

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:03-CR-77-T-30TBM

UNITED STATES OF AMERICA

-vs-

14 April 2006

SAMI AMIN AL-ARIAN,

1:10 p.m.

Defendant.

TRANSCRIPT OF PROCEEDINGS
(CHANGE OF PLEA HEARING)
BEFORE THE HONORABLE THOMAS B. MCCOON, III,
UNITED STATES DISTRICT COURT MAGISTRATE

APPEARANCES:

For the Government:

WALTER FURR, ESQUIRE
TERRY ZITEK, ESQUIRE
CHERIE KRIGSMAN, ESQUIRE
United States Attorney's Office
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Suite 3200
Tampa, Florida 33602

For the Defendant
Sami Al-Arian:

LINDA MORENO, ESQUIRE
Linda Moreno, P.A.
Post Office Box 10985
Tampa, Florida 33679

JACK FERNANDEZ, ESQUIRE
SIMON ALEXANDER GAUGUSH, ESQUIRE
DELMAR LEE FUGATE, ESQUIRE
Zuckerman, Spaeder
101 East Kennedy Boulevard,
Suite 1200
Tampa, Florida 33602

ALSO PRESENT:

SAMI AMIN AL-ARIAN (Defendant)
SONYA COHN (Courtroom Deputy
Clerk)

(appearances continued on next page)
STENOGRAPHICALLY REPORTED
COMPUTER-AIDED TRANSCRIPTION

Sherrill L. Jackson, RPR
Official Court Reporter, U.S. District Court
Middle District of Florida, Tampa Division

REPORTED BY:

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E X H I B I T S

(None marked or received)

Sherrill L. Jackson, RPR
Official Court Reporter, U.S. District Court
Middle District of Florida, Tampa Division

1 (1:10 p.m.) PROCEEDINGS

2 THE COURT: Okay. Let's call the case.

3 THE CLERK: *United States of America vs.*

4 *Sami Amin Al-Arian*, Case Number 8:03-cr-77-T-30TBM.

5 THE COURT: Okay. For the Government, we have
6 Miss Krigsman, Mr. Zitek, and Mr. Furr; and for
7 Dr. Al-Arian, we have Miss Moreno and, at the request of the
8 Court, Jack Fernandez, Lee Fugate, and they have with them
9 Simon Gaugush.

10 Mr. -- Dr. Al-Arian, my understanding is that
11 you're here to plead guilty to a count in the superseding
12 indictment, Count 4.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: As I suggested to you a moment ago,
15 this matter will take about 20 or 30 minutes to work
16 through, and it involves you and I having a conversation.
17 I'll be asking a number of questions, and you'll need to
18 respond to those questions. I'm required to do this under
19 oath, so let's begin by having you -- you can remain seated,
20 but simply raise your right hand.

21 THE CLERK: Do you solemnly swear or affirm that
22 the answers you will give to the answers propounded by the
23 Court or counsel will be the truth, whole truth, and nothing
24 but the truth?

25 THE DEFENDANT: I do.

1 THE CLERK: Thank you.

2 THE COURT: I think, for purposes of the record,
3 we need to indicate that the proceeding is being conducted
4 in camera. A notice of the proceeding was filed. However,
5 it was filed under seal. The public has not -- not been
6 alerted to the pendency of the proceedings.

7 My recollection is that that is at the request of
8 both parties; and both Judge Moody and I think it
9 appropriate in the circumstances that the proceeding go
10 forward in camera.

11 I am going to ask that the court reporter
12 transcribe the proceedings and make that a part of the
13 sealed record. That sealed record in relation to the plea
14 and so forth will be open to the public at an appropriate
15 time.

16 Mr. Zitek.

17 MR. ZITEK: Technically, Judge, the decision to
18 hold this hearing was made on February 27th by Judge Moody
19 at the request of the Defense and over the objection of the
20 United States because the United States -- our position
21 ordinarily is that hearings of this nature are to be held in
22 the public. We made our argument at that time. The judge
23 overruled it. And so, we just wanted to -- in the record,
24 we have a continuing objection, but we're otherwise here.

25 THE COURT: Okay. I think that the -- in those

1 circumstances where the Government has made an objection
2 here, I think it needs to be said that the reason we are
3 proceeding in camera is that this is -- the plea that is
4 going to be entered here is in the nature of a conditional
5 plea.

6 If I move forward and find it's freely and
7 voluntarily entered today, I will enter an R&R, which will
8 allow a ten-day objection period. It's possible during that
9 period that something could happen to the plea and it might
10 not be accepted; and in those circumstances, the argument
11 is -- and I think it's one that the Court has given weight
12 to -- the argument is that it would be unfair to
13 Dr. Al-Arian, were he in a position to have to go to trial
14 in this matter, if the fact that he had attempted to enter a
15 plea was made a matter of public knowledge since the -- and
16 since the sentencing would go forward rather quickly as --
17 and the trial is not too far in the distant future were it
18 necessary to have a trial.

19 I think Judge Moody and I both concur that it's in
20 the best interest of the Defendant, and there are compelling
21 reasons for allowing this matter to proceed in camera to the
22 exclusion of the public.

23 As I said, we will direct that a transcript of the
24 proceedings today be put together as promptly as possible.
25 That transcript will be filed in the sealed record of the

1 Court at an appropriate time. The pleadings related to the
2 plea here, as well as the transcript of the proceedings,
3 will be made available to the public.

4 We have one other matter that I'd like to address
5 before we get back to Dr. Al-Arian in the matter at hand.
6 There was a request by the Federal Public Defender's Office
7 to appear at the proceedings, and two of their members are
8 present in court.

9 It was granted yesterday, but the -- frankly, the
10 discussions that Judge Moody and I had were to allow the
11 Defendant to address the matter were there any other
12 objections to allowing them to proceed or to be privy to the
13 proceedings.

14 Miss Moreno, do we need to discuss that further?

15 MS. MORENO: No, Your Honor. I did state my
16 objections and had Miss Guagliardo put that before
17 Your Honor, and His Honor apparently considered that and
18 allowed them to be present. We do have concerns about the
19 confidentiality of what goes on here. That was the
20 substance of my objection.

21 THE COURT: Well, obviously if we allow
22 Miss Guagliardo and Mr. Beck, who represent the Co-Defendant
23 in this matter, to participate, they're duty-bound to keep
24 these matters private and confidential.

25 You understand that, Counsel?

1 MR. BECK: We do, Your Honor.

2 THE COURT: The -- my understanding is that the
3 posture of the Fariz matter is not altogether different from
4 the posture of the Al-Arian matter; is that correct? Are
5 you heading toward entering a plea in this matter?

