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 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT
 18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 19 SOUTHERN DIVISION

20 UNITED STATES OF AMERICA,
 21 Plaintiff,
 22 v.
 23 NADER SALEM ELHUZAYEL and
 MUHANAD ELFATIH M. A. BADAWI,
 24 Defendants.

No. SA CR 15-00060(A)-DOC

GOVERNMENT'S SENTENCING POSITION
RE: DEFENDANT MUHANAD ELFATIH M.
A. BADAWI

Hearing Date: October 17, 2016
 Hearing Time: 3:00 p.m.
 Location: Courtroom of the
 Hon. David O.
 Carter

27 Plaintiff United States of America, by and through its counsel
 28 of record, the United States Attorney for the Central District of

1 California and Assistant United States Attorneys Judith A. Heinz,
2 Deirdre Z. Eliot, and Julius J. Nam, hereby submits the attached
3 memorandum of points and authorities in support of the government's
4 sentencing position for defendant Muhanad Elfatih M. A. Badawi. The
5 government requests that the Court consider at sentencing the
6 attached memorandum of points and authorities, the presentence
7 investigation report, the files and records of this case including
8 the government's Rule 32(f) response to the PSR, the evidence
9 admitted at trial, and such further argument as this Court may
10 permit.

11 Dated: October 7, 2016

Respectfully submitted,

12 EILEEN M. DECKER
13 United States Attorney

14 PATRICK R. FITZGERALD
15 Assistant United States Attorney
16 Chief, National Security Division

17 /s/
18 JUDITH A. HEINZ
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26 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Muhanad Elfatih M. A. Badawi ("defendant Badawi" or "defendant") was convicted at trial of conspiring to provide, and aiding and abetting an attempt to provide, material support or resources to a foreign terrorist organization, specifically, the Islamic State of Iraq and the Levant ("ISIL"), aka ISIS, the Islamic State. The "material support" defendant Badawi conspired and attempted to provide to ISIL was a fighter -- codefendant Elhuzayel. In addition, defendant Badawi was convicted of one count of financial aid fraud, that defendant Badawi committed to facilitate the provision of codefendant Elhuzayel as a fighter to ISIL.

On September 26, 2016, this Court sentenced codefendant Elhuzayel to a term of imprisonment of 360 months and a life term of supervised release, as well as special assessments. (Dckt. No. 224). Defendant Badawi was, and is, equally culpable as codefendant Elhuzayel -- only his role differed. Defendant Badawi was a radicalizer, recruiter, and facilitator, and like codefendant Elhuzayel, defendant Badawi aspired to die a martyr fighting jihad for ISIL. Despite the attempts of others to dissuade him, defendant Badawi continued to promote the ISIL ideology and gather fighters for ISIL. In short, defendant Badawi's role as a radicalizer, recruiter, and facilitator makes him more dangerous than any single would-be fighter.

There are no mitigating factors that justify a lower sentence here. In sentencing codefendant Elhuzayel, this Court rejected downward variances based on youthful age, minimal criminal history, and a comparison to the Dandach case (SACR 14-109-JVS). The Court

1 should do so here as well. Defendant Badawi reminds the Court of his
2 health issues that arose during his pretrial detention, but he does
3 not suggest these warrant a lower sentence, nor do they.¹ And
4 contrary to the Recommendation Letter's suggestion, defendant
5 Badawi's immigrant status does not support a reduced sentence;
6 defendant Badawi thrived in the United States both before and after
7 he chose to provide fighters to ISIL.

8 Therefore, the government respectfully submits that the Court
9 should impose the same sentence on defendant Badawi as it imposed on
10 codefendant Elhuzayel -- a term of imprisonment of 360 months and a
11 life term of supervised release.

12 II. RELEVANT FACTS

13 The facts summarized below, derived from the evidence admitted
14 at trial and the presentence investigation report ("PSR"),
15 demonstrate that the low-end Guidelines sentence advocated by the
16 government is necessary to fulfill the purposes of sentences set
17 forth in 18 U.S.C. § 3553(a)(2).

