison.

- *United States* v. *Cedric Carpenter* and *Lamont Ranson* (S.D. Miss.): Cedric Carpenter and Lamont Ranson each pled guilty to conspiring to provide material support to a designated foreign terrorist organization, in violation of 18 U.S.C. § 2339B, for their involvement in a conspiracy to sell false documents to individuals they believed were members of Abu Sayyaf, a Philippines-based group. Carpenter, a convicted felon, also pled guilty to possessing a firearm at the time of his arrest. On May 20, 2005, Carpenter was sentenced to 63 months of imprisonment and Ranson was sentenced to 29 months of imprisonment.
- *United States* v. *John Walker Lindh*, 227 F. Supp. 2d 565 (E.D. Va. 2002): John Walker Lindh was apprehended in Afghanistan, armed and engaged on behalf of the Taliban. He had traveled to Pakistan and then crossed into Afghanistan, where he trained with the Taliban and took up arms on their behalf. He was charged with conspiracy to kill, material-support charges, and weapons charges. He agreed to cooperate with the Government and pled guilty to supporting the Taliban, in violation of the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. § 1705(b)), and carrying an explosive during the commission of a felony, in violation of 18 U.S.C. § 844(h)(2). He admitted that by supplying services to and fighting in support of the Taliban, he provided protection and sanctuary to Al Qaeda, a designated foreign terrorist organization. Lindh cooperated and provided information

about training camps and fighting in Afghanistan in 2001. On October 4, 2002, he was sentenced to 20 years' imprisonment.

- *United States* v. *Yahya Goba, et al.*, No. 02-CR-214S (W.D.N.Y.), *see* 240 F. Supp. 2d 242 (W.D.N.Y. 2003) (denying defendants' motions to revoke detention order): These defendants, known as the "Lackawanna Six," were charged with conspiring to provide, attempting to provide, and providing, material support to Al Qaeda, in violation of 18 U.S.C. § 2339B, based upon their pre-9/11 travel to Afghanistan to train in the Al Farooq camp operated by Al Qaeda. Five defendants pled guilty to providing material support to Al Qaeda, and the sixth pled guilty to providing funds and services to Al Qaeda in violation of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1705. All six defendants cooperated with the Government, providing information about Al Farooq and testifying in other terrorism cases brought by the United States and by other countries; for example, Goba testified in the *Al-Moayad* case discussed above. They were sentenced, on various dates in December 2003, to terms ranging from seven to ten years in prison.
- *United States* v. *Abdelghani Meskini*, S3 00 Cr. 15 (JFK) (S.D.N.Y.), *see* 319 F.3d 88 (2d Cir. 2003) (affirming co-defendant's conviction and sentence): Abdelghani Meskini was the co-defendant of Mokhtar Haouari, who is discussed above. Haouari recruited Meskini to assist Ahmed Ressam, who was planning to bomb LAX at the Millennium. Meskini was to meet Ressam in the United States, provide him with

money and a telephone, and serve as his driver and translator.[36] In return, Ressam was to arrange for Meskini, who had expressed a desire to join the *jihad* in Chechnya, to attend a terrorist training camp in Afghanistan. Pursuant to a cooperation agreement, Meskini pled guilty to participating in a conspiracy to provide material support to Ressam's planned terrorist act, in violation 18 U.S.C. §§ 371 & 2339A; six counts of conspiring to commit, and committing, identification-document fraud, access-device fraud, and bank fraud, in violation of 18 U.S.C. §§ 371, 1028, 1029, & 1344; and violating 18 U.S.C. §§ 922(g)(5) & 2 by shipping and transporting in interstate and foreign commerce, and possessing in and affecting commerce, a handgun while he was an alien illegally in the United States. Meskini provided substantial assistance to the Government by, among other things, testifying at the trials of Ressam and Haouari. On January 23, 2004, Meskini was sentenced to 72 months' imprisonment.

- *United States* v. *Syed Mustajab Shah, Muhammed Abid Afridi, and Ilyas Ali* (S.D. Cal.): The defendants were charged with conspiring to provide material support to Al Qaeda, in violation of 18 U.S.C. § 2339B, and drug charges, in a scheme to trade heroin and hashish for Stinger anti-aircraft missiles. From April through September 2002, the defendants negotiated with undercover law enforcement agents for the sale of 600 kilograms of heroin and five metric tons of hashish. The defendants also

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[36] Although Meskini did not know Ressam's specific plan, he knew that Ressam was coming to the United States to commit some kind of violent terrorist act.

negotiated to purchase four Stinger anti-aircraft missiles, which the defendants indicated they were going to sell to members of Al Qaeda in Afghanistan. Afridi and Ali each pled guilty to drug and material-support charges, and cooperated against Shah. On April 3 and 10, 2006, Afridi and Ali, respectively, were each sentenced to 57 months in prison. Shah also pled guilty and is awaiting sentencing.

- *United States* v. *Masoud Ahmad Khan, et al.*, No. CRIM.03-296-A (E.D. Va.), *see* 309 F. Supp. 2d 789 (E.D. Va. 2004) (ruling on co-defendants' motions for judgment of acquittal): This case, which was discussed above, involved defendants who were members of the Dar al-Arqam Islamic Center in Falls Church, Virginia, and who participated, in 2000 and 2001, in paintball and paramilitary training with the encouragement of Dar al-Arqam's spiritual leader, Sheikh Ali al-Timimi. Soon after the terrorist attacks of September 11, 2001, a meeting was held at the home of defendant Yong Ki Kwon. During this meeting, Sheikh Al-Timimi encouraged those in attendance to go to Pakistan to receive military training from LET, to be able to fight against American troops soon expected to arrive in Afghanistan. This encouragement was significant enough that four of those who attended this meeting, including Kwon and defendants Khwaja Mahmood Hasan, and Mohammed Aatique, left the United States and traveled to an LET training camp less than a week after this meeting. They completed their training but did not travel into Afghanistan. Kwon, Hasan, and Aatique each pled guilty to conspiring to provide material support to LET,

in violation of 18 U.S.C. § 2339A, and other charges. Each cooperated with the Government and provided substantial assistance, including by testifying at one or more terrorism trials. Kwon was sentenced to 38 months' imprisonment, Hasan to 37 months, and Aatique to 38 months.[37]

- *United States* v. *Earnest James Ujaama* (W.D. Wash.): Earnest James Ujaama was indicted on one count of conspiring to provide material support to an FTO (Al Qaeda) and to terrorist activity, in violation of 18 U.S.C. §§ 2339B, 2339A, & 956, and one count of using, carrying, possessing, and discharging firearms during a crime of violence, in violation of 18 U.S.C. §§ 924(c)(1)(A)(iii) & 2. The charges alleged that Ujaama and his unindicted co-conspirators were trying to set up an Al Qaeda terrorist training camp in Oregon. As part of an agreement that requires him to continue cooperating with the Government for ten years, Ujaama pled guilty to conspiring to supply goods and services to the Taliban, in violation of IEEPA. His cooperation, which is ongoing, has led to charges against a number of other individuals. Ujaama was sentenced, on February 13, 2004, to two years' imprisonment.

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[37] Kwon, Hasan, Aatique, and co-defendant Masoud Ahmad Khan (discussed above) were assisted in their travels by co-defendant Randall Todd Royer, who had been to the LET camp previously. The charges against Royer included violations of 18 U.S.C. §§ 2339A & 2339B, but he pled guilty to aiding and abetting the use and discharge of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 924(c) & 2, and aiding and abetting the carrying of an explosive during the commission of a felony, in violation of 18 U.S.C. §§ 844(h)(2) & 2. On April 9, 2004, he was sentenced to 20 years in prison.

In sum, defendants convicted of material-support charges after trial have received sentences ranging from 75 years to 52 months of imprisonment, with all but one defendant receiving at least ten years. Stewart's criminal conduct, which lasted more than two years, was both extremely dangerous and devious, and she cannot have failed to understand at the time that the Government had placed her in a position of trust with respect to a terrorist leader who was believed to pose a sufficient threat that he needed to be held essentially incommunicado. Under the circumstances, a Guidelines sentence of 30 years' imprisonment would avoid an unwarranted sentence disparity, as required by Section 3553(a)(6).[38]

F. Stewart's Conduct Was Clearly Criminal In Nature And Not The Result of Zealous Advocacy

Stewart asserts that her criminal conduct involved "crossing a line that had not yet been definitively drawn" and that it arose from an excess of zealous advocacy. As a result, she argues that it would be inappropriate to impose a sentence of imprisonment. (Stewart Mem. 33-42). As a review of the law and the evidence at trial make perfectly

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[38] By contrast, Stewart's request for a non-jail sentence would create a disparity that would be not only unwarranted but also significant and unprecedented. As reported above, even those material-support defendants who pled guilty to reduced charges or who cooperated with the Government received multi-year sentences of imprisonment. Indeed, the Department of Justice's Counterterrorism Section has confirmed that no defendant convicted of conspiring to violate, or violating, 18 U.S.C. § 2339A or § 2339B — not even a defendant who has provided substantial assistance to the Government — has received a sentence that did not include a term of imprisonment. This Court should not make Stewart the first.

clear, neither of these claims has any merit.

Stewart claims that a sentence of imprisonment is unwarranted because the material support statutes do "not draw a bright line between what is legal or illegal." (Stewart Mem. 33). Stewart is simply wrong. As the Court ruled in denying Stewart's pretrial motion to dismiss Counts Four and Five, the language and statutory structure of the material support statutes are not ambiguous and the statute provided Stewart with fair notice of the acts that are prohibited by its proscription of providing personnel. *United States* v. *Sattar*, 314 F. Supp. 2d 279, 299-301 (S.D.N.Y. 2004) ("making Sheikh Abdel Rahman available as a co-conspirator in a conspiracy to kill and kidnap persons in a foreign country – is conduct that plainly is prohibited by the statute.").