6 MR. BECK: We are involved in negotiations,
7 Your Honor.

8 THE COURT: Has there been a plea agreement
9 accepted?

10 MR. BECK: No, there has not.

11 THE COURT: All right.

12 Well, there being no new objections, Judge Moody's
13 ruled on the matter. We'll allow them to participate, but
14 obviously the matters that are discussed here are private,
15 confidential, and shall not be disclosed by those counsel or
16 anybody else present in the -- in the courtroom today.

17 For the record, we have members of the
18 investigative team and otherwise just necessary courtroom
19 personnel present today.

20 Dr. Al-Arian, let's get on with the plea here.

21 I just placed you under oath. The significance of
22 that is that I want you to answer my questions truthfully.
23 There's no benefit to you in giving me a false answer. If
24 you were to lie to me, because of the fact you're under
25 oath, you could be prosecuted separately for that lie; and,

1 therefore, you need to make sure that all your answers are
2 truthful.

3 Obviously what you do here today is a significant
4 act on your part; and, therefore, it's very important that
5 you understand the entirety of the proceedings.

6 If at any time I say something to you that you do
7 not understand, I want you to stop me and let me clarify it
8 for you; or if at any time you wish to speak to your
9 attorney, just let me know that, and we'll allow that.

10 The record should reflect that on two occasions
11 during the proceedings in this matter the Court has looked
12 to Mr. Fugate and Mr. Fernandez of the Zuckerman, Spaeder
13 firm for assistance as -- acting really as friends of the
14 Court; and in that capacity, they have been involved with
15 the negotiations with the Government, and we request that
16 they be present again today.

17 So, if, in fact, you need to speak to
18 Mr. Fernandez or Mr. Fugate or the immigration attorney,
19 Mr. Gaugush, then feel free to do that as well.

20 Finally, this young lady is a court reporter.
21 She's attempting to take down everything that's said in
22 these proceedings. I want to make an accurate record here.
23 It will become a part of the public file eventually; and for
24 that reason, I need you to answer all of my questions out
25 loud. I can watch a person shake their head like this or

1 like this (indicating) and know what they mean. She can't
2 take down a head shake, so you need to answer my questions,
3 if you would, sir.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How old are you, sir?

6 THE DEFENDANT: Forty-eight.

7 THE COURT: How far in school did you get?

8 THE DEFENDANT: I've got my Ph.D.

9 THE COURT: Obviously you can read and write in
10 English.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Any other language?

13 THE WITNESS: Arabic, and I understand French.

14 THE COURT: Under the influence of any alcohol or
15 drugs today?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you taking any medications in the
18 jail?

19 THE DEFENDANT: I take tablets for controlling
20 diabetes.

21 THE COURT: Okay. How often do you take those
22 tablets?

23 THE DEFENDANT: One drug twice a day, one drug
24 once a day.

25 THE COURT: Okay. Are there any side effects to

1 that medication? Does it affect your thinking in any way?

2 THE DEFENDANT: No.

3 THE COURT: Do you take any other kind of
4 medication for any other type of condition?

5 THE DEFENDANT: No.

6 THE COURT: Have you been treated recently at the
7 jail for any physical ailment?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever, in the past or at any
10 time during the pendency of these proceedings, been treated
11 by a psychiatrist or psychologist for any type of mental
12 condition?

13 THE DEFENDANT: No, sir.

14 THE COURT: You thinking clearly today?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: All right. The -- according to the
17 sealed plea agreement in this case, the count you're
18 pleading guilty to is Count 4 of the superseding indictment,
19 which is -- which is an allegation that you conspired to
20 commit offenses against the United States.

21 We'll talk more about that in a moment.

22 Given the nature of the charge, as you're aware,
23 this file has been assigned to two judges throughout the
24 proceedings. I happen to be the magistrate judge assigned
25 to the proceedings; and, as you know, Judge Moody is the

1 district judge assigned to the proceeding. Judge Moody is a
2 higher-level judge than I am.

3 As you experienced, the trial of these criminal
4 matters is before the district judge, not myself; but the
5 rules say you can plead either before the district judge or
6 the magistrate judge; and we -- because you get to make a
7 choice, I need to talk to you about it.

8 We do use this written form that you were
9 previously presented, and it appears that you signed it,
10 along with Miss Moreno. Do you understand when you signed
11 the form you were agreeing to have me conduct the plea?

12 THE DEFENDANT: I do.

13 THE COURT: You understand that when you come back
14 for sentencing in this matter, that that sentencing is going
15 to be before Judge Moody, not me?

16 THE DEFENDANT: I understand.

17 THE COURT: Now, I'm going to explain the count
18 which is designated by your plea agreement as the pertinent
19 count, which is Count 4, in summary terms and indicate to
20 you the potential punishment on that charge. Then I'm going
21 to ask you how you plead, and you may plead either guilty or
22 not guilty as you see fit.

23 As you know from having reviewed the superseding
24 indictment for many, many months and having gone through a
25 trial in this matter, Count 4 accuses you of a conspiracy to

1 make and receive contributions of funds, goods, or services
2 which were for the benefit of the Islamic Jihad, which
3 became at some point a specially designated terrorist
4 organization.

5 The allegations are set out in some detail, both
6 at the outset of the indictment and in Count 4, and those
7 allegations essentially charge that you committed a -- a
8 conspiracy to violate offenses against the United States.

9 This is a five-year offense, meaning that the
10 maximum punishment that can be imposed is five years in
11 prison; and we're going to talk in a few moments about the
12 fact that through plea negotiations that amount has been
13 reduced, but at this point I'm required to tell you the
14 maximum term, and the maximum term for a 371 conspiracy is
15 five years in prison.

16 In addition to that, the Court can impose a fine
17 up to \$250,000, and you can be placed on a period of three
18 years' supervised release. We'll talk about all of this
19 punishment in a bit.

20 In addition to the punishment, the Court is
21 required to impose a special assessment, kind of like court
22 costs, and the amount of a special assessment is \$100, and
23 that sum is due at the time or shortly after sentencing.

24 Do you understand the allegations against you in
25 Count 4 of the superseding indictment?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: You understand the potential
3 punishment in this case?

4 THE DEFENDANT: I do.

5 THE COURT: As to this charge, how do you plead?

6 THE DEFENDANT: Guilty.

7 THE COURT: Let me explain to you that your guilty
8 plea is a significant act. By pleading guilty, you're not
9 only admitting the charge, but you're, in effect, giving up
10 or waiving a number of rights that you have.

11 As you know, in our system, we have a right to the
12 presumption of innocence. You have a right to have a jury
13 trial. In this case, you have the right to have another
14 jury trial in order to contest the allegations against you;
15 and at that trial, your attorney would be permitted to
16 assist you.

