

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
UNITED STATES OF AMERICA,
:
- v. -
:
MUSTAFA KAMEL MUSTAFA,
a/k/a "Abu Hamza,"
a/k/a "Abu Hamza al-Masri,"
a/k/a "Mostafa Kamel,"
a/k/a "Mostafa Kamel Mostafa,"
:
Defendant.
:
----- X

04 Cr. 356 (KBF)

SENTENCING MEMORANDUM OF THE UNITED STATES OF AMERICA

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TABLE OF CONTENTS

I.	PRELIMINARY STATEMENT	1
II.	BACKGROUND.....	2
A.	The Evidence at Trial	2
1.	The Hostage-Taking in Yemen	3
a.	The December 1998 Hostage-Taking.....	3
b.	Abu Hamza’s Role in the Hostage-Taking.....	5
2.	The Bly, Oregon Training Camp.....	9
a.	The Origins of the Bly Training Camp Plot	9
b.	Kassir and Aswat’s Travel to the United States	10
3.	Support to al Qaeda and the Taliban in Afghanistan.....	13
a.	Abu Hamza’s Sending of Abbasi to al Qaeda in Afghanistan.....	13
b.	Abu Hamza’s Support to the Taliban	14
4.	Additional Evidence of Abu Hamza’s Intent and Motive	15
5.	Abu Hamza’s False Testimony	19
B.	Procedural History.....	19
1.	Kassir’s Arrest and Conviction	19
2.	Aswat’s Arrest and Extradition	20
3.	Abu Hamza’s Arrest, Extradition, and Conviction	20
C.	The Presentence Investigation Report	21
III.	ARGUMENT: THE COURT SHOULD IMPOSE A SENTENCE OF LIFE IMPRISONMENT	23
A.	The Governing Legal Framework	23
B.	The Nature and Seriousness of Abu Hamza’s Crimes Necessitate a Sentence of Life Imprisonment.....	25

C.	A Sentence of Life Imprisonment is Appropriate to Service the Purpose of Deterrence	27
D.	A Sentence of Life Imprisonment is Appropriate to Protect the Public from Further Crimes of Abu Hamza.....	28
E.	The History and Characteristics of this Defendant Also Support a Sentence of Life Imprisonment.....	29
F.	Imposing a Guidelines Sentence of Life Imprisonment Would Advance the Goals of Section 3553(a)	37
G.	The Court Should Defer to the Bureau of Prisons’ Procedures for Designating Abu Hamza to an Appropriate Facility	41
IV.	CONCLUSION.....	45

TABLE OF AUTHORITIES

Cases

<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979)	42
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	23, 24, 41
<i>Procunier v. Martinez</i> , 416 U.S. 396 (1974)	42
<i>Rita v. United States</i> , 551 U.S. 338 (2007).....	24
<i>Sandin v. Conner</i> , 515 U.S. 472 (1995).....	42
<i>Turner v. Safley</i> , 482 U.S. 78 (1987).....	42
<i>United States v. Agudelo</i> , 414 F.3d 345 (2d Cir. 2005).....	38
<i>United States v. Booker</i> , 543 U.S. 220 (2005).....	23, 38
<i>United States v. Case</i> , 180 F.3d 464 (2d Cir.1999)	38
<i>United States v. Crosby</i> , 397 F.3d 103 (2d Cir. 2005).....	23
<i>United States v. Dunnigan</i> , 507 U.S. 87 (1993).	38
<i>United States v. Fernandez</i> , 443 F.3d 19 (2d Cir. 2006)	41
<i>United States v. Garcia</i> , 413 F.3d 201 (2d Cir. 2005).....	38
<i>United States v. Lincecum</i> , 220 F.3d 77 (2d Cir. 2000).....	38
<i>United States v. Meskini</i> , 319 F.3d 88 (2d Cir. 2003)	27
<i>United States v. Rattoballi</i> , 452 F.3d 127 (2d Cir. 2006)	41
<i>United States v. Rubenstein</i> , 403 F.3d 93, 98-99 (2d Cir. 2005).....	41
<i>United States v. Stewart</i> , 590 F.3d 93 (2d Cir. 2009).....	27, 44
<i>United States v. Williams</i> , 79 F.3d 334 (2d Cir. 1996).....	38
<i>United States v. Williams</i> , 65 F.3d 301 (2d Cir. 1995).....	41, 42
<i>United States v. Zagari</i> , 111 F.3d 307 (2d Cir.1997)	38

Statutes

18 U.S.C. § 371.....21

18 U.S.C. § 842.....19

18 U.S.C. § 956.....19, 39

18 U.S.C. § 1203.....21

18 U.S.C. § 2339A.....19, 21

18 U.S.C. § 2339B19, 21

18 U.S.C. § 3553..... *passim*

18 U.S.C. § 3621.....41

50 U.S.C. § 1705.....21

Sentencing Guidelines

U.S.S.G. § 2A1.139

U.S.S.G. § 2A1.539

U.S.S.G. § 2A4.139

U.S.S.G. § 2M5.3.....39, 40

U.S.S.G. § 2X1.139, 40

U.S.S.G. § 2X2.139

U.S.S.G. § 3A1.421, 39, 40

U.S.S.G. § 3C1.1.....21, 37, 38, 39

U.S.S.G. § 3D1.239

U.S.S.G. § 5A22, 40

U.S.S.G. § 5E1.2.....40

I. PRELIMINARY STATEMENT

The Government respectfully submits this memorandum in connection with the sentencing of Mustafa Kamel Mustafa, a/k/a “Abu Hamza” (“Abu Hamza” or the “defendant”), which is scheduled for January 9, 2015, at 10:00 a.m. On May 19, 2014, Abu Hamza was found guilty after trial of eleven counts, covering years of terrorist conduct that spanned multiple continents.

This defendant has devoted much of his life to supporting terrorism. Operating out of the Finsbury Park Mosque in London, Abu Hamza worked tirelessly to drive his young, impressionable followers to participate in acts of violence and murder across the globe. From the safe confines of his mosque, Abu Hamza openly and unapologetically used the power of his hateful words to distort religion by giving purported religious justification for acts of terrorism. In Abu Hamza’s eyes, engaging in violent jihad was not just recommended, it was mandatory.

But the defendant was far more than just a talker, and ultimately, he stands before this Court to be held accountable for his actions. Over the course of years, Abu Hamza put his words of hate into action. Abu Hamza was a global terrorist leader who orchestrated plots around the world to further his deadly mission, from participating in a hostage-taking in Yemen that left four innocent tourists dead, to trying to establish a terrorist training camp on United States soil, to sending a follower to train and fight with al Qaeda in Afghanistan. The seriousness of this defendant’s offenses and the need for just punishment and deterrence cannot be overstated.

No sentence short of life imprisonment is appropriate.¹

¹ The defense even seems to acknowledge that imprisonment for the remainder of Abu Hamza’s life is appropriate given the exceedingly serious nature of the defendant’s convictions: “Mr. Mostafa is 56 years old and has been convicted of 11 counts of terrorism-related offenses. As such, the defense is under no illusions that Mr. Mostafa will ever freely return to his family

II. BACKGROUND

A. The Evidence at Trial

The Government called numerous witnesses at trial, including two victims of a deadly hostage-taking in Yemen (Mary Quin and Margaret Thompson); several individuals (Ayat Hakima, Angelica Morris, and David Smith) who encountered the two men that Abu Hamza sent to the United States to create a jihad training camp; a cooperating witness (Earnest James Ujaama) who worked with Abu Hamza to establish that training camp and who brought one of Abu Hamza's followers to Pakistan for Abu Hamza; another cooperating witness (Saajid Badat) who encountered that follower in Afghanistan with al Qaeda; an expert in international terrorism (Evan Kohlmann); and various U.S. and British law enforcement witnesses. The Government's proof also included evidence seized from the defendant's residence in London and from his Finsbury Park Mosque that confirmed his steadfast commitment to deadly jihad and al Qaeda.

This proof established, beyond a reasonable doubt, Abu Hamza's involvement in three primary courses of conduct. First, in late December 1998, Abu Hamza participated in a hostage-taking in Yemen, whose purpose was to coerce the Yemeni government to free some of Abu Hamza's followers, including his stepson, from prison and which resulted in the murder of four Western tourists. Second, in late 1999, Abu Hamza tasked two of his followers with the mission of establishing a camp in United States for training men to fight with al Qaeda and engage in acts of murder in Afghanistan. And third, from 2000 to 2001, Abu Hamza provided a variety of support to al Qaeda and the Taliban in Afghanistan, including by dispatching a follower to train and fight with al Qaeda and by sending money and other support to the Taliban. In addition,

even under the most lenient realistically conceivable non-life sentence.” Defendant Mostafa Kamel Mostafa's Sentencing Memorandum (“Deft. Sent. Mem.”) at 20.

numerous video and audio recordings of the defendant demonstrated his intent and motive to commit the charged crimes.

1. The Hostage-Taking in Yemen

In December 1998, Abu Hamza, operating from the safety of London where he was the influential leader of the Finsbury Park Mosque, participated in a hostage-taking of sixteen Western tourists, including two Americans, in Yemen. Four of the hostages were killed during a rescue operation by the Yemeni army. Abu Hamza had a close relationship with the Islamic Army of Aden, the terrorist group responsible for the kidnapping, and its leader, Abu Hassan al-Midhar (“Abu Hassan”). In fact, in the months leading to the hostage-taking, Abu Hamza served as the spokesperson for that terrorist group, issuing warnings that Westerners should stay out of Yemen. The hostage-taking was an effort to coerce the Yemeni government to free men who had been imprisoned days earlier, including Abu Hamza’s stepson and other men who Abu Hamza knew in the United Kingdom. The evidence at trial established Abu Hamza’s foreknowledge of the hostage-taking, as well as his participation in the hostage-taking by providing the terrorists with a vital tool—a satellite phone—that was used during the kidnapping and by providing advice and guidance to Abu Hassan, the leader of the kidnappers, as the attack was underway.

a. The December 1998 Hostage-Taking

On December 28, 1998, a group of Westerners were on a guided caravan tour of Yemen. That morning, approximately 20 kidnappers, armed with AK-47 assault rifles, rocket propelled grenade launchers (“RPGs”), and hand grenades, ambushed a convoy of vehicles with the

tourists. (Tr. at 2720-23, 2862-63; PSR ¶ 22).² Sixteen tourists were taken hostage, including two American women, Mary Quin and Margaret Thompson. (Tr. at 2867). The kidnappers then took the hostages to a remote location in the desert, where their victims were kept under armed guard. (Tr. at 2724-25, 2866-67). Almost immediately after taking the tourists captive, the kidnappers collected passports from the hostages and demanded to know which of them were Americans. (Tr. at 2728-29, 2869-70; PSR ¶ 22). Abu Hassan, the leader of the kidnappers, also told the tourists that it was not their fault that their countries had bombed Iraq and that the hostages would be held until the kidnappers' "friends" were released from prison. (Tr. at 2731, 2873; PSR ¶ 22).

The following day, on December 29, Yemeni military forces launched a rescue operation. A gunfight brought out between the hostage-takers and the Yemeni military forces, with the kidnappers using the tourists as human shields. The kidnappers ordered the hostages to stand on a raised embankment with their arms raised, while the kidnappers fired at Yemeni military from between the legs of the hostages. (Tr. at 2736-39, 2880; PSR ¶ 23). At one point, two or three kidnappers advanced towards the Yemeni forces while each used a tourist as a human shield. (Tr. at 2742-43). One of the American tourists, Ms. Quin, was being used a shield, with her captor pressing an AK-47 assault rifle against her back, when that captor was shot. (Tr. at 2885-86). Ms. Quin then courageously wrestled the AK-47 from her captor and escaped to the awaiting Yemeni military forces. (Tr. at 2885-87; PSR ¶ 23).

