



U.S. Department of Justice

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Eastern District of New York*

JJD/SDD/MPC
F. #2012R00095

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April 14, 2015

By Hand and ECF

The Honorable Sandra J. Feuerstein
United States District Judge
United States District Court
Eastern District of New York
1010 Federal Plaza
Central Islip, New York 11722

Re: United States v. Marcos Alonso Zea
Criminal Docket No. 13-072 (S-1) (SJF)

Dear Judge Feuerstein:

On September 9, 2014, the defendant Marcos Alonso Zea, also known as "Ali Zea," pled guilty to Counts Three and Four of a Superseding Indictment charging: (1) attempt to provide material support to the foreign terrorist organization al-Qaeda in the Arabian Peninsula ("AQAP"), also known as Ansar al-Sharia ("AAS")¹, in violation of 18 U.S.C. § 2339B(a)(1); and (2) obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2). The defendant is scheduled to be sentenced by Your Honor on April 20, 2015. The defendant's total offense level is 39, which provides for an advisory Guidelines range of 360 months to life imprisonment within Criminal History Category VI. Because the counts of conviction have a combined statutory maximum of 35 years, the defendant's effective Guidelines range is 360 to 420 months. (Pre-Sentence Investigation Report ("PSR") at ¶ 85). However, pursuant to the plea agreement under Rule 11(c)(1)(C), the parties agreed to a term of imprisonment not to exceed 300 months, which was accepted by the Court at the time of the defendant's guilty plea. For the reasons set forth below, the government respectfully requests that the Court sentence the defendant to a term of imprisonment of 300 months, which is below the advisory Guidelines range and statutory maximum.

¹ AQAP and AAS are collectively referred to herein as "AQAP."

I. OFFENSE CONDUCT AND PROCEDURAL HISTORY

A. Background on AQAP and AAS

AQAP is an Islamic-extremist terrorist organization. (PSR ¶ 5). It was formed in January 2009 and formally designated a foreign terrorist organization (“FTO”) by the United States Department of State on January 19, 2010. AQAP was led by Nasir al-Wahishi, Usama bin Laden’s former secretary in Afghanistan who reportedly escaped to Iran and was arrested and subsequently extradited to Yemen in 2003. (Id.). Al-Wahishi then reportedly escaped from a Yemeni prison in 2006 and spearheaded the merger of the Saudi and Yemeni branches of al-Qaeda in 2009. AQAP was also buttressed by Anwar al-Awlaki, a U.S.-born radical cleric, until Awlaki’s death on September 30, 2011. Awlaki gained a following via his Internet sermons and was a member and leader of AQAP. (Id.).

In the past several years, AQAP has claimed responsibility for attempted terrorist attacks against the United States. For example, AQAP claimed responsibility for the attempted Christmas Day 2009 bombing of a Detroit-bound passenger plane from Europe by Umar Farouk Abdulmutallab. (PSR ¶ 6). In a video released days after the attempt, AQAP addressed the American people, threatening to “come for you to slaughter, and we have prepared for you men who love death like you love life.” Further, AQAP later claimed responsibility for an October 2010 plot to send explosive-laden packages on United States-bound cargo flights. (Id.).

AQAP is adept at using technology and the Internet to popularize its message. Through AQAP’s media wing -- Al-Malahem Media -- AQAP publishes an online, English-language magazine called *Inspire*. (PSR ¶ 7). In or about July 2010, AQAP published the first issue of *Inspire*. The cover page of the publication bears the “Al-Malahem Media” logo and name and, under the magazine’s title, states “Periodical Magazine issued by the al-Qa’idah Organization in the Arabian Peninsula.” In or about October 2010, AQAP released the second issue of *Inspire*, which included a feature article entitled “I Am Proud to be a Traitor to America,” written by Samir Khan, another U.S. citizen who became an influential member of AQAP until his death in 2011. (Id.). Following his arrest, the Spring 2014 issue of *Inspire* actually featured a note about the defendant’s arrest and a photograph of the defendant. A copy of that issue of *Inspire* is attached hereto as Exhibit 1.² See Exhibit 1 at 4.

² Because of the nature of the content of *Inspire*, the government is not filing the exhibits to this sentencing memorandum on ECF and respectfully requests that the Court order that Exhibits 1-3 of this sentencing memorandum be filed and remain under seal. However, the government will provide a complete copy of the sentencing memorandum with all the exhibits to both defense counsel and the Probation Department.

