

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:07CR647
)	
Plaintiff,)	
)	Judge James G. Carr
v.)	
)	
ZUBAIR AHMED, and)	GOVERNMENT'S SENTENCING
KHALEEL AHMED,)	<u>MEMORANDUM</u>
)	
Defendants.)	

Now comes the United States of America, by and through its undersigned counsel, Steven M. Dettelbach, United States Attorney for the Northern District of Ohio, Assistant United States Attorneys Thomas E. Getz, Justin E. Herdman, Gregg N. Sofer, and Department of Justice Trial Attorney Jerome J. Teresinski, and respectfully submits this Sentencing Memorandum, which summarizes the United States' position that defendant Zubair Ahmed should be sentenced to a term of 120 months imprisonment and that defendant Khaleel Ahmed should be sentenced to a term of 108 months imprisonment.

In this Memorandum, the government first outlines a brief history of the case. The Memorandum then briefly addresses the defendants' Guidelines range as properly calculated in

the plea agreements.¹ Finally, the Memorandum sets forth a concise description of the offense conduct in the instant case.

I. Case History

On February 21, 2006, an indictment charging Marwan El Hindi (hereinafter, “El Hindi”), as well as two co-defendants, was unsealed following execution of an arrest warrant on El Hindi and search warrants on the residences of El Hindi.² The indictment charged El Hindi with, *inter alia*, Conspiring to Kill and Maim Individuals Outside the United States, in violation of Title 18, United States Code, Section 956(a)(1), and Conspiring to Provide Material Support to Terrorists, in violation of Title 18, United States Code, Section 2339A. Both defendant Zubair Ahmed and defendant Khaleel Ahmed were referenced in that indictment as “recruits” of El Hindi.

On February 21, 2007, a superseding indictment was unsealed in Case No. 06-CR-719 charging defendants Zubair Ahmed and Khaleel Ahmed, along with El Hindi and his original co-defendants, with Conspiring to Kill and Maim Individuals Outside the United States, in violation of Title 18, United States Code, Section 956(a)(1). Zubair Ahmed and Khaleel Ahmed were arrested on February 21, 2007 and search warrants were executed at their respective residences.

¹ As of the date of this Memorandum, the plea agreements entered into by each defendant remain under seal with this Court. Accordingly, this Memorandum does not address certain provisions of that agreement. Any motions by the government, including those addressing acceptance of responsibility, will be made on the date of the sentencing hearing before the Court. Additionally, this Memorandum does not address specific sentencing factors with respect to each defendant under 18 U.S.C. § 3553. The government intends to address those sentencing factors as applied to each defendant on the date of sentencing.

² This case was numbered 06-CR-719 and, where necessary, will be referenced in order to distinguish from the instant case.

On December 14, 2007, a separate indictment was unsealed charging defendants with Conspiring to Kill and Maim Individuals Outside the United States, in violation of Title 18, United States Code, Section 956(a)(1), thereby giving rise to the instant case. As a result of this separate indictment, the original charges in Case No. 06-CR-719 against these defendants was dismissed on December 27, 2007. El Hindi proceeded to trial in Case No. 06-CR-719 and was convicted of multiple counts, including violations of 18 U.S.C. §§ 956(a)(1) and 2339A, on June 13, 2008.

On January 15, 2009, both defendants entered a plea of guilty to a superseding information in this case, which charged a single count of Conspiring to Provide Material Support to Terrorists, in violation of Title 18, United States Code, Section 2339A. Plea agreements entered into by the government and the defendants were accepted by this Court under Fed. R. Crim. Pro. 11(c)(1)(C); these agreements were filed, under seal, with the Court on that date. On the date of their guilty pleas, the defendants were advised by the Court that, upon satisfaction of certain conditions within the plea agreements, Zubair Ahmed would be sentenced to a term of imprisonment between 110 and 125 months and Khaleel Ahmed would be sentenced to a term of imprisonment between 92 and 115 months.

II. Counts of Conviction

A. Statutory Penalties

1. 18 U.S.C. § 2339A

The statutory penalty for the 18 U.S.C. § 2339A violation, conspiring to provide material support to terrorists, is a maximum term of imprisonment of up to 15 years.

The sole count of the superseding information charged the defendants with conspiring “to provide material support and resources, *knowing and intending* they were to be *used in preparation for and in carrying out* a violation of Title 18, United States Code, Section 956 (conspiring to kill and maim individuals outside the United States).” (Emphasis added). Title 18, United States Code, Section 2339A is an enumerated offense within the definition of “federal crimes of terrorism” in 18 U.S.C. § 2332b(g)(5). As agreed to by both the government and the defendants, a base offense level of 26 applies to this offense under U.S.S.G. § 2M5.3. For defendant Zubair Ahmed only, a two-level enhancement for assuming a leadership role applies, increasing his base offense level to 28 under U.S.S.G. § 3B1.1(c). Finally, the terrorism enhancement in U.S.S.G. § 3A1.4 also applies to this offense, thereby increasing the offense level by 12 levels, to 40 for Zubair Ahmed and 38 for Khaleel Ahmed. Also under U.S.S.G. § 3A1.4, a criminal history category of VI is applied to each defendant.