18 A. Defendant Badawi Sought to Provide ISIL With Its Most 19 Needed Resource -- Fighters.

20 ISIL is "the most lethal terrorist organization in the world."
21 Exh. A, at 75; Exh. B, at 161 (William Braniff testimony).² But to
22 appreciate fully the gravity of defendant Badawi's conduct, it is
23 equally important to understand ISIL's critical need for fighters.
24

25 ¹ If defendant Badawi or the Court intends to rely on defendant
26 Badawi's health issues in the determination of his sentence, the
government requests the opportunity to address this further.

27 ² Attached hereto as Exhibits A and B are copies of transcripts
28 (Day 7, Volumes II and III, respectively) of the trial testimony of
expert witness William Braniff. The referenced page numbers are
those located at the bottom center of each exhibit page.

1 In late June 2014, ISIL held and controlled territory in Iraq and
2 Syria. It declared itself an Islamic caliphate and announced yet
3 another name for itself in a series of aliases -- "the Islamic
4 State." In July 2014, ISIL's leader, Abu Bakr al-Baghdadi, called on
5 all Muslims throughout the world to "stand up and rise," to "take up
6 arms," to become "soldiers of the Islamic State," and to "fight."
7 See Gov't Exh. 1006 (A Message to the Mujahidin and the Muslim Ummah
8 in the month of Ramadan); Exh. A, at 79-83. The purpose of al-
9 Baghdadi's call was clear. For ISIL to achieve its mission of the
10 establishment of a world-wide Islamic caliphate and the subjugation
11 of all people to Sharia law, the terrorist organization needed more
12 fighters to gain and hold its ever-expanding territory.³ See PSR
13 ¶ 9. Thus, of all the resources needed by ISIL to maintain and
14 expand its Islamic caliphate, fighters were, as this Court found,
15 "the most important and critical." (Dckt. No. 225, at 37).⁴

16 After Abu Bakr al-Baghdadi issued the call to arms in July 2014,
17 ISIL continued to expand its territory. It continued to gain ground
18 in Iraq and Syria.⁵ See Gov't Exh. 41 (map from Badawi's iPhone
19 showing land controlled in Syria and Iraq by ISIL on May 14, 2015).

21
22 ³ At trial, expert witness William Braniff testified that the
23 goals of ISIL include establishing a caliphate, expanding the
24 boundaries of that caliphate until the world is dominated by its
25 interpretation of Islam, and the imposition of Sharia law, as
26 practiced by ISIL, across the world. Exh. A, at 79, 89.

27 ⁴ Docket ("Dckt.") Number 225 is a transcript of the sentencing
28 hearing for codefendant Elhuzayel on September 26, 2016.

29 ⁵ See U.S. Dept. of State Publication, Country Reports on
30 Terrorism 2014 (June 2015), at 296, 355, accessed at
31 <http://www.state.gov/documents/organization/239631> ("2014 State Dept.
32 Country Reports"); Gov't Exh. 102 (copy of ISIL's publication, Dabiq,
33 found on defendant Elhuzayel's USB drive in his carry-on bag seized
34 at the airport), at 12-13, 16-17, 32-33.

1 ISIL expanded into Libya and the Egyptian Sinai, and gained
2 affiliates in Afghanistan-Pakistan, Algeria, Nigeria, the
3 Philippines, and Yemen.⁶ As the evidence at trial demonstrated
4 conclusively, defendants Badawi and Elhuzayel answered Abu Bakr al-
5 Baghdadi's call to provide soldiers to the Islamic State.