AQAP is considered to be one of the most active and lethal al-Qaeda affiliates and has expressed the intent to attack both the United States homeland and regional targets. (PSR ¶ 8). As noted above, AQAP was designated as an FTO on January 19, 2010. Subsequently, on October 4, 2012, AAS was designated as an FTO by the Department of State. (*Id.*). According to the Department of State, AAS is considered to be an alias used by AQAP in an attempt to rebrand itself to manipulate people into joining AQAP's terrorist cause. During 2012, AAS took responsibility for several attacks in Yemen, including attacks targeting the Yemeni military. For example, AAS claimed responsibility for a series of attacks in March 2012 that killed more than 100 people, including Yemeni soldiers. Additionally, in May 2012, AAS claimed responsibility for a suicide bombing that killed more than 100 Yemeni soldiers during a parade. (*Id.*). Most recently, AQAP claimed responsibility for the January 14, 2015, rampage that killed 12 people at the *Charlie Hebdo* satirical magazine offices in Paris, France.

B. Summary of Investigation

As set forth in the PSR and prior court filings, an investigation conducted by the Federal Bureau of Investigation's Joint Terrorism Task Force ("JTTF") and the New York City Police Department, Intelligence Division ("NYPD Intel") revealed that between August 1, 2011 and January 21, 2013, the defendant attempted to provide material support to AQAP by providing money and himself in support of its violent extremist causes. (PSR ¶¶ 11-12). More specifically, in January 2012 the defendant attempted to travel from the United States to Yemen for the purpose of joining AQAP. The defendant had originally wanted to travel with his co-defendant Justin Kaliebe ("Kaliebe"). The defendant ultimately decided to go alone. The defendant boarded a flight from John F. Kennedy Airport ("JFK Airport") in Queens, New York for the purpose of joining AQAP. However, during a transfer in London, England, the defendant was stopped and questioned by British law enforcement officers regarding the purpose of his trip to Yemen. Unsatisfied with his explanation, and because he did not possess a visa to enter Yemen, British authorities returned the defendant to the United States. (PSR ¶ 11). Despite his unsuccessful attempt to reach Yemen, the defendant refocused his efforts by providing assistance to Kaliebe who continued planning to travel to Yemen to join AQAP and engage in violent jihad.

During the course of the investigation, law enforcement authorities employed a variety of investigative techniques, including the use of an undercover law enforcement operative ("UC-1") (PSR ¶ 9). UC-1 recorded conversations with the defendant. During these conversations, the defendant demonstrated knowledge of jihad, and discussed his attempt to join AQAP. Specifically, on one occasion the defendant bragged to UC-1 about how he lied to British officials regarding the purpose of his trip to Yemen. On another occasion the defendant cautioned both UC-1 and Kaliebe not to discuss their plans verbally but rather write down their plans on paper so the material could later be destroyed. One recording demonstrates the defendant employing this method of communication. On the recording, verbal communication stops between the defendant, Kaliebe and UC-1, moments later a pilot light from a stove can be heard clicking, and a few seconds later a smoke alarm

goes off. According to UC-1, the defendant took the notes regarding the plan to travel to Yemen and burned them.³

On January 21, 2013, Kaliebe attempted to travel to Yemen to engage in jihad. Three days prior to Kaliebe's attempted trip, Kaliebe met with the defendant and UC-1. During this meeting, the defendant provided money to both Kaliebe and UC-1 in support of the planned trip. After providing the money, the defendant stated, "I just hope my story, my, the event that happened to me will help you guys move forward, inspire you." (PSR ¶ 20). Kaliebe was arrested on January 21, 2013.

In April 2013, sensing that the investigation was closing in on him, the defendant attempted to destroy evidence of his guilt by directing an associate who was familiar with computer operating systems to erase the hard drive in his home computer, as well as two additional hard drives that the defendant had used previously. While the defendant successfully destroyed evidence on one of the drives, investigators were able to obtain two of the drives intact, and performed forensic examinations that revealed incriminating evidence, including electronic copies of the Winter 2010 and Spring 2011 issues of *Inspire* magazine. (PSR ¶22). These issues of *Inspire* included articles entitled, "Which is Better: Martyrdom or Victory?" "Why Did I Choose al-Qaeda?"; "What to Expect in Jihad," "Know that Jihad is Your Duty," "AQ Chef: [sic] Destroying Buildings" and "The Jihadi Experiences." Copies of the Winter 2010 and Spring 2011 issues of *Inspire* are attached hereto as Exhibits 2 and 3, respectively. A further review of the hard drives revealed that the defendant conducted web searches for "How to Build Practical Firearms Suppressors," "How to Make Dispensable Silencers" and other searches regarding high-powered rifles. (PSR ¶ 22). Additionally, the review of the defendant's hard drives recovered a video of an improvised explosive device ("IED") attack on a Humvee filled with soldiers. That video was released by al-Qaeda in Iraq, along with a press release which, in sum and substance, claimed that it was an operation targeting Americans near Fallujah and depicted the final seconds of the lives of a group of "American Crusaders."