Four hostages—Margaret Whitehouse, Peter Rowe, Ruth Williamson, and Andrew Thirsk—were killed during the course of the rescue operation. (Tr. at 2745, 2853, 2889-90).

² In this memorandum, "PSR" refers to the Presentence Investigation Report, which was prepared by the United States Probation Office on December 30, 2014; "Tr." refers to the transcript from the trial in this case; and "GX" refers to Government Exhibits offered at trial.

The Yemeni military rescued the surviving hostages, several of whom suffered serious injuries. (Tr. at 2743-45, 2888-89). For instance, Ms. Thompson was shot in the leg during the gunfight. (Tr. at 2743). The bullet completely shattered Ms. Thompson's left femur, requiring extensive surgery that entailed implanting a titanium rod in her leg and compressing her femur. (Tr. at 2746). She continues to suffer from the effects of that devastating injury today. (*Id.*).

b. Abu Hamza's Role in the Hostage-Taking

Abu Hamza participated in this kidnapping in a number of ways. First, before the kidnapping, Abu Hamza agreed to serve as a "mouthpiece" for the Islamic Army of Aden. (Tr. at 3272, 3476). Abu Hamza did so largely through the Supporters of Shariah ("SOS"), a pro-shariah organization that Abu Hamza operated out of the Finsbury Park Mosque. (*See* GX 15, 228 (January 11, 1999 television interview: "I was, and I am still, head of an organization which is called Supporters of Sharia.")). For instance, in a July/August 1998 SOS newsletter, Abu Hamza issued a warning about Yemen: "many foreign hostages have been kidnapped in attempts to leverage greater resources out of [the] central government. . . . We have also received news that a Mujahid who fought in Bosnia has killed three missionary nuns who were tempting Muslims [to] become Mushriks." (GX 615-H).

Shortly after issuing this warning, in a September/October 1998 SOS newsletter, the defendant published an even more explicit threat, which was titled, "Yemeni Mujahideen are warming up." (GX 621). The SOS newsletter reported that the Islamic Army of Aden had "declared Jihad against the government [of Yemen]" and had conducted an attack on an oil pipeline. (*Id.*). This message also included a call to arms from the Islamic Army of Aden, urging "Muslim fighters to join their [the Islamic Army of Aden's] Jihad struggle and stop the invasion of the last state in the peninsula which is about to fall into the hands of the West." (*Id.*).

On October 11, 1998, the defendant published another statement through the SOS, declaring that “[s]upporting the army of Aden is an obligation for those seeking Gardens of Eden.” (GX 250, 250-T). Abu Hamza announced SOS’s unwavering support for the Islamic Army of Aden, and urged others to support the organization as well: “S.O.S. supports and is devoted to the Aden Islamic army, incentives and talks about it, by asking whoever is capable of that support to do it sooner than later” (*Id.*). In this statement, which was issued approximately two months before the hostage-taking, the defendant additionally warned all non-Muslims, or infidels, to leave Yemen unless they had permission from Abu Hassan to stay: “Therefore S.O.S. warns all the infidels to leave the region, or to seek a promise (protection) from the Emir of Jihad (Abul Hassan Al Mihdar, May God protect him) to stay” (*Id.*).

In addition to posting threats and warnings for Abu Hassan, Abu Hamza participated in the actual hostage-taking in a few ways. Abu Hamza provided the kidnappers with a satellite phone, which was an essential tool for the hostage takers to use to negotiate the release of the hostages. (PSR ¶ 25).³ Months before the kidnapping, Abu Hamza bought a satellite phone in the United Kingdom. (Tr. at 3247; PSR ¶ 25). He then arranged for his stepson, Mohsin Ghalain, to transport the satellite phone to Yemen and provide the phone to Abu Hassan. (Tr. at 3502-03; PSR ¶ 25). The terrorists used the satellite phone during the hostage-taking. In fact, as the hostage-taking was underway, the defendant added airtime minutes to the satellite phone for the kidnappers. (Tr. at 2779-81; PSR ¶ 25).

In addition, Abu Hamza was in frequent contact with Abu Hassan leading up to and during the hostage-taking. (PSR ¶ 29). Telephone toll records revealed that the defendant and

³ The hostage-taking occurred in December 1998, prior to the prevalence of cellular telephones, and in a remote part of Yemen. A working satellite telephone for the hostage-takers to use during the attack therefore was extremely important.

Abu Hassan spoke twenty times by telephone before the kidnapping—including a seven-minute call the day before the kidnapping—and twice during the kidnapping. (GX 1003; PSR ¶ 29).

The defendant later admitted to Ms. Quin that he had spoken with Abu Hassan during the kidnapping and had instructed Abu Hassan to negotiate from the back, in order to protect himself. (GX 219-T).

Abu Hamza's participation in the hostage-taking should come as no surprise. The defendant repeatedly endorsed and advocated for the very sort of vile terrorist act that the Islamic Army of Aden conducted in December 1998. In numerous public statements, Abu Hamza proclaimed that non-Muslims in Muslim lands⁴ could be kidnapped and killed. For example, Abu Hamza stated that, "[i]f a kaffir [a non-believer in Islam] enters a Muslim land . . . , anybody could take him, capture him, and enslave him. Or even sell him in the market. He's like a cow. He's like a pig." (GX 130; PSR ¶ 30); "If Muslims cannot take them [kaffirs] to the, you know, and sell them in the market, then you just kill them. It's okay." (GX 109; PSR ¶ 30); and "Killing a kaffir for any reason, you can say it's okay even if there's no reason for it." (GX 132; PSR ¶ 30); *see also infra* Part II.A.4.

The defendant's participation in this particular hostage-taking was motivated by the preceding arrests in Yemen of several of Abu Hamza's associates, including his stepson, Mohsin Ghalain. On December 23, 1998—just over two months after the defendant proclaimed that Muslims were obligated to support the Islamic Army of Aden and warned "infidels" to stay out of Yemen (GX 250, 250-T)—Ghalain and five other men were arrested in Yemen. (GX 14; PSR ¶ 31). During his testimony at trial, the defendant admitted to knowing four of those men: Ghalain, Sarmad Ahmad, Shahid Butt, and Malik Nasser Fadl Harhara. (Tr. at 3499-05; PSR

⁴ As Abu Hamza testified, Yemen is a predominantly Muslim country. (Tr. at 3482).

¶ 31). Ghalain delivered the satellite telephone that Abu Hamza had purchased to Abu Hassan in Yemen on Abu Hamza's behalf. (PSR ¶ 31). British authorities seized a receipt for Ghalain's travel from London to Aden, Yemen in November 1998, during a May 2004 search of Abu Hamza's residence. (Tr. at 1008, 3503; GX 19, 502). Butt attended the Finsbury Park Mosque and provided security there. (GX 14; Tr. at 3504; PSR ¶ 31). Harhara also attended the Finsbury Park Mosque. (Tr. at 3499). In fact, Harhara's martyrdom letter also was found in the defendant's home during a March 1999 search. (GX 26, 246, 246-T; PSR ¶ 31; *see also* Tr. at 3500).

In October 2000, less than two years after the hostage-taking, Ms. Quin traveled to London to interview Abu Hamza regarding the kidnapping. (Tr. at 2895; PSR ¶ 32). During the course of that interview, the defendant admitted that he partnered with and supported Abu Hassan, provided the satellite phone to Abu Hassan, and spoke with Abu Hassan during the kidnapping. (GX 219). Among other things, the defendant told Ms. Quin that he considered the kidnapping to be "a good thing to do" under Islam, and even implicitly blamed her because, "we [had] been giving warnings, 'Don't come, don't come.'" (*Id.*). Abu Hamza further told Ms. Quin that the tourists had been kidnapped to hurt the Yemeni government and that the plan was to hold the tourists captive "until the government let my people go." (*Id.*). As Abu Hamza callously put it to this victim of his horrifying crime, "they snatched you to exchange you." (*Id.*). Tellingly, at one point during the interview, Abu Hamza even acknowledged his advanced knowledge of the hostage-taking to Ms. Quin: "*We* never thought it would be that bad." (*Id.* (emphasis added)).

2. The Bly, Oregon Training Camp

Even after this tragedy, which left four innocent tourists dead, Abu Hamza continued to zealously advocate violent jihad. In the fall of 1999, Abu Hamza sent two of his devoted followers—Oussama Kassir and Haroon Aswat—from London to the United States with orders to establish a terrorist training camp on a remote ranch in Bly, Oregon. The purpose of this camp was to train young, impressionable men in America to fight and kill, so they could travel to Afghanistan to join forces with al Qaeda.

a. The Origins of the Bly Training Camp Plot

In around the fall of 1999, Ujaama, one of Abu Hamza's U.S.-based followers, reached out to Abu Hamza and discussed plans to create a jihad training camp at a ranch in Bly, Oregon. (Tr. at 2038). Ujaama—who had been a student of Abu Hamza's and had spent time with Abu Hamza at the Finsbury Park Mosque—was aware of Abu Hamza's view that physical jihad training was mandatory for all Muslims. (Tr. at 2039). Abu Hamza was interested in Ujaama's training camp proposal, and agreed to send two men to the United States to help Ujaama establish the training camp. (Tr. at 2039-40).

Abu Hamza received two faxes from Ujaama discussing the plans for the training camp. (Tr. at 1940-42). The first fax, which was sent from Ujaama to Abu Hamza on October 25, 1999, contained language for a flyer to advertise the training facility and a message from Ujaama to Abu Hamza. (Tr. at 2058-59; GX 315). In the message, Ujaama referenced “[t]he land that we spoke of,” and emphasized that the land would simulate conditions in Afghanistan: the property “looks just like Afghanistan with mountains and small trees, dry, hot and cold extreme temperatures,” and “[i]t barely rains, but snows heavily during the winter.” (Tr. at 2061; GX 315). Ujaama drew this comparison because the purpose of the camp was to train men to fight in

Afghanistan. (Tr. at 2055, 2061). Ujaama also explained that the property “is in a state that is pro-militia and fire-arms state,” and assured Abu Hamza that “[o]ur ju’mat,” referring to the group of young men from Ujaama’s Seattle mosque, “is young, strong and desirous.” (GX 315). Ujaama told Abu Hamza that they were “expecting the two brothers that we discussed to come in November” (*Id.*); those “two brothers” would in fact arrive in Seattle in November 1999 and were Kassir and Aswat. Ujaama also told Abu Hamza that they were planning to bring Abu Hamza to the United States permanently, explaining that “[i]t is already understood that you will lead us here in America.” (*Id.*).

A little under two weeks later, on November 6, 1999, Ujaama sent Abu Hamza a second fax. (GX 316). In this fax, Ujaama provided Abu Hamza with a list of tapes, including some of Abu Hamza’s lectures, that Ujaama requested. (*Id.*). Ujaama also informed Abu Hamza that the “juma’t” had split, “[t]he second juma’t will operate underground,” and “[t]he two brothers coming will not have contact with the first juma’t.” (GX 316). Twenty days later, those “two brothers” arrived in the United States.

b. Kassir and Aswat’s Travel to the United States

In November 26, 1999, Kassir, Aswat, and Kassir’s wife and children flew from London to New York City, where they boarded a Greyhound bus for Seattle. (Tr. at 2081-82; GX 2, 335, 336, 337, 338, 339). Upon arriving in Seattle, Kassir, Aswat, and Kassir’s family were picked up by Ujaama, stayed at Ujaama’s residence for two or three days, and soon were brought to the ranch in Bly, Oregon. (Tr. at 2081-84).