Furthermore, the evidence introduced at trial against Stewart makes it abundantly clear that Stewart knew full well that her conduct was criminal. Stewart repeatedly lied in SAMs affirmations that she would abide by the SAMs during her visits to Abdel Rahman and that she would not use her meetings with Abdel Rahman to pass messages between him and third parties, including the media (GXs 3,7, & 12). During her prison visits with Abdel Rahman, Stewart repeatedly smuggled letters from Sattar, containing terrorist messages from Taha and others, including Taha's requests that Abdel Rahman withdraw his support for the cease-fire. During the prison visits Stewart deliberately used covering noises and other distractions to conceal from the prison guards discussions involving terrorism. After each prison visit, Stewart smuggled Abdel Rahman's responses back to

Sattar. Stewart twice relayed Abdel Rahman's withdrawal of support for the cease-fire to the Egyptian reporter, thereby disseminating it world-wide.

Stewart's awareness that her conduct was criminal is also reflected in her statements to Lisa Sattar and to Yousry, following the issuance of the first press release. Stewart told Lisa Sattar of her concern that she would not be able to "hide" from the United States Attorney's Office the fact that she had issued the first press release and that there would be consequences for her as result of her actions. (GX 1115X at 2-3). Stewart told Yousry that she was "risking her whole career" in disseminating Abdel Rahman's statement and that she was not doing it "lightly." (DX LS-701T at 5-6; DX MY-1713 at 5-6).

Stewart's contention, that she was prosecuted for conduct performed in the context of providing otherwise *bona fide* legal services to a client, is equally meritless and should be offensive to those actually zealously defending criminal defendants within the bounds of the law. Stewart's actions had nothing to do with legitimate legal representation of Abdel Rahman. Again, the evidence at trial makes that clear.

The crux of Stewart's defense at trial was that she was merely acting in good faith as a zealous advocate for her client, Abdel Rahman, as required by the code of ethics. The jury rejected that defense and found Stewart guilty because the evidence proved decisively that Stewart's actions had nothing whatsoever to do with her role as Abdel Rahman's attorney. While Stewart abused a position of trust as Abdel Rahman's attorney

to gain access to Abdel Rahman, her actions were purely criminal in nature.

Repeatedly lying to the Government in SAMs affirmations, smuggling terrorist messages to and from Abdel Rahman in prison, concealing from prison guards the reading and dictation of those terrorist messages, and disseminating Abdel Rahman's withdrawal of support for the cease-fire had nothing to do with legitimate legal representation and was nothing short of criminal conduct. Stewart did not and could not explain in her trial testimony how her actions constituted legitimate legal representation and, similarly, does not in her sentencing submission.

Indeed, during cross-examination, Stewart testified that the only possible legal matters that remained in her representation of Abdel Rahman were the filing of (1) a civil lawsuit challenging his conditions of confinement, (2) a habeas corpus petition seeking a new trial for him should she ever find newly discovered evidence, (3) a clemency petition on Abdel Rahman's behalf, and (4) a request of the governments of the United States and Egypt to transfer Abdel Rahman to Egypt to serve his sentence. (Tr. 8401-14). Clearly, Stewart's actions had nothing to do with furthering any of those legitimate legal objectives.

In fact, Stewart and Ramsey Clark testified that their "goal" was to have Abdel Rahman transferred to Egypt to serve his sentence in an Egyptian prison rather than in the United States. (Tr. 7632, 7922, 8719-20). Stewart's actions, in disseminating Abdel Rahman's withdrawal of support for the cease-fire – which was a directive calling for the

return to the violence and killings of the past directed at that Egyptian government – would be extremely detrimental to that goal and in all likelihood result in the Egyptian government's denial of any request to transfer Abdel Rahman.[39]

Accordingly, neither of these bases justifies a non-Guidelines sentence.

G. Stewart's Did Not Attempt To "Avoid A Greater Harm"

Stewart asserts that a downward departure under section 5K2.11 of the Sentencing Guidelines or a non-Guidelines sentence is warranted because she committed the crimes for which she stands convicted "to avoid a perceived greater harm" and that her conduct did not "cause or threaten the harm or evil sought to be prevented by the law." (Stewart Mem. at 44). She argues that her conduct in this case "was the product of her perception that her client's health and well-being, seriously jeopardized by his continued imprisonment in the United States, was the 'greater harm' that she sought to avoid by her conduct." (Stewart Mem. at 44-45). Stewart's claim is without merit.

Section 5K2.11 of the Sentencing Guidelines and its policy statement authorizes a downward departure in two different circumstances: (1) if a defendant believed he or she was avoiding a greater harm by committing the offense; and (2) if a defendant's conduct,

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[39] To the extent Stewart pursued a strategy of keeping Abdel Rahman in the public eye, there were legitimate ways of doing that without defrauding the government and providing material support to a conspiracy to murder. The SAMs prohibited Abdel Rahman from communicating with the media, including through his attorneys. They did not prohibit Abdel Rahman's attorneys from communicating with the media about his case or his conditions of confinement, filing lawsuits on his behalf, or otherwise providing *bona fide* legal services to him.

although a violation of the law, does not truly cause or threaten the harm sought to be prevented by the criminal statute. A downward departure under the "greater harm" prong applies only in "narrow, extreme circumstances, such as a mercy killing." *United States* v. *Barajas-Nunez*, 91 F.3d 826, 832 (6th Cir. 1996). A departure under this prong "is typically inappropriate where the defendant could have pursued other means of avoiding the greater harm rather than committing a crime." *United States* v. *Grewal*, 2 F. Supp. 2d 612, 624 (D.N.J. 1998); *see also United States* v. *Hunter*, 980 F. Supp. 1439, 1449 (M.D. Ala. 1997); *United States* v. *Rooney*, 370 F. Supp. 2d 310, 316 (D.Me. 2005). A reduced sentence may be appropriate, provided that the circumstances significantly diminish society's interest in punishing the conduct. Where the interest in punishment or deterrence is not reduced, a reduction in punishment under this prong is not warranted. U.S.S.G. § 5K2.11; *United States* v. *Carrasco*, 313 F.3d 750, 754-56 (2d Cir. 2002).

Under the second prong of section 5K2.11, the focus is on the harm sought to be avoided by the law proscribing the offense at issue, not the applicable Guidelines provision. Where a defendant's conduct may cause or threaten the harm sought to be prevented by the criminal statute, a downward departure is not warranted. U.S.S.G. § 5K2.11; *United States* v. *Carrasco*, 313 F.3d at 754-56.

Neither prong of section 5K2.11 is applicable to Stewart. Stewart's claim, that she committed the crimes for which she now stands convicted because of her perception that her client's health and well-being were seriously jeopardized by his continued

imprisonment in the United States, is unsupported by the evidence. In the first instance, Stewart's conduct was not intended to avoid a greater harm; it was intended to cause a greater harm. Stewart was convicted of providing material support to a conspiracy to murder persons outside the United States, and Stewart engaged in that conduct in order to assist Abdel Rahman, Taha, and others in the pro-violence faction of the Islamic Group to end the cease-fire in effect in Egypt and return to the violence and killings of the past. Her efforts to aid a violent terrorist organization in its effort to bring about a violent upheaval in Egypt, under no circumstances could be considered a lesser harm.[40]

The second prong of section 5K2.11 similarly provides no relief for Stewart. Because the material support statutes under which Stewart was convicted were intended to prevent the harm threatened by her conduct – providing aid to a terrorist organization and the commission of terrorist acts – a downward departure simply is not warranted.

H. An Aberrant Behavior Downward Departure Or Non-Guidelines Sentence Is Not Warranted

Stewart next asserts that her criminal conduct was aberrational and warrants either

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[40] To the extent Stewart in fact perceived Abdel Rahman's health and well-being as being seriously jeopardized by his continued imprisonment in the United States, she did little to alleviate the problem. Stewart never filed a lawsuit challenging Abdel Rahman's conditions of confinement at FMC Rochester nor took steps through the Bureau of Prisons to obtain additional medical care for him. (Tr. 8268, 8619-26). The fact of the matter is that Abdel Rahman, a difficult and non-compliant patient, received appropriate medical care from Bureau of Prison medical personnel and from physicians from the Mayo Clinic in Rochester, Minnesota. (Tr. 6161-66). This fact was either known to Stewart or would have been known to her if she had inquired.

a downward departure under section 5K2.20 of the Sentencing Guidelines or a non-Guidelines sentence. This argument should also be rejected.

Section 5K2.20 of the Sentencing Guidelines authorizes a downward departure where the offense of conviction is a "single criminal occurrence or single criminal transaction that (A) was committed without significant planning; (B) was of limited duration; and (C) represents a marked deviation by the defendant from an otherwise law-abiding life." U.S.S.G. § 5K2.20 cmt. n.1. The current formulation of this section was adopted in November 2000 as a result of an amendment in response to a split among the circuit courts as to whether the departure required proof that the conduct was spontaneous or should be considered under a totality of circumstances approach. The Sentencing Commission rejected both approaches and charted a middle course, rejecting the requirement of spontaneity and allowing a departure for conduct involving more than a single act. The Second Circuit, in *United States* v. *Gonzales*, 281 F.3d 38, 45-47 (2d Cir. 2002), decided that the role of the 2000 amendment was merely to clarify and that therefore even for pre-2000 offense conduct, the current language of the Guidelines applies. Under Second Circuit case law a district court may consider spontaneity, even if it is not determinative. *United States* v. *Castellanos*, 355 F.3d 56, 60 (2d Cir. 2003).