III. Factual Summary of the Offense Conduct³

The conduct in this case is especially serious and evinces a committed, long-term plan by both defendants to engage in violent jihad on the battlefield against members of the United States military. From early 2004 until February 2007, the defendants both demonstrated a focused and dedicated ambition to wage violent jihad overseas. This conspiracy spanned three continents, involved a number of other co-conspirators, and consumed at least three years of the defendants’ relatively young lives.

³ The facts addressed in this section are based on specific consensual recordings, emails recovered from the computers of Zubair Ahmed and Haris Ahmed, and telephone intercepts. The government intends to provide specific evidence to this Court at the sentencing hearing.

The defendants are paternal cousins and are roughly the same age. Prior to their arrest in this case, both defendants resided in Chicago, Illinois. Following defendant Khaleel Ahmed's arrival in the United States in approximately 1998, the defendants became good friends and developed a mutual interest in the concept of violent jihad, especially as it was waged against U.S. military forces in Iraq and Afghanistan.

Beginning in early 2004, the defendants secretly devised a plan to travel overseas in pursuit of joining the violent jihad against the U.S. military, primarily in Afghanistan. As part of this scheme, the defendants coordinated with a number of individuals, including Syed Haris Ahmed (hereinafter, "Haris Ahmed") from Atlanta, Georgia.⁴ For instance, communications in May 2004 indicated that Zubair Ahmed and Khaleel Ahmed planned to travel overseas at a time coinciding with a pre-planned trip by Haris Ahmed to Pakistan, where the defendants would eventually link up with Haris Ahmed in an effort to wage violent jihad against U.S. military forces in Afghanistan. As one step in this plan, Zubair Ahmed and Khaleel Ahmed departed from the United States to Cairo, Egypt in May 2004 without providing any notice to their families or friends. This travel was planned for at least several months prior to their departure and was delayed, in part, by a wait for Khaleel Ahmed's U.S. passport.

Upon arrival in Egypt, Zubair Ahmed communicated with Haris Ahmed in order to coordinate the planned rendezvous in Pakistan. At this same time, Zubair Ahmed's father became aware that the defendants had travelled to Cairo and intended on getting involved in

⁴ Haris Ahmed was convicted in the Northern District of Georgia on June 9, 2009 of Conspiring to Provide Material Support to Terrorists, in violation of 18 U.S.C. § 2339A. He was later sentenced to 156 months imprisonment. There is no familial relationship between Haris Ahmed and the defendants.

violent jihad, possibly in Iraq. In an effort to prevent the defendants from traveling onward, Zubair Ahmed's father paid for El Hindi and El Hindi's brother to travel to Cairo in order to intercept the defendants. The defendants were in fact stopped from traveling to Afghanistan and/or Iraq by Zubair Ahmed's father and the El Hindis.

Upon their return to the United States, El Hindi arranged for the defendants to meet with Darren Griffin (hereinafter "Griffin"), an ex-Special Forces soldier and openly extremist convert to Islam who offered military training to those wishing to engage in violent jihad. The defendants met with Griffin on two occasions – briefly on July 3, 2004 and then more extensively on July 4, 2004. During the July 4 conversation, which Griffin secretly recorded, the defendants discussed their desire to obtain training with specific firearms, including a .50 caliber machine gun and sniper rifles. In addition, Griffin suggested that the defendants would be well-served by beginning firearms training with a .22 caliber handgun. Also during this conversation, the defendants were joined by El Hindi, at which point the defendants' trip to Cairo for the purposes of engaging in violent jihad was referenced. During this conversation with Griffin, Zubair Ahmed stated that he had a "five year plan" with respect to engaging in violent jihad.

Throughout the summer and fall of 2004, the defendants remained in contact with El Hindi. On October 2, 2004, Zubair Ahmed and Griffin also talked via telephone and discussed the possibility of meeting for the purposes of training. Throughout this time period, Zubair Ahmed remained in close contact with Haris Ahmed in Atlanta.

In order to facilitate communications, Zubair Ahmed, Khaleel Ahmed, and Haris Ahmed agreed to use the term "third" as a codeword for violent jihad. This codeword was frequently used in communications between all three individuals throughout the course of the conspiracy.

