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10
 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR. No. S-05-240 GEB
 14)
 Plaintiff,) PLEA AGREEMENT
 15)
 v.)
 16)
 UMER HAYAT,)
 17)
)
 18)
 Defendant.)
 19)

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 21 I.
 22 INTRODUCTION

23 A. **Scope of Agreement:** The Second Superseding Indictment in
 24 this case charges defendant Umer Hayat with Making False Statements
 25 to the Federal Bureau of Investigation ("FBI") (Counts Five and Six).
 26 The Information in this case charges defendant Umer Hayat with
 27 Making a False Statement to the FBI and U.S. Customs and Border
 28 Protection. This document contains the complete Plea Agreement

1 between the United States Attorney's Office for the Eastern District
2 of California and the Counterterrorism Section of the Department of
3 Justice (collectively, the "government") and the defendant regarding
4 this case. This Plea Agreement is limited to the United States
5 Attorney's Office for the Eastern District of California, and the
6 Counterterrorism Section of the Department of Justice, and cannot
7 bind any other federal, state, or local prosecuting, administrative,
8 or regulatory authorities.

9 **B. Court Not a Party:** The Court is not a party to this Plea
10 Agreement. Sentencing is a matter solely within the discretion of
11 the Court, the Court is under no obligation to accept any
12 recommendations made by the government, and the Court may in its
13 discretion impose any sentence it deems appropriate up to and
14 including the statutory maximum stated in this Plea Agreement. If
15 the Court should impose any sentence up to the maximum established
16 by the statute, the defendant cannot, for that reason alone,
17 withdraw his guilty plea, and he will remain bound to fulfill all of
18 the obligations under this Agreement. The defendant understands
19 that neither the prosecutor, defense counsel, nor the Court can make
20 a binding prediction or promise regarding the sentence he will
21 receive.

22 **II.**

23 **DEFENDANT'S OBLIGATIONS**

24 **A. Guilty Plea:** The defendant will plead guilty to an
25 Information charging him with violation of 18 U.S.C. § 1001. The
26 defendant agrees that he is in fact guilty of this charge and that
27 the facts set forth in the Stipulated Factual Basis attached hereto
28 as Exhibit A are accurate.

1 **B. Special Assessment:** The defendant agrees to pay a special
2 assessment of \$100.00 at the time of sentencing by delivering a
3 check or money order payable to the United States District Court to
4 the United States Probation Office immediately before the sentencing
5 hearing.

6 **III.**

7 **THE GOVERNMENT'S OBLIGATIONS**

8 **A. Dismissals:** Provided that defendant abides by all his
9 obligations under this Agreement, the government agrees to move, at
10 the time of sentencing, to dismiss the underlying indictments
11 against defendant with prejudice.

12 **B. Recommendations:**

13 1. **Incarceration Range:** Provided that defendant abides by
14 all his obligations under this Agreement, the government agrees to
15 recommend at the time of sentencing that he receive a sentence of
16 time served. (As of the time of this plea agreement, defendant has
17 served (in pretrial detention) approximately 330 days of
18 incarceration and 30 days of home detention).

19 2. **Acceptance of Responsibility:** The Government agrees
20 to recommend a reduction in the defendant's offense level for
21 acceptance of responsibility under U.S.S.G. § 3E1.1, provided that
22 the defendant manifests a full and clear acceptance of
23 responsibility through and including the time of sentencing.

24 **IV.**

25 **ELEMENTS OF THE OFFENSE**

26 **A. Elements of the Offense:** At a trial, the government would
27 have to prove beyond a reasonable doubt the following elements with
28 respect to the Information charging a violation of 18 U.S.C. § 1001:

1 First, the defendant made a false statement in a matter within the
2 jurisdiction of a federal agency;
3 Second, the defendant acted willfully, that is deliberately and with
4 knowledge that the statement was untrue; and
5 Third, the statement was material to the federal agency's activities
6 or decisions.

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V.

MAXIMUM SENTENCE

A. **Maximum Penalty:** The maximum sentence which the Court can
impose is five (5) years of incarceration, a three year period of
supervised release, a fine of \$250,000.00, and a special assessment
of \$100.00.

B. **Violations of Supervised Release:** The defendant
understands that if he violates a condition of supervised release at
any time during the term of supervised release, the Court may revoke
the term of supervised release and require the defendant to serve up
to two additional years imprisonment.

VI.