Stewart does not qualify for this departure because she cannot satisfy the requirements that her crimes were committed without significant planning and were of limited duration. Nor should Stewart receive a non-Guidelines sentence based on this

claim. Stewart's recurrent criminal conduct, in which she deceived the government, smuggled terrorist messages to and from Abdel Rahman, and disseminated Abdel Rahman's withdrawal of support for the Islamic Group's cease-fire, involved significant planning and took place over a period of more than two years, from March 1999 to July 2001. *See United States* v. *Castellanos*, 355 F.3d at 60 (affirming district court's denial of departure because there was evidence that defendant "had a week's notice of the crime and therefore plenty of time to consider whether to participate," "'was carrying the money' to purchase the drugs at the time of arrest," and "had attempted to evade responsibility for her role in the drug transaction by lying on the stand and suborning the perjury of others."); *United States* v. *Campbell*, 2005 WL 2001882, at *2 (S.D.N.Y. Aug. 19, 2005) (no departure because "[t]he decision here to purchase guns was not made on one occasion by on three"); *United States* v. *Hollier*, 321 F. Supp. 2d 601, 603 (S.D.N.Y. 2004) (no downward departure for defendant who submitted four false W-4s in four separate years and who forged at least three IRS letters over a two-year period.); *United States* v. *Barclay*, 2004 WL 1277996, at *5 (S.D.N.Y. June 8, 2004) (no departure because the defendant's criminal conduct "required planning" over the course of three months).

Accordingly, Stewart's conduct cannot be deemed "aberrational."

I. Stewart's "Chilling Effect" Claim Is Frivolous

Finally, Stewart argues that if she receives a prison sentence, it will "exert a

substantial chilling effect on attorneys, who would be powerfully discouraged from representing unpopular, controversial or politically extreme clients or groups for fear of risking their own careers and freedom." (Stewart Mem. at 88). In support of her claim she cites from a handful of letters and other writings from attorneys and non-attorneys, whose actual knowledge of Stewart's recurrent criminal conduct and the evidence introduced against Stewart at her trial is highly suspect. She also argues that if a prison sentence is imposed, it will be a source of regret in the future, like for example, past prosecutions under the Sedition Act of 1798, the Espionage Act of 1917 and Sedition Act of 1918 during and after World War I, and the Smith Act during World War II and the Cold War. These claims simply ignore the reality of Stewart's conduct in this case and should be rejected.

As the evidence at trial made clear, Stewart was not prosecuted and convicted because she represented Abdel Rahman, an "unpopular client," or for anything she did in the course of her legitimate legal representation of Abdel Rahman. Indeed, as previously argued, the conduct for which Stewart was prosecuted and convicted had nothing to do with legitimate lawyering. Stewart's convictions were based on her repeated lies in SAMs affirmations that she would abide by the restrictions placed on Abdel Rahman; her repeated smuggling of terrorism messages to and from Abdel Rahman; and her disseminations of Abdel Rahman's pro-violence directives to the Islamic Group to end its cease-fire and resume the violence and killings of the past directed at the Egyptian

government. Based on that conduct Stewart was convicted of defrauding the United States, making false statements, providing material support to a conspiracy to murder and conspiracy to provide material support to a conspiracy to murder. What Stewart and her supporters fail to recognize and acknowledge is the seriousness of Stewart's criminal conduct, the severity of the potential consequences of her providing material support to a terrorist organization, and the fact that her criminal conduct simply had nothing to do with legitimate zealous legal representation. Stewart did not walk a fine line of zealous advocacy and accidentally fall over it; she marched across it and into a criminal conspiracy.

POINT III

AHMED ABDEL SATTAR SHOULD BE SENTENCED TO LIFE IMPRISONMENT

Sattar played a central role in both the Count One conspiracy to defraud the United States and the Count Two terrorist conspiracy to murder people outside the United States, because he was the communications "hub" that connected the various leaders of the Islamic Group, including (via Stewart and Yousry) Abdel Rahman. In addition, Sattar solicited violence, as charged in Count Three, by participating in the creation and distribution of the *fatwah* calling for the killing of Jewish people, and by sending to Abdel Rahman (via Stewart and Yousry) Taha's messages seeking to end the Islamic Group's cease-fire. Because of this reprehensible and dangerous conduct, and in accordance with the Sentencing Guidelines and the recommendation of the Probation Office, the

Government respectfully asks the Court to sentence Sattar to life imprisonment.[41] None of the factors he cites warrant a downward departure under the Guidelines or a non-Guidelines sentence.

A. The Terrorism Sentencing Enhancement Should Be Applied

Sattar argues that the terrorism enhancement under Section 3A1.4 of the Guidelines does not apply to him because there was insufficient evidence at trial to prove that he intended to promote a terrorism crime. Sattar appears to base this argument on his assertion that "the evidence at trial demonstrated there was no actual conduct engaged in by [him] which resulted in tangible consequences," and as such, there is insufficient proof that his crimes were calculated to influence or to retaliate against the government. (Sattar ltr. 2-3).

Sattar is incorrect. Contrary to what Sattar asserts, there is no requirement that his conduct actually result in "tangible consequences" for Section 3A1.4 to apply. Section 3A1.4 provides that, "[i]f the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32." U.S.S.G. § 3A1.4(a); *United States* v. *Meskini*, 319 F.3d 88, 91 (2d Cir. 2003). In addition, this section provides that, "[i]n each such case, the defendant's criminal history category . . . shall be Category VI." U.S.S.G. §

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[41] The Probation Department has calculated Sattar's Sentencing Guidelines range to be 360 months to life.

3A1.4(b); *United States* v. *Meskini*, 319 F.3d at 91. Notably, this enhancement applies only when the offense is a "federal crime of terrorism." U.S.S.G. § 3A1.4(a). The Guidelines define "federal crime of terrorism" by referring to Title 18, United States Code, Section 2332b, *see* U.S.S.G. § 3A1.4, application note 1, which in turn defines the term to be an offense that "is calculated to influence or affect the conduct of the government by intimidation or coercion, or to retaliate against government conduct;" and that violates one of a number of specified federal statutes. 18 U.S.C. § 2332b(g)(5); *Haouari* v. *United States*, 429 F. Supp. 2d 671, 682 (S.D.N.Y. 2006). Sattar's conviction under Count Two for conspiring to murder persons outside the United States, in violation of 18 U.S.C. § 956(a)(1) and (a)(2)(A), qualifies as a federal crime of terrorism.

Here, as reflected in the jury's verdict, there was more than sufficient evidence at trial to demonstrate that Sattar intended to promote a federal crime of terrorism by showing that his conduct was "calculated to influence or affect the conduct of the government . . . or to retaliate against government conduct." For example, in September 1999, Sattar and Taha sent a message to Abdel Rahman through Yousry asking Abdel Rahman to support Taha's efforts to end the Islamic Group's cease-fire in Egypt and return to the use of violence and killings in order to overthrow the Egyptian government. Abdel Rahman's "permission [was] given to fight" and Abdel Rahman "demand[ed] that [the Islamic Group] consider themselves absolved from [the cease-fire]." (GX 1029X at 6-7; *see also* GX 2204AT). The evidence also showed that in May 2000, Sattar and Taha

again sent a message to Abdel Rahman through Stewart and Yousry seeking Abdel Rahman's support in ending the Islamic Group's cease-fire. (GX 1707X at 33-36). In response, Abdel Rahman withdrew his support for the cease-fire and directed that his statement be disseminated in the media, which Sattar and Stewart did. (GX 1710X at 48-49, GX 1711 at 31-33; Tr. 5569-70, 5572, 5605-06). The evidence also showed that, in the fall of 2000, Sattar and Taha wrote the *fatwah* mandating the killing of Jewish people everywhere in Abdel Rahman's name in response to events in the Middle East involving the Israeli-Palestinian conflict (entitled "*Fatwah* Mandating the Killing of Israelis Everywhere") (*see* GX 1179X-83X); disseminated it around the world (*see* GX 1182X); relayed it to Alaa Abdul Raziq Atia, the military leader of the Islamic Group in Egypt (*see* GX 1191X, 1194X, 1197X); and agreed to tell Atia to "go by" it, in other words, to carry out the mandate and kill Jewish people (*see* GX 1188X).[42]

Accordingly, the Court should apply the terrorism enhancement under Section 3A1.4.

B. Sattar's Pre-Sentence Confinement Does Not Warrant A Downward Departure

Sattar argues that the Court should grant him a downward departure based on the

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[42] The *fatwah* called on "brother scholars everywhere in the Muslim world to do their part and issue a unanimous *fatwah* that urges the Muslim nation to fight the Jews and to kill them wherever they are." The *fatwah* further urged "the Muslim nation" to "fight the Jews by all possible means of *Jihad*, either by killing them as individuals or by targeting their interests, and the interests of those who support them, as much as they can." (GX 1182X at 13-17).

conditions to which he has been subject while being detained in the Special Housing Unit ("SHU") in the Nine-South Wing and, at times, in the Ten-South Wing of the Metropolitan Correctional Center ("MCC"). Specifically, Sattar relies on two alleged conditions: (1) that he has been "locked in a cell 23 hours each day" in the Nine-South Wing; and (2) that he has been subject to "the highest security in the MCC" when he was, at times, in the Ten-South Wing. (Sattar ltr. 8). Sattar also asserts that these restrictions "further contributed to his unaddressed medical condition regarding his health" and therefore justify a departure. (Sattar ltr. 9).