17 As you know from the last trial, in our system,
18 you have a right to remain silent; and the effect of that is
19 that at this stage of the proceeding we don't make you prove
20 your innocence at the trial, we make the Government prove
21 your guilt.

22 So, if instead of pleading guilty here you wish to
23 have a retrial, you would be entitled to such a retrial, and
24 you would have the right to the assistance of a lawyer. The
25 burden would be on the prosecutor to prove the case against

1 you, and no one can force you to be a witness if you didn't
2 choose to be.

3 The -- I'm required to review for you the
4 essential elements of this offense. They are set out at
5 page 2 of the plea agreement. The -- were you to try this
6 count instead of pleading guilty to it, the burden would be
7 on the prosecutor to bring in witnesses and evidence to
8 prove up essentially the four -- the five elements they've
9 listed here at page 2.

10 Essentially the Government would have to show that
11 two or more people came to an agreement, an understanding,
12 to commit some unlawful plan. In this case, it was to
13 provide material support to the PIJ.

14 The second element they would have to prove beyond
15 a reasonable doubt would be that the object of the plan was
16 to make and receive contributions, goods, or services to
17 this specially designated terrorist organization.

18 The third element is that you were a knowing and
19 willful participant in the plan. And then the Government on
20 top of that would have to show that during the existence of
21 the conspiracy, one or more of the alleged co-conspirators
22 in this case committed at least one of the overt acts which
23 are set forth in some detail in the indictment; and the
24 Government would further have to show that that overt act
25 was allegedly committed at or about the time of the alleged

1 conspiracy in an effort to carry it out.

2 As you know from the last trial, what happens in
3 these matters if you go to trial, at the conclusion of all
4 the evidence and the arguments, the jury is advised as to
5 each charge of the essential elements. They are further
6 instructed that if the Government has proved each of the
7 essential elements beyond a reasonable doubt, it should find
8 you guilty.

9 As you also know, they're advised that if the
10 Government fails to prove even one of these elements, the
11 jury is instructed to find you not guilty.

12 If you chose to go to trial instead of pleading
13 guilty to the count, the -- your lawyers could participate
14 again, whether it would be Miss Moreno or some other
15 counsel. You would have counsel representing you. Again,
16 they could cross-examine all of the Government witnesses.
17 They could try to keep out any evidence they didn't think
18 was admissible.

19 The law allows that no one could force you to
20 testify if you did not wish to testify. However, if it was
21 your desire to take the stand in this second trial, you
22 could certainly do so.

23 Additionally, you could call other witnesses in
24 your defense, whether they were civilian or law enforcement
25 witnesses, if they had favorable information to you. You'd

1 have the right to subpoena those witnesses and make them
2 come to court and make them testify if that was your desire.

3 Now, I'm explaining the rights to you here because
4 I want you to understand the full consequences of the guilty
5 plea.

6 As I say, by pleading guilty, you're not just
7 admitting this particular charge, but you are effectively
8 giving up or waiving each of these rights. By moving
9 forward with a guilty plea, there will not be a retrial.
10 You will not challenge the allegations as they relate to
11 this particular charge; and in a short period of time you
12 will be brought back, and at that point you will be
13 sentenced.

14 Now, do you understand that these are the
15 consequences of pleading guilty?

16 THE DEFENDANT: I do, Your Honor, but --

17 MS. MORENO: Your Honor, in the Court's recitation
18 of the first element of the offense, I think the Court used
19 the phrase "material support." Material support is not
20 involved in this particular count.

21 THE COURT: Okay. Funds, goods, or services.

22 THE DEFENDANT: Yeah. I'm pleading to services.

23 THE COURT: All right.

24 The -- it's a disjunctive -- as I recall,
25 disjunctive statute in the sense that the Government doesn't

1 have to prove all; they merely have to prove one or the
2 other. But you're conceding the services aspect?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Other than that, do you understand the
5 consequences of pleading guilty?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: By pleading guilty, you're not going
8 to contest the matter; and in a short period of time,
9 whenever the matter is deemed to be appropriate for
10 sentencing, you will be brought back and sentenced.

11 Now, your lawyers have negotiated a plea agreement
12 on your behalf, and this plea agreement is in some respects
13 very much like a contract. What you say you're going to do
14 in the contract we expect you to do. What the prosecutor
15 says their office is going to do we expect them to do.

16 In the broad sense, the plea agreement is not a
17 contract with the Court. Now, in your case, there -- this
18 is a particular type of plea agreement, and we're going to
19 get into that in some detail in a moment; but in a broad
20 sense, the plea agreement is not binding on the Court except
21 where it indicates that it is binding.

22 And so that I can make sure that you understand
23 how this works, I'm going to go through various aspects of
24 the plea agreement with you, and I'd like you to follow
25 along with me. Obviously, if you have questions, stop me

1 and we'll work through those; and if at any time you need to
2 talk to either Miss Moreno or Mr. Fernandez, please indicate
3 that as well.

4 I want you to begin by looking at page 3. On this
5 page, there begins certain concessions that your lawyers
6 have negotiated with the Government in this matter. So, at
7 Paragraph 5, the Government has agreed with your counsel
8 that at the time of sentencing all the remaining counts
9 against you will be dismissed pursuant to Rule 11.

10 Now, in the next paragraph, Paragraph 6 there,
11 there is an agreement that the United States Attorney's
12 Office for the Middle District of Florida and the
13 Counter-Terrorism Section of the United States Department of
14 Justice agree not to charge you with committing any other
15 federal crimes or offenses about which they have knowledge.
16 As I understand it, the Government needs to speak to this
17 provision a little bit.

18 MS. KRIGSMAN: Yes, Your Honor. I have been
19 authorized by the Deputy Assistant Attorney General of the
20 Criminal Division to further bind the Eastern District of
21 Virginia such that if the Court accepts the plea agreement,
22 the United States Attorney's Office for the Eastern District
23 of Virginia likewise will not charge the Defendant with
24 committing any other federal crimes known to that
25 United States Attorney's Office at the time of the agreement

1 related to the conduct giving rise to the agreement.

2 THE COURT: Okay. At the bottom of page 3,
3 there's another concession -- a significant concession that
4 has been made. The parties, your counsel, and counsel for
5 the Government have agreed that the appropriate disposition
6 in this case as it relates to sentence will fall within a
7 guideline range of 46 to 57 months; and this is arrived at
8 by a guidelines calculation which results in a digested
9 level of -- Level 23 and a criminal history of 1.

10 Now, the plea agreement suggests that the Court
11 may accept or reject this aspect of the agreement or defer a
12 decision. However, an order has been entered by Judge Moody
13 as of yesterday in which he has indicated that he accepts
14 the guidelines calculation made -- agreed to by the parties
15 and as calculated by Probation. So, in this case, this is
16 an example of -- of something that the Court has agreed to
17 ahead of time, and you are assured that your sentence will
18 fall within this range; and should something happen that it
19 does not, you'll be permitted to withdraw the plea.