II. GUIDELINES CALCULATION

As noted above, the Probation Department has determined that the defendant's total offense level is 39, which provides for an advisory Guidelines range of 360 months to life imprisonment within Criminal History Category VI based on the application of the Terrorism Enhancement. (PSR at ¶¶ 29-49, 52). The government concurs with this calculation. Because the counts of conviction have a combined statutory maximum of 35 years, the defendant's effective Guidelines range is 360 to 420 months. However, pursuant

³ During the investigation, law enforcement authorities became aware of other steps the defendant took with respect to operational security, as well. For example, during a meeting where the defendant and others discussed their plans, the defendant required all present to remove the batteries from their cell phones prior to beginning the discussion.

to the plea agreement, the term of imprisonment shall not exceed 300 months, pursuant to Rule 11(c)(1)(C).

III. APPLICABLE LAW

It is settled law that “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” Gall v. United States, 552 U.S. 38, 49 (2007) (citation omitted). Next, a sentencing court should “consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [it] may not presume that the Guidelines range is reasonable. [It] must make an individualized assessment based on the facts presented.” Id. at 50 (citation and footnote omitted).

Title 18, United States Code, Section 3553(a) provides that, in imposing sentence, the Court shall consider:

- (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; [and]
 - (C) to protect the public from further crimes of the defendant.

Section 3553 also addresses the need for the sentence imposed “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a)(2)(D). “[I]n determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, [the Court] shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.” 18 U.S.C. § 3582(a).

It is well-settled that, at sentencing, “the court is virtually unfettered with respect to the information it may consider.” United States v. Alexander, 860 F.2d 508, 513 (2d Cir. 1988). Indeed, Title 18, United States Code, Section 3661 expressly provides that “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” Thus, the Court must first calculate the correct Guidelines range, and then apply the 3553(a) factors to arrive at an appropriate sentence, considering all relevant facts.

IV. ANALYSIS

A. The Defendant's Sentencing Submission and Objections to the PSR

In his March 26, 2015 sentencing memorandum (“Def. Mem.”) the defendant objects to the application of the terrorism enhancement as set forth in § 3A1.4. As discussed further below, the PSR appropriately applied the terrorism enhancement. In sum, attempting to provide material support to a foreign terrorist organization such as AQAP, in violation of 18 U.S.C. § 2339B(a)(1), is among the crimes listed in 18 U.S.C. § 2332(g)(5)(B), and the defendant’s offense conduct was squarely “calculated to influence or affect the conduct of government by intimidation or coercion.” See 18 U.S.C. § 2332(g)(5)(A).

1. The Defendant's Objections to the PSR

In a letter dated April 8, 2015, the defendant makes four objections to the “Investigation” section of the PSR. Specifically, the defendant disputes that he conspired to travel to Yemen in January 2012 with others. (PSR ¶ 11). He claims that it “was to be a solo trip.” However, he does not dispute that he conspired with Kaliebe regarding Kaliebe’s planned trip, and that he provided advice and money to Kaliebe for the trip. Secondly, the defendant disputes the allegation that the purpose of his trip was “to kill his perceived enemies.” (PSR ¶ 11). Third, the defendant disputes that he purchased a rifle so he could engage in target shooting in preparation for his trip. (PSR ¶ 11). Lastly, the defendant reiterated his objection to the claim that the defendant wanted Kaliebe to join him on his January 2012 trip to Yemen. (PSR ¶ 11).

As an initial matter, none of the defendant’s objections change the effective Guidelines range, as outlined in the PSR, which is significantly higher than the 300-month cap agreed upon at the time of the defendant’s guilty plea. Moreover, each of the defendant’s arguments is undermined by the evidence in this case.⁴ For example, the evidence in this case establishes that Kaliebe and the defendant originally planned to travel together to Yemen, but, when Kaliebe was unable to obtain a passport, the defendant elected to travel to Yemen by himself. Further, while the defendant claims that his purchase of a rifle was unconnected to his plans to join AQAP, both common sense and the evidence suggest otherwise. There is no information to suggest that the defendant was a recreational shooter, or that he was engaging in target shooting other than to prepare himself for his plot to join AQAP, where he knew the most likely weapon he would be issued would be an automatic rifle. The timing of the defendant’s rifle purchase, which occurred after his conversion to radical Islam and shortly before he began planning to travel to Yemen, also demonstrates his purpose in training with the rifle. Of further significance, immediately before attempting to travel to Yemen, the defendant gave the rifle to an associate from the

⁴ The government does not seek a Fatico hearing on these or any other issues, given that these facts should not have a material effect on the defendant’s ultimate sentence.