At Bly, Kassir announced that he had been sent by Abu Hamza to train men to fight in Afghanistan. (Tr. 152-53, 927, 939; PSR ¶ 34). Kassir boasted that he had received training at camps in Afghanistan associated with Bin Laden and that he himself had run training camps for

Bin Laden. (Tr. at 153, 939). Aswat similarly told people at Bly that he was there to train the brothers in jihad and that he too had received training at camps in Afghanistan. (Tr. at 154).

Kassir brought with him various tools to conduct this training, including manuals on manufacturing poisons, nerve gas, and explosives. (GX 312-B, 312-C, 312-D, 330-C-T, 330-D; PSR ¶ 35). Kassir also was in possession of letters addressed to both Usama Bin Laden and Abu Hamza, reflecting his support for those individuals. (GX 330-E, 330-E-T, 330-F, 330-F-T). In his letter to Abu Hamza, Kassir thanked Abu Hamza for “the hospitality” that Abu Hamza extended Kassir at Abu Hamza’s “residence” and for “correction of [Kassir’s] knowledge,” and further wrote, “I love you and I felt so comfortable with you.” (GX 330-E, GX 330-E-T). Kassir also had a copy of Bin Laden’s 1996 declaration of war against America and an issue of the SOS newsletter from December 1998/January 1999, which contained articles about the Islamic Army of Aden taking responsibility for the December 1998 kidnapping in Yemen and accusing “the United Snakes of America” of trying to kill Bin Laden. (GX 330-B, 330-G).

After arriving at Bly and viewing the property, Kassir was furious at Ujaama because the property at Bly did not resemble what Ujaama had represented to Abu Hamza. (Tr. at 121, 928). In particular, Kassir aggressively confronted Ujaama because he had promised Abu Hamza that there would be brothers to train and guns on the property, and because there was no place for Abu Hamza to stay. (Tr. at 121-22, 928). Even so, Kassir and Aswat still attempted to institute military-style activities and conduct training. Both Kassir and Aswat armed themselves with firearms and organized armed patrols of the property at night. (Tr. at 151). Kassir and Aswat conducted target practice and physical exercises, and instructed people at Bly on how to throw knives. (Tr. at 928-30). On one occasion, Kassir trained various Bly residents, including an 18-year old teenager, how to slit a person’s throat. (Tr. at 144-46; PSR ¶ 36). During this

demonstration, Kassir asked the teenager if he would kill a kaffir (*i.e.*, a non-Muslim). (Tr. at 144-45).

Abu Hamza supported and directed Kassir and Aswat from London. Abu Hamza provided Kassir and Aswat with money to fund the training at the Bly property, and called the men while they were at Bly. (Tr. at 126, 150-51; PSR ¶ 37). During one phone conversation with Abu Hamza, Kassir complained that the property at Bly was not what had been anticipated and questioned whether he should continue there. (Tr. at 127-28). Abu Hamza responded by exhorting Kassir to persevere in his mission at Bly. (Tr. at 128).

After Kassir and Aswat grew frustrated with the lack of men to train at Bly, they relocated to the Dar Us Salaam Mosque in Seattle. (PSR ¶ 38). At the mosque, Kassir taught men how to make silencers, how to assemble and disassemble an AK-47 assault rifle, how to convert an AK-47 into a fully automatic firearm, and how to modify an AK-47 so it can launch grenades. (Tr. at 409-18). Kassir also met with men from the Dar Us Salaam Mosque at one of their homes, where Kassir said he was only concerned about his martyrdom and that he had come to the United States to destroy. (Tr. at 422).

Both Kassir and Aswat subsequently left the United States. (PSR ¶ 39). Kassir eventually returned to his home country of Sweden. In October 2003 and January 2006, Swedish authorities conducted searches of Kassir's residence. (GX 7, 8). During those searches, Swedish authorities found a large volume of jihadi material, as well as numerous manuals related to weapons, poisons, and explosives. (GX 7, 8; PSR ¶ 39).

Aswat subsequently linked up with al Qaeda. In September 2002, the Federal Bureau of Investigation ("FBI"), in conjunction with Pakistani authorities, conducted a search of a house connected to al Qaeda (the "al Qaeda house") in Karachi, Pakistan. (GX 4; PSR ¶ 40). During

that search, the FBI seized a handwritten ledger, written in Arabic, which contained a list of names. (*Id.*). Among the names listed on that ledger was “Aswat Haroon,” along with a notation indicating British nationality. (GX 1111-A-T; PSR ¶ 40). Numerous items recovered from the al Qaeda house contained the fingerprints of Khalid Sheikh Mohammed, who at the time served as al Qaeda’s Chief Operational Planner. (GX 4; PSR ¶ 40).⁵

3. Support to al Qaeda and the Taliban in Afghanistan

Undeterred by his unsuccessful efforts to establish a jihad training camp in Oregon, Abu Hamza focused on supporting violent jihad in Afghanistan, most notably by providing personnel to al Qaeda and by providing goods and services to the Taliban.

a. Abu Hamza’s Sending of Abbasi to al Qaeda in Afghanistan

In 2000, Abu Hamza instructed Ujaama to deliver another one of Abu Hamza’s followers, Feroz Abbasi, to Ibn Sheikh al Liby, whom Abu Hamza described to Ujaama as a “front-line commander.” (Tr. at 1948-49, 2584). Abu Hamza told Ujaama that Abbasi was going to Afghanistan to receive jihad training and fight on the front lines. (Tr. at 1947, 2141).

⁵ The Government’s terrorism expert, Evan Kohlmann, testified as follows about Khalid Sheikh Mohammed:

- Q. Now, Mr. Kohlmann, what was Khalid Sheikh Mohammed’s role in Al Qaeda?
- A. Khalid Sheikh Mohammed was appointed within Al Qaeda to oversee special projects, and by special projects this meant large overseas military operations that required a great amount of complexity and that would have targeted some of Al Qaeda’s most high-profile adversaries. The reason why KSM was chosen for this role is he had a history of coming up with very serious and high-profile terrorist plots that Al Qaeda admired.
- Q. And has Khalid Sheikh Mohammed planned terrorist attacks?
- A. Yes, he has.
- Q. What are some of the attacks he’s planned?
- A. The chief plot in which he is associated with is the September 11, 2001 terrorist attacks in the United States, of which he is conceded of being the mastermind.

(Tr. at 1176-77).

Around that time, Ibn Sheikh al Liby ran the Khalden jihad training camp in Afghanistan, which was one of the primary training camps in the 1990s for individuals seeking to become mujahideen. (Tr. at 1200). The Khalden camp produced many al Qaeda fighters, including al Qaeda operatives, Richard Reid and Zacharias Moussaoui. (Tr. at 1200-02, 1639; PSR ¶ 42). Ibn Sheikh al Liby had a reciprocal agreement with al Qaeda, by which individuals who received training at Khalden could then receive additional training at al Qaeda camps, and al Qaeda operatives could receive specialized training at Khalden. (Tr. at 1202). Ibn Sheikh al Liby also was publicly praised by al Qaeda after his death for leading al Qaeda's ground forces against U.S. military personnel at the Battle of Tora Bora in Afghanistan in late 2001. (Tr. at 1202-03).

Ujaama brought Abbasi to Pakistan and left him in Quetta. (Tr. 2161-62). Abbasi, however, succeeded in making his way into Afghanistan and in linking up with Ibn Sheikh al Liby. In Afghanistan, Abbasi was taken by Ibn Sheikh al Liby to an al Qaeda guesthouse called the House of Pomegranates, where Abbasi encountered Saajid Badat, a cooperating witness who testified at trial via closed circuit television. (Tr. at 1642; PSR ¶ 43). Badat later saw Abbasi at the al Faruq training camp, which was al Qaeda's primary training camp and where recruits were trained in topics that included military tactics, weapons, and explosives. (Tr. at 1632, 1647-48; PSR ¶ 43). Abbasi also met with senior al Qaeda leaders, Saif al-Adl and Abu Hafs al-Masri, who asked if he was willing to participate in attacks on behalf of al Qaeda against American and Jewish targets. (Tr. at 1652-54; PSR ¶ 43).

Abbasi subsequently was transferred to the custody of the United States military in Afghanistan in December 2001. (GX 6).

b. Abu Hamza's Support to the Taliban

The defendant also provided goods, services, and supplies in Taliban-controlled areas of Afghanistan from spring 2000 through late 2001. (PSR ¶ 48). At the time, a national emergency had been declared by Executive Order with respect to the Taliban, thereby prohibiting United States persons from making any contribution of funds, goods, or services to or for the benefit of the Taliban, and from supplying any goods, software, technology, or services to the Taliban or to the area of Afghanistan that was controlled by the Taliban. (PSR ¶ 45-47). The evidence at trial, including the testimony of Ujaama, a U.S. citizen, established the defendant's knowledge of these U.S. sanctions against the Taliban. (GX 613-A, 615-B; Tr. at 2005-06; PSR ¶ 48).

Yet despite his awareness of these sanctions, the defendant directed Ujaama to deliver Abbasi to al Qaeda in Afghanistan in areas controlled by the Taliban. (PSR ¶ 48). The defendant also tasked Ujaama to deliver large sums of money to several individuals, including Ibn Sheikh al Liby and Abu Khabab, an explosives expert, both of whom operated from the safety of Taliban controlled territories of Afghanistan. (Tr. at 1949, 2146-51, 2169-81; PSR ¶ 48).

4. Additional Evidence of Abu Hamza's Intent and Motive

The trial evidence also overwhelmingly demonstrated Abu Hamza's intent and motive to commit the charged terrorism offenses. This evidence came largely in the form of audio and video recordings of Abu Hamza's speeches, and evidence recovered from searches of his residence in London and the Finsbury Park Mosque.

Consistent with his efforts to establish a terrorist training camp in the United States and sending one of his young followers, Abbasi, to Afghanistan to train and fight with al Qaeda, Abu

Hamza repeatedly preached that physical training and fighting in jihad was mandatory for Muslims. For instance:

- “What in short we need, we need parents to educate their children and to give them training, capability, power. Send them to the front lines.” (GX 107).
- “No, my dear brothers and sisters, because many of these brothers, they get killed on the cheap. They get killed. We don’t want you to go to get killed after a hot talk. Allah said prepare. So for those who want to go, this is why we are running our camps. We don’t want people to die of negligence. You go in the name of Allah. You go and fight. But you must be trained.” (GX 106).
- “And also there is a need for you to train, so you can last longer. If you want to be a martyr, then you might as well fight many battles. You don’t have to go and get killed in the first battle.” (GX 106).
- “Fighting has been made obligatory to you.” (GX 102).
- “[T]he backbone of jihad is fighting. Every fighting is jihad. But not every jihad is fighting. Now Allah meant fighting is the obligation. Because when you fight, you automatically do jihad.” (GX 102).