20 If you go to the bottom of page 4, there is the
21 next concession that has been negotiated by your lawyers.
22 At this section -- excuse me. In this section, it is agreed
23 by the United States that they will make no recommendation
24 as to the imposition or amount of any fine in this case. As
25 I indicated to you and as I'll talk more about in a minute,

1 there can be a fine as part of the punishment. It can be as
2 high as \$250,000. In this case, the Court will make no
3 recommendation with regards to that.

4 At Paragraph 10, there is a further agreement that
5 your counsel can ask the Court to recommend to the Bureau of
6 Prisons a particular facility or a particular type of
7 facility in which you should have to spend the rest of any
8 sentence that you must serve in this matter, and the
9 Government indicates that it will defer to the Bureau of
10 Prisons to designate the appropriate facility and type of
11 facility.

12 And then next at page 5, Paragraph 11, there is a
13 provision by which the Government has agreed as part of this
14 plea agreement that they will recommend to the Court that
15 you receive a sentence which is at the low end of any
16 sentencing guideline range in this matter. In other words,
17 it would be at the low end of the 46 months. The low end
18 has been agreed to.

19 Now, each of these provisions that I've
20 highlighted here is a significant one. It is negotiated
21 with the prosecutor, obviously, to put you in the best
22 possible position for sentencing and, also, to get you the
23 best possible sentence.

24 I want to point out, however, that certain of
25 these provisions and, in particular, the last one that I

1 mentioned are not binding provisions on the Court. These
2 type concessions essentially are recommendations to the
3 judge as to what he should do with your sentencing.

4 Now, obviously, the Government, if this case moves
5 forward, will be required to dismiss all remaining counts;
6 but in matters such as the recommendation related to a fine
7 or the recommendation related to a facility or the low-end
8 disposition recommendation, these are, in effect, nothing
9 more than recommendations to Judge Moody as to what he
10 should do at your sentencing, and you need to be very clear
11 that they're not binding recommendations.

12 It is entirely possible -- entirely possible that
13 he may consider these representations but choose to do
14 something different. This means that he may not recommend a
15 facility that your lawyer requests. It may mean that he
16 will, in fact, impose a fine and reject the suggestion that
17 he not do so.

18 And, in particular, with regard to the low-end
19 disposition provision at page 5, he may not give you the
20 benefit of that recommendation. He might see something in
21 the presentence report. He might hear something at
22 sentencing. He might recall something from the trial.
23 There might be any number of factors that could come into
24 play that would prompt him to determine that it is not
25 appropriate to give you the benefit of that provision; and,

1 if so, you will not get the benefit of that provision.

2 In this instance, unlike the guidelines
3 calculation -- in this instance, these type of
4 recommendations, because they're not binding on the Court,
5 mean that if the judge chooses to do something different,
6 you will not be allowed to back out of your plea or withdraw
7 your plea. In other words, if he doesn't give you -- I have
8 no clue what your sentence is going to look like, except it
9 will fall in the suggested range; but if he doesn't give you
10 a low-end disposition, it's not a basis to withdraw the
11 plea, because that's how this type of provision works. Do
12 you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: Okay. Good.

15 Now, obviously your part of the deal is that you
16 have agreed to plead guilty to a disposition falling --
17 falling in a particular sentencing range. I want to talk to
18 you about sentencing here and some other aspects of this
19 plea agreement. I am certain that what I say is going to be
20 repetitive of things you have been advised of by your
21 lawyers. I want you to bear with me, however, because these
22 are -- I'm going to give it to you from the perspective of
23 the Court; and, again, if there's any question about this, I
24 want you to stop me.

25 As indicated, the maximum term in this case would

1 ordinarily be 60 months but, based on the plea negotiations,
2 is a maximum term of 57 months incarceration.

3 The Court, on your sentencing day, is going to
4 consider the agreement that has been entered into and will
5 again consider the guideline calculations, and you're going
6 to hear some discussions on sentencing day about your
7 guidelines and how they've been computed. Even though these
8 guidelines are not binding on the Court, your sentence has
9 been calculated through the use of them. This has been
10 found acceptable to the Court. So, you're going to hear
11 some discussions about these guidelines with the -- if this
12 matter moves forward with the understanding being that the
13 range is 46 to 57 months.

14 You need to be clear that as a result of the plea
15 to this charge you are going to be sentenced to a term
16 within this range and you will end up serving the full
17 amount of that sentence. Under the guidelines scheme, we
18 don't have early-release programs anymore. Programs like
19 parole where people used to get out after doing a third of
20 their sentence have been done away with. So, under the
21 guideline scheme, whether you receive 46 months, 57 months,
22 or something in between, you should expect you'll have to
23 serve the full amount of the sentence. Statistically, the
24 best you can hope for is a sentence which would be
25 85 percent of the term of the incarceration. You can earn

1 some good time with good behavior; but I want you to
2 understand that even though your lawyers have locked in a
3 particular range, this is going to result in the imposition
4 of a term of imprisonment, and you should expect that you
5 will have to serve the full amount of that term, whatever it
6 may be. Do you understand that?

7 THE DEFENDANT: I do.

8 THE COURT: Okay. In addition to the term of
9 incarceration, which is assured you in this matter, the
10 judge is going to consider the imposition of a fine. Now,
11 whether or not he's going to impose a fine in this case, I
12 can't say. The imposition of a fine depends on a number of
13 circumstances, not the least of which is your ability to
14 pay, but it is one of the forms of punishment that the judge
15 can use. In this case, it can be for as much as \$250,000;
16 and as you sit here, you need to understand that it's
17 entirely possible that the judge could impose a fine, and it
18 could be for that amount. You understand that?

19 THE DEFENDANT: (Nods head.) Yes.

20 THE COURT: That fine can be in addition to any
21 term of incarceration as well. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The Court will likely impose a term of
24 supervised release to follow your term of incarceration.
25 Supervised release is like being put on probation after you

1 have done your prison sentence. The way it works is that
2 when a person is released, they're assigned to a probation
3 officer, there's conditions put on them, and they're
4 expected to follow the rules. If they break the rules, they
5 get violated and they come back to court; and if their
6 violation is serious enough, they can go to prison for
7 breaking the rules of supervised release.

8 Now, in your case, I'm required to tell you that
9 supervised release is part of the expected disposition in
10 this case, and I think the Court likely will impose some
11 period of supervised release to follow your imprisonment;
12 but, additionally, as part of your plea agreement, as you
13 are aware, you have agreed as a condition of your plea that
14 you will stipulate to deportation. Thus, at page 4,
15 Paragraph 8, you agree and stipulate to deportation pursuant
16 to the specified provisions of the Immigration and
17 Nationality Act and further agree that you'll cooperate with
18 the Bureau of Immigration in facilitating that deportation.