SENTENCING DETERMINATION

A. **Statutory Authority:** The defendant understands that the
Court must consult the Federal Sentencing Guidelines (as promulgated
by the Sentencing Commission pursuant to the Sentencing Reform Act
of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
modified by United States v. Booker and United States v. Fanfan,
543 U.S. 220 (2005)) and must take them into account when
determining a final sentence. Defendant understands that the Court
will determine a non-binding and advisory guideline sentencing range
for this case pursuant to the Sentencing Guidelines. Defendant

1 further understands that the Court will consider whether there is a
2 basis for departure from the guideline sentencing range (either
3 above or below the guideline sentencing range) because there exists
4 an aggravating or mitigating circumstance of a kind, or to a degree,
5 not adequately taken into consideration by the Sentencing Commission
6 in formulating the Guidelines. Defendant further understands that
7 the Court, after consultation and consideration of the Sentencing
8 Guidelines, must impose a sentence that is reasonable in light of
9 the factors set forth in 18 U.S.C. § 3553(a).

10 **B. Stipulations Affecting Guidelines Calculation:** The
11 government and the defendant agree that there is no material dispute
12 as to the following sentencing guidelines variables and therefore
13 stipulate to the following:

- 14 1. The parties agree that the November 1, 2005 Sentencing
15 Guidelines apply to this case.
- 16 2. Pursuant to U.S.S.G. § 2B1.1, defendant's base offense
17 level is 6.
- 18 3. The Government agrees to recommend a two-level reduction
19 in the applicable sentencing guideline offense level, as
20 set forth in § III.B.2.
- 21 4. The parties agree that no specific offense characteristics
22 or adjustments apply to this defendant in this case other
23 than those referenced above.
- 24 5. Therefore, assuming that the defendant qualifies for a
25 reduction under U.S.S.G. § 3E1.1, defendant's final
26 adjusted offense level will be 4.
- 27 6. The parties stipulate and agree not to move for, or argue
28 in support of, any departure from the advisory guideline

1 range.

2 VII.

3 WAIVERS

4 **A. Waiver of Constitutional Rights:** The defendant understands
5 that by pleading guilty he is waiving the following constitutional
6 rights: (a) to plead not guilty and to persist in that plea if
7 already made; (b) to be tried by a jury; (c) to be assisted at trial
8 by an attorney, who would be appointed if necessary; (d) to subpoena
9 witnesses to testify on his behalf; (e) to confront and cross-
10 examine witnesses against him; and (f) not to be compelled to
11 incriminate himself.

12 **B. Waiver of Appeal and Collateral Attack:** The defendant
13 understands that the law gives him a right to appeal his conviction
14 and sentence. He agrees as part of his plea, however, to give up
15 the right to appeal the conviction and the right to appeal any
16 aspect of the sentence imposed in this case.

17 The defendant also gives up any right he may have to bring a
18 post-conviction attack on his conviction or his sentence. He
19 specifically agrees not to file a motion under 28 U.S.C. § 2255 or
20 § 2241 attacking his conviction or sentence.

21 Notwithstanding section III. A. above, if the defendant's
22 conviction on the count to which he is pleading is ever vacated at
23 the defendant's or the government's request, or his sentence is ever
24 reduced at defendant's request, the government shall have the right:
25 (1) to prosecute the defendant on the count to which he pleaded
26 guilty; (2) to reinstate any counts that may be dismissed pursuant
27 to this agreement (even if dismissed with prejudice); and (3) to
28 file any new charges that would otherwise be barred by this

1 agreement. The decision to pursue any or all of these options is
2 solely in the discretion of the government. By signing this
3 agreement, the defendant agrees to waive any objections, motions,
4 and defenses he might have to the government's decision. In
5 particular, he agrees not to raise any objections based on the
6 passage of time with respect to such counts including, but not
7 limited to, any statutes of limitation or any objections based on
8 the Speedy Trial Act or the Speedy Trial Clause of the Sixth
9 Amendment.

10 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees
11 to waive all rights under the "Hyde Amendment," Section 617, P.L.
12 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
13 litigation expenses in connection with the investigation and
14 prosecution of all charges in the above-captioned matter and of any
15 related allegations (including without limitation any charges to be
16 dismissed pursuant to this Agreement and any charges previously
17 dismissed).

18 : The defendant understands that the
19 offense with which he is charged is a felony and that he may insist
20 that the Government charge him by way of an Indictment presented to
21 and approved by a Grand Jury. Notwithstanding this fact, the
22 defendant waives prosecution by Indictment and consents to
23 proceeding by way of an Information. The defendant will execute a
24 written waiver of Indictment in open court at the time he enters his
25 guilty plea.