Bay Shore mosque, who the defendant believed shared his radical ideology. Lastly, the defendant, by his own admission, wanted to travel to Yemen to train with AQAP. AQAP, through its media operations and its actions, has made clear that its objective is to wage global, violent jihad against its perceived enemies, including the United States and its western allies, and the Yemeni government. There is no plausible excuse for the defendant to join AQAP other than to fight on its behalf.

2. The Terrorism Enhancement Applies

The Terrorism Enhancement clearly applies to the defendant's offense conduct. Section 3A1.4 of the Sentencing Guidelines applies where "the offense is a felony that involved, or was intended to promote, a federal crime of terrorism," as defined in 18 U.S.C. § 2332b(g)(5). U.S.S.G. § 3A1.4 & comment n. 1. Section 2332b(g)(5), in turn, provides that:

[T]he term "Federal crime of terrorism" means an offense that -

(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

(B) is a violation of . . . 2339A (relating to providing material support to terrorists), [or] 2339B (relating to providing material support to terrorist organizations).

18 U.S.C. § 2332b(g)(5). The Second Circuit has held that by requiring that the underlying crime "be calculated to influence or affect . . . or to retaliate against government conduct," the statute does not require "proof of a defendant's particular motive." United States v. Awan, 607 F.3d 306, 317 (2d Cir. 2010). "[A] person may intend and may commit an offense that is so calculated even if influencing or retaliating against government is not his personal motivation." Id. By way of example, "a person who murders a head of state" commits an act of terrorism if he knows "that his crime will influence or affect the conduct of government . . . even if his particular motivation in committing the murder is to impress a more established terrorist with his abilities." Id. (emphasis in original). In this case, the first count of conviction – Count Three of the Superseding Indictment – charges a violation enumerated in 18 U.S.C. § 2332b(g)(5)(b).

As set forth in detail above and in the PSR, the defendant's crimes were clearly "calculated to influence or affect" government conduct in that they were undertaken expressly in support of a terrorist organization with a clearly defined history of murdering innocent civilians and targeting secular government infrastructure. In addition, the defendant specifically provided support to Kaliebe in the form of money to assist Kaliebe in his trip to Yemen. (PSR ¶ 25). At time the defendant provided this support to Kaliebe, Kaliebe had pledged to wage violent jihad. For example, during a June 4, 2012 recorded meeting, Kaliebe told UC-1 that, once he arrived in Yemen, he expected to fight primarily "the

Yemeni army.” However, Kaliebe continued that he would also “say, those who are fighting against the Sharia of Allah . . . whether it’s the U.S. drones or the, their puppets, in the Yemeni army . . . or, who knows, if American agents or whatever, U.S. Special Forces [U/I] who they got over there.”

3. The Sentences on Each Count Should Run Consecutively to Arrive at an Appropriate Sentence

The defendant’s effective advisory Guidelines range is 360 to 420 months, with an effective range of 300 months pursuant to the plea agreement. In light of the 18 U.S.C. § 3553(a) factors discussed below, concurrent sentences on the two counts would not be appropriate and would result in an unwarranted windfall for the defendant. Here, consecutive sentences are particularly appropriate because it involves two counts of conviction for two different substantive crimes; Count Three relates to an attempt to provide material support to AQAP, pursuant to 18 U.S.C. § 2339B(a)(1), and Count Four relates to obstruction of an official proceeding, pursuant to 18 U.S.C. § 1512(c)(2). Therefore, in order “to produce a combined sentence equal to the total punishment,” see U.S.S.G. § 5G1.2(d), the Court should exercise its discretion and sentence the defendant to consecutive terms of prison on Counts Three and Four. As the Second Circuit noted in 2010, “the Guidelines signal that any crime promoting terrorism is to be viewed as extremely serious.” United States v. Stewart, 597 F.3d at 521 (2d Cir. 2010). Likewise, “the strong need to deter terrorism is evident from the Guidelines recommendation that a terrorism defendant be accorded a criminal history of VI, the highest level possible, without regard to [a defendant’s] actual criminal record.” Id. Under the circumstances presented here, where the defendant’s plea of guilty spared the government the burdens associated with prosecuting a case involving classified information, and that was likely to consume the time and attention of JTTF investigators whose primary duties are protecting national security through the prevention and investigation of other crimes of terrorism, a sentence of 300 months’ imprisonment is not unreasonably low.