Under the Guidelines, a sentencing court may depart if it finds "that there exists an aggravating or mitigating circumstance of a kind or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." U.S.S.G. § 5K2.0. In *United States* v. *Carty*, the Second Circuit held that "pre-sentence confinement conditions may in appropriate cases be a permissible basis for downward departures." 264 F.3d 191, 196 (2d Cir. 2001); *see also United States* v. *Teyer*, 322 F. Supp. 2d 359, 377 (S.D.N.Y. 2004); *United States* v. *Mateo*, 299 F. Supp. 2d 201, 207-12 (S.D.N.Y. 2004). However, a departure is warranted only if the circumstances are "so severe as to take [the] particular case 'outside the heartland of the applicable Guideline.'" *United States* v. *Carty*, 264 F.3d at 196 (quoting *Koon* v. *United States*, 518 U.S. 81, 109 (1996)). Indeed, departures under Section 5K2.0 of the Guidelines are permitted only "where the conditions in question are extreme to an exceptional degree and their severity

falls upon the defendant in some highly unique or disproportionate manner." *United States* v. *Teyer*, 322 F. Supp. 2d at 377 (quoting *United States* v. *Mateo*, 299 F. Supp. 2d at 208); *see Rickenbacker* v. *United States*, 365 F. Supp. 2d 347, 351 (E.D.N.Y. 2005) (departures are justified only in "extraordinary" cases); *see, e.g.*, *United States* v. *Mateo*, 299 F. Supp. 2d at 207-12 (granting downward departure where pretrial detainee experienced sexual abuse by prison guard and birth of child without medical attention); *United States* v. *Francis*, 129 F. Supp. 2d 612, 619 (S.D.N.Y. 2001) (granting downward departure where pretrial detainee suffered "extraordinary stress and fear for his safety" as a result of being subjected for extended period to "qualitatively different, substandard conditions" prevailing at overcrowded, unsanitary and unsafe state correctional facility).[43]

In this case, Sattar's alleged pre-sentence confinement conditions do not rise to the level that would warrant a downward departure. Here, Sattar relies primarily on the fact that his pre-sentence confinement has been located in high-security facilities. However, Sattar was placed in such facilities because he was considered a high-security risk, given the nature of the charges against him. Sattar does not assert that prison officials abused

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[43] Indeed, in *Carty*, the defendant was allegedly held in a four-foot by eight-foot cell with three or four other inmates without light or running water. He received ten to fifteen minutes per day outside of his cell to bathe and was allowed to make only one phone call per week. The only toilet available was a hole in the ground. He was denied access to paper, pens, newspaper, and radio. In addition, while he was incarcerated, he lost forty pounds. 264 F.3d at 193. After holding that those conditions could justify a downward departure, the Second Circuit remanded the case to the district court to reconsider whether a downward departure was warranted. *Id.* at 197. On remand, the district court declined to depart. *See Teyer*, 322 F. Supp. 2d at 378 n.9.

him or intentionally subjected him to unnecessary pain or punishment, such as the extraordinary conditions detailed in *Mateo* or *Francis*, or even *Carty*, where the court declined to grant a downward departure. Additionally, to the extent that Sattar argues that his "unaddressed medical condition" is an extraordinary condition, he has not provided any specific details regarding what constitutes his medical condition or how his confinement contributed to his medical condition. Accordingly, based on his current assertion, there is an insufficient basis to find that the conditions of his confinement subjected him to the type of extraordinary conditions that warrant a departure.

REDACTED

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D. A Guidelines Sentence Is Also Warranted Because Sattar Perjured Himself At Trial

A Guidelines sentence is also warranted because Sattar attempted to obstruct justice by perjuring himself at trial. Sattar intentionally testified falsely and committed perjury when he testified that (1) the reasons he assisted in writing and disseminating the *fatwa* issued in Abdel Rahman's name calling for the murder of Jews everywhere was to keep Abdel Rahman's name in the media and simply to speak out against what was going

on in the Middle East (Tr. 10205, 10987); (2) he did not intend that violence would result from the issuance of the *fatwa* issued in Abdel Rahman's name (Tr. 10211-12, 10985-86); (3) during his conversations with Atia and with Taha and Hamza regarding Atia, Sattar was trying to help Atia escape from Egypt (Tr. 10297); (4) he never advocated the use of violence against anyone and never solicited any person to commit violence (Tr. 10359, 10360; 11071-72); and (5) he accepted telephone calls from Taha, Atia, and others in the Middle East and telephonically connected these people to one another because he believed it was his "duty as a Muslim" and he wanted to "help those people to do something good in Egypt." (Tr. 11040).

Section 3C1.1 of the Sentencing Guidelines, as described in Point II, mandates a two-level upward adjustment of the offense level if a defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of a prosecution by committing perjury. U.S.S.G. § 3C1.1. Perjury occurs when a witness "gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States* v. *Dunnigan*, 507 U.S. at 94.

Perjury may be established by testimony inconsistent with the jury's verdict. It is appropriate to regard the jury's verdict as having "necessarily determined" the falsity of a defendant's testimony when: (i) the defendant testified that he lacked guilty knowledge; and (ii) the jury subsequently convicts the defendant. *See United States* v. *Bonds*, 933

F.2d at155. Moreover, where the false testimony "concern[s] [the defendant's] own state of mind -- a matter about which he was peculiarly knowledgeable" -- it is "reasonable" to conclude from the jury's verdict that the defendant intentionally lied. *See id.*

The jury rejected Sattar's claims, concerning his reasons for issuing the *fatwah* and his use and advocacy of violence, in finding him guilty of Counts Two and Three and, in doing so, "necessarily determined" the falsity of this testimony. *United States* v. *Bond*, 933 F.2d at 155. Furthermore, the plain language of the *fatwah*, written in Abdel Rahman's name, makes it clear that Sattar was advocating the use of violence against Jewish people everywhere and that he intended that violence would result from its issuance. (GX 1182X at 13-17, GX 540T).

Sattar also lied when he testified that his conversations with Atia and with Taha and Hamza regarding Atia, were intended to assist Atia in escaping from Egypt. Rather than proving that Sattar intended to assist Atia in escaping from Egypt, the evidence demonstrated that Sattar intended to assist Atia in his terrorist efforts against the Egyptian government.

The evidence reflects that, starting in the spring 2000 and continuing into the fall of 2000, Sattar facilitated a series of telephone communications between Taha and Atia, the military leader of the Islamic Group in Egypt, who Sattar knew was connected to the 1997 Luxor terrorist attack. During these conversations, Taha and Atia's associates discussed the readiness of Atia and his associates to engage in terrorist military action and

the possibility of a meeting between Taha and Atia. On October 9, 2000, during a telephone conversation, Taha told Sattar that Sattar should inform Atia's associate about the *fatwah* written by them in Abdel Rahman's name and to tell Atia's associate to instruct Atia and his associates that they "are suppose to go by it." Sattar agreed. (GX 1188X at 5). Two days later, on October 11, 2000, during a telephone conversation, Sattar told Taha that he had spoken with Atia and believed that Atia was eager, ready, and able "to do things," meaning to perform terrorist acts, and that Sattar had to warn Atia repeatedly during their conversation that Sattar's telephone was "not safe." (GX 1192 at 13-14, GX 1194X at 7). This evidence makes clear that Sattar was not trying to help Atia escape from Egypt, but instead to facilitate a meeting between Atia and Taha, and to otherwise assist Atia in undertaking terrorist acts against the Egyptian government.

Sattar also perjured himself when he testified that he accepted telephone calls from Taha, Atia and others in the Middle East and telephonically connected them to one another because he wanted to help others do something good in Egypt. As the evidence clearly demonstrated, Sattar facilitated telephone communications to, among other reasons, assist Taha and the pro-violence faction of the Islamic Group to end the cease-fire in Egypt and return to the use of violence and killings and to solicit others to kill Jewish people everywhere. Because of his conduct, the jury found Sattar guilty of conspiracy to murder persons outside the United States and of soliciting crimes of violence.

Combined with his dangerous and deceitful conduct as proven during the trial of this case, Sattar's trial perjury justifies a Guidelines sentence of life imprisonment.

POINT IV

MOHAMMED YOUSRY SHOULD BE SENTENCED TO TWENTY YEARS' IMPRISONMENT

Yousry played a crucial role in both the Count One conspiracy to defraud the United States, the Count Four material support conspiracy, and in providing material support to a conspiracy to murder people outside the United States as charged in Count Five, because he was the only person who communicated directly with Abdel Rahman. His conviction was based primarily on his role as translator and smuggler of terrorist messages to and from Abdel Rahman. Because this conduct put the lives of innocent people in danger, the Government respectfully asks the Court to sentence Yousry to a term of 20 years' imprisonment.[44] None of the factors he cites warrant a downward departure under the Guidelines or a non-Guidelines sentence.

A. A Guidelines Sentence Is Warranted and Yousry Is Not Entitled To A Role Reduction

Yousry contends that he is entitled to a four-level adjustment in his offense level for his minimal role pursuant to Section 3B1.2 of the Sentencing Guidelines. He argues

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[44] The Probation Department has calculated Yousry's Sentencing Guidelines range to be 360 months to life imprisonment. Because Yousry's statutory authorized maximum sentence is 240 months, his Guidelines term of imprisonment is 240 months, the minimum under the range.

that he is entitled to such an adjustment because (1) he was averse to the activities and beliefs of the Islamic Group; (2) he was an interpreter who worked at the request and discretion of the attorneys who hire him; (3) there was no evidence that he was aware of Sattar's relationship with the Islamic Group; and (4) he never provided any information to the media. (Yousry 10/12/05 ltr.). Yousry's claim is without merit.

Rather than being a minor or minimal participant, Yousry was an essential participant in the conspiracy to defraud the United States, the conspiracy to provide material support to a terrorist activity and in providing material support to a terrorist activity.

1. Applicable Law

Sentencing Guidelines section 3B1.2 provides for a 4-level reduction for minimal participation, a 2-level reduction for minor participation, and a 3-level reduction for cases falling in between. Application Note 3 explains that a minimal role reduction

> is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant. It is intended that the downward adjustment for a minimal participant will be used infrequently.

U.S.S.G. § 3B1.2, cmt. n.4. A minor participant is "a defendant . . . who is less culpable than most other participants, but whose role could not be described as minimal." *Id.*, cmt. n.5.

In determining whether a role reduction is applicable "a district court looks to

factors such as the nature of the defendant's relationship to other participants, the importance of the defendant's actions to the success of the venture, and the defendant's awareness of the nature and scope of the criminal enterprise." *United States v. Ravelo*, 370 F.3d 266, 269-70 (2d Cir. 2004) (citation and internal quotation marks omitted). "An adjustment for a defendant's minor role under U.S.S.G. § 3B1.2(b) is warranted only if the defendant is 'substantially less culpable than the average participant." *Id.* at 269.