Abu Hamza also repeatedly told his followers that it is appropriate to kidnap, capture, enslave, sell, and even kill non-Muslims who set foot on Muslim land. This of course was consistent with his role in the December 1998 hostage-taking in Yemen, when sixteen Western tourists were taken captive while on vacation in a predominantly Muslim country. For instance:

- “If a kaffir [non-Muslim] enters a Muslim land or, you know, anybody could take him, capture him, and enslave him. Or even sell him in the market. He’s like a cow. He’s like a pig.” (GX 130).
- “What will bring you honor? Unless you go and put his [a kaffir’s] nose into the toilet. And you chop his head. And you take his wife as a booty. And you throw him in the stable. Then he will understand what honor Allah have given you.” (GX 130).
- “If a kaffir is walking by, when you catch him, what are you doing here, then he’s a booty, you can sell him in the market. This is what Islam says. What are they doing there anyway? Most of them are spies and things like that. Even if they didn’t do anything. If Muslims cannot take them to the, you know, and sell them in the market, then you just kill them. It’s okay.” (GX 104).

- “Killing a kaffir for any reason, you can say it’s okay even if there’s no reason for it.” (GX 132).

Abu Hamza also made statements that revealed his admiration of and support for Usama Bin Laden, his agreement with al Qaeda’s attacks on America, and his view that suicide operations can be permissible. These statements were consistent with Abu Hamza’s intent to support al Qaeda in connection with the Bly training camp and sending Abbasi to Afghanistan.

For instance:

- “Everybody was happy when the planes hit the World Trade Center. Anybody who tell you he was not happy, they are hypocrites. For the Muslim Nation, I’m telling you. Everybody.” (GX 113).
- “Sheikh Bin Laden is not a normal person. He’s an example for all of the mujahideen [Islamic fighters]. With his past, experience, goals, and achievements.” (GX 110).
- When asked by Evan Kohlmann about his opinion of Bin Laden, Abu Hamza answered: “Well, I would call him a reformer, you see. He is a person that is trying to reform. He’s got ... I think he’s a victim as well. He’s a victim from the American policies and he’s a victim of the scholars of his country. He’s a good-hearted person. He likes to share the, to poor people, their, their, their, you know, their way of life. He hates injustice, he likes heroism as well, and he doesn’t care about death, you know. He’s a very great man, you know. But, unfortunately, as I say he’s a victim of international bad policies and, and selfishness.” (GX 101). Abu Hamza continued, still referring to Bin Laden: “I think he’s good. He’s a hero and we should not undermine him because it does fire back even if you know him because these kind of people, God mighty. He put some love in the hearts of people to them, and you can’t fight that.” (*Id.*).
- When asked in an interview whether he approved of the October 2000 bombing of the *USS Cole*, which killed 17 American sailors, Abu Hamza responded: “Of course. I agree with it.” (GX 113).
- When Ms. Quin also inquired about his view on the *USS Cole* bombing, Abu Hamza similarly opined: “I think it’s a good thing. I think it’s a good message. I think it’s a good thing. I think it’s something for Muslims to, to, to rejoice. Not only um, because of the operation, but also that the desire to fight any force is there.” (GX 219).
- When asked by an audience member “whether suicide bombing’s allowed,” Abu Hamza answered: “It is not called suicide; it is called uh, it is called, uh, *shahid*

operation. Suicide, this is what the people call it, suicide to make people off it. It is not called suicide, this is called uh, *shahada*, martyrdom. Because, if the only way to hurt the enemies of Islam, uh, except by taking your life for that—then it is allowed.” (GX 131).

Searches conducted of Abu Hamza’s residence and the mosque he led further confirmed his steadfast support for violent jihad. On May 27, 2004, British law enforcement searched Abu Hamza’s residence in London. (GX 19). This search resulted in the recovery of ten volumes of the Encyclopedia Jihad (GX 507); computer files that included multiple images of Bin Laden (GX 508-B, 508-F, 509-A, 509-B, 509-C, 511-K), a copy of Bin Laden’s 1996 declaration of war against the United States (GX 510-B), a photograph of the September 11, 2001 attacks (GX 508-A), an image of Abu Hamza speaking with the writing, “Allah Happy when kaafir get killed.” (GX 508-C), and an image with photographs of Abu Hamza and Bin Laden side-by-side (GX 511-W); and portions of the al Qaeda propaganda video, *Destruction of the USS Cole*, featuring footage of al Qaeda recruits receiving physical training (GX 511-Y).

A January 20, 2003 search of the Finsbury Park Mosque—where Abu Hamza was the leader and the imam—also resulted in the recovery of a host of items that reflected support for al Qaeda and violent jihad. (GX 17). British law enforcement seized from the mosque, among other things, various computer files including another copy of Bin Laden’s 1996 declaration of war against the United States (GX 615-D), an image of the *USS Cole* (GX 613-D), more photographs of Bin Laden including one of Bin Laden holding an AK-47 assault rifle (GX 614-E, 615-C, 615-I), a suicide video for one of the September 11th hijackers (GX 614-G), and a flyer advertising a speech by Abu Hamza regarding Bin Laden’s swearing of an oath of allegiance, called *bayat*, to Mullah Omar (GX 613-A), as well as a military helmet (GX 612), a gas mask (GX 611), a hatchet (GX 607), and nuclear, biological, and chemical clothing (GX 610).

5. Abu Hamza's False Testimony

After the close of the Government's case, the defendant elected to testify. During the course of his testimony, the defendant repeatedly lied about a host of topics, including his involvement in the conduct set forth above. Among other things, the defendant denied: (i) participating in the kidnapping in Yemen in December 1998; (ii) sending men to Bly, Oregon to set up a jihad training camp; (iii) sending Abbasi to Afghanistan for jihad training; and (iv) providing assistance to the Taliban after July 4, 1999. (Tr. at 2975-76); *see also infra* Part III.E.

B. Procedural History

1. Kassir's Arrest and Conviction

Kassir was arrested and detained in the Czech Republic on December 11, 2005, and was extradited to the United States on or about September 25, 2007. (PSR ¶ 52). On May 12, 2009, after a four-week jury trial before the Honorable John F. Keenan, Kassir was found guilty of eleven counts: (1) two counts of conspiring to provide and conceal material support and resources to terrorists, in violation of 18 U.S.C. § 2339A; (2) two counts of providing material support and resources to terrorists, in violation of 18 U.S.C. § 2339A; (3) two counts of conspiring to provide material support and resources to a designated foreign terrorist organization, al Qaeda, in violation of 18 U.S.C. § 2339B; (4) two counts of providing material support and resources to a designated foreign terrorist organization, al Qaeda, in violation of 18 U.S.C. § 2339B; (5) two counts of conspiring to kill, kidnap, maim, and injure persons in a foreign country, in violation of 18 U.S.C. § 956(a); and (6) one count of distributing information relating to explosives, destructive devices, and weapons of mass destruction, in violation of 18 U.S.C. § 842(p)(2)(A). (PSR ¶ 19). These charges related to Kassir's participation in Abu Hamza's efforts to establish the jihad training camp in Bly, Oregon, as well as his operation of

terrorist websites out of Sweden. On September 15, 2009, Judge Keenan sentenced Kassir to life imprisonment. (*Id.*).

2. Aswat's Arrest and Extradition

Aswat was arrested by authorities in Zambia and extradited to England in June 2005. He was extradited to the United States and first appeared before the Court on October 21, 2014. (PSR ¶ 49). Aswat's case is pending, with trial scheduled to commence on June 2, 2015.

3. Abu Hamza's Arrest, Extradition, and Conviction

The defendant was arrested and detained in the United Kingdom on May 27, 2004, based on a provisional arrest warrant issued at the request of the United States Government. (PSR ¶ 50). Abu Hamza was subsequently arrested on British charges on October 19, 2004. (*Id.* ¶¶ 50, 94). Following a jury trial in the United Kingdom, the defendant was found guilty on February 7, 2006 of, among other things, soliciting to murder and using threatening and insulting words with intent to stir up racial hatred. (*Id.* ¶ 95). Abu Hamza was sentenced by the British court to a term of seven years' imprisonment. (*Id.* ¶ 94).

United Kingdom prison records reflect that, during the course of his incarceration in the United Kingdom, the defendant repeatedly committed serious disciplinary violations. (PSR ¶ 97). Among other things, United Kingdom prison records reflect that, in 2011, prison officials recovered a document suggesting how to manufacture an improvised explosive device; also in 2011, Abu Hamza delivered during a telephone conversation a sermon, which was recorded and subsequently posted on the Internet; and in 2012, the defendant refused to relocate and made threats to the prison staff. (*Id.*)⁶

⁶ Just as he denied all the charges against him at trial, the defendant disputes *every* disciplinary incident reported by prison officials, both in the United Kingdom and at the Metropolitan Correctional Center ("MCC"). *See* Deft. Sent. Mem. at 5-6. The Government

After years of litigation challenging his extradition to the United States in the United Kingdom and before the European Court of Human Rights, the defendant was extradited to the United States on October 6, 2012. (PSR ¶ 50).

Trial began with jury *voir dire* on April 14, 2014. On May 19, 2014, the jury returned a verdict of guilty on all eleven Counts in the Indictment: conspiring to take hostages and taking hostages, in violation of 18 U.S.C. § 1203 (Counts One and Two); conspiring, providing, and attempting to provide material support and resources to terrorists, in violation of 18 U.S.C. §§ 371 and 2339A (Counts Three, Four, Seven, and Eight); conspiring, providing, and attempting to provide material support and resources to a designated foreign terrorist organization, namely al Qaeda, in violation of 18 U.S.C. § 2339B (Counts Five, Six, Nine, and Ten); and conspiring to provide goods and services to the Taliban, in violation of 50 U.S.C. § 1705 (Count Eleven). (PSR ¶ 13).

C. The Presentence Investigation Report

On December 30, 2014, the Probation Office issued its final Presentence Investigation Report (“PSR”). The PSR calculated an offense level of 59 and a Criminal History Category of VI in light of the terrorism enhancement pursuant to U.S.S.G. § 3A1.4. (PSR ¶¶ 57-101). The Probation Office’s Guidelines calculation is not in dispute, *see* Deft. Sent. Mem. at 16, except that the Government seeks an enhancement for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, based on Abu Hamza’s false testimony at trial, *see infra* Parts III.E, III.F.⁷ Based on an

provided to the Probation Office and the defense relevant portions of documents concerning the incidents in the United Kingdom that were provided to the Government by the Metropolitan Police Service of the United Kingdom. In light of the overwhelming seriousness of the defendant’s offense conduct, however, the Government does not intend to call witnesses to testify about the disciplinary incidents.

⁷ The Probation Office provided that adjustments for obstruction of justice are “[t]o be determined.” (PSR ¶¶ 66, 72, 78, 84). That is because “[t]he Court is in the best position to

offense level of 43⁸ and a Criminal History Category of VI, the Probation Office determined a Guidelines range of life imprisonment. (PSR ¶ 174).

The Probation Office has recommended a sentence of life imprisonment. (PSR p. 39). In support of this recommendation, the Probation Office explained:

In the instant offense, Mustafa took every opportunity to promote the killing of innocent people by providing support and funding for terrorists. Four tourists were killed and a number of them were seriously injured during the kidnapping in Yemen in December 1998. Following their deaths, the defendant could have realized the seriousness of his actions and been deterred from further involvement in the cause. However, quite the contrary, less than a year after the Yemeni kidnapping, Mustafa established a jihad training camp to teach others how to kill. Further, the defendant, who provided support to al Qaeda and the Taliban beginning in 2000, continued to support al Qaeda and the Taliban even after the terrorist attacks in the United States on September 11, 2001.