6 B. Defendant Badawi Conspired to Provide, and Attempted to
7 Provide, Fighters to ISIL

8 At trial, the government introduced a video, photographs,
9 internet communications, and recorded conversations in which
10 defendants Badawi and Elhuzayel expressed repeatedly, in their own
11 words and through their own actions, their agreement to fight for
12 ISIL, their aspiration for martyrdom, and their approval of and
13 desire to participate in ISIL's terrorist activities. In addition,
14 defendant Badawi worked to recruit several other young men in the
15 Orange County community to fight for ISIL. To do so, he used his
16 fluency in Arabic and his extensive knowledge of the Quran, other
17 Islamic writings, and the teachings of global jihadi clerics.
18 Defendant Badawi also used social media accounts to communicate with
19 ISIL supporters and operatives, and to disseminate pro-ISIL
20 information. On his iPhone, defendant Badawi carried numerous photos
21 of ISIL executions and a photo showing the ISIL flag flying over the
22 White House.

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27 ⁶ See 2014 State Dept. Country Reports, at 297; U.S. Dept. of
28 State Publication, Country Reports on Terrorism 2015 (June 2016), at
7, 79, 165-167, 175-178, 200-201, 229-230, 309-312, 362, 373-376,
accessed at <http://www.state.gov/documents/organization/258249>.

1 1. Defendant Badawi Responded Immediately to al-
2 Baghdadi's Call to Jihad and Began Recruiting Fighters

3 Abu Bakr al-Baghdadi issued his call to jihad in early July;
4 defendant Badawi answered almost immediately and began advocating to
5 others that they join him to fight for ISIL. PSR ¶ 10. On July 8,
6 2014, via his Facebook account, defendant Badawi argued to a young
7 man, NA,⁷ that together, they should join "al dawlah al Islamiyah"
8 (the Arabic name for ISIL), as follows:⁸

9 MB:⁹ Im [sic] going to Syria
10 I want to
11 help to fight
12 NA: I want to go to Gaza man . . .
13 MB: u down?
14 lets do this man
15 trust me we will be happy
16 we have to establish the state first in
17 Iraq and syria then we will go little by
18 little till we reach gaza
19 we can join al dawlah al islamiya¹⁰ in iraq
20 and Syria

21 Gov't Exh. 412; PSR ¶ 11.

22 On July 15, 2014, defendant Badawi, via his Facebook account,
23 urged another young man, ID,¹¹ "We should going [sic] Isis in Iraq and
24 Syria," "Check their youtube videos," "They're jihadist." Gov't Exh.
25 410; PSR ¶ 11.

26

27 ⁷ "NA" was one of several young men to whom defendant Badawi
28 advocated joining ISIL.

⁸ The spelling, punctuation, and grammar in the quoted
communications herein is as it appears in the original except where
indicated otherwise.

⁹ "MB" is an abbreviation for defendant Muhanad Badawi.

¹⁰ The English-language translation of the Arabic words "al
dawlah al islamiya" is Islamic State.

¹¹ "ID" was another one of several young men to whom defendant
Badawi advocated joining ISIL.

1 On July 23, 2014, defendant Badawi, via his Facebook account,
2 told NA, "I might join ISIS in the future man . . . *Inshallah* [God
3 willing].¹² The prophet said where there gonna be a lot of armies and
4 wars in Yemen Iraq and Syria he said join the Syrians." Gov't Exh.
5 411; PSR ¶ 11.

6 On August 21, 2014, defendant Badawi, via his Facebook account,
7 had the following exchange about ISIL with another young man, AI.¹³

8 MB: Wat [sic] u think of abubakr albaghdadi n aldawla

9 AI: ISIS?

10 MB: I guess

11 AI: Da3ish right?

12 MB: Yea

13 AI: . . . Killing Muslims in the name of religion

14 MB: What

15 No I want your opinion

16 I don't care what they say

17 AI: I'm 100% disagreeing with whatever they're doing from A-Z

18 MB: Ok

19 AI: Yup

20 MB: Have u seen albaghdadi first appearance

21 AI: Nope!

22 MB: [MB sends AI a link to al-Baghdadi's first appearance]

23 AI: I'm sorry bro I'm not gonna watch it

24 Gov't Exh. 421.

25 Although AI expressed his disinterest in ISIL on August 21,
26 2014, this did not stop defendant Badawi. On October 3, 2014,
27 defendant Badawi, via his Facebook account, promoted ISIL again to
28 AI, concluding with, "May Allah give victory to the mujahideen in
Iraq and Syria and all part [sic] of the world." Gov't Exh. 413.