26 Defendant further understands that the offense charged in the
27 Information arose within the Eastern District of Virginia and that
28 he has a right to insist that the charge be filed in the Eastern

1 District of Virginia, and that all proceedings associated with the
2 offense be conducted and adjudicated in the Eastern District of
3 Virginia. Notwithstanding this fact, the defendant agrees and
4 consents that the Information and all proceedings related to the
5 Information (including his guilty plea, sentencing and any other
6 related proceedings) may be conducted and adjudicated in the Eastern
7 District of California.

8 **VIII.**

9 **ENTIRE PLEA AGREEMENT**

10 Other than this Plea Agreement, no agreement, understanding,
11 promise, or condition between the government and the defendant
12 exists, nor will such agreement, understanding, promise, or
13 condition exist unless it is committed to writing and signed by the
14 defendant, counsel for the defendant, and counsel for the United
15 States.

16 **IX.**

17 **APPROVALS AND SIGNATURES**

18 **A. Defense Counsel:** I have read this Plea Agreement and have
19 discussed it fully with my client. The Plea Agreement accurately
20 and completely sets forth the entirety of the agreement. I concur
21 in my client's decision to plead guilty as set forth in this
22 Agreement.

23
24 DATED: _____

25 Johnny L. Griffin, III.
Attorney for Defendant

26 **B. Defendant:** I have read this Plea Agreement and carefully
27 reviewed every part of it with my attorney. I understand it, and I
28 voluntarily agree to it. Further, I have consulted with my attorney

1 and fully understand my rights with respect to the provisions of the
2 Sentencing Guidelines which may apply to my case. No other promises
3 or inducements have been made to me, other than those contained in
4 this Agreement. In addition, no one has threatened or forced me in
5 any way to enter into this Plea Agreement. Finally, I am satisfied
6 with the representation of my attorney in this case.

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DATED: _____
UMER HAYAT
Defendant

C. Court Certified Interpreter/Translator: I declare that I
am a court certified interpreter/translator. On _____, I
read the entire contents of the foregoing plea agreement to Umer
Hayat, translating the document from English to
_____.

DATED: _____
Interpreter/Translator

1 **D. Attorney for United States:** We accept and agree to this
2 Plea Agreement on behalf of the government.

3 DATED: _____ McGREGOR W. SCOTT
4 United States Attorney

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6 By: _____
7 S. ROBERT TICE-RASKIN
8 Assistant U.S. Attorney

9 By: _____
10 LAURA L. FERRIS
11 Assistant U.S. Attorney

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1 EXHIBIT "A"

2 Factual Basis for Plea

3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE EASTERN DISTRICT OF CALIFORNIA

5
6 UNITED STATES OF AMERICA,)
7 Plaintiff,) No. Cr. S-05-240 GEB
8 v.) STIPULATED FACTUAL BASIS FOR
9 UMER HAYAT,) PLEA OF GUILTY
10 Defendant.)
11

12 Defendant Umer Hayat and the Government agree and stipulate
13 that the following is an accurate description of the factual basis
14 for the defendant's plea of guilty to the Information, charging
15 defendant with Making A False Statement to the Federal Bureau of
16 Investigation ("FBI") and U.S. Customs and Border Protection ("CBP")
17 in violation of 18 U.S.C. § 1001:

18 1. On or about April 19, 2003, Umer Hayat and his family,
19 were traveling from California to Pakistan with an intermediate stop
20 and change of flight at Washington-Dulles International Airport.
21 The Hayat family entered a jetway at the Washington-Dulles Airport
22 to board United Airlines Flight #924 and were detained by CBP
23 Inspectors accompanied by an agent from the FBI.

24 2. CBP Inspector Martinez identified himself to Umer Hayat
25 and asked defendant if he had anything to declare. Umer Hayat
26 replied that he did not. Inspector Martinez again asked defendant
27 if he had any cash with him to declare and reminded him that
28 individuals who carry more than \$10,000 out of the United States had

1 to declare that money. Defendant then stated that he had \$10,000
2 and produced two plain white envelopes from his waistband, each
3 containing \$5,000. Inspector Martinez asked if there was any more
4 money. Defendant replied that there was not. Inspector Martinez
5 asked if the money was for himself or the entire family. Defendant
6 stated it was for the whole family. The Inspector asked a second
7 time if there was any more money (referring to the whole family).
8 Defendant replied no.

9 3. At this point the family was advised that everyone and
10 their bags would be searched for money. When Hamid Hayat
11 (defendant's son) was approached by inspectors, he removed two plain
12 white envelopes from his pockets, each containing \$5,000. When Oma
13 Salma Hayat (defendant's wife) was approached, she indicated that
14 she had money and subsequently produced a plain white envelope later
15 determined to contain \$8,053. In total, as defendant then and there
16 knew, the family was carrying an aggregate sum of \$28,053.

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