B. Statutory Sentencing Factors

As set forth below, the sentencing factors under Section 3553(a) tilt in favor of a sentence of 300 months’ imprisonment.

1. Nature and Circumstances of the Offense

It is self-evident that the nature of the defendant’s conduct is extremely serious. In fact, the defendant’s sentencing memorandum concedes that the defendant has been convicted of a “very serious offense.” (Def. Mem. at 56). As he admitted during his guilty plea, the defendant attempted to travel to Yemen for the purpose of joining AQAP. In an attempt to undermine the seriousness of the defendant’s conduct, defense counsel argues that the defendant never reached Yemen or engaged in violent jihad. (Id. at 4-5). While this is true, this fact does not warrant anything approaching the lenience requested by the defendant. First, the only reason the defendant did not travel to Yemen was because of the

intervention of law enforcement authorities in London, England. The defendant took every necessary step to travel to Yemen, including saving money, purchasing a plane ticket, traveling to JFK, passing through security, and ultimately taking the first leg of his trip to London. But for the intervention of counter-terrorism authorities, the defendant would have successfully reached Yemen. Second, had the defendant reached Yemen and joined AQAP, he likely would be facing even more serious charges and a more severe sentence. Third, although he was ultimately unsuccessful in his attempt to join AQAP, the defendant's actions were undoubtedly intended to support AQAP's mission of waging violent jihad against those they consider to be the enemies of Islam, including Americans and the Yemeni government. Fourth, the defendant's lack of success acted as no deterrent to him engaging in further terrorism offenses, but rather, he used his experience to provide advice to Kaliebe, so that Kaliebe would be able to successfully travel to Yemen to join AQAP.

Moreover, the serious nature of the defendant's conduct is highlighted by the fact that terrorist organizations such as AQAP are increasingly recruiting American citizens to support their cause and sustain their operations. Obviously, American citizens, such as the defendant, who can travel from the United States to receive terrorism training, and then return to the United States are particularly concerning and present a grave danger to the United States homeland. Unfortunately, such concerns are not merely hypothetical. Like the defendant in this case, Bryant Neal Vinas was a Long Island resident who aspired to support a terrorist group. Vinas was successful. After converting to Islam in 2004, he traveled to Waziristan, Pakistan in 2007 with the intention of meeting and joining a jihadist group to fight U.S. soldiers in Afghanistan. He was accepted into al-Qaeda, and received training in combat operations. Vinas also volunteered detailed information about the operation of the Long Island Rail Road system to a senior al-Qaeda leader in order to help plan a bomb attack on a commuter train. Moreover, he participated in two rocket attacks on U.S. soldiers in Afghanistan in September 2008. Subsequently, Vinas was captured and transferred to federal custody. In January 2009, he pled guilty in EDNY to multiple federal crimes of terrorism and is awaiting sentencing.

2. History and Characteristics of the Defendant

Although the defendant has no criminal record, the Court should not consider this to be a significant mitigating factor in determining his punishment. As noted previously, the terrorism enhancement under U.S.S.G. § 3A1.4 mandates that the defendant's criminal history be increased to the maximum, Category VI. This provision of the Guidelines embodies the judgment that terrorism offenses are particularly dangerous and deserve severe punishment. Furthermore, when assessing the need to protect the public in crafting an appropriate sentence, the Second Circuit has recognized that terrorists present a special risk of danger because of their often fanatical devotion to violent causes. See United States v. Meskini, 319 F.3d 88, 92 (2d Cir. 2003) ("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."). The defendant fits this description in Meskini perfectly. The defendant requests a sentencing reduction based almost entirely on his history and characteristics, pursuant to § 3553(a)(1), to the exclusion of all of the other factors that

Congress has instructed sentencing courts to consider, including the serious nature of this offense and the need for the sentence to protect the public and deter terrorism offenses.

3. Sentence Must Reflect Seriousness, Promote Respect for the Law, Provide Just Punishment, Afford Deterrence and Protect the Public

The Court must next consider the factors set forth in § 3553(a)(2)(A)-(C), which provide that a sentence should reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct and protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(2)(A)-(C). The defendant's sentencing memorandum ignores these factors, which weigh heavily in favor of a sentence at or near 300 months in prison.