Five days later, on October 8, 2014, defendant Badawi urged NA
and AI to join ISIL, as follows:

MB: *Inshallah* [God willing] they will take over Jordan as soon
as they're don't [sic] with Iraq and Syria

¹² Words or phrases in the Arabic language are followed by English-language translations in brackets.

¹³ "AI" was another one of several young men to whom defendant Badawi advocated joining ISIL.

1 Implement sharia and have access to Israel

2 It's gonna happen bro

3 There's a fiqh¹⁴ of jihad bro

4 I started my Islamic state campaign in Orange County, you
5 are welcome to join anytime

6 Gov't Exh. 418; PSR ¶ 11.

7 2. Defendant Badawi Affirmed and Recorded on Video
8 Elhuzayel's Pledge to Fight for ISIL

9 On October 21, 2014, defendant Badawi made a video of
10 codefendant Elhuzayel pledging allegiance to ISIL. At the beginning
11 of the video, defendant Badawi, in fluent Arabic, introduced
12 codefendant Elhuzayel as a supporter of the Islamic State, who was
13 addressing "a letter to the Mujahideen at the Islamic State in Syria
14 and Iraq." Gov't Exh. 2/2A (video found on Badawi's iPhone).¹⁵ On
15 the video, codefendant Elhuzayel stated "I totally support the
16 Islamic State . . . I will join you guys soon . . . I will be there
17 to fight with you guys . . . I will fight for the sake of Allah to
18 protect what we believe in." The video recorded that when
19 codefendant Elhuzayel made each of these pledges, defendant Badawi
20 stated repeatedly "Ameen," indicating his own commitment that the
21 pledges be fulfilled. Id.; PSR ¶ 14. Contrary to defendants'
22 previous assertions, there is no evidence this video was ever deleted
23 from defendant Badawi's iPhone.

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27 ¹⁴ In this context, the Arabic word "fiqh" means law or
jurisprudence.

28 ¹⁵ The designation "A" refers to the transcript of a video or
audio recording or an English-language translation of an exhibit.

3. Defendant Badawi Continued to Promote ISIL and Expressed Publicly His Own Desire for Martyrdom

On October 22, 2014, on his Twitter account, @darrulislam, defendant Badawi posted, "Things aren't as it used to be anymore, it is very clear now, either you are with the Khalifa Ibrahim or with Barak Obama." Gov't Exh. 211. "Khalifa Ibrahim" is a reference to ISIL leader Abu Bakr al-Baghdadi. At trial, Special Agent Scott Wales, of the Federal Bureau of Investigation ("FBI"), testified that the Arabic term "darrul" meant "house of" -- thus, Badawi's Twitter handle "darrulislam" meant "house of islam."

On October 30, 2014, defendant Badawi expressed on Twitter his desire for martyrdom: "May Allah grant me martyrdom to clean all my filthy sins." Gov't Exh. 213, page 30. He continued, "We are men that love death for sake of Allah as much as kaffirs love life." Id. At trial, expert witness William Braniff testified that "kafir" or "kufr" is a derogatory term meaning disbelievers or infidels and is used by ISIL to refer to all non-Muslims. Exh. A, at 83.

On November 2, 2014, defendant Badawi tweeted, "Died or lived Abubakr Albghdadi [sic], the Khilafah has been established and it is obligatory upon every capable Muslim to defend it." Gov't Exh. 213, page 29.