The fact that Yousry may not have conceived of the crimes for which he stands convicted or engaged in all significant acts related to them is not a basis for a minimal or minor role adjustment. *See United States* v. *Ravelo*, 370 F.3d at 270. Furthermore, the fact that Yousry had no decision-making authority and acted primarily as a translator is not a basis for a mitigating role reduction. *See United States* v. *Salvador*, 426 F.3d 989, 994 (8th Cir. 2005) (affirming the district court's denial of a minor role adjustment on the basis that "[a]lthough [the defendant "had no decision-making authority" and] [the defendant's] primary role in the conspiracy was as a translator, this does not mean that he did not play an important role."); *United States* v. *Gomez*, 94 Fed. Appx. 479, 480 (9th Cir. 2004) (affirming the district court's denial of a minor role adjustment on the basis that "[a]lthough Gomez presented evidence at trial that she had no prior knowledge of the criminal undertaking . . . , she actively participated . . . by translating from Spanish to English and by commenting on the quality of the drugs"); *United States* v. *Garcia*, 2001

WL 1301451, at *1 (4th Cir. Oct. 26, 2001) (rejecting the defendant's argument that he acted "only as a translator" because the defendant was involved in "arranging the time and place for the parties to meet, and acting as an intermediary between undercover police officers and the co-defendants."). Similarly, the fact that Yousry might possibly have played a lesser role than another one of his co-conspirators is not a basis for a minor role adjustment; to be eligible for the reduction, the defendant's conduct must be minor as compared to the average participant. *See United States* v. *Castano* 234 F.3d 111, 113 (2d Cir. 2000). As a significant participant in his crimes, Yousry is simply not entitled to a mitigating role adjustment.

While Yousry may have been the least culpable of the three defendants, his role in the offenses of conviction was neither minor nor minimal. As noted, Sattar, Stewart, and Yousry together served as the hub of a communications network that enabled Abdel Rahman to perpetuate his position as a leader of the Islamic Group and that enabled Taha, the most militant of the leaders of the Islamic Group, to persuade Abdel Rahman to withdraw his support for the Islamic Group's self-imposed cease-fire and advocate the resumption of the violence and killings that occurred in the past. Yousry played an essential role in the success of their efforts.

While Yousry argues that among the three defendants he had no "decision-making power," that claim is unsupported by the evidence and simply untrue. In fact, Yousry was in the most powerful position of the three defendants in that he was the only defendant

who spoke directly with Abdel Rahman and he could simply have refused to translate and to deliver Sattar's and Taha's terrorist messages to Abdel Rahman and smuggle out of prison Abdel Rahman's responses. He chose instead to participate in the crimes for which he now stands convicted. Most significantly, he chose to participate knowing the prohibitions of the SAMs; the violent history of the Islamic Group; Taha's leadership position in the pro-violence/anti-cease-fire faction of the Islamic Group; and that, over a two-year period, he was repeatedly delivering Sattar's and Taha's messages to Abdel Rahman seeking an end to the cease-fire and a return to the violence and killings of the past. As the verdict in this case demonstrates, Yousry did these things as a knowing participant in a conspiracy to defraud the United States and knowing that he was providing material support to a conspiracy to murder persons outside the United States.

2. Additional Reasons Yousry's Role In The Offense Warrants A Guidelines Sentence

a. Yousry's Knowledge of Abdel Rahman and the Islamic Group

Yousry was extremely knowledgeable of Abdel Rahman and the Islamic Group even before his participation in the crimes for which he now stands convicted. Indeed, Yousry may have known more about Abdel Rahman, the Islamic Group, Taha, and the violence wrought by them, and that they were capable of inflicting, than anyone else because of his expertise.

Because of Yousry's role as a translator for the defense during and after Abdel Rahman's trial, he knew that Abdel Rahman was found guilty in 1995 of engaging in a

seditious conspiracy to wage a war of urban terrorism against the United States, soliciting crimes of violence against the United States military and Egyptian President Hosni Mubarak and participating in a bombing conspiracy. (Tr. 9515). He also knew that in January 1996, Abdel Rahman was sentenced to life imprisonment. (Tr. 9516).

As a doctoral student at New York University writing his dissertation on Abdel Rahman and the Islamic Group, Yousry learned much about them. For example, Yousry knew that (1) Abdel Rahman was an influential figure in the Islamic Group, who first became a leader of the group in 1980; (2) Abdel Rahman gave permission to the Islamic Group to assassinate President Anwar al-Sadat and believed that President Hosni Mubarak should likewise be killed; and (3) Abdel Rahman believed in militant *jihad* and advocated the use of "terroristic violence." (Tr. 9026, 9424, 9452, 9455-58; DX MY 1900A).

Yousry understood that the ultimate goal of the Islamic Group and Abdel Rahman was to establish a Muslim state in Egypt, by whatever means necessary including violent revolution, which would be ruled by their interpretation of Muslim law. (Tr. 8955, 8959, 9022, 9448-49, 9458; DX MY-550LT1, 2, 3, & 4).

Yousry knew that the Islamic Group is a militant Islamic organization that (1) believes that armed struggle was Islamically justified against the Egyptian government in order to establish a Muslim state, (2) had assassinated former Egyptian President Anwar Al-Sadat based on a fatwa that had been issued by Abdel Rahman, (3) had attempted to

assassinate Egyptian President Hosni Mubarak, and (4) had carried out numerous suicide missions against and committed numerous murders of members of the Egyptian police force. (Tr. 9423-27, 9564, 9582, 9583-84, 9591; DX MY 1900A). Yousry also knew that in 1997, certain leaders of the Islamic Group called for a cease-fire with regard to their attacks against the Egyptian government, (Tr. 9729-30), and that other leaders living outside of Egypt were opposed to a cease-fire. (Tr. 9732).

Yousry was also aware that the Islamic Group, in the 1990's, carried out several acts of terrorism against civilians and Egyptian government officials in Egypt. (Tr. 9567, 9582). Moreover, he knew that the terrorist attacks against civilians included the use of violence against tourists and that the Islamic Group targeted tourists as a way of destabilizing the government because the country's tourism industry was its main source of income. (Tr. 9580). Yousry knew in September 1997, that six assassins claiming an association with the Islamic Group shot and stabbed a group of tourists visiting an archeological site in Luxor, Egypt, that 58 foreign tourists were killed along with several Egyptian security guards as a result of the attack, and that the perpetrators of that crime left pamphlets at the scene that demanded, among other things, the release of Abdel Rahman from custody in the United States. (Tr. 9591-92, 9655).

Yousry was also knowledgeable about Islamic Group leader Rifa'i Taha. Yousry knew as early as 1998 that Taha was a significant leader of the Islamic Group and that he was opposed to the group's unilateral cease-fire toward the Egyptian government. (Tr.

9732-33, 9891-92; GX 2415-11). Yousry also knew that Taha had joined the *mujahaddin* in Afghanistan's fight against the Soviet Union thereby gaining military and leadership experience and that he subsequently played a major role in organizing and building the military wing of the Islamic Group. (Tr. 9708-09). Yousry also was aware that Taha became an actual ground leader of the Islamic Group in 1984. (Tr. 9713).

Indeed, Yousry conceded in his testimony that his knowledge of Taha "increased tremendously" between 1998 and 1999. For example, he learned that Taha had joined with Usama Bin Laden in a declaration calling for *jihad* against the United States. (Tr. 9719-20, 9724). Yousry also learned from newspaper articles and from delivering Taha's messages to Abdel Rahman that Taha was adamently opposed to the cease-fire. (Tr. 9732).

b. Yousry's Knowledge of SAMs

The evidence at trial established that Yousry was well aware of the existence of the SAMs and the limitations that they placed on Abdel Rahman's ability to communicate with others. Yousry's knowledge of the SAMs was established during the Government's direct case by documents seized from Yousry's home and by Yousry's own actions and statements recorded during visits with Abdel Rahman. During the search of Yousry's home, FBI agents seized two copies of the version of the SAMs dated "April 7, 1999 (Modified December 10, 1999)," which was the version in effect at the time of the May 2000 prison visit with Abdel Rahman, (GX 2305-1, 2312-37), and a copy of the section of

the Code of Federal Regulations that authorized the SAMs (GX 2405-4). Also found during the search was a Bureau of Prisons memorandum, which Yousry received on or about March 10, 1999, which discussed the SAMs requirement that all correspondence to and from Abdel Rahman be screened by the FBI or the Bureau of Prisons. (GX 2415-10).[45]

The evidence at trial showed that Yousry knew that he and Abdel Rahman's attorneys were prohibited by the SAMs from smuggling terrorism messages into Abdel Rahman from Sattar and Taha. Yousry acknowledged during the May 2000 prison visit that he and Stewart would be "in trouble" if the prison guards discovered that they were reading Abdel Rahman a letter from Sattar containing Taha's terrorism message. (GX 1707X at 29). During the May 2000 visit, Yousry and Stewart also engaged in various acts of deception to conceal from the prison guards the fact that Yousry was reading

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[45] Yousry conceded in his testimony that: (1) he had a general understanding of the SAMs; (2) he knew that Abdel Rahman became subject to the SAMs in the spring of 1997; (3) he knew the SAMs changed over time; (4) he discussed the SAMs with Abdel Rahman during a number of prison visits and telephone calls; and (5) he knew that the SAMs contained restrictions as to who could visit with Abdel Rahman and speak with him by telephone. (Tr. 8966-67, 9186-87, 9749-64).