19 The Government, in turn, indicates that they will
20 use their best efforts to expedite the deportation as well.

21 So, while I think it is fair to advise you that
22 you will receive some period of supervised release as part
23 of your sentence, and if you are released and allowed to
24 remain in the United States, you should expect that you will
25 have to serve that period of supervised release. The

1 greater likelihood, according to the plea agreement, is that
2 you're going to be deported, and supervised release will be
3 a moot point at that point. You understand?

4 THE DEFENDANT: I do.

5 THE COURT: Okay. I want to ask you to go to page
6 6, Paragraph 3, for a moment. I always pause in this
7 provision and tell whoever I'm taking a plea from -- I
8 paraphrase the first part of it for anybody I'm taking a
9 plea from.

10 Here the Government says it reserves the right to
11 tell the Court and Probation -- that's kind of already come
12 and gone -- but to tell the Court things about you or this
13 crime that they think are significant, and they reserve the
14 right to tell the Court about all the crimes that they think
15 you've been involved in.

16 The reason I highlight that provision is because,
17 in effect, it allows the Government leeway at sentencing to
18 speak in aggravation if it chooses to do so. Now, this is a
19 pretty tight plea agreement. It's intended to get you a
20 sentence within a specified range, and I think you'll -- you
21 can be assured that your sentence will fall within that
22 range; otherwise, you'll be allowed to withdraw your plea
23 agreement.

24 It does not mean that the Government will not
25 appear at your sentencing and speak in aggravation against

1 you and your activities or the crime that occurred in this
2 particular instance. If that happens, you don't have to
3 agree with anything that they say. You will have the
4 opportunity to rebut anything they say.

5 I simply always point this provision out to
6 indicate that it is not a breach of this agreement if that
7 occurs, because they've sort of reserved that right despite
8 the fact that they made these other concessions with you.

9 Do you understand that?

10 THE DEFENDANT: (Gestures.)

11 (Pause.)

12 MS. MORENO: Your Honor, the question with respect
13 to this particular language used in Paragraph 3 of the
14 sentencing information where Dr. Al-Arian raised the
15 question when Your Honor indicates and uses the terminology
16 "crimes," in this particular situation, unlike most
17 situations, we're post-trial with acquittals and mistried
18 counts --

19 THE COURT: I don't think you have to worry about
20 Judge Moody holding any matters for which you were acquitted
21 against you at all. The Government may seek to argue that
22 activity, but I don't think on any counts you've been
23 acquitted of you can -- you should worry about the judge
24 holding it against you.

25 What I -- I'm simply pointing out here, so people

1 don't get blind-sided as they move towards sentencing, is
2 that even though there are these concessions and the
3 Government is bound by them, in this case the Court has
4 agreed to the larger ones with regard to incarceration. If
5 the Government -- I expect there will be statements on both
6 sides at sentencing, and some of the things you hear from
7 the Government you may not agree with or appreciate; but
8 it's not a breach of this agreement, it's not a basis to
9 back out of the agreement if that happens, because they
10 reserved that right. You understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: In this case, if the plea goes forward
13 and it is accepted by Judge Moody, it will not alter at all
14 the fact that the sentencing range is going to be between 46
15 and 57 months. That will be a given throughout the
16 proceedings, but that will not prevent the Government from
17 saying what it feels is an appropriate statement at your
18 sentencing.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Go to page 7, bottom of the
21 page, Paragraph 5. Now, this is standard language put in
22 all the Government plea agreements and still is
23 substantially applicable even in your circumstances. This
24 language is inserted in the plea agreement to cut down or
25 limit or restrict your right to appeal in this case. This

1 language basically says that there are three specific ways
2 by which you can initiate an appeal. The first way that you
3 could initiate an appeal would be if your sentence was for
4 more than what the law allows. I told you the maximum fine
5 is \$250,000. If you had had a \$260,000 fine as part of your
6 punishment, it's illegal because it's more than the law
7 allows, and you could appeal it.

8 The second way that this language says that you
9 could take an appeal would be if the guidelines were
10 calculated in a particular range and the judge went above
11 that range. If Judge Moody -- and I don't think you have to
12 worry about this happening if this goes forward; but if
13 Judge Moody were to bust the plea agreement and sentence you
14 to, say, 60 months, that's above the guideline calculation.
15 That would be something that you could appeal.

16 And the third way you could take an appeal would
17 be if something about the sentencing proceeding violated the
18 Constitution.

19 Except in those three circumstances, however, this
20 language is intended to take away your right to appeal. If
21 you read it carefully, it says that the only other way you
22 could appeal is if for some reason the Government appeals;
23 and then if that happened, all bets are off, and you could
24 appeal whatever you wish.

25 The effect of this is that on your sentencing day,

1 when you appear, if the Judge sentences you within this
2 calculated range that has been agreed to, you're going to be
3 stuck with that sentence, meaning, you're not going to be
4 able to appeal it, even if it's on the high end of that
5 range, as long as it is lawful and constitutional. You
6 understand that?

7 THE DEFENDANT: I do.

8 THE COURT: The effect of this is if you got the
9 full 57 months, for instance, that would be perhaps more
10 than you would anticipate; but because of the fact it was in
11 the calculated range, it is lawful, absent some
12 constitutional violation, you're not going to be able to
13 appeal it. You understand that?

14 THE DEFENDANT: I do.

15 THE COURT: The -- let me ask you, beyond this
16 plea agreement -- beyond the written plea agreement, have
17 you been promised anything from anybody that is an
18 inducement to you to appear in court today and plead guilty?

19 MS. MORENO: May we have a minute, Your Honor, to
20 confer?

21 THE COURT: Yes.

22 (Pause.)

23 MS. MORENO: Your Honor, just very briefly, on
24 behalf of any other inducements that Dr. Al-Arian considered
25 in return for accepting this plea, we just want to bring it

1 to the Court's attention and highlight the deportation
2 issue.

3 We have been in conversation with the Government
4 quite materially about their efforts to expedite
5 Dr. Al-Arian's deportation. We are mindful of the other
6 example of the Co-Defendant in this matter and the problems
7 that have occurred there. We believe the Government has
8 exercised a lot of good faith and told us that they would do
9 everything they can to assist us in expediting this and, in
10 fact, has shared information with Mr. Fernandez and
11 Mr. Fugate about the deportation.

12 So, I just want to make it clear to the Court that
13 inducement in this particular agreement was the expedited
14 deportation and the assistance of the United States
15 Government in helping facilitate that as soon as possible.