First, with respect to § 3553(a)(2)(A), attempting to provide material support to a foreign terrorist organization, and then attempting to obstruct justice by destroying evidence of such criminal activity, are serious offenses and need to be adjudicated in a manner that will promote respect for the law and provide just punishment. A sentence of 300 months would accomplish these objectives.

Second, in regard to § 3553(a)(2)(B), the Court's sentence should afford adequate deterrence to terrorism, both specific deterrence to this defendant, and general deterrence to other individuals who might be inclined to engage in terrorism offenses against the United States. A sentence of 300 months would provide the appropriate specific deterrence to the defendant. The defendant's conduct demonstrates that law enforcement intervention served as no deterrent to the defendant's quest to provide material support to AQAP. After being confronted in London and returned to the United States, the defendant did not then remove himself from the conspiracy or see the error of his criminal conduct. To the contrary, the defendant used his experience and mistakes as a way to facilitate Kaliebe's efforts to join AQAP and fight jihad. Most telling is how the defendant described his experience in London and his desire for that experience to act as a learning experience for Kaliebe as Kaliebe prepared to travel to Yemen. In a recording of the January 18, 2013 meeting, where the defendant provided Kaliebe with money and support, the defendant stated, "I just hope my story, my, the event that happened to me will help you guys move forward, inspire you." Still further, the defendant attempted to destroy evidence of his terrorism crimes by erasing the hard drives from his computer, which he used in furtherance of the charged terrorism offenses. In addition to specific deterrence, the Court's sentence should also seek to deter others from attempting to obstruct justice by destroying evidence of criminal activity. As such, these facts demonstrate that the defendant is uniquely dangerous and only a significant period of incarceration will serve to act as a specific deterrent. A sentence of 300 months in prison would send a strong message that attempts to provide material support to terrorist organizations such as AQAP and other al-Qaeda affiliates, as well as the destruction of evidence during an on-going criminal investigation, will be met with severe consequences.

Third, pursuant to § 3553(a)(2)(C), it is essential that the Court's sentence "protect the public from further crimes of the defendant." When evaluating the defendant's future dangerousness, and the need for the Court's sentence to protect the public from further crimes of the defendant, the defendant's offense conduct is relevant. As discussed, in detail above, this defendant remained undeterred in his quest to provide support to AQAP. Additionally, there is little in the record to suggest that the defendant has seen the error of his criminal conduct or that he has disavowed his support of AQAP. Based on the defendant's conduct and his desire to provide support to AQAP a sentence of 300 months is appropriate. The incapacitation that 300 months' imprisonment would provide will help protect the public and achieve the objective of this statutory sentencing factor.

4. Parity With Other Terrorism Sentences

The defendant cites to a number of other cases from around the country where courts have sentenced defendants, who the defendant claims to be equally or more culpable, to less than 300 months'. (Def. Mem. at 29-55). While sentencing courts should seek to "avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), the information presented by the defendant does not compel such a result here. Specifically, the defendant has provided minimal information about those other cases, failing to address such factors as negotiated plea agreements, mitigating personal circumstances of those defendants, or substantial assistance to the government, which may have played a role in the sentencing analyses. Rather than speculating about why another court sentenced a particular defendant the way it did, the government respectfully submits that, as set forth above, the Court should use the defendant's advisory Guidelines range as the "starting point and the initial benchmark," Gall, 552 U.S. at 49, consider all of the § 3553(a) factors applicable to the defendant, and then "make an individualized assessment based on the facts presented." Id. at 50 (citation and footnote omitted). Notably, a sentence of 300 months' imprisonment is not at odds with other cases in this district – Betim Kaziu was sentenced to 27 years' imprisonment after traveling from Brooklyn to Egypt and the Balkans in an effort to join a jihadist group.

V. CONCLUSION

Based upon the defendant's offense conduct and his own statements, which were captured with audio recordings, wherein the defendant, a self-admitted jihadist, plotted for almost two years to travel to Yemen, join AQAP and fight with terrorists and when that failed, assisted his co-conspirator to do the same, coupled with his destruction of evidence in an attempt to thwart an on-going criminal investigation, the government respectfully submits that a sentence of 300 months imprisonment is necessary and appropriate to fulfill the objectives of sentencing.

Respectfully submitted,

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Exhibits 1-3

cc: Marc Bogatin, Esq. (By email)
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Clerk of the Court (SJF) (By ECF, without exhibits)