

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:09-CR-216-1FL

FILED IN OPEN COURT
ON 2/9/11 DR
Dennis P. Iavarone, Clerk
US District Court
Eastern District of NC

UNITED STATES OF AMERICA)
)
 v.) MEMORANDUM OF PLEA AGREEMENT
)
 DANIEL PATRICK BOYD)

The United States of America ("United States"), by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Defendant, with the concurrence of the Defendant's Attorney, Rosemary Godwin and Debra Graves, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.
2. The Defendant agrees:
 - a. To plead guilty to Counts One and Two of the Second Superseding Indictment herein.
 - b. To make restitution to any victim including any victim with respect to a Count dismissed as part of the agreements in whatever amount the Court may order, pursuant to 18 U.S.C. §§ 3663 and 3663A. Said restitution shall be due and payable immediately.
 - c. To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal whatever sentence is imposed, including any issues that relate to the establishment of the advisory Guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory Guideline range that is established at sentencing, and further to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant

at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.

- d. To waive all rights, whether asserted directly or through a representative, to request or receive from the United States any records pertaining to the investigation or prosecution of this matter, except as provided in the Federal Rules of Criminal Procedure. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.
- e. Except as exempted herein, to assist the United States in the recovery and forfeiture of any assets which facilitated and/or were required through unlawful activities, including all such assets in which the defendant has any interest or control. Specifically, the Defendant agrees to voluntarily forfeit and relinquish to the United States the property specified in the Second Superseding Indictment. The sole exception as to which the Government will not pursue forfeiture actions is 134 Lakeside Circle, Willow Springs, North Carolina. The defendant does agree to voluntarily forfeit and relinquish the contents of account number 000694780927 at Bank of America and account numbers 2000017763338 and 1010102805600 at Wachovia Bank. The Defendant further agrees to sign any documents necessary to effectuate the forfeiture and waives any further notice. In addition, the Defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Second Superseding Indictment, as detailed above. The Court has jurisdiction over the disposition of such items and may order the investigative agency to dispose of the items in such manner as provided by the agency's regulations. Forfeited firearms may be ordered destroyed.
- f. To pay a special assessment of \$100.00 for each count, for a total of \$200.00, pursuant to the provisions of 18 U.S.C. § 3013. The assessment shall be paid by the Defendant at sentencing. The Defendant or Defendant's counsel shall provide a check in payment of the said assessment directly to the Clerk, U.S. District Court/EDNC.
- g. To complete and submit, if requested, a financial statement under oath to the Office of the USA-EDNC

no later than two weeks after the entry of the guilty plea.

- h. To abide by any conditions of release pending sentencing and report timely for service of sentence. This provision does not imply that the Government will alter its request for pre-trial detention.
 - i. Whenever called upon to do so by the United States, (1) to disclose fully and truthfully in interviews with Government agents information concerning all conduct related to the Second Superseding Indictment and any other crimes of which the Defendant has knowledge, and (2) to testify fully and truthfully in any proceeding. These obligations are continuing ones. The Defendant agrees that all of these statements can be used against the Defendant at trial if the Defendant withdraws from this plea agreement or is allowed to withdraw the guilty plea.
 - j. If the Defendant provides false, incomplete, or misleading information or testimony, this would constitute a breach of this Agreement by the Defendant, and the Defendant shall be subject to prosecution for any federal criminal violation. Any information provided by the Defendant may be used against the Defendant in such a prosecution.
 - k. To submit to a polygraph examination whenever requested by the Office of the USA-EDNC. The results of these examinations will be admissible only at the Defendant's sentencing, and at any hearing as to whether there has been a breach of this agreement. The United States may rely on these results in determining whether the Defendant has fulfilled any obligation under this Agreement.
3. The Defendant understands, agrees, and admits:
- a. That as to each Count of the Second Superseding Indictment, to which the Defendant is pleading guilty, the charge, code section, elements, and applicable penalties are as follows:

Count One

- (1) Conspiracy to Provide Material Support to Terrorism

(2) Code section violated: 18 U.S.C. § 2339A

(3) Elements:

First: Beginning on a date unknown but not later than November 9, 2006, and continuing to at least July, 2009, in the Eastern District of North Carolina and elsewhere the Defendant did;

Second: Knowingly, willfully, and unlawfully combine, conspire, confederate, and agree with others known and unknown to the Grand Jury, to provided material support and resources as defined in 18 U.S.C. § 2339A(b), that is, currency, training, transportation, and personnel;

Third: Doing so with the intent to conceal and disguise the nature, location, source, and ownership of such material support;

Fourth: Knowing and with the intent that such material support was to be used in preparation for and carrying out a violation of 18 U.S.C. § 956 (conspiracy to murder, kidnap, maim, or injure persons in a foreign country), and

Fifth: Did commit one or more overt acts in furtherance of such conspiracy including the purchase of airline tickets on or about April 3, 2007, for Ziyad Yaghi and Mohammad Omar Aly Hassan to travel from the United States to Israel.