16 THE COURT: Okay. Well, I think we've spoken
17 briefly to that issue earlier; but let me say this: As I
18 read the plea agreement, there's no guarantee of an
19 expedited deportation; but what the Government has assured
20 you is that they will make their best effort to try to
21 induce ICE to expedite the proceedings.

22 Is that correct, for the Government?

23 MR. ZITEK: That's correct. What Miss Moreno is
24 referring to is that process has already started, you know.
25 So, we're talking about actually trying to implement that

1 particular provision. We're not -- we don't want -- in
2 order to expedite it, we can't wait. So, we -- the
3 agreement was written in that fashion, and we are trying to
4 carry out our side of the bargain, and Dr. Al-Arian and
5 the -- his attorneys are trying to carry out their side of
6 it to see if we can actually make the deportation work in an
7 expedited fashion.

8 THE COURT: Now, did -- let me go back and get you
9 to answer my question rather than the lawyers. The question
10 is: The ultimate determination by us has to be that your
11 plea is being entered freely and voluntarily and with a
12 understanding of the consequences.

13 One of the ways that we measure the voluntariness
14 aspect is whether there are inducements, either appropriate
15 or inappropriate. These written plea agreements set forth a
16 number of inducements. My question to you is, beyond the
17 discussions and the efforts that apparently are ongoing with
18 regards to deportation, have there been any other promises
19 made to you that are an inducement in your mind to you
20 entering a guilty plea? If so, we need to put them on the
21 record.

22 THE DEFENDANT: I don't recall anything else.

23 THE COURT: Okay. And you understand the status
24 of the deportation issue? I think in the law "expedited" is
25 a relative term. And it may not be tomorrow. As you've

1 seen in the case of Mr. Hammoudeh, it may be a matter
2 months.

3 What I hear is that the Government and your
4 counsel are working to avoid a similar circumstance, and
5 they hope that the -- that will occur much more
6 expeditiously at the conclusion of any sentence, but there
7 are no guarantees inherent in that. Do you understand?

8 THE DEFENDANT: I understand.

9 THE COURT: Okay. Apart from -- apart from any
10 promise, has anybody threatened you in any way or do you
11 feel like you're being forced or coerced in any way into
12 pleading guilty?

13 THE DEFENDANT: No.

14 THE COURT: You think anybody has attempted to
15 trick you?

16 THE DEFENDANT: No.

17 THE COURT: Now, in the proceedings, you were
18 previously represented by Mr. Moffitt and Miss Moreno. In
19 the broad sense, do you have any complaints about anything
20 either Mr. Moffitt or Miss Moreno did on your behalf?

21 THE DEFENDANT: Absolutely not.

22 THE COURT: We post-trial allowed Mr. Moffitt to
23 be withdrawn from further proceedings in the matter.

24 Miss Moreno has a pending motion, which we have deferred
25 specifically because I thought it was in everyone's best

1 interest, including yours, that she be allowed to
2 participate in the plea-bargaining process.

3 As I indicated -- I want to say this on the
4 record, and then I'm going to ask you a question. As I
5 indicated in the order allowing Mr. Moffitt to be withdrawn,
6 although he asserted irreconcilable conflicts with
7 Dr. Al-Arian, I found no evidence of that. I think while
8 there may have been disagreements along the way, I don't
9 think the conflicts were reconcilable at all.

10 I don't recall that Miss Moreno alleged
11 irreconcilable conflicts in her motion, and I certainly have
12 found no evidence of that.

13 Having said that, since the trial and since we
14 have a pending motion to withdraw that I have deferred, do
15 you have any complaints about anything she's done during the
16 post-trial period?

17 THE DEFENDANT: Absolutely not.

18 THE COURT: Now, we've also, on two occasions
19 during the course of this trial, imposed upon Mr. Fugate and
20 Mr. Fernandez to assist the Court, and I want to inform both
21 of them that the Court is -- and I speak for both
22 Judge Moody and myself -- that we are exceedingly grateful
23 for the assistance that you've brought to the Court. This
24 was entirely voluntary on your part and without any form of
25 compensation, and we're grateful for that assistance.

1 I think in the latter stages involving the plea
2 discussions, the involvement was such -- and I probably need
3 to ask Dr. Al-Arian. Even though we provided them sort of
4 as a sounding board for you and to give you an independent
5 view of things, I think Mr. Fernandez was active in the plea
6 discussions. Do you have anything -- any complaints about
7 anything either Mr. Fernandez or Fugate or any other lawyer
8 with their firm has done?

9 THE DEFENDANT: I deeply appreciate their
10 involvement.

11 THE COURT: I take that to be no as well?

12 THE DEFENDANT: I have no problems.

13 THE COURT: All right. Now, I'm going to ask the
14 prosecutor to give me a factual basis to support the plea.

15 There is a lengthy factual basis. By my
16 understanding, the factual basis was negotiated at arm's
17 length. I am required, however, to put a factual basis on
18 the record; and so, you're going to have to permit us to
19 place that factual basis on the record.

20 I'm going to ask you some follow-up questions
21 about it, and I'm going to ask you after it's been stated
22 whether or not you agree with it, whether there are any
23 inaccuracies in it, or whether or not you wish to correct
24 anything. Hopefully the answer to all of those is no or
25 yes, you agree and there are no corrections; but this is a

1 necessary part of the proceeding.

2 If the Government would give me a factual basis.

3 MR. ZITEK: Yes, Your Honor.

4 As set forth in Paragraph 9 and subparagraphs of
5 the plea agreement:

6 A. During the period of the late 1980s and early
7 to mid 1990s, Defendant Al-Arian was associated with several
8 organizations, including the Palestinian Islamic Jihad.

9 Defendant Al-Arian knew that Co-Defendants Ramadan
10 Abdullah Shallah, Bashir Musa Mohammed Nafi, and Mazen
11 Al-Najjar were also associated with the Palestinian Islamic
12 Jihad.

13 B. On or about January 23rd, 1995, President
14 William Clinton issued Executive Order 12947, which declared
15 a national emergency regarding grave acts of violence
16 committed by foreign terrorists that disrupted the Middle
17 East peace process.

18 Executive Order 12947 prohibited certain
19 transactions, including the making or receiving of any
20 contribution, funds, goods, or services to or for the
21 benefit of organizations and individuals who are declared
22 specially-designated terrorists.

23 Executive Order 12947 also made unlawful any
24 transaction that evaded or avoided or had the purpose of
25 evading or avoiding or attempting to violate any of the --

1 of the prohibitions set forth in the order.

2 On January 24th, 1995, the United States had
3 designated the Palestinian Islamic Jihad, Sheikh Abdel Aziz
4 Awda, and Fathi Shiqaqi as specially-designated terrorists.
5 Later that year, in November 1995, the United States
6 designated Ramadan Shallah as a specially-designated
7 terrorist.