(PSR at p. 40). The Probation Office further noted that, based on meetings with the defendant, Abu Hamza presents “as a charming and charismatic individual,” and “[i]t was not difficult to understand how he could influence others and gather a large following of believers.” (*Id.*). The Probation Office further cited Abu Hamza’s prior British convictions relating to speeches he made in London from 1997 to 2000, in which he solicited the murder of non-believers in Islam, and relating to his possession of the Encyclopedia Jihad. (*Id.*). The Probation Office expressed its agreement with the British judge’s conclusion “that the defendant represents a danger to the lives of innocent people.” (*Id.*).

Accordingly, the Probation Office found that Abu Hamza “has demonstrated by his actions in the instant offense and in connection with his prior conviction that he has no regard for the lives of others,” and that he believes “that his actions are justified by his religion and thus, he determine the validity of Mustafa’s statements,” and therefore “the Probation Office defers to the Court regarding this issue.” (PSR ¶ 55).

⁸ As the PSR notes, pursuant to Application Note 2 to U.S.S.G. § 5A, the offense level is treated as a level 43 in the “rare cases” where the calculated offense level exceeds 43. *See* U.S.S.G. § 5A, comment (n.2).

accepts no personal responsibility for such actions.” (PSR at 40). As such, the Probation Office concluded that Abu Hamza “would present a continued threat to others, even upon deportation, if he were to serve less than a lifetime sentence.” (*Id.*). In recommending this sentence, the Probation Office was aware of—and empathetic to—the defendant’s physical limitations, but noted “the Bureau of Prisons’ experience to place him in a facility that can accommodate his significant physical needs.” (*Id.* at 40-41).

III. ARGUMENT

THE COURT SHOULD IMPOSE A SENTENCE OF LIFE IMPRISONMENT

A. The Governing Legal Framework

The Guidelines still provide strong guidance to the Court in light of *United States v. Booker*, 543 U.S. 220 (2005) and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). Although *Booker* held that the Guidelines are no longer mandatory, it held also that the Guidelines remain in place and that district courts must “consult” the Guidelines and “take them into account” when sentencing. *Booker*, 543 U.S. at 264. As the Supreme Court stated, “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range”—that “should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007).

After that calculation, however, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); the four legitimate purposes of sentencing, *see id.* § 3553(a)(2); “the kinds of sentences available,” *id.* § 3553(a)(3); the Guidelines range itself, *see id.* § 3553(a)(4); any relevant policy statement by the Sentencing Commission, *see id.* § 3553(a)(5); “the need to avoid unwarranted sentence disparities among

defendants,” *id.* § 3553(a)(6); and “the need to provide restitution to any victims,” *id.* § 3553(a)(7). *See Gall*, 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

Courts may not presume that the appropriate sentence necessarily lies within the applicable Guidelines range, but “the fact that § 3553(a) explicitly directs sentencing courts to consider the Guidelines supports the premise that district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Gall*, 552 U.S. at 50 n.6. Their relevance throughout the sentencing process stems in part from the fact that, while the Guidelines are advisory, “the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives,” *Rita v. United States*, 551 U.S. 338, 348 (2007), and the Guidelines are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions,” *Gall*, 552 U.S. at 46; *see also Rita*, 551 U.S. at 349. To the extent a sentencing court varies from the Guidelines sentence, “[it] must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Gall*, 552 U.S. at 50.

B. The Nature and Seriousness of Abu Hamza's Crimes Necessitate a Sentence of Life Imprisonment

For this defendant—a terrorist leader who supported acts of violence and murder across the globe—“the nature and circumstances of the offense,” 18 U.S.C. § 3553(a)(1), and “the seriousness of the offense,” *id.* § 3553(a)(2)(A), are by far the most relevant sentencing considerations. The nature of Abu Hamza's offenses merits a sentence of life imprisonment. The defendant was not merely a vocal proponent of jihad. He was a leader who both acted on his message and directed his followers to participate in violent jihad.

Abu Hamza sent two men—Kassir and Aswat—from England to Oregon to establish a jihad training camp. The purpose of that camp was as simple as it was terrifying: to train men so that they could go to Afghanistan to fight with al Qaeda. And the men Abu Hamza sent were well-suited to the task. Kassir carried with him deadly manuals containing guides for making poisons and bombs. He not only spoke of violent jihad but he demonstrated it, most notably while teaching participants at Bly how to slice a man's throat and teaching men at the Dar Us Salaam Mosque in Seattle about how to use an AK-47 and how to construct silencers for firearms. Aswat later demonstrated his utter commitment to Abu Hamza, violent jihad, and, in particular, al Qaeda, when he in fact joined al Qaeda in Pakistan. (GX 4, 1111-A-T). Abu Hamza was not content merely to send these men to the United States with orders to establish a terrorist training camp. Abu Hamza supplied them with money, he called them while they were at the property in Bly, and during at least one of these calls, he exhorted Kassir to follow through on his mission to train the men in jihad.

Abu Hamza did not limit himself to sending men to this country. Abu Hamza was fully invested in waging jihad in Afghanistan. After his attempt to start a camp to train fighters in the United States had failed, Abu Hamza dispatched Abbasi to Afghanistan, to train in violent jihad

and to fight with al Qaeda. Abu Hamza sent Abbasi to Ibn Sheikh al Liby—someone Abu Hamza described as a “front-line commander” and someone who ran a camp in Afghanistan that trained al Qaeda terrorists. (Tr. at 1200-02, 1948-49, 2584). Abbasi, in fact, made his way to Afghanistan, where he with Ibn Sheikh al Liby, attended al Qaeda’s al Faruq training camp, and met with senior al Qaeda leaders who discussed with Abbasi his willingness to conduct a terrorist attack against American or Jewish interests. Moreover, as demonstrated by the voluminous evidence recovered from Abu Hamza’s residence, including video footage of al Qaeda training, Abu Hamza knew the nature of the training Abbasi would receive in Afghanistan.

Abu Hamza also played a crucial role in the kidnapping of Western tourists in Yemen. Well before the kidnapping, Abu Hamza pledged his support to the Islamic Army of Aden and, through his SOS organization, provided a platform for Abu Hassan to spread his message. Abu Hamza then provided the kidnapers with a satellite phone and funded additional minutes of airtime for use during the hostage-taking. And during the attack, Abu Hamza spoke with Abu Hassan, the leader of the hostage-takers, giving advice and guidance. Abu Hamza did all this because the kidnapping of Western hostages was a step forward in his jihad against infidels on Muslim land. And more immediately, the hostage-taking was an effort by Abu Hamza and Abu Hassan to pressure the Yemeni government to release some of Abu Hamza’s supporters who had been arrested in Yemen, including his stepson. Ultimately, the hostage taking resulted in the deaths of four innocent hostages.

The seriousness of these offenses cannot be overstated. And they demand the most serious penalty available.

C. A Sentence of Life Imprisonment is Appropriate to Serve the Purpose of Deterrence

A sentence of life imprisonment in this case is also necessary “to afford adequate deterrence to criminal conduct.” 18 U.S.C. § 3553(a)(2)(B). Indeed, the need for deterrence is especially important in the context of a terrorism offense. Terrorism is a crime with high recidivism rates and rehabilitation is notoriously difficult. *See United States v. Meskini*, 319 F.3d 88, 91-92 (2d Cir. 2003) (noting the link between “the difficulty of deterring and rehabilitating” terrorists and the conclusion that “terrorists and their supporters should be incapacitated for a longer period of time”). As Second Circuit Judge John M. Walker has stated, “[i]n no area can the need for adequate deterrence be greater than in terrorism cases, with their potential for devastating loss of innocent life.” *United States v. Stewart*, 590 F.3d 93, 181 (2d Cir. 2009) (Walker, J., concurring). In this case, there is an overwhelming demand for both individual and general deterrence.

As for individual deterrence, a sentence of life imprisonment is the only way to deter Abu Hamza from returning to his criminal conduct. Abu Hamza’s repeated engagement in distinct acts of terrorism has made clear that he is unrepentant and there can be little question that he would return to radicalizing young men and supporting violent jihad if given the opportunity to do so. Notably, this is not the sort of criminal conduct that only can be committed by someone of youth. Abu Hamza did not engage in physical violence himself; he exhorted others to do so. To commit his acts of terror, Abu Hamza did not rely on his physical ability, but on his mental ability, charisma, and his power of persuasion. Abu Hamza will be able to drive impressionable young men to acts of terror at any age; indeed, Abu Hamza apparently became more influential as he aged.

As for general deterrence, Abu Hamza did not act alone. Abu Hamza inspired others around the world to adopt his goals of violence and murder in support of global jihad. And he dispatched certain trusted followers around the world to act in his stead. A life sentence in this case is necessary to deter like-minded individuals who might be similarly inclined to inspire others to support violent jihad and fight with terrorist groups like al Qaeda. A life sentence also is likely to deter others who are exposed to hateful extremist teaching from purported “spiritual leaders”—the next generation of people like Ujaama, Abbasi, Kassir, and Aswat—from being persuaded to engage in acts of terrorism at the urging of people like Abu Hamza or on their own initiative. Simply put, it is essential that those who might turn to terrorism know a simple fact: If they conspire to train and fight with terrorists, and if they support al Qaeda’s call to murder Americans, no matter where they do it, they will be caught, prosecuted, and then imprisoned for life.

For all these reasons, society’s interest in effective deterrence calls for total and lifelong incapacitation.

D. A Sentence of Life Imprisonment is Appropriate to Protect the Public from Further Crimes of Abu Hamza

For many of the same reasons, a sentence of life imprisonment in this case is necessary “to protect the public from further crimes of the defendant.” *See* 18 U.S.C. § 3553(a)(2)(C). The defendant’s ability to commit these offenses was never predicated on physical health. Rather, the defendant was able to dispatch men around the globe from the comforts of his home and mosque in the United Kingdom and even while laboring under many of the same physical limitations he has today. Nor is the defendant’s ability to spur action diminished by time. His prosecutions by British and American authorities arguably have elevated his status among those inclined to follow his message. In short, the defendant’s ability to commit terrorist offenses has,

if anything, increased since the time period of his offense conduct. Moreover, the defendant's inclination to commit such offenses has not been diminished, as demonstrated by his failure to express genuine remorse for any of his crimes. Abu Hamza has no regard for the lives of non-Muslims, and he believes that his actions supporting terrorism and murder are justified by religion. There is no reason to expect his views to change. A sentence of life imprisonment is therefore necessary to protect the public from additional crimes that the defendant is no doubt willing and able to commit.

E. The History and Characteristics of this Defendant Also Support a Sentence of Life Imprisonment

A review of the history and characteristics of this defendant also reflect that a sentence of life imprisonment is appropriate. Abu Hamza was a brash criminal, openly urging others to engage in acts of murder. For many years, Abu Hamza used his oratory gifts for evil, distorting religion to persuade young men to engage in acts of terror.

Indeed, the defendant's British conviction goes far in reflecting the nature of his character. Abu Hamza was found guilty in February 2006 for conduct that included making public speeches at the Finsbury Park Mosque between 1997 and 2000, in which he encouraged others to murder those who did not believe in the Islamic faith and stirred up racial hatred. (PSR ¶ 95). As the British judge aptly observed during Abu Hamza's sentencing: "You helped to create an atmosphere in which to kill has become regarded by some as not only a legitimate course but as a moral and religious duty in pursuit of perceived injustice." (PSR ¶ 96). The judge further observed that Abu Hamza is "a person whose views and whose manner of expression of his views created a real danger to the lives of innocent people in different parts of the world." (*Id.*).