On November 15, 2014, on his Twitter account, @darrulislam, defendant Badawi posted, "Inshallah [God willing] soon the Islamic state will take over Baghdad ya musilmeen [oh Muslims]." Gov't Exh. 213, page 25.

1 On November 19, 2014, defendant Badawi had an extended
2 conversation on Facebook with another young man, IM,¹⁶ in which Badawi
3 urged IM, in sum, that the caliphate had been established, and it was
4 time for jihad. Badawi attached two photographs to his
5 communication, one showing dead children, and another showing the
6 ISIL beheadings of multiple individuals (from an ISIL video showing
7 the ISIL beheadings of Ethiopian Christians on a beach in Libya).¹⁷
8 Gov't Exh. 409.

9 4. Defendant Badawi Continued His Commitment to ISIL's
10 Ideology Even After a Family Member Confronted Him
11 About ISIL's Burning of the Jordanian Pilot

12 On February 5, 2015, defendant Badawi exchanged text messages
13 with codefendant Elhuzayel in which Badawi described his family's
14 opposition to ISIL, as follows:

15 MB: My brother is so against Islamic state after the burning
16 video
17 He said this is so *haram* [wrong] and has nothing to do with
18 islam
19 He told my mom not to let me have a passport so I won't
20 travel there

21 Gov't Exh. 60 (text messages on Badawi's iPhone). The "burning
22 video" that defendant Badawi referenced is a video released by ISIL
23 on February 3, 2015, showing a Royal Jordanian Air Force pilot, Muath
24 Safi Yousef Al-Kasasbeh, being burned to death by ISIL while trapped
25 inside a metal cage. Later, during his post-arrest interview with
26

27 _____
28 ¹⁶ "IM" was another one of several young men to whom defendant
Badawi advocated joining ISIL.

¹⁷ The ISIL video that is the source of the photograph is titled
Until There Came to Them Clear Evidence. The video ends with the
graphic murder of approximately 30 Ethiopian Christians; one group is
murdered by beheading, one group is murdered at gunpoint. Exh. B, at
117-119 (trial testimony of William Braniff).

1 the FBI, defendant Badawi defended ISIL's burning of Al-Kasasbeh
2 alive. See Gov't Exh. 1011/1011A (recording and transcript).¹⁸

3 On March 22, 2015, using his Twitter account, @darrulislam,
4 defendant Badawi tweeted "All Muslims under Allah and his law against
5 united nations of kuffr" and "The kafirs are boiling, Die with your
6 rage." Gov't Exhs 22/22A (from Badawi's iPhone) and 213 (Badawi
7 Twitter account).

8 5. Defendant Badawi Received the Pell Grant Funds He
9 Would Later Use to Purchase Elhuzayel's Plane Ticket

10 On or about March 23, 2015, defendant Badawi received in his
11 HigherOne bank account a deposit of \$2,865, which was a disbursal of
12 a portion of his student financial aid, specifically, federal Pell
13 Grant funds. Gov't Exhs. 964, 981; PSR ¶ 35. Defendant Badawi had
14 obtained these Pell Grant funds by submitting a FAFSA application on
15 which he had certified that he would use the funds "only to pay the
16 cost of attending an institution of higher education." Gov't Exh.
17 960; PSR ¶ 35.¹⁹ Defendant Badawi later used \$671.60 of this Pell
18 Grant money to purchase codefendant Elhuzayel's plane ticket. Gov't
19 Exh. 968; PSR ¶ 36.

20
21
22 ¹⁸ In addition, William Braniff testified at trial that ISIL
23 maintains a fundamentalist interpretation of Sharia law that ignores
24 traditional Sunni Islam and instead reverts back to a very
25 puritanical interpretation of Islam based on medieval theology. Exh.
26 A, at 88-89. In connection with this interpretation, ISIL carries
out draconian public punishments such as cutting off limbs or
decapitation or crucifixion for violations of ISIL's interpretation
of Sharia law. Exh. A, at 89.