8 C. Defendant Al-Arian performed services for the
9 Palestinian Islamic Jihad in 1995 and thereafter.

10 D. Such services included filing for immigration
11 benefits for individuals associated with the Palestinian
12 Islamic Jihad, hiding the identities of individuals
13 associated with the Palestinian Islamic Jihad, providing
14 assistance to an individual associated with the Palestinian
15 Islamic Jihad in a United States court proceeding.

16 The services are described in more particularity
17 in the following paragraphs.

18 E. On or about February 6th, 1995, Defendant
19 Al-Arian had a telephone conversation with a co-conspirator
20 and discussed a recent presidential executive order against
21 terrorists.

22 F. Defendant Al-Arian was aware that the
23 Palestinian Islamic Jihad achieved its objectives by, among
24 other means, acts of violence:

25 G. On or about August 25th, 1995, Defendant

1 Al-Arian filed a visa renewal petition with the INS on
2 behalf of Co-Defendant Nafi.

3 H. On or about September 1st, 1995, Co-Defendant
4 Al-Najjar wrote a \$5,000 check drawn on the Muslim Women's
5 Society account payable to the World & Islam Studies
6 Enterprise known as WISE, which was deposited into the WISE
7 account.

8 I. On or about October 25th, 1995, Co-Defendant
9 Al-Najjar executed an affidavit filed with the INS in
10 support of Nafi's alien employment petition. In the
11 affidavit, Al-Najjar stated that he and Defendant Al-Arian
12 had sufficient financial means to fund Nafi's salary.
13 Al-Najjar further stated in 1993 he contributed \$36,000 to
14 WISE; that in January and February 1994, he had in excess of
15 \$50,000 available to support the operations of WISE.

16 J. On or about October 30th, 1995, in the early
17 morning hours, Defendant Al-Arian received a telephone call
18 from a co-conspirator in which the co-conspirator asked
19 whether Defendant Al-Arian had heard that Fathi Shiqaqi had
20 been killed. Defendant Al-Arian indicated that he had
21 heard, then refused to talk.

22 Later that day, he had a telephone conversation
23 with Al-Najjar. Defendant Al-Arian indicated he wanted to
24 meet with Al-Najjar.

25 K. On or about October 30th, 1995, Co-Defendant

1 Nafi made a telephone call to Al-Arian. Nafi whispered
2 during this conversation, and Defendant Al-Arian said the
3 matter had been complicated and inquiries had begun.

4 L. On or about October 30th, 1995, Defendant
5 Al-Arian had a telephone conversation with a journalist at
6 the *St. Petersburg Times*. When the journalist asked about
7 Shallah being named Secretary General of the Palestinian
8 Islamic Jihad, Defendant Al-Arian falsely stated that
9 Shallah's name must have been mixed up with someone else and
10 falsely stated he only knew Ramadan Abdullah Shallah as
11 "Ramadan Shallah."

12 Later, Defendant Al-Arian had another telephone
13 conversation with a journalist at the *St. Petersburg Times*.
14 During this conversation, Defendant Al-Arian expressed shock
15 and surprise and falsely stated there was nothing Shallah
16 had done while at WISE to indicate any political
17 affiliation.

18 Defendant Al-Arian falsely indicated that Shallah
19 was not involved in any political activities while at WISE
20 and that Shallah had been engaged in only scholarly work.

21 M. On or about October 31, 1995, Defendant
22 Al-Arian and Co-Defendant Al-Najjar caused a facsimile to be
23 sent from WISE explaining his mission and his experience
24 with Shallah and falsely denied any knowledge or affiliation
25 with any political group in the Middle East.

1 N. On or about August 7th, 2000, Defendant
2 Al-Arian, within the Middle District of Florida, had a
3 telephone conversation with Co-Defendant Nafi, who was in
4 England, about utilizing a contact of Nafi in Egypt to
5 obtain travel documents for Al-Najjar. They then spoke
6 about Nafi's problems with his immigration status in the
7 United States. They then had a coded conversation about the
8 accounts to which Nafi had sent money to assist in the
9 defense of Co-Defendant Al-Najjar's ongoing INS proceeding.

10 O. On or about August 8th, 2000, Defendant
11 Al-Arian, who was in the Middle District of Florida, called
12 a co-conspirator who was outside the state of Florida. When
13 Defendant Al-Arian asked the co-conspirator if anything was
14 deposited in his account or his wife's account, the
15 co-conspirator replied that there were, quote, "ten shirts,"
16 unquote (referring to a sum of money). The Defendant
17 Al-Arian then directed the co-conspirator to send nine of
18 them to the account of another co-conspirator.

19 P. Later in the day on August 8th, 2000,
20 Defendant Al-Arian, within the Middle District of Florida,
21 had a telephone conversation with Co-Defendant Nafi, who was
22 outside the state of Florida and told Nafi that the issue of
23 the magazines (referring to a sum of money) was resolved,
24 but the travel document had not been received from Egypt.

25 They then discussed utilizing the press to support

1 Al-Najjar in his INS hearing by setting up an interview with
2 Abed Aziz Awda to show that he had the permission of the
3 Israelis to reside in the Gaza Strip. Defendant Al-Arian
4 asked Nafi for Awda's telephone number. Nafi told him to
5 call back the next day to get the number. Additionally,
6 they discussed Nafi's response to allegations in the press
7 that he was a member of the Palestinian Islamic Jihad.

8 Q. On or about August 8th, 2000, Defendant
9 Al-Arian directed Co-Defendant Hatim Naji Fariz to arrange a
10 newspaper interview with Awda.

11 R. On or about August 9th, 2000, Defendant
12 Al-Arian and Co-Defendant Fariz had a telephone conversation
13 about causing one or more newspaper articles to be written
14 on Awda. They desired to utilize those articles in the INS
15 hearing regarding Al-Najjar and wanted to portray -- wanted
16 them to portray Awda as a religious figure with no relation
17 to the Palestinian Islamic Jihad.

18 THE COURT: Thank you, sir.

19 Dr. Al-Arian, is that an accurate statement of
20 your involvement in the matters related to Count 4?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you wish to correct any -- any of
23 the factual statement made by Mr. Zitek or add any
24 additional facts?

25 THE DEFENDANT: No, sir.

1 THE COURT: If you look at the bottom of page 14,
2 top of page 15, the concluding paragraphs of your plea
3 agreement indicate that this is the entire agreement, as we
4 have previously discussed; and then there is the last
5 paragraph by which you certified that you read this plea
6 agreement in its entirety and that you understand it. Is
7 that, in fact, correct?