Yousry also introduced into evidence during his defense case a draft of his doctoral dissertation. In the draft dissertation, Yousry wrote that he and Abdel Rahman's attorneys were prohibited from disclosing any part of their conversations with Abdel Rahman to the media. (DX MY-550LT4). It was established during his cross-examination that Yousry wrote that portion of his dissertation in late 1999 or earlier 2000, prior to the May 2000 prison visit with Abdel Rahman and the issuance of the press releases in June 2000. (Tr. 9511-13, 9575-77, 9702).

prohibited letters to Abdel Rahman and taking prohibited dictation from Abdel Rahman. (GX 1707X at 33-36).

c. Yousry's Criminal Conduct

From March 1999 through July 2001, despite his knowledge of the SAMs, Yousry engaged in conduct that intended to deceive the Government and circumvent the SAMs by smuggling terrorist messages to and from Abdel Rahman and assisting in the ultimate dissemination of Abdel Rahman's terrorist statements to the media in the form of two press releases in June 2000, announcing his withdrawal of support for the Islamic Group's cease-fire. Yousry committed the crimes with full knowledge of the Islamic Group's extensive violent history and Taha's continuing efforts to obtain Abdel Rahman's support to end the cease-fire with the Egyptian government and resume the violence and killings of the past.

i. The March 1999 Prison Visit

As previously noted, in March 1999, Yousry and Stewart made their first visit to Abdel Rahman at FMC Rochester, where he had been transferred in January 1998. (GX 306; Tr. 2713). During the course of the visit, on March 1 and 2, 1999, Yousry and Stewart relayed to Abdel Rahman a request from Sultan and Habib for a *fatwa* from Abdel Rahman as to whether the Islamic Group should form a political party in Egypt. (GX 1005X at 2-4). In responding to their request, Abdel Rahman rejected the proposal that the Islamic Group form a political party, stating that the cease-fire was a "tactic" and

not a "principle." (GX 2415-6T; *see also* GX 1007X at 3, 6-7). Also during the visit, Yousry and Stewart relayed the first of several requests from Taha for Abdel Rahman's support in ending the Islamic Group's cease-fire and resuming the use of violence and killings against the Egyptian government. (GX 1007X at 4-5). In response, Abdel Rahman stated that he had "no objection" to Taha's call for a resumption of the violence against the Egyptian government even though others were calling for a halt to the violence, but instructed that "[n]o new charter, and nothing should happen or be done without consulting me, or informing me." (GX 1007X at 4-5).

Following the visit, Stewart and Yousry provided Sattar with Abdel Rahman's responses. Sattar, in turn, relayed Abdel Rahman's messages to both Taha and Mustafa Hamza, the Islamic Group leader who supported the cease-fire. (GX 1007X at 3-7, 9-10; GX 1009X at 2-3).

ii. The September 1999 Prison Visit

On September 18, 1999, Yousry and Ramsey Clark made the next visit to Abdel Rahman at FMC Rochester. (GX 307, GX 308). Several days prior to this visit, four Islamic Group members, including the leader of the group's military wing, were killed in a shootout with the Egyptian police. The killings were the subject of a series of telephone conversations on September 13, 1999, between Sattar, Taha and Hamza. (GX 1023X, GX 1025X). In a telephone conversation set up by Sattar between Taha and Muntasir Al-Zayyat, Taha indicated his displeasure with the killings and advised that the Islamic

Group had "emerged in the weak position after the *Initiative*" and urged that the group take a different course, a return to the use of violence against the Egyptian government. (GX 1027 at 9-10).

Following the series of telephone conversations, Taha again passed a message to Sattar to be relayed to Abdel Rahman, urging Abdel Rahman's support for an end to the cease-fire. (GX 1025X). During one of their conversations prior to the September 1999 prison visit, Taha advised Sattar that if Abdel Rahman issued a statement favorable to Taha calling for an end to the cease-fire and return to violence, "frankly, this will strengthen me among the brothers." (GX 1026X at 2). Sattar, in turn, prepared a letter with Taha's message and provided it to Yousry and Clark prior to their visit.

Yousry and Clark relayed Taha's message to Abdel Rahman during the visit and Abdel Rahman responded to it. Abdel Rahman dictated his response to Yousry stating:

> The Islamic Group has committed itself to the suspension of military operations Initiative which was launched two years ago by the brothers from their jails, in spite of the Egyptian government's continued killing of the innocent people and conducting unjust military trials. This Initiative was made to protect the Muslims and to unify all the lines to face the real enemies of the nation. However, the Initiative left some people thinking that it was initiated out of weakness or an abandonment of the fundamental principles of the Group, which is basically a *Da'wa, Jihad* group. The latest thing published in the newspapers was about the Egyptian regime's killing of four members of the Group. This is – this is enough proof that the Egyptian regime does not have the intention to interact with this peaceful Initiative which aims at unification. I therefore, demand that my brothers, the sons of the Islamic Group do a comprehensive review of the Initiative and its

> results. I also demand that they consider themselves absolved from it.

(GX 1029 at 6-7). By his statement, Abdel Rahman advised the Islamic Group that it was no longer bound by the cease-fire and that a resumption of the violence was permissible.

Following the visit, Yousry, now far removed from his role as merely a translator, advised Sattar that Clark discussed "everything with him" and provided Sattar with Abdel Rahman's response. (GX 1028X). Sattar, in turn, relayed Abdel Rahman's message to Taha. (GX 1029X).

It was expected, following this prison visit, that Clark would issue Abdel Rahman's statement to the media, "absolving" the Islamic Group of the cease-fire. During a telephone conversation, Yousry and Sattar explicitly discussed the fact that Clark was to issue Abdel Rahman's statement to the media. (GX 1028X). Clark, instead, decided against doing so and refused to issue Abdel Rahman's statement. (GX 1030X). When Sattar advised Yousry of Clark's refusal, Yousry urged Sattar to try to persuade Clark to issue the statement, but Sattar declined to do so, advising Yousry that Clark "probably figured it out from its legal angle." (GX 1030X at 1). In other words, issuing Abdel Rahman's statement, "absolving" the Islamic Group of the cease-fire and withdrawing his support for it, would have violated the SAMs and constituted a violation of the criminal law.

iii. The February 2000 Prison Visit

In Februrary 2000, Yousry returned to FMC Rochester for a prison visit with

Abdel Rahman, this time with another of his attorneys, Abdeen Jabara. As with each of the previous visits, Sattar prepared a letter for Abdel Rahman beforehand which included a message from Taha once again seeking Abdel Rahman's support in opposing the cease-fire. (Tr. 10687-88; GX 1051X, GX 1053X, GX 1059X).

During the visit, Abdel Rahman advised Yousry that he wanted Jabara to hold a press conference after the visit in order to announce Abdel Rahman's views on the cease-fire. (Tr. 9395). Abdel Rahman had been informed that after the previous visit, Clark had refused to issue Abdel Rahman's statement. (GX 2312-40T). But, Jabara, likewise, refused to hold a press conference or issue Abdel Rahman's statement, because to do so would constitute a violation of the SAMs and he feared that it would result in him being cut off from Abdel Rahman. (Tr. 9395-9400; DX MY1004CT at 746, 752). During the visit, Jabara also refused to permit Abdel Rahman to dictate to Yousry a letter addressed to the Islamic Group. (GX 1701X at 34, 36-37).

iv. The May 2000 Prison Visit

Yousry next visited Abdel Rahman at FMC Rochester with Stewart on May 19 and 20, 2000, as described in Point II. Yousry and Stewart again circumvented the SAMs, using this meeting to relay to Abdel Rahman, once again, a message from Taha contained in a letter written by Sattar seeking Abdel Rahman's support of Taha in ending the cease-fire.

As previously noted, on the first day of this visit, on May 19, 2000, Yousry told

Abdel Rahman and Stewart about the kidnappings by the Abu Sayyaf terrorist group in the Philippines and Abu Sayyaf's demand to free Abdel Rahman. (GX 1706X at 27-28). On that day, Yousry also read Abdel Rahman an inflammatory statement by Taha that had recently been published in an Egyptian newspaper. (GX 1706X at 50-55). Again, none of this had anything to do with Yousry's translator function, which of course was the only legitimate basis for his even being there.

Also on May 19, 2000, Yousry read Abdel Rahman the letter from Sattar, with Taha's message requesting Abdel Rahman withdraw his support for the cease-fire.[46] During the reading of Taha's message, Yousry actively assisted Stewart in concealing their actions from the prison guards. At one point, Yousry and Stewart explicitly discussed the fact that the guards were patrolling close to the prison conference room where they were meeting with Abdel Rahman and might notice that Stewart was not involved in the conversation with Yousry and Abdel Rahman. To conceal the fact that Stewart was not participating in the conversations, among other things, Stewart instructed Yousry to make it look as if Stewart was communicating with Abdel Rahman and Yousry was merely translating. To accomplish this, Stewart told Yousry to look periodically at Stewart and Abdel Rahman in turn, even though Yousry was in fact reading. Stewart contemporaneously observed to Yousry that she should "get an award for" her acts of

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[46] Taha was referred to as "Abu Yasir"in Sattar's letter smuggled into the prison during the May 2000 visit to Abdel Rahman. Yousry conceded in his testimony that he knew that the "Abu Yasir"referred to in Sattar's letter was Taha. (Tr. 9828).

concealment, and Yousry agreed that Stewart should "get an award in acting." Following the comments about Stewart's acting ability, Yousry, Stewart, and Abdel Rahman all laughed. (GX 1706X at 51-52).

On May 20, 2000, during the second day of the prison visit, Abdel Rahman dictated letters to Yousry indicating that he did not support the cease-fire and calling for the Islamic Group to re-evaluate the cease-fire. Yousry and Stewart again actively concealed the conversation between Yousry and Abdel Rahman from the prison guards. Abdel Rahman initially dictated a letter to Muntasir Al-Zayyat. (GX 1710X at 48-49). After the completion of that letter, Yousry reminded Abdel Rahman that he needed to respond to Taha's message requesting that he withdraw his support for the cease-fire and Abdel Rahman did so. (GX 1711X at 31-33).

After the May 2000 prison visit, Yousry and Stewart relayed Abdel Rahman's messages to Sattar. Sattar subsequently had telephone conversations with Taha, Hamza and Al-Sirri during which he relayed Abdel Rahman's messages.

v. The Press Releases

Following the May 2000 visit to Abdel Rahman, during a telephone conversation on June 5, 2000, Yousry and Sattar discussed what Stewart was going to say to the media about Abdel Rahman's statement. During the conversation, Yousry suggested that the three of them – Yousry, Sattar, and Stewart – meet to discuss what Stewart should say to the media and Yousry also volunteered to serve as translator during any press interview.