27 ¹⁹ The documents and testimony of Ms. Mendoza introduced at trial
28 established that defendant Badawi completed four separate FAFSA
applications, and in each, he certified that he would use his Pell
grant money only to pay the cost of attending college.

1 6. Defendant Badawi Made a Pact With Elhuzayel to Make
2 Hijra and Fight on ISIL's Front Line

3 On March 27, 2015, defendants Badawi and Elhuzayel exchanged
4 text messages in which they expressed their agreement to join ISIL
5 and fight on the front line.

6 MB: Nader *inshallah* [God willing] when we go we make a pact
7 that we fight on the front line and don't look back
8 NE:²⁰ *Allahuakbar* [God is great] *inshallah*
 May Allah grant us 72 virgins XD²¹

9 Gov't Exh. 61; PSR ¶ 15. On the same date, defendant Badawi tweeted
10 "Wish that I had a 100 soul [sic] to fight for the sake of Allah with
11 all of them. #oAllah_help_me_to_go_to_sham." Gov't Exh. 213, page
12 14 (from Badawi's Twitter account).

13 On March 28, 2015, defendant Badawi tweeted on his Twitter
14 account, "I can't wait to make *Hijra* [religious migration] with my
15 brother @MayAllahAccept (one of Elhuzayel's Twitter accounts)
16 *inshallah* [God willing] to *Alsham* [Syria].
17 #oAllah_help_us_to_go_to_Alsham." See Gov't Exh. 134 (a tweet from
18 Badawi's Twitter account found on Elhuzayel's USB drive); PSR ¶ 16.
19 William Braniff testified at trial that ISIL's view of "*Hijra*" means
20 traveling to ISIL-held territory to wage " *jihad*," that is, violent
21 action, on behalf of the caliphate. Exh. A, at 80, 84. The meaning
22 of "*Hijra*" as migration to the Islamic State for the purpose of
23

24
25 ²⁰ "NE" is an abbreviation for codefendant Nader Elhuzayel.

26 ²¹ The reference to "72 virgins XD" refers to defendant Badawi's
27 belief, which is shared by many other jihadists, including
28 codefendant Elhuzayel, that a man who dies as a martyr will be able
to enjoy 72 virgins, also referenced as 72 *Hur Al Ayn*, in the after-
life (in Paradise). (Trial testimony of FBI Special Agent Thomas
Ropel, III).

1 engaging in violent jihad is confirmed in ISIL's own online
2 publication, Dabiq. PSR ¶ 16, n.2.²²

3 7. Defendant Badawi Continued to Recruit Fighters and
4 Urged Elhuzayel to Join Him to Fight With ISIL Against
5 Jews and Crusaders

6 In March or April 2015, while volunteering at the Islamic Art
7 Expo on the Queen Mary in Long Beach, defendant Badawi engaged KB²³ in
8 a conversation about ISIL that was prompted by a recent ISIL attack.
9 KB testified at trial that based on that conversation, he understood
10 defendant Badawi to be a supporter of ISIL. (Trial testimony of KB).

11 On April 6, 2015, defendant Badawi disseminated an ISIL
12 recruiting video by posting the link on Twitter, using his Twitter
13 account, @darrulislam. Gov't Exh. 213, page 13-14.

14 On April 24, 2015, in a telephone conversation, defendants
15 Badawi and Elhuzayel discussed how it would be such a blessing to
16 fight for the cause of Allah and to die in the battlefield.

17 MB: Amen. May Allah grant us victory. May Allah cause us to
18 go there and show these captors, these crusaders, and these
19 Jews²⁴ and *renegades* and these atheists [unintelligible]
20 what Islam is about.

21 NE: Amen. Amen. *Rawāfiq*,²⁵ *renegades*, you name it, *polytheist*.
22 MB: *Polytheist* and *rawāfiq*, all of them. We're gonna show them
23 who Allah is. We're gonna show them the true legion of
24 Islam. We're [sic] show them who is *Muhamad Peace be upon*
25 *him*.