In an October 18, 2004 email exchange, Haris Ahmed referenced a “three step plan” and graduation to “third,” meaning violent jihad. Zubair Ahmed replied in this email exchange that he and Khaleel Ahmed had both made it very close to “third degree,” but were double-crossed (ostensibly by El Hindi and his brother, who prevented the defendants from travelling on to Afghanistan and/or Iraq). In this same email exchange, Zubair Ahmed made clear that participation in violent jihad would be the culmination of a multi-step process, which included education, training, fundraising, and securing quality “manpower” – all in an effort to avoid “parents” who were identified by Zubair Ahmed as the most significant obstacle to violent jihad.

While the defendants’ interaction with El Hindi waned during the latter months of 2004, the communications between Zubair Ahmed and Haris Ahmed continued throughout 2005. Haris Ahmed travelled to Pakistan the summer of 2005 for the purposes of joining a terrorist organization and waging violent jihad. Zubair Ahmed was aware of the purpose of Haris Ahmed’s travel to Pakistan. On June 16, 2005, Haris Ahmed emailed Zubair Ahmed that he was going to Pakistan in order to get some business done – “if you know what I mean.” In an email exchange from July 2005, Haris Ahmed stated to Zubair Ahmed that he was in Pakistan and waiting to join the “third,” to which Zubair Ahmed replied that he wanted to know the time frame for “third degree” and he continued to think of “third.” Haris Ahmed eventually returned to the United States in August 2005 and described, again in email communications, his frustrated ambitions to join a group waging violent jihad against the United States overseas.

During the fall of 2005, Zubair Ahmed and Haris Ahmed continued to correspond via email about their jihadist plans. This included an email exchange from November 24, 2005, in which Haris Ahmed asked Zubair Ahmed to come to New York City or, in the event that Zubair

Ahmed was unavailable, to send Khaleel Ahmed instead. In response, Zubair Ahmed stated that he needed to attend his uncle's funeral, but that he had spoken to Khaleel Ahmed and the defendants still wished to meet up with Haris Ahmed. The email correspondence culminated in two telephone calls between Zubair Ahmed and Haris Ahmed on December 2, 2005, at which point Haris Ahmed invited Zubair Ahmed to travel to Atlanta in order to advance the planning for violent jihad. Immediately thereafter, Zubair Ahmed telephoned Khaleel Ahmed and discussed the possibility of travelling to Atlanta in order to link up with Haris Ahmed.

In the weeks leading up to the arrest of El Hindi, Khaleel Ahmed expressed his own continued desire to engage in violent jihad. During a telephone conversation with Zubair Ahmed on February 2, 2006, Khaleel Ahmed encouraged his cousin by stating, "Yeah, you can't give up dude... Remember...rem...remember what you said? There...there many obstacles that we gotta go through and this is one of them. There's the shit load of obstacles that we still are going through and you know, it's never gonna end." Khaleel Ahmed also repeatedly assisted Zubair Ahmed in researching the purchase of firearms, including a WASR-10 assault rifle.

Upon the arrest of El Hindi in February of 2006, Zubair Ahmed and Khaleel Ahmed both became aware that they were the subject of FBI investigation and, consequently, appeared to reduce any overt signs of their jihadist ambitions in order to avoid additional scrutiny. Despite this attention from law enforcement, Zubair Ahmed purchased a handgun in August 2006, which he returned only after he was notified that the FBI was aware of the weapon. There were some indications that the defendants continued to nurture jihadist ambitions, as Zubair Ahmed continued to amass a collection of jihadist videos and weapons training manuals in early 2007,

all of which were transferred to a portable, external hard drive. This hard drive was recovered during the execution of search warrants at the time of the defendants' arrest.

Finally, the defendants pled guilty on January 15, 2009. During the plea colloquy, both defendants responded in the affirmative when asked by this Court whether they intended to engage in violent and hostile activities against U.S. military personnel in either Iraq or Afghanistan. Zubair Ahmed also admitted that he had sought out training in an effort to engage in armed combat against U.S. military personnel. Khaleel Ahmed admitted that the discussions with Griffin on July 4, 2004 were for the purpose of eventually putting the defendants in a position where they could engage in armed conflict with U.S. military personnel. The Court, finding an adequate factual basis for the pleas, then allowed the defendants to plead guilty to the single count alleged in the superseding information.

IV. Conclusion

Based on the length of the charged conspiracy, the severity of the conduct alleged, and the defendants' overriding dedication to engaging in violent jihad against their fellow Americans overseas, as well as additional evidence to be presented at the sentencing hearing, the Court should impose a sentence of 120 months imprisonment for Zubair Ahmed and 108 months imprisonment for Khaleel Ahmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 1st day of July, 2010, a copy of the foregoing *Government's Sentencing Memorandum* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

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