(4) Maximum term of imprisonment: 15 years

(5) Minimum term of imprisonment: N/A years

(6) Maximum term of supervised release: 3 years

(7) Maximum term of imprisonment upon revocation of supervised release: 2 years

- (8) Maximum fine: \$ 250,000.00
- (9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.
- (10) Special assessment: \$ 100

Count Two

- (1) Conspiracy to Murder, Kidnap, Maim, and Injure Persons in a Foreign Country

- (2) Code section violated: 18 U.S.C. § 956(a)

- (3) Elements:

First: Beginning not later than November 9, 2006 in the Eastern District of North Carolina and elsewhere, the Defendant did;

Second: knowingly, willfully, and unlawfully combine, and conspire, with others known and unknown to the Grand Jury to commit outside the United States an act that would constitute murder if committed in the special maritime and territorial jurisdiction of the United States; and

Third: did an act within the United States to effect the object of the conspiracy that is on June 10, 2009, practiced military tactics and weapon usage on private property in Caswell County, North Carolina.

- (4) Maximum term of imprisonment: Life
- (5) Minimum term of imprisonment: N/A years
- (6) Maximum term of supervised release: 5 years
- (7) Maximum term of imprisonment upon revocation of supervised release: 5 years
- (8) Maximum fine: \$ 250,000.00
- (9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.

(10) Special assessment: \$ 100

Total Statutory Maximum Sentence: Life Imprisonment; 5 Years Supervised Release; \$ 500,000.00 Fine; \$ 200.00 Special Assessment.

- b. That any sentence imposed will be without parole.
 - c. That the Court will take into account, but is not bound by, the applicable United States Sentencing Guidelines, that the sentence has not yet been determined by the Court, that any estimate of the sentence received from any source is not a promise, and that even if a sentence up to the statutory maximum is imposed, the Defendant may not withdraw the plea of guilty.
 - d. To participate in a proffer interview deemed to be truthful and forthcoming. The Government will be the sole Judge of whether such interview is indeed truthful and forthcoming.
 - e. That the cooperation referenced in paragraph 2(i) may include cooperation with and testimony on behalf of foreign Governments as dictated by the United States.
 - f. That the Defendant will enter into a stipulation of facts relevant to the investigation which led to the current Indictment.
 - g. That, unless Defendant is found unable to pay, the Court will impose a fine, and failure to pay it will subject Defendant to additional criminal and civil penalties pursuant to 18 U.S.C. §§ 3611-14.
4. The United States agrees:
- a. At sentencing, it will dismiss Counts Three through Eleven of the Second Superseding Indictment as to this defendant only.
 - b. That it reserves the right to make a sentence recommendation.
 - c. That it reserves the right at sentencing to present any evidence and information pursuant to 18 U.S.C. § 3661, to offer argument or rebuttal, to recommend imposition of restitution, and to respond to any motions or objections filed by the Defendant.


- d. That the USA-EDNC will not further prosecute the Defendant for conduct constituting the basis for the Second Superseding Indictment; however, this obligation is limited solely to the USA-EDNC and does not bind any other state or federal prosecuting entities.
- e. That it will make known to the Court at sentencing the full extent of the Defendant's cooperation, but the United States is not promising to move for departure pursuant to U.S.S.G. §5K1.1, 18 U.S.C. § 3553(e), or Fed. R. Crim. P. 35.
- f. Pursuant to U.S.S.G. §1B1.8, that self-incriminating information provided by the Defendant pursuant to this Agreement shall not be used against the Defendant in determining the applicable advisory Guideline range, except as provided by §1B1.8 and except as stated in this Agreement. The United States will not, however, withhold from the United States Probation Office any evidence concerning relevant conduct.
- g. That the USA-EDNC agrees not to share any information provided by the Defendant pursuant to this Agreement with other state or federal prosecuting entities except upon their agreement to be bound by the terms of this Agreement.


5. The parties agree to the following positions as to the below-listed sentencing factors only, which are not binding on the Court in its application of the advisory Guideline range; provided that if Defendant's conduct prior to sentencing changes the circumstances with respect to any such factors, the United States is no longer bound to its positions as to those factors:

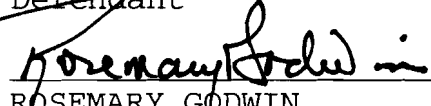
a. A downward adjustment of 3 levels for acceptance of responsibility is warranted under U.S.S.G. §3E1.1.

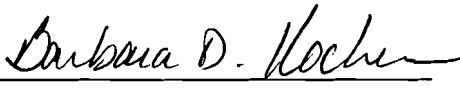
This the 14 day of January, 2011.


GEORGE E. B. HOLDING
United States Attorney



DANIEL PATRICK BOYD
Defendant

BY: 
JOHN S. BOWLER
Assistant United States Attorney
Criminal Division

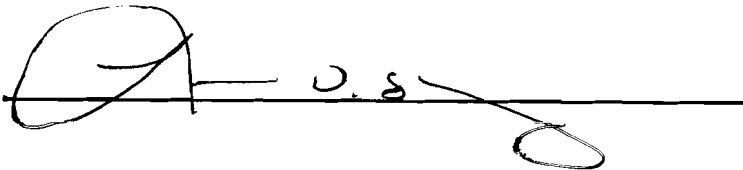

ROSEMARY GODWIN
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By: 
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Criminal Division


DEBRA GRAVES
Attorney for the Defendant

BY: 
JASON M. KELLHOFER
Trial Attorney
U.S. Department of Justice
National Security Division

APPROVED: this 9th day of February 2011.



Louise W. Flanagan
Chief United States District Judge