26 NE: Yeah, *inshallah* [God willing]. Fight for the way of Allah,
27 man. Fight for the cause of Allah. May Allah make us sons
28 of men, dying in the battlefield, *Amen, Lord*.

29 MB: Amen. *Amen, Lord*.

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22 See Exh. A, at 85 (William Braniff testimony that Dabiq is
ISIL's English language propaganda magazine).

23 "KB," who testified at trial, was another one of several young
men to whom defendant Badawi advocated joining ISIL.

24 Braniff testified that ISIL considers Jews to be legitimate
targets of violence, Exh. A, at 89.

25 Rawāfi is plural of Rafid and is used to describe those who
reject the authority of Islam.

1 Gov't Exh. 701/701A (recorded telephone conversation). As the
2 conversation continued, defendant Badawi said that he wanted ISIL "to
3 gain a lot of territories," that he was "impatient," that he wanted
4 "the victory so bad," and that he "hate[d] this coalition." Id.
5 Defendants Badawi and Elhuzayel also talked about their joint goal to
6 join ISIL as fighters.

7 MB: They have -- Islamic State they have a new -- new people
join their army.

8 NE: Yeah. They have that every time, man.

9 MB: Yeah, every time.

10 NE: They keep expanding; more people coming.
May Allah make us among them, man.

11 MB: Amen. Amen.

12 NE: I guess we'll like, you know, just die in the battlefield,
that's it. I want to die *Shaheed* [martyr], man. That's
all I want in this life man. I just ask Allah for that.

13 Id.; PSR ¶ 17.

14 8. Defendants Badawi and Elhuzayel Hoped for a Merger of
15 al-Qa'ida and ISIL and Aspired to Martyrdom

16 While most of defendants' communications related to ISIL, the
17 evidence established that both defendants revered many leaders of the
18 global jihadi movement and held favorable opinions about al-Qa'ida.
19 As William Braniff testified, ISIL grew out of a branch of al-Qa'ida,
20 specifically, al-Qa'ida in Iraq. Exh. A, at 75. In their telephone
21 conversation on April 24, 2015, defendants Badawi and Elhuzayel
22 discussed optimistically an ISIL -- al-Qa'ida merger:

23 NE: Dude, could you imagine once Al-Qa'ida teams up with
Islamic State?

24 MB: Wow, it will be huge.

25 NE: Yeah, man.

26 Gov't Exh. 701/701A. In addition, four photos -- two of Osama bin
27 Laden, one of Mohammad Atta (a 9/11 hijacker), and one of the World
28 Trade Center during the 9/11 attacks -- were found on defendant

1 Badawi's iPhone and Facebook account. See Gov't Exhs. 52, 53, 54,
2 and 419.

3 On May 3, 2015, defendants Badawi and Elhuzayel, in a telephone
4 conversation, expressed their shared desire to be united in the
5 Islamic State and their shared aspiration for martyrdom.

6 NE: *Alhamdulillah* [Praise be to Allah]. May we be united in
7 the Islamic State.

8 MB: [O Lord of the Worlds].

9 NE: Amen. *Jannah* [Paradise], man.

10 MB: Amen.

11 NE: Yeah, amen, 72 *Hur Al Ayn* [women of Paradise].²⁶

12 MB: Oh yes.

13 Gov't Exh. 714/714A (recorded telephone conversation); PSR ¶ 18.

14 9. Defendants Badawi and Elhuzayel Celebrated the
15 Garland, Texas, Attack

16

17 On the same date, May 3, 2015, two gunmen opened fire outside a
18 Prophet Mohammed cartoon contest in Garland, Texas. PSR ¶ 18, n.5.

19 ISIL claimed responsibility for the attack.²⁷ Shortly after the
20 attacks, on the evening of May 3, 2015, defendants exchanged text
21 messages about it.

