



terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by 2 years. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

III. ESSENTIAL ELEMENTS OF THE OFFENSES

Count One

Title 18, United States Code, Section 1546(a) (4th paragraph) provides, in relevant part:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement

The elements of the fourth paragraph of § 1546(a) are:

1. The defendant knowingly made a false statement under oath or subscribes as true pursuant to 28 U.S.C. § 1748 *or* that he presented a visa application containing a false statement (subscription or oath not necessary for this variant of proof of subsection (a) of 1546);<sup>1</sup> and

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<sup>1</sup> In United States v. Khalje, 658 F.2d 90 (2d Cir. 1981), the court held that the language of subsection (a) of 1546 proscribes two different courses of conduct concerning visa applications - 1 - making a false statement under oath or - 2 - presenting a visa containing a false statement, with the second method of proof not requiring the taking of the oath. Simply put, it does not require an "oath" - presentment is adequate. In the instant case, the second superseding

2. The defendant acted willfully in making the false statement; and
3. The false statement was material to the issuance of a passport.

### Venue

Title 18, United States Code, Section 3238 provides:

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender ...<sup>2</sup>

### Count Two

Title 18, United States Code, Section 1546(a) (1st paragraph) provides, in relevant part:

Whoever knowingly... utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained;

The elements of the first paragraph of §1546(a) are:

1. The defendant possessed and/or used a United States visa; and
2. The defendant knew that the visa was procured by means of any false

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indictment charges both prongs in Count One because the defendant took an oral oath during his visa application interview and he also presented the form to the embassy containing the false statement.

<sup>2</sup> Thus, although the false statement was submitted from Israel to a Visa Center not in this district and sworn to in the Consulate General of the United States in Jerusalem, Israel, venue is proper in this district because defendant resided here and the acts were “begun or committed ... elsewhere out of the jurisdiction of any particular State or district.”

claim or statement and

3. The false statement or claim was material.

IV. PLEA AGREEMENT

The defendant has indicated that he wishes to plead *nolo contendere* and there is no written plea agreement.

V. FACTUAL BASIS FOR THE PLEA

Had this matter proceeded to trial, the government would prove that the defendant committed the crime charged by witness testimony and the presentation of evidence as per the statement of facts contained in the earlier filed Change of Plea Memorandum combined with the following supplemental recitation of facts:

The original of the defendant's visa application form as well as the actual visa issued and affixed to Idais' passport would be submitted into evidence. The representative of the United States State Department who conducted the interview of the defendant at the embassy in Jerusalem, Israel would testify that she administered an oral oath to the defendant and then went through each of the questions filled out on the visa application form submitted by Idais. Idais confirmed that the answers to the questions on the application form were truthful and accurate. The defendant's photograph is affixed to the visa application and the interviewer confirmed that the person pictured on the form, the defendant Idais, was the person she interviewed.

In reliance on the responses to those questions, a visa was issued to Idais to travel to the United States. Idais possessed and used that visa on or about August 6, 2000 to enter the

United States.

Another representative from the State Department who also worked in the Israeli embassy would testify that prior to 9-11-01, original visa application forms were not universally retained in storage. Rather, they were kept on site at the embassy for a period of time, and then later destroyed. After 9-11-01, policy changes required that visas be retained and shipped to the United States for retention in storage. This representative would testify that he reviewed the original storage box from which Idais' original visa application form in this case was obtained. There is no other visa application form for Idais. Further, unique processing numbers on the visa application form in this case are the same processing numbers entered on the actual visa issued and affixed to Idais' passport. Therefore, it is undisputed that the visa issued to Idais was issued as a result of the visa application form filled out by Idais and charged in this case. The answers to questions having to do with prior arrests, prior convictions, and membership in any terrorist organization are all matters that are material to the issuance of a visa. If any one of those three

facts have been revealed via honest answers to the questions on the visa application, the representative of the State Department would testify that the visa would not have been issued.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Supplemental Plea Memorandum has been served by me, this date, by first class delivery upon the following individual:

Robert E. H. Miller, Esq.  
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NANCY BEAM WINTER  
Assistant United States Attorney

DATED \_\_\_\_\_