8 THE DEFENDANT: That's correct, Your Honor.

9 THE COURT: Okay. Is there anything about the
10 plea agreement that I have said today that confuses you in
11 any way or that you wish to question?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: The plea agreement is dated
14 February 28th, 2006, and bears your signature, along with
15 Miss Moreno's. Did you sign it after you read it?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: I always pause at the end of the
18 process to tell whoever I'm taking a plea from that it
19 doesn't matter to me, nor does it matter to Judge Moody,
20 whether you plead guilty to this allegation or not. We both
21 respect that you have an absolute right to have a trial in
22 this case, a retrial if you wish. So, I always pause at the
23 end of the process to say that if, while we have been
24 talking, you have started to think that perhaps you ought
25 not to plead but you ought to have your second trial, that's

1 fine with us. All you have to do is tell me that, and I'll
2 stop the plea, and we'll put you back on the trial calendar.

3 On the other hand, if you're satisfied you're
4 guilty or you believe it's in your best interest to plead
5 guilty and that's what you wish to do, let me know that, and
6 I'll wrap up the plea as far as I can take it today.

7 Now, what would you like to do?

8 THE DEFENDANT: I believe it's in my best interest
9 to enter a plea.

10 THE COURT: All right. I'm going to find that
11 Sami Amin Al-Arian is an alert, intelligent individual. I'm
12 satisfied from speaking with him today that he's fully
13 coherent, that he understands the allegations against him in
14 Count 4 of the superseding indictment, as well as the
15 potential punishment on that count.

16 I have explained to him the constitutional rights
17 he's giving up by entering his plea. I'm satisfied that he
18 understands those rights as well and he is voluntarily
19 waiving them.

20 There is a written plea agreement in this case.
21 It appears to contain all the promises that have been made
22 to Dr. Al-Arian. It does not appear that there are any
23 inappropriate promises or inducements, nor does it appear
24 that he has been threatened, forced, or coerced in any way
25 into pleading guilty.

1 The plea is being entered in accordance with Rule
2 11(c)(1)(C). However, as previously indicated, Judge Moody
3 has indicated his intention to accept the plea and allow the
4 matter to move forward rather expeditiously for sentencing.

5 There is a factual basis to support the
6 allegations in Count 4 of the superseding indictment. The
7 Defendant agrees with those facts. Throughout the
8 proceedings, Dr. Al-Arian has been represented by competent
9 counsel with whom he indicates he's satisfied. In addition,
10 he's had the benefit of outside counsel as well.

11 From everything that appears to me today, sir,
12 your plea is being entered freely and voluntarily with an
13 understanding of the consequences. I'm going to so find and
14 will recommend that this matter proceed forward with
15 sentencing.

16 The way this works is that I will enter a -- I
17 will enter a report and recommendation. There's a ten-day
18 period for objections. At the conclusion of that ten days,
19 if there are no objections filed, the plea will be accepted,
20 and at that point, your case will be set for sentencing.

21 Do you understand?

22 THE DEFENDANT: I do.

23 THE COURT: Thank you.

24 Miss Moreno.

25 MS. MORENO: Your Honor, I have a comment and

1 question very briefly. On behalf of Mr. Moffitt and myself,
2 Your Honor, we would also like to express our deep
3 appreciation to Mr. Fugate and Mr. Fernandez and to Simon.
4 As this Court knows, after an arduous six months in trial,
5 we immediately went into trying to resolve this matter.

6 We were dedicated to securing the release of
7 Dr. Al-Arian in some fashion, and we believe that we could
8 get to this place only with the assistance of these fine
9 gentlemen in the finest traditions of being counseled to a
10 situation. Mr. Fugate and Mr. Fernandez and Simon have
11 really assisted us. So, we want to thank them for affording
12 those efforts.

13 With respect to the report and recommendation,
14 Your Honor, in reading the transcript, I had -- I was
15 reminded that I had asked you that the R&R would be in
16 camera to His Honor and that the sentencing, which I'm
17 hearing from the Court, would be sometime after ten days
18 from today, I -- I'm assuming.

19 THE COURT: The plea will not be accepted before
20 the ten-day objection period runs. Once it's accepted, I'm
21 sure that Judge Moody will be in -- in contact with your
22 office about sentencing. If you have -- if you have a
23 preference on when sentencing occurs, feel free to contact
24 his office.

25 MS. MORENO: And, Your Honor, we -- it was the

1 request of the Defense at the previous proceeding on
2 February the 27th, and it is still our request, that the
3 sentencing be in camera as well. We can communicate that
4 again to the Court. I did -- I did want --

5 THE COURT: Let me say this: If you read the
6 entirety of the order yesterday from Judge Moody, he's
7 indicated it will be a public proceeding, and I think
8 appropriately so.

9 If you believe it should be in camera, then you
10 should file a motion asking him to reconsider that; but he's
11 already indicated that it should be a public proceeding.

12 MS. MORENO: I did not know about the order,
13 Your Honor.

14 THE COURT: Well, there is a -- an order entered
15 as of yesterday, and we can certainly give you a copy of it.
16 But as he indicates at the end of the order, the sentencing
17 proceeding will be in public but, pending the public
18 sentencing on all of these matters, will, in fact, remain in
19 camera; and any motions that you have related, for instance,
20 to the -- if you have any motions related to the PSR or any
21 motions related to sentencing, they should be filed in
22 camera. However, at the point of sentencing, I expect these
23 matters will be opened up.

24 MS. MORENO: The order that you're referring to
25 was under seal, and I haven't gotten a copy of it. That's

1 why I was not apprised that he had ordered it had to be --

2 THE COURT: We'll have a copy of that down here
3 that you can review, if you wish.

4 MS. MORENO: Thank you.

5 THE COURT: Anything else from the Government?

6 MR. ZITEK: Let me just check my notes here,
7 Judge.

8 (Pause.) We have nothing further, Judge.

9 THE COURT: Anything else from the Defense?

10 MS. MORENO: No, Your Honor.

11 THE COURT: Good luck to you, sir.

12 (Adjourned at 2:10 p.m.)

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CERTIFICATE OF REPORTER

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2
3
4 I, SHERRILL LYNN JACKSON, Official Court Reporter
5 for the United States District Court, Middle District of
6 Florida, Tampa Division,

7 DO HEREBY CERTIFY, that I was authorized to and
8 did, through use of Computer-Aided Transcription, report in
9 shorthand the proceedings and evidence in the above-styled
10 cause, as stated in the caption hereto, and that the
11 foregoing pages numbered 1 to 48, inclusive, constitute a
12 true and correct transcription of my shorthand report of
13 said proceedings and evidence.

14 IN WITNESS WHEREOF I have hereunto set my hand
15 this 17th day of April, 2006.

16
17
18
19 _____
SHERRILL LYNN JACKSON, RPR
Official Court Reporter
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25