(GX 1102X at 2-3). According to Stewart, the three defendants did in fact meet to discuss what should be disseminated to the media. (Tr. 8282-83).[47]

As previously discussed, on June 13, 2000, Stewart and Sattar contacted Reuters reporter Esmat Salaheddin in Cairo, Egypt and announced Abdel Rahman's withdrawal of support for the cease-fire. According to Stewart, Yousry had planned on being present for the announcement but was not. (Tr. 8301). Again, further demonstrating his role as a willing participant in a criminal conspiracy, as opposed to that of simply a translator, following the issuance of the press release, Yousry telephoned Sattar to find out whether Stewart had actually released Abdel Rahman's statement. Sattar advised Yousry that she had. (GX 1104X). The following day, Reuters and various Middle East newspapers published articles about Abdel Rahman's withdrawal of support for the Islamic Group's cease-fire in Egypt. (GX 9, GX 1115 at 2).

By smuggling Abel Rahman's pro-violence directive out of FMC Rochester and disseminating it in the media, Yousry knew that they – Stewart, Yousry, and Sattar – had given Taha and his co-conspirators in his pro-violence wing of the Islamic Group the support they had long been unsuccessfully seeking.

The dissemination of Abdel Rahman's withdrawal of support for the cease-fire and its publication in the media created turmoil within the Islamic Group between the pro-

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[47] Yousry testified that several days after a prison visit, he, Sattar and the lawyer participating in the visit would meet to discuss the visit. (Tr. 9830-31).

cease-fire and pro-violence factions. Indeed, Sattar was accused by those in the pro-cease-fire faction of having fabricated Abdel Rahman's statement. (GX 1250X, 1114X). On June 20, 2000, Yousry and Stewart spoke with Abdel Rahman during a prison telephone call, on which, with Stewart's approval, Yousry read a number of newspapers articles to Abdel Rahman that reported on the reaction to his statement. (*See* GX 2313-45BT, GX 2312-49T, GX 2312-47BT, GX 2312-45AT). After having the newspaper articles read to him, Abdel Rahman reaffirmed to Yousry his prior withdrawal of support for the cease-fire by dictating a new statement. (DX MY 1006CT at 1097-99). Stewart then issued Abdel Rahman's reaffirmation in a second press release which again stated that Abdel Rahman was withdrawing his support for the cease-fire. (GX 2663).

vi. The July 2001 Prison Visit

Once the Government learned that Stewart had issued Abdel Rahman's statements to the media in violation of the SAMs, Stewart and Abdel Rahman's other attorneys were required to sign a revised affirmation. (Tr. 2341-2356; GX 10-13). Stewart refused to sign the revised affirmation until May 2001. The other attorneys signed affirmations before then but no visits were made to Abdel Rahman until July 2001, when Stewart and Yousry returned to FMC Rochester for the first time since their visit in May 2000. (Tr. 8550-51).

During the July 2001 prison visit with Abdel Rahman, Yousry and Stewart continued to violate the SAMs by (1) informing Abdel Rahman that Sattar had been

informed that the bombing of the *U.S.S. Cole* had been bombed on Abdel Rahman's behalf and that Sattar was asked to convey to the United States government that more terrorist acts would follow if Abdel Rahman was not freed; (2) smuggling a message to Abdel Rahman from his son, Mohammed Abdel Rahman urging Abdel Rahman to continue to support an end to the cease-fire and the resumption of violence in Egypt; and (3) smuggling in to Abdel Rahman messages and correspondence from other persons.

* * * * *

Thus, the evidence at trial makes clear that Yousry played an important and, indeed, an indispensible role in the crimes for which he now stands convicted. Without Yousry's participation in these crimes, the issuance of Abdel Rahman's withdrawal of support for the cease-fire would not have been possible. Yousry's conduct in this case is not consistent with a minor or minimal participant in a criminal act and he is therefore not entitled to downward role adjustment.

B. A Guidelines Sentence Is Also Warranted Because Yousry Perjured Himself At Trial And Lied To Investigators During The Investigation Of This Case

A Guidelines sentence is also warranted because Yousry attempted to obstruct justice by lying to FBI investigators prior to his arrest in this case and by perjuring himself at trial. While Yousry argues for a sentence below the Guidelines range based, in part, on his general honesty and law abiding nature, including his cooperation and honesty with the investigating agents, the evidence at trial demonstrates otherwise.

Section 3C1.1 of the Sentencing Guidelines mandates a two-level upward

adjustment if the defendant willfully obstructs or impedes or attempts to obstruct or impede the administration of justice by committing perjury. Perjury occurs when a witness "gives false testimony concerning a material matter with the willful intent to provide false testimony." *United States* v. *Dunnigan*, 507 U.S. at 94.

Yousry intentionally testified falsely and committed perjury when he testified that (1) he did not see or read any version of the SAMs until sometime late in 2000 or early 2001, and did not know that they prohibited the disclosure communications by Abdel Rahman to the media and other forms of communication (Tr. 9186); (2) he was completely truthful with FBI agents in his interviews with them conducted after September 11, 2001 (Tr. 9113); and (3) he knew little about Taha in May 2000, at the time of his and Stewart's visit with Abdel Rahman at the FMC Rochester. (Tr. 9164).

Yousry testified falsely that he did not see or read any version of the SAMs until sometime late in 2000 or early 2001and did not know that they prohibited the disclosure of communications by Abdel Rahman to the media and other forms of communication. (Tr. 9186). This testimony is belied by, among other things, the evidence seized from Yousry's home by the FBI.

During the search of Yousry's home, the FBI found and seized two copies of SAMs dated "April 7, 1999 (Modified December 10, 1999)." The FBI also seized draft versions of Yousry's doctoral dissertation, which were introduced into evidence by Yousry during his defense case. In his draft dissertation, Yousry wrote that he and Abdel

Rahman's attorneys were prohibited from disclosing any part of their conversations with Abdel Rahman to the media. (DX MY-550LT4 at 28-29). It was established during his cross-examination that Yousry wrote that portion of his dissertation in late 1999 or earlier 2000, prior to the May 2000 prison visit with Abdel Rahman and the issuance of the press releases in June 2000. (Tr. 9511-13, 9575-77, 9702). Thus, Yousry lied about his knowledge of the SAMs and what they prohibited at the time he committed his crimes.

Yousry also committed perjury at trial when he testified that he was completely truthful with FBI agents in his interviews with them conducted after September 11, 2001. (Tr. 9858). There are numerous examples of Yousry lying to the FBI during those interviews. Yousry lied to the FBI when he told the agents that the only messages delivered to Abdel Rahman by Stewart and Yousry during the July 2001 prison visit were letters from his family regarding a dispute over property that he owned. (Tr. 9859). Yousry also lied to the FBI when he told the agents that during the July 2001 prison visit the only message from one of Abdel Rahman's sons was the son's request for an opinion on whether the son should get married. In fact, Yousry and Stewart delivered a message from Mohammed Abdel Rahman urging Abdel Rahman to continue to support an end to the cease-fire and the resumption of violence in Egypt. (GX 1716X at 62).

Yousry also lied to the FBI when he told the agents that he had not relayed any messages to or from Taha or any leaders of the Islamic Group. (Tr. 9864-65). As described above, practically each time Yousry visited Abdel Rahman at FMC Rochester

– during the prison visits in March 1999, September 1999, February 2000, and May 2000 – he relayed a message from Taha to Abdel Rahman and then relayed Abdel Rahman's response to Taha through Sattar. Indeed, it was Yousry who reminded Abdel Rahman on the second day of the May 2000 visit that Abdel Rahman needed to respond to Taha's message requesting that Abdel Rahman withdraw his support for the cease-fire. (GX 1711X at 31-33).

Yousry also lied to the FBI when he told the agents that Stewart issued Abdel Rahman's withdrawal of support for the cease-fire after she had asked Abdel Rahman his opinion regarding the cease-fire. (Tr. 9865-66). The evidence at trial established that Yousry knew that Stewart issued Abdel Rahman's statement, withdrawing his support for the cease-fire, in response to Taha's request that he do so and not as result of Stewart asking his opinion. In fact, Stewart never asked Abdel Rahman his opinion of the cease-fire before issuing his initial statement to Reuters reporter Esmat Salaheddine. (GX 1706X, GX 1707X, GX 1710X, GX 1711X, GX 1712X).

Yousry also lied to the FBI when he told the agents during his first interview that nothing was mentioned to Abdel Rahman about the bombing of the *U.S.S. Cole* during the July 2001 visit. (Tr. 9866-67). Yousry also lied to the FBI in a subsequent interview when he told agents that the only time he ever discussed the bombing of the *U.S.S. Cole* with Abdel Rahman was when he read a newspaper article about the bombing during a legal telephone call shortly after the attack occurred. (Tr. 9868-69). As Yousry knew, he

and Stewart discussed the bombing of the *U.S.S. Cole* with Abdel Rahman during their visit in July 2001. (GX 1717X at 11-13).

Yousry also lied to the FBI when he told the agents that he did not know which Islamic Group leaders Sattar associated with or was in contact with. (Tr. 9872-75). Yousry was well aware that Sattar was in direct contact with Taha and other Islamic Group leaders. During the May 2000 prison visit, Yousry read to Abdel Rahman Sattar's letter with Taha's message. In Sattar's letter, Yousry read that Sattar has "semi-constant contact with Abu Yasir (Taha), Abu Hazim, Abu Musab, Abdul Harith, Abu Ithar, Abu Khalid, Abu Mustafa, and many other brothers . . ." and that "Abu Yasir called me the day before yesterday. He still asks for your Honor's moral support to his position, . . ." (GX 1707X at 30; Tr. 9874-75).