Abu Hamza also has long held ties to prominent terrorist leaders. For instance, while in the United Kingdom, he agreed to serve as a spokesperson for Abu Hassan and his terrorist group, the Islamic Army of Aden. (Tr. at 3246). Abu Hamza was associated with terrorist leaders in Afghanistan, like Abu Khabab and Ibn Sheikh al Liby. (Tr. at 2147, 2149). Abu Khabab, an expert in manufacturing explosives, ran a camp in Afghanistan that specialized in training men in nonconventional warfare, such as chemical, biological, and radiological weapons, and in sophisticated explosives. (Tr. at 1203, 1593, 2147). Ibn Sheikh al Liby ran the Khalden camp in Afghanistan where al Qaeda operatives were trained, was described by Abu Hamza as a “front-line commander,” and fought as the leader of al Qaeda forces during the Battle of Tora Bora with U.S. military personnel in November 2001. (Tr. at 1200-02, 1948-49, 2584). Abu Hamza also was close with Wakil Ahmad Mutawakkil, who was the Taliban’s foreign minister and was responsible for organizing relationships between the Taliban and al Qaeda and foreign parties who sought to work with the Taliban. (Tr. at 1214, 2143-44).

Abu Hamza’s character was further displayed by his unapologetic praise of Bin Laden and his terrorist objectives. Abu Hamza called Bin Laden “a reformer,” “a victim from the American policies,” “a good-hearted person,” “a very great man,” and “a hero” (GX 101), described Bin Laden as “an example for all of the mujahideen” (GX 110), claimed that all Muslims were “happy” with the terrorist attacks of September 11, 2001 (GX 113), and announced his agreement with the bombing of the *USS Cole* (GX 113, 219) and in general with suicide bombings “if it is the only way to hurt the enemies of Islam” (GX 131). In fact, even when testifying, Abu Hamza continued to express his admiration and love for Bin Laden: “He’s a very famous man, people love him, and including, myself.” (Tr. at 3203).

Abu Hamza's deplorable character was further reinforced when he sat down with Mary Quin at the Finsbury Park Mosque. When he spoke face-to-face with a woman who was almost killed as a result of the hostage-taking, Abu Hamza never once offered a hint of remorse. Quite the opposite, Abu Hamza callously told Ms. Quin that "they snatched you to exchange you," and that the hostage-taking was "a good thing" under Islam. (GX 219). Abu Hamza even went so far as to suggest that the hostage-taking was Ms. Quin's own fault because "we [had] been giving warnings, "Don't come, don't come." (Id.).

Abu Hamza's lack of hesitance to lie repeatedly while under oath at trial also speaks volumes as to his character. Over the several days that Abu Hamza was on the witness stand, he lied over and over again, and made claims that defied common sense. Indeed, his direct examination began with a litany of lies about his participation in the charged offenses:

Q. Did you participate in a kidnapping in Yemen in December of 1998?

A. Never.

Q. Did you know about any such kidnapping in advance?

A. Never.

Q. Did you send anyone to the United States and Bly, Oregon, in particular to have a training camp for jihad?

A. Never.

Q. Did you ever send Feroz Abbasi to Afghanistan to engage in jihad?

A. Never.

Q. Or jihad training?

A. Never.

Q. Did you ever send Feroz Abbasi to give material support to Al Qaeda?

A. Never.

Q. Did you ever send Feroz Abbasi to give material support to terrorists?

A. Never.

Q. Did you provide assistance to the Taliban after July 4, 1999, in the form of funds, goods, or services for the benefit of the Taliban?

A. Never.

Q. Did you ever provide a computer lab for the benefit of the Taliban?

A. Taliban, no.

Q. Did you ever provide funds for the benefit of the Taliban?

A. No.

Q. Did you ever provide Feroz Abbasi for the benefit of the Taliban?

A. Never.

Q. Did you ever conspire, agree illegally, with anyone to do any of what we just discussed?

A. Never.

Q. Did you ever attempt to do any of those things?

A. Never.

Q. Did you ever aid and abet anyone else committing those offenses?

A. Never, as far as I know.

(Tr. at 2975-77). The jury's guilty verdict on all eleven counts of the Indictment leaves no doubt that the jury found this testimony to be entirely false.

Abu Hamza's lies that followed during his testimony were rampant. For instance, while Abu Hamza admitted at trial that he created the SOS (Tr. at 3111) and previously had announced to the world that he was the head of the SOS (GX 228), he conveniently tried to distance himself

from the SOS's publication of Bin Laden's declaration of war against the United States, insisting that he never reviewed that posting:

- Q. We've seen 330B the declaration of war, Bin Laden's declaration of war then a communique from SOS. Where did that originate? Whose work is that?
- A. I'm too busy to watch the English side. Sometimes people make complain and then address the people who work, like this article which he's talking about Imam Amin, somebody complained to me about it, they said this article is under the title "Jihadi in America."
- Q. But the communique about the declaration of war?
- A. Yes. Declaration of war you will not find is he wrote in Arabic.
- Q. He, being?
- A. Bin Laden. Sheik Bin Laden, he wrote it in Arabic. So if there's anything about it, it should be first in Arabic then the translation. You will find only it's in English and there is no Arabic for it.
- Q. So did you write that communique, the English communique that went on the website?
- A. No.

THE COURT: Did you ever read the Arabic version of the Bin Laden communique?

THE WITNESS: No.

THE COURT: You never read it?

THE WITNESS: I never read it. I read the English one, I don't know, because somebody sponsored the English version and he made hundreds of thousands of it in England and distribute it. It become like people, you want ten, have ten, it becomes some decoration.

THE COURT: Did anybody ever tell you that the English version was an inaccurate translation of the Arabic version?

THE WITNESS: No. I didn't examine it. It was just like a piece of decoration of the website and I could be negligent in that of course because of Supporters of Shariah and it carries my name and some articles in support of Shariah in English which I do participate, like the

newsletter, I'm involved in the newsletter, but the other stuff, we even had a disclaimer after Mr. Ujaama left about regarding the articles, contribution, we are not responsible, and about the money, anybody wants to pay money we not, we don't collect money. If you want to have Supporters of Shariah, spend it in your environment and that's it.

(Tr. at 3204-06).

Abu Hamza lied about essentially every aspect of his offense conduct. He falsely testified about the October 25, 1999 fax (GX 315) that Ujaama sent him about the Bly, Oregon training camp, claiming that he did not read the entire fax, threw it in the trash, and never thought about the training camp:

Q. So what was your reaction when you received the fax?

A. I just throw it away, throw away.

Q. Were you interested --

A. I read a couple of lines there and then it just, another hallucination.

Q. Were you interested in pursuing that training camp that Mr. Ujaama had proposed?

A. Just a funny joke. I was throwing it away.

Q. Were you interested in pursuing it?

A. Never.

Q. And what happened to that fax?

A. As I said, I throw it away. I took it, I put it in the rubbish bin and that's it.

Q. Did you ever send Mr. Kassir or Haroon Aswat to the United States to go to that training camp in Bly, Oregon?

A. Never, ever thought about that training camp or any. Once I threw it in the rubbish bin it completely disappeared from my mind.

(Tr. 3305-06). But this testimony that Abu Hamza never thought about the training camp and never sent Kassir and Aswat to the United States was belied not just by the testimony of several witnesses and common sense, but also by the lines in the fax that referred to a prior conversation in which Abu Hamza and Ujaama discussed the property for the training camp (“[t]he land that we spoke of is about 360 acres and looks just like Afghanistan” (GX 315)) and that specifically mentioned Abu Hamza’s commitment to sending two men to Ujaama in November 1999 (“[w]e are expecting the two brothers that we discussed to come in November” (*Id.*)). In fact, Abu Hamza insisted on cross-examination that he never even spoke with Ujaama about Kassir and Aswat traveling to the United States (Tr. at 3551), notwithstanding the explicit reference in the October 25, 1999 fax to “the two brothers we discussed to come in November” (GX 315).⁹ The fax’s reference to Abu Hamza’s prior discussion with Ujaama about sending two men to the United States (*i.e.*, Kassir and Aswat) also stood in direct contradiction with Abu Hamza’s testimony at trial that he recalled that Aswat mentioned traveling to the United States with Kassir *after* he received the fax, and that Abu Hamza urged Aswat not to travel with Kassir. (Tr. at 3307).

⁹ Abu Hamza testified on cross-examination as follows:

Q. Isn’t it true that you spoke with James Ujaama about Oussama Kassir and Haroon Aswat traveling to the United States before you even received this fax from James Ujaama?

A. It’s never true.

MR. CRONAN: Ms. Quinones, can you please highlight the first sentence of the middle paragraph on the right side of the page.

Q. “We are expecting the two brothers we discussed to come in November.” Do you see that?

A. Yeah, I see that.

Q. And this was a fax that James Ujaama sent you in October 1999, correct?

A. Yes.

(Tr. at 3551).

Abu Hamza also lied when he claimed not to have sent Abbasi to Ibn Sheikh al Liby in Afghanistan, and even made the patently absurd claim that Ibn Sheikh al Liby did not want more trainees attending his training camp:

Q. Somebody we talked about whose name didn't come up is Ibn Sheik. Have you ever sent Mr. Abbasi to train with Ibn Sheik?

A. No, especially not Ibn Sheik. Because he informed me in 1996 that the problem we have is he doesn't want people to come and he's inundated by people coming and he doesn't want people to come, because for one very simple reason he does not want to either close his place, number one, or to be forced to join Sheik bin Laden, because if you remember at that time bin Laden was in Sudan and Taliban just came into power and he just came, they invited him, he proposed to go back to Afghanistan and he lost most of his supporters in that travel in and back, so he was trying to gather again momentum.

(Tr. at 3364). Abu Hamza also made the equally unbelievable claim that Abbasi—someone who lived at the Finsbury Park Mosque and was like a son to Abu Hamza (Tr. at 3470; *see also* Tr. at 2140 (Ujaama testifying that Abbasi attended religious services at the Finsbury Park Mosque and was living on and off at the mosque))—simply left the mosque one day for Afghanistan without telling Abu Hamza:

Q. In late 2000 when Ferroz Abbasi left the Finsbury Park Mosque --

A. Late 2000? Yes, year 2000, yes.

Q. Is it your testimony that he didn't even tell you that he was leaving?

A. He never told me. He was upset from me and he left. I didn't know where he go. Did he go to continue his study? Did he go to marry? Did he go back home? I never knew.

(Tr. at 3472). This testimony not only was contrary to Ujaama's testimony, but it also defied common sense. A young man, who was living at the Finsbury Park and studying religion under Abu Hamza, would not have left on his own for Afghanistan without first telling—and receiving approval from—his spiritual mentor.

But perhaps the most incredible lie that Abu Hamza told was his claim that, during the Yemen hostage-taking, he was actually trying to peacefully resolve the situation:

Q. And your testimony today, as you stand trial for that Yemen kidnapping, is that you wanted to act as a peacemaker during the hostage taking?

A. Of course. . . .

(Tr. at 3465). If not for the tragedy that occurred and the innocent lives that were lost, this claim would be laughable. For someone who repeatedly declared that a non-Muslim who enters a Muslim land can be captured, sold in the market, or killed (GX 104, 130), and who was in contact with the leader of the hostage-taking before and during the attack, to claim that he was actually trying to be a peacekeeper and help the hostages, is simply preposterous.

F. Imposing a Guidelines Sentence of Life Imprisonment Would Advance the Goals of Section 3553(a)

Pursuant to Section 3553(a), the Court is to consider “the kinds of sentence and the sentencing range established [in the Sentencing Guidelines],” as well as “any pertinent policy statement [issued by the Sentencing Commission].” 18 U.S.C. § 3553(a)(4), (5). These statutory factors weigh especially heavy in favor of a Guidelines sentence of life imprisonment.

The Probation Office declined to recommend whether obstruction of justice enhancements, pursuant to U.S.S.G. § 3C1.1, should be imposed in light of Abu Hamza’s testimony, because “[t]he Court is in the best position” to make that determination. (PSR ¶ 55). In light of the defendant’s repeated lies while testifying as to central issues concerning his guilt, *see supra* Part III.D, the Government respectfully requests that the Court find, by a preponderance of the evidence, that Abu Hamza “1) willfully 2) and materially 3) committed

perjury, which is (a) the intentional (b) giving of false testimony (c) as to a material matter.”

United States v. Zagari, 111 F.3d 307, 329 (2d Cir.1997).¹⁰

Otherwise, the Government agrees with the Probation Office’s calculation of the advisory Guidelines range in this case. That calculation is as follows:

¹⁰ The Guidelines authorize a two level upward adjustment:

[i]f . . . the defendant . . . attempted to obstruct or impede[] the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, and . . . the obstructive conduct related to . . . the defendant’s offense of conviction and any relevant conduct

U.S.S.G. § 3C1.1. As the Supreme Court has explained, an enhancement for obstruction of justice is appropriate when a defendant “gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake or faulty memory.” *United States v. Dunnigan*, 507 U.S. 87, 94 (1993). Thus, the Second Circuit held in *Zagari*, that before applying an obstruction enhancement based on perjury, the sentencing court must find by a preponderance of the evidence “that the defendant 1) willfully 2) and materially 3) committed perjury, which is (a) the intentional (b) giving of false testimony (c) as to a material matter.” *Zagari*, 111 F.3d at 329; *cf. United States v. Garcia*, 413 F.3d 201, 220 n.15 (2d Cir. 2005) (“Judicial authority to find facts relevant to sentencing by a preponderance of the evidence survives *Booker*.”). In other words, “[b]efore imposing the adjustment, the district court must find that the defendant ‘consciously act[ed] with the purpose of obstructing justice.’” *United States v. Lincecum*, 220 F.3d 77, 80 (2d Cir. 2000) (quoting *United States v. Case*, 180 F.3d 464, 467 (2d Cir.1999)); *see also United States v. Agudelo*, 414 F.3d 345 (2d Cir. 2005) (denying the obstruction enhancement where there was no obvious lie); U.S.S.G. § 3C1.1, comment. (n.2) (“In applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.”).

Here, there is little room to describe Abu Hamza’s testimony as anything but intentionally materially false and perjurious, made with the specific intent to mislead the jury and the Court, and purposefully obstructive of justice. *See supra* Part III.E. Abu Hamza therefore “consciously act[ed] with the purpose of obstructing justice.” *Lincecum*, 220 F.3d at 80 (quoting *Case*, 180 F.3d at 467). The evidence militates for the Court to “make independent findings necessary to establish a willful” attempt by the defendant to obstruct justice. *Dunnigan*, 507 U.S. at 95. Because the “[C]ourt need do nothing more to satisfy *Dunnigan* than point to the obvious lie and find that the defendant knowingly made a false statement on a material matter,” *United States v. Williams*, 79 F.3d 334, 337-38 (2d Cir. 1996), and, as described above, Abu Hamza uttered a litany of false statements on material matters during his testimony—contradicted by the facts, by logic, by common sense, and, most damningly, by the jury’s verdict—this Court can, and should, find that Abu Hamza obstructed justice and therefore apply a two-point enhancement to the offense level of each Group pursuant to U.S.S.G. § 3C1.1.

- Group 1: Counts One and Two.** Counts One and Two, which concern the December 1998 hostage-taking in Yemen, are treated as one Group pursuant to U.S.S.G. § 3D1.2(a), because each count involved substantially the same harm, in that they involved the same victims and same act or transaction. Pursuant to U.S.S.G. § 2A4.1(c)(1), the base offense level for both Counts One and Two¹¹ is determined by U.S.S.G. § 2A1.1, because a victim was killed under circumstances that would constitute murder. Accordingly, the base offense level is 43. *See* U.S.S.G. § 2A1.1(a). Because this offense was a felony involved in, or intended to promote, a federal crime of terrorism, the offense level is increased by 12, pursuant to U.S.S.G. § 3A1.4 (the “terrorism enhancement”). Four more levels are added because the defendant was an organizer or leader of a criminal activity involving five or more participants, pursuant to U.S.S.G. § 3B1.1(a) (the “leadership enhancement”). Another two levels are added because Abu Hamza willfully attempted to obstruct or impede the administration of justice by testifying falsely at trial, pursuant to U.S.S.G. § 3C1.1 (the “obstruction enhancement”). Accordingly, the offense level for Group 1 (Counts One and Two) is 61.
- Group 2: Counts Three, Four, Five, and Six.** Counts Three, Four, Five, and Six concern Abu Hamza’s material support to al Qaeda and terrorists by working to establish a terrorist training camp in Bly, Oregon, and also are treated as one Group pursuant to U.S.S.G. § 3D1.2. For Counts Three and Four (material support to terrorists), the operative Guideline is U.S.S.G. § 2X2.1, which provides that the offense level is the same as the underlying offense that the defendant materially supported. *See* U.S.S.G. § 2X2.1, comment (n.1). For these counts, the defendant provided, and conspired to provide, material support to a conspiracy to kill, kidnap, maim, and injure persons, and to damage and destroy property in a foreign country, in violation of 18 U.S.C. § 956. Accordingly, the base offense level for Counts Three and Four is 33, pursuant to U.S.S.G. § 2A1.5. Because the 12-level terrorism enhancement, the four-level leadership enhancement, and the two-level obstruction enhancement apply, the resulting offense level for Counts Three and Four is 51. For Counts Five and Six (material support to al Qaeda), the operative Guideline is U.S.S.G. § 2M5.3, which provides for a base offense level of 26. After applying the 12-level terrorism enhancement, the four-level leadership enhancement, and the two-level obstruction enhancement, the resulting offense level for Counts Five and Six is 44. Accordingly, the offense level for Group 2 (Counts Three, Four, Five, and Six) is 51.
- Group 3: Counts Seven, Eight, Nine, and Ten.** Counts Seven, Eight, Nine, and Ten also involve the defendant’s material support to al Qaeda and terrorists, but primarily concern his efforts to send Abbasi to al Qaeda leaders in Afghanistan. For Counts Seven and Eight (material support to terrorists), the base offense level is 33 because the material support was to a violation of 18 U.S.C. § 956. *See* U.S.S.G. §§ 2X2.1, 2A1.5. Application of the 12-level terrorism enhancement, the four-level

¹¹ Pursuant to U.S.S.G. § 2X1.1(a), the offense level for a conspiracy (*i.e.*, Count One) is the same as the offense level for the substantive offense (*i.e.*, Count Two).

leadership enhancement, and the two-level obstruction enhancement results in an offense level of 51 for Counts Seven and Eight. For Counts Nine and Ten (material support to al Qaeda), the base offense level is 26. *See id.* § 2M5.3. The 12-level terrorism enhancement, the four-level leadership enhancement, and the two-level obstruction enhancement yield an offense level of 44 for Counts Nine and Ten. Thus, the offense level for Group 3 (Counts Seven, Eight, Nine, and Ten) is 51.

- **Group 4: Count Eleven.** Count Eleven is the defendant's participation in a conspiracy to provide goods and services to the Taliban. The base offense level for Count Eleven is 26. *See* U.S.S.G. §§ 2X1.1, 2M5.3. In addition, because the offense involved the provision of funds with the intent, knowledge, or reason to believe that they would be used to commit, or assist in the commission of, a violent act, two levels are added pursuant to U.S.S.G. § 2M5.3(b)(1)(E). Application of the 12-level terrorism enhancement, the four-level leadership enhancement, and the two-level obstruction enhancement results in an offense level of 46 for Group 4 (Count Eleven).
- **Grouping Analysis.** Accordingly, Group 1 has an offense level of 61, Group 2 has an offense level of 51, Group 3 has an offense level of 51, and Group 4 has an offense level of 44. Because Group 1 is more than 9 levels higher than the next less serious Group, the resulting combined offense level remains 61. *See* U.S.S.G. § 3D1.4. Because the defendant went to trial, and indeed testified in a manner that reflected his failure to accept responsibility, no reduction is warranted for acceptance of responsibility.

According, the final offense level is 61. The Application Notes to U.S.S.G. § 5A provides that, in the "rare cases" where the offense level is more than 43, the offense level "is to be treated as an offense level of 43." U.S.S.G. § 5A, comment (n.2).

The defendant's prior conviction in the United Kingdom, which resulted in a sentence of seven years' imprisonment in February 2006, constitutes three Criminal History Points. However, the applicable Criminal History Category is VI, in light of the terrorism enhancement, because the offense involved, or was intended to promote, a federal crime of terrorism. *See* U.S.S.G. § 3A1.4(b). Accordingly, at offense level 43 and Criminal History Category VI, the Guidelines range is life imprisonment, *id.* § 5A, and the recommended fine is \$25,000 to \$250,000, *id.* § 5E1.2(c)(3).

This Guidelines sentence of life imprisonment is the appropriate sentence in this case. As the Second Circuit has explained, “the guidelines cannot be called just another factor in the statutory list, 18 U.S.C. § 3553(a), because they are the only integration of the multiple factors.” *United States v. Rattoballi*, 452 F.3d 127, 131 (2d Cir. 2006) (citations and internal quotation marks omitted); *cf. United States v. Fernandez*, 443 F.3d 19, 28 (2d Cir. 2006) (stating that “the Guidelines range should serve as ‘a benchmark or a point of reference or departure’ for the review of sentences”) (citations omitted) (quoting *United States v. Rubenstein*, 403 F.3d 93, 98-99 (2d Cir. 2005)). As the Supreme Court put it in *Gall*, “to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” 552 U.S. at 50. Indeed, it is precisely because the Guidelines function as a national “benchmark” that a Guidelines sentence here will advance another Section 3553(a) goal: “the need to avoid unwarranted sentence disparities.” 18 U.S.C. § 3553(a)(6).

G. The Court Should Defer to the Bureau of Prisons’ Procedures for Designating Abu Hamza to an Appropriate Facility

Defense counsel urges the Court to order the Bureau of Prisons (“BOP”) to designate the defendant to a medical facility and to institute specific conditions of confinement. This request should be denied, and the BOP should be afforded its broad discretion in evaluating this inmate—including the appropriate security level and his medical condition—and determining the proper designation for him.

It is well established that, while the BOP is required to consider, among other things, statements by the sentencing Court when considering the appropriate designation, *see* 18 U.S.C. § 3621(b)(4), the Court lacks authority to order the BOP to designate a defendant to a specific facility, *see* 18 U.S.C. § 3621(b); *United States v. Williams*, 65 F.3d 301, 307 (2d Cir. 1995) (“A sentencing court has no authority to order that a convicted defendant be confined in a particular

facility, much less placed in a particular treatment program; those decisions are within the sole discretion of the Bureau of Prisons.”).

Indeed, the Supreme Court has repeatedly recognized that courts are “ill equipped to deal with the increasingly urgent problems of prison administration and reform.” *Turner v. Safley*, 482 U.S. 78, 84 (1987) (quoting *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)). As the Supreme Court observed in *Turner*:

Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.