Yousry also committed perjury when he testified falsely that he knew little about Taha in May 2000, at the time of his and Stewart's visit with Abdel Rahman at FMC Rochester. Yousry testified that the first time he heard of Taha was in late 1999 and, at that time, he had just learned that Taha had been removed from the leadership of the Islamic Group. (Tr. 9164). Yousry also suggested in his testimony that, because he could not read a newspaper article found in his home because the print was too small, he did not know who Taha really was. (Tr. 9167-68; GX 2020).

As the trial evidence established, Yousry knew much about Taha before and at the time of the May 2000 prison visit with Abdel Rahman. Yousry assisted in smuggling

Taha's messages to Abdel Rahman in February 1999, September 1999, and May 2000; read those messages to Abdel Rahman; and recorded and smuggled out Abdel Rahman's responses to Taha. As Yousry eventually conceded on cross-examination, his knowledge of Taha, as described above, was extensive.

Yousry's perjurious trial testimony and repeated lies to FBI agents clearly demonstrate that Yousry attempted to obstruct justice in this case. Accordingly, the two-level enhancement under U.S.S.G. § 3C1.1 for obstruction of justice should be applied and a Guidelines sentence should be imposed.

C. A Guidelines Sentence For Yousry Would Not Impinge On Academic Freedom

Finally, Yousry claims that lengthy prison sentence "will impinge on academic independence by discouraging others from investigating movements and leaders who affect the United States." (Yousry 6/30/06 ltr. at 4, 7). In support of this claim Yousry refers to several letters from academics and colleagues, whose actual knowledge of Yousry's criminal conduct and the evidence introduced against him at trial is highly suspect. This claim simply ignores the reality of Yousry's conduct in this case and should be rejected by the Court.

As the evidence at trial made clear, Yousry was not prosecuted and convicted because of his academic position or because the subject of his dissertation was Abdel Rahman and the Islamic Group. Furthermore, Yousry was not prosecuted because he used Abdel Rahman as a research source and gathered information for his doctoral

dissertation during prison visits with him.

As the evidence described above makes abundantly clear, Yousry was prosecuted and convicted of serious crimes because he knowingly and intentionally violated the SAMs, which were imposed to protect "persons against the risk of death or serious bodily injury" that could result if Abdel Rahman were free "to communicate terrorist information," (GX 2-6, 11, 13), and because he repeatedly assisted in smuggling terrorist messages to and from Abdel Rahman that called for an end to the Islamic Group's cease-fire in Egypt and the resumption of the killings and violence of the past. By engaging in this conduct, Yousry defrauded the United States and provided material support to a conspiracy to murder persons outside the United States by essentially providing Abdel Rahman to Taha and the pro-violence faction of the Islamic Group to bring about a violent revolution against the Egyptian government.

What Yousry and his supporters fail to recognize and acknowledge is the seriousness of Yousry's criminal conduct, the severity of the potential consequences of his providing material support to a terrorist organization, and the fact that his conduct simply had nothing to do with academic freedom or independence. For his criminal conduct in this case, Yousry should receive a Guidelines sentence.

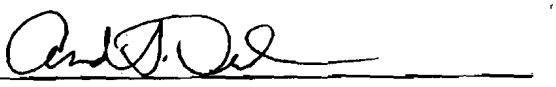
CONCLUSION

For the reasons set forth above, the Government respectfully asks the Court to sentence Sattar to life imprisonment, Stewart to thirty years' imprisonment, and Yousry to twenty years' imprisonment .

Dated: New York, New York
August 30, 2006

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney

By: 

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CERTIFICATE OF SERVICE

Lillie Grant deposes and says that she is employed in the Office of the United States Attorney for the Southern District of New York.

That on the 30th day of August, 2006, she caused a copy of the foregoing to be served by Federal Express upon:

Kenneth A. Paul, Esq.
-and-
Barry M. Fallick, Esq.
Rochman Platzer Fallick
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Jill R. Shellow-Lavine, Esq.
c/o Sam Schmidt, Esq.
111 Broadway-Suite 1305
New York, NY 10006

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. Section 1746.

Lillie Grant
LILLIE GRANT

Executed on: August 30, 2006
New York, New York

Exhibit 1

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

VIA FAX

July 28, 2006

Robin L. Baker, Esquire
U.S. Attorney's Office for the
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

Re: United States v. Lynne Stewart
S1 02 CR. 395 (JGK)

Dear Ms. Baker:

Thank you for your recent inquiry concerning the Federal Bureau of Prisons (BOP) ability to provide adequate health care for federal prisoners with significant, acute or chronic medical conditions. Specifically, you have asked whether, based on the available information, the BOP can provide the necessary and appropriate care for Ms. Stewart should she be incarcerated in a federal correctional facility.

I am only aware of Ms. Stewart's medical condition as described by the documents you provided this office, namely, a letter by Dr. Teich, dated June 29, 2006, two letters by Dr. Grossbard dated February 28 and June 28, 2006, and a downward departure motion. The aforementioned documents suggest that Ms. Stewart is recovering from breast cancer treatment, has type II diabetes, hypertension, and sleep apnea. Based on Dr. Grossbard's most recent letter it appears that Ms. Stewart has completed her cancer treatments and is only in need of follow up care and monitoring. He recommended she initiate therapy with Arimidex, have follow up visits with an oncologist, and have a yearly mammography exam.

If committed to the custody of the BOP, Ms. Stewart may be reviewed for designation by the Bureau of Prisons Office of Medical Designations. At that time, a determination would be made as to the appropriate facility in which to designate her. Every BOP institution is equipped to deal with medically ill inmates. Each institution runs a number of chronic care clinics whose purpose it is to provide routinely scheduled quality care to medically ill inmates, as well as to stay cognizant of any changes in medical conditions that may arise. These clinics Ms.

include a diabetic care clinic, and a hypertension care clinic, among others. Inmates enrolled in these clinics are seen at a minimum on a quarterly basis, and more often if medically necessary. Based on recent data obtained, the Bureau of Prisons houses over 160,000 inmates (over 12,000 female), including over 18,000 with hypertension and 4,000 with diabetes.

Upon Ms. Stewart's arrival, health services staff would meet with her, perform a physical examination, and set up a treatment plan to meet her medical needs, which can include annual visits with a contract oncologist. Additionally, female inmates over age 40 receive yearly mammograms as a diagnostic tool. Female inmates with a history of breast cancer or disease are evaluated for mammograms on an as needed basis. Further, the BOP has an extensive formulary which can provide Ms. Stewart with the medications she needs to control her conditions. According to the letters provided, Ms. Stewart has been treated with the following medications: Norvasc, Lovastatin, Lisinopril, Hydrochlorothiazide, Armidex and Anastrozole. The BOP has these medications, or their appropriate substitutions, on its formulary. If it is determined that these medications are needed by Ms. Stewart to treat her medical conditions, she will be given them. Inmates are given their medication on a daily basis as many times as medically required. Depending on the type of medication and the institution, inmates either receive their medication through pill line, or in the alternative, by maintaining a supply of medication in their cell. It was further indicated that Ms. Stewart uses a CPAP device for her sleep apnea. This device is available to inmates who need it.

BOP institutions are accredited by the Joint Commission on Accreditation for Health Care Organizations, which sets the medical, surgical, and psychiatric standards for hospitals nationwide. Additionally, each BOP institution contracts with medical centers in the local vicinity to provide specialized medical treatment. These medical centers offer BOP inmates access to MRI, CT Scans, and other diagnostic tools. When medical emergencies and the need for surgical procedures arise, these major medical centers offer the Bureau a wide range of trained surgical specialists. Each institution has procedures in place to contact local emergency transportation teams for the timely transportation to one of the local medical centers. Currently, the BOP houses and treats 650 inmates with malignant cancers.

Additionally, BOP institutions provide mental health services. If an inmate has any mental health problems, the institutions are able to provide ongoing psychology and

psychiatric oversight and management in the form of direct and consistent psychotherapy, group therapy and education, psychiatric clinic evaluation by either Bureau or consult psychiatrists and psychologists, as well as availability of restricted pill line for specific psychiatric medications.

Based on the information provided to me and my knowledge of BOP's medical resources, the BOP will be able to provide appropriate care for Ms. Stewart. If I can offer any further information in this matter, please do not hesitate to contact me.

Sincerely,

Barbara J. Cadogan
Health Systems Administrator

Exhibit 2

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

VIA FAX

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

August 1, 2006

Robin L. Baker, Esquire
U.S. Attorney's Office for the
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

Re: U.S. v. Lynne Stewart
S1 02 Cr. 395 (JGK)

Dear Ms. Baker:

This letter supplements the July 28, 2006 letter of Barbara Cadogan, Health Services Administrator concerning the Federal Bureau of Prisons (BOP) ability to provide adequate mental health care for federal prisoners with significant, acute or chronic mental health conditions.

I have reviewed the documents you provided this office, namely a downward departure motion, and a report regarding a psychiatric examination of Ms. Stewart written by Dr. Stephen Teich. These documents suggest that Ms. Stewart would benefit from "insight oriented psychotherapy."

As the Regional Psychology Services Administrator, I am aware of the capabilities and mental health services offered by federal correctional institutions. Upon entering the Bureau, all inmates are psychologically screened, and all inmates are given access to psychological treatment if they request it. The Bureau of Prisons has over 400 doctoral level psychologists and over 650 mental health and substance abuse treatment specialists. In most Bureau institutions doctoral level psychologists function as front-line providers of mental health services to inmates. Direct inmate services include psychological assessments, crisis intervention, long-term therapy, short-term therapy, and group therapy. These therapies including supportive psychotherapy for

inmates who wish to gain insight into their motivations and actions. All care provided is consistent with medical community standards.

I am aware of the capabilities and mental health services offered by the BOP. The BOP has the physicians, staff, expert community consultant staff and facilities to provide for Ms. Stewart's mental health.

Sincerely,

Gerard Bryant, Ph.D.
Psychology Services Administrator