Id. at 84-85; *see also Sandin v. Conner*, 515 U.S. 472, 482-83 (1995) (“[F]ederal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment. Such flexibility is especially warranted in the fine-tuning of the ordinary incidents of prison life” (internal citations omitted)); *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (“[T]he problems that arise in the day-to-day operation of a corrections facility are not susceptible to easy solutions. Prison administration therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”).

Moreover, as set forth in the BOP’s submission, which is attached as Exhibit A, the BOP has adequate procedures in place to ensure that the defendant receives necessary medical accommodations. The defendant will be designated based on a classification determination that considers the most appropriate security level institution and also takes into consideration BOP’s mission to protect society. *See* Exh. A at 1. In light of Abu Hamza’s medical conditions, he will be evaluated at a medical facility, which will include an assessment by a prosthetic specialist. *Id.*

After that medical evaluation is conducted, the BOP will make a designation determination based both on the defendant's medical needs and any security concerns. *Id.* In making its designation, the BOP will consider the defendant's ability to manage daily activities and the level of medical care and assistance he requires. *Id.* In the event that the BOP determines that the defendant should be incarcerated at the United States Penitentiary, Administrative Maximum ("ADX"), located in Florence, Colorado, the defendant would be afforded additional opportunities to challenge such a determination. *Id.* at 2.

If at the conclusion of this review process, the BOP ultimately determines that the defendant should be housed at the ADX, Abu Hamza will be housed in an area that can accommodate his medical needs and, as made clear in the BOP's submission, the ADX is equipped to address the defendant's medical concerns. Exh. A at 2-3. As explained in the BOP's letter:

If it is determined that the ADX is the most appropriate housing for inmate Mustafa, he would be housed in an area that can accommodate his medical needs. The ADX has a variety of housing assignments available in order to accommodate various levels of health care needs, including handicap accessible cells and those designated for serious medical needs which are located within the health services department at the ADX. Additionally, health care personnel make rounds in each housing unit on a daily basis at the ADX and any additional needs, such as wound care, are attended to on a daily basis or as medically indicated. Currently there is 54 staff in the health services department at FCC Florence, consisting of 3 physicians, 5 physician assistants, 4 nurses, and numerous other health care providers. The ADX also provides on sight [sic] dental, optometry and MRI treatment. Additionally, the ADX has its own laboratory and pharmacy to provide services to inmates. If the type of care need cannot be provided on sight, the ADX has contracted with numerous community specialists who can evaluate and treat inmates with major medical concerns in a local hospital. The Bureau also uses telemedicine when and if needed. Finally, if the type or level of care required by an inmate cannot be provided for the inmate while at the ADX, the Bureau can and will transfer said inmate to one of its medical care facilities.

Id. Accordingly, the BOP is well equipped to make a determination about where the defendant should be imprisoned, and the defendant's arguments about conditions of confinement should have no bearing on the sentence imposed by the Court.¹²

In view of the BOP's ability to make the appropriate designation, the defendant's arguments about his need for certain conditions of confinement are merely distractions from the relevant issues at sentencing. As set forth above, the seriousness of the offense, the need for deterrence, and the need to protect the public from the defendant all counsel heavily in favor of a sentence of life imprisonment. To reduce the defendant's sentence in a case of this nature due to the defendant's health is not appropriate. *See Stewart*, 590 F.3d at 183 (Walker, J., concurring) ("Advancing age and treatable medical conditions are not normally a ticket to overwhelming leniency, and this case is no different from the norm in that respect.").¹³

* * *

A Guidelines sentence of life imprisonment is the only appropriate sentence in this case. Abu Hamza waged a global war of jihad against those that he considered infidels. He sent men to American soil to learn how to fight and kill in support of that war. He sent Feroz Abbasi to Afghanistan to train and fight with al Qaeda in support of that war. He facilitated the kidnapping of innocent tourists in Yemen in support of that war. A sentence of life imprisonment would

¹² To the extent the defendant's submission relies on what he expects to be the conditions of his confinement, these arguments are entirely speculative, premature, and inappropriate for the Court's consideration at sentencing. If, in the future, there is any meritorious basis for a challenge to his confinement, there are administrative and legal avenues for an inmate to pursue such a challenge.

¹³ The defendant at one point suggests that his designation to the ADX would violate assurances given by the United States Government during the course of the extradition proceedings. *See* Deft. Sent. Mem. at 29-30. However, the Government never provided an assurance to the United Kingdom that the defendant would not be designated to the ADX. Indeed, the defendant's own citations to the record before the European Court of Human Rights ("ECHR") make clear that the ECHR acknowledged the possibility that the defendant might be detained at the ADX for a relatively short period. *See id.* at 31, 33, 34.

reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and would be sufficient, but not greater than necessary to serve the purposes of sentencing.¹⁴

IV. CONCLUSION

For the foregoing reasons, the Government respectfully submits that the defendant should be sentenced to a Guidelines sentence of life imprisonment.

Dated: New York, New York
January 2, 2015

Respectfully submitted,

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¹⁴ In light of the nature of the crimes here and the sentence that should be imposed, educational and vocational training of the defendant does not pose a particular concern in this case.

AFFIRMATION OF SERVICE

JOHN P. CRONAN, pursuant to 28 U.S.C. § 1746, hereby declares under the penalty of perjury:

I am an Assistant United States Attorney in the Office of the United States Attorney for the Southern District of New York. On January 2, 2015, I caused copies of the Government's Sentencing Memorandum to be delivered by ECF, electronic mail, and first class mail to the following counsel for defendant Mustafa Kamel Mustafa, a/k/a "Abu Hamza":

Michael Keith Bachrach, Esq.
276 Fifth Avenue
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29 Broadway, Suite 1412
New York, NY 10006
Email: llewis@joshuadratel.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: New York, New York
January 2, 2015

/s/ John P. Cronan
John P. Cronan
Assistant United States Attorney



Federal Bureau of Prisons

Washington, DC 20534

January 2, 2015

Edward Kim
Assistant United States Attorney
U.S. Attorney's Office
Southern District of New York
One St. Andrews Plaza
New York, NY 10007

Re: Mostafa Kamel Mostafa, a/k/a Abu Hamza al-Masri, register number 67495-054

Dear Mr. Kim:

This is in response to your request to the Bureau of Prisons as to designation plans for the above-referenced inmate. As previously mentioned, although we cannot pre-designate an inmate, we can advise to our plans for this inmate specifically.

Due to his medical concerns, [REDACTED], he will be given a full medical evaluation at a medical center and assessed by a prosthetic specialist. After a medical determination regarding the most appropriate placement for him, considering the level of medical care and security controls needed, he will be designated. Whether he can manage his activities of daily living and the amount and intensity of medical care and assistance he needs will be important considerations in the designation process.

In general, the designation decision is a classification one – which is actually a behavioral prediction – made utilizing the Bureau's classification system. The Bureau's classification system provides basic objective criteria and individual factors for assessing the security needs of each individual inmate. The relevant Program Statement is 5100.08, Inmate Security Designation and Custody Classification. It "provides policy and procedure regarding the Bureau of Prisons' inmate classification system. The classification of inmates is necessary to place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau's mission to protect society. The Bureau's classification, designation and re-designation procedures are consistent with the statutory authority contained in 18 U.S.C. § 3621(b). All classification, designation and re-designation decisions are made without favoritism given to an inmate's social or economic status." P5100.08, page 1, section 1.

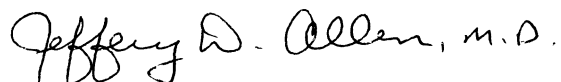
If the ADX is a consideration for placement, there are additional multi-level reviews prior to placement there. Specifically, Bureau staff initiates the referral process in accordance with Bureau Program Statement 51008.08, Inmate Security Designation and Custody Classification, and submits the designation packet for review. Once the Designation and Sentence Computation Center prepares the

designation packet, it is sent to the Warden of the designated institution for review. If the Warden concurs with the ADX referral, the packet is signed and submitted to the Regional Director in the region where the inmate is located. If the Regional Director concurs with the referral, the packet is signed and submitted to the Chief of the Designation and Sentence Computation Center. The Chief of the Designation and Sentence Computation Center (DSCC) will direct DSCC staff to conduct an initial assessment of the referral packet and the inmate's need for placement at the ADX. If the Chief of the DSCC determines that placement at the ADX is not appropriate, the referral packet is forwarded to the Assistant Director of Correctional Programs, who will notify the referring Warden that placement is not appropriate. If it is determined that consideration for placement at the ADX is appropriate, the Chief of the DSCC forwards the designation packet to the National Discipline Hearing Administrator, who in turn will assign a Hearing Administrator to conduct a hearing on the appropriateness of the inmate's placement at the ADX. At this time, the Chief of the DSCC will also simultaneously forward the packet to the Psychology Services Administrator in Central Office for review. The findings of the psychological review are reported to the Chief of the DSCC.

The hearing to determine the appropriateness of placement at the ADX is conducted by a Hearing Administrator appointed by the National Discipline Hearing Administrator. The Hearing Administrator is a Bureau employee who has extensive correctional experience, including observing and evaluating inmate adjustment and the criteria for placement of inmates in different institutions. The Hearing Administrator prepares the Notice of Hearing on Referral for Transfer to the ADX (Notice). The Notice contains specific evidence which forms the basis for the referral, unless such information would jeopardize the safety and security of the institution or endanger staff or others. Once the Notice is completed, it is delivered to the inmate and a time and date for the hearing is set. The Notice must be delivered to the inmate at least 24 hours prior to the commencement of the hearing. The inmate has the opportunity to be present throughout the hearing, except where institutional security and good order are jeopardized. The inmate may waive his right to appear and may also submit documentary evidence and make an oral statement. At the conclusion of the hearing, the Hearing Administrator prepares a written recommendation on whether placement of the inmate at the ADX is appropriate. A copy of this recommendation is provided to the inmate and is forwarded to the National Discipline Hearing Administrator, who reviews the recommendation and forwards the recommendation to the Assistant Director of Correctional Programs within 15 days of receiving the recommendation. The Assistant Director of Correctional Programs or their designee reviews the recommendation and has up to 30 days to accept or reject the recommendation for placement at the ADX. Once the Assistant Director of Correctional Programs reaches a decision, that decision is communicated to the inmate, who is advised of his right to appeal the decision through the Administrative Remedy Program.

If it is determined that the ADX is the most appropriate housing for inmate Mostafa, he would be housed in an area that can accommodate his medical needs. The ADX has a variety of housing assignments available in order to accommodate various levels of health care needs, including handicap accessible cells and those designated for serious medical needs which are located within the health services department at the ADX. Additionally, health care personnel make rounds in each housing unit on a daily basis at the ADX and any additional needs, such as wound care, are attended to on a daily basis or as medically indicated. Currently there is 54 staff in the health services department at FCC Florence, consisting of 3 physicians, 5 physician assistants, 4 nurses, and numerous other health care providers. The ADX also provides on sight dental, optometry and MRI treatment. Additionally, the ADX has its own laboratory and pharmacy to provide services to inmates. If the type of care need cannot be provided on sight, the ADX has contracted with numerous community specialists who can evaluate and treat inmates with major medical concerns in a local hospital. The Bureau also uses telemedicine when

and if needed. Finally, if the type or level of care required by an inmate cannot be provided for the inmate while at the ADX, the Bureau can and will transfer said inmate to one of its medical care facilities.

Handwritten signature of Jeffrey D. Allen, M.D. in black ink.

Jeffery D. Allen, M.D.
Chief of Health Programs
Federal Bureau of Prisons

/s/

Dominique Raia
Senior Counsel
Federal Bureau of Prisons