22 MB: What city

23 NE: Garland texas

24 MB: Did they do an attack

25 NE: Yes

26 MB: I never heard anything

27 NE: Search Garland shooting on google

28

May allah grant him *shaheed* [martyrdom]

29

30 Gov't Exh. 62 (from the Badawi's iPhone); PSR ¶ 18.

31

32 ²⁶ See Exh. A, at 91 (Braniff testimony that according to ISIL,
33 an individual who dies fighting jihad -- martyrs himself -- will be
34 granted the highest levels of paradise.

35 ²⁷ See, e.g., Yan, Holly, "ISIS claims responsibility for Texas
36 shooting but offers no proof," [cnn.com](http://www.cnn.com/2015/05/05/us/garland-texas-prophet-mohammed-contest-shooting/), May 5, 2015, accessed at
37 [http://www.cnn.com/2015/05/05/us/garland-texas-prophet-mohammed-](http://www.cnn.com/2015/05/05/us/garland-texas-prophet-mohammed-contest-shooting/)
38 [contest-shooting/](http://www.cnn.com/2015/05/05/us/garland-texas-prophet-mohammed-contest-shooting/).

1 Before the attack, one of the gunmen, Elton Simpson, sent out a
2 Twitter communication to multiple contacts, including codefendant
3 Elhuzayel, announcing the gunmen had sworn allegiance to Abu Bakr al-
4 Baghdadi. See Gov't Exh. 202 (showing Simpson Tweet received by
5 Elhuzayel).²⁸ Codefendant Elhuzayel responded to Simpson, asking
6 "allahuakbar [God is great] brother was it you?" This exchange was
7 found on defendant Badawi's iPhone. See Gov't Exhs. 23/23A, 24/24A
8 (showing Elhuzayel's Tweet to Simpson found on Badawi's iPhone).
9 Codefendant Elhuzayel also tweeted to Simpson, "I love you for the
10 sake of Allah brother may Allah grant you *jannat al ferdaus* [the
11 highest level of Paradise reserved for martyrs]." Gov't Exhs. 203,
12 204; see PSR ¶ 18. ISIL operative Abu Hussain al-Britani²⁹ re-tweeted
13 Simpson's original tweet, and this was also found on defendant
14 Badawi's iPhone. Gov't Exh. 19.³⁰ Subsequently, Abu Hussain al-

15 _____
16 ²⁸ Defendant Elhuzayel had previously been in contact via Twitter
17 with Simpson. See Gov't Exh. 201 (Simpson's April 17, 2015 tweet to
18 Elhuzayel, "May Allah give you food in Jannah (Paradise) from the
19 hands of hoor (women of Paradise)").

20 ²⁹ At trial, William Braniff testified that Gov't Exh. 382 (a
21 Twitter message and attachment from codefendant Elhuzayel's Twitter
22 account) contained a photograph of Abu Hussain al-Britani, aka Junaid
23 Hussain, a British citizen, who joined ISIL in 2013. In ISIL, Abu
24 Hussain al-Britani became a notorious hacker for the organization, as
25 well as an on-line recruiter and someone who would incite violence
26 on-line, encouraging individuals to engage in violent actions. See
27 Exh. A, at 93-94; see also PSR ¶ 18, n.6.

28 FBI Special Agent Scott Wales testified at trial that defendant
Elhuzayel, during his post-arrest interview, stated the following: he
was in contact with Abu Hussain al-Britani (who he knew as "Abu
Hussain") via Surespot; Abu Hussain al-Britani had inspired Elton
Simpson to carry out the Garland, Texas, attack; Abu Hussain al-
Britani was from the Islamic State; Abu Hussain al-Britani, who
defendant Elhuzayel believed to be in Syria, knew Elhuzayel was
coming to the Islamic State; and Abu Hussain al-Britani had wanted
Elhuzayel to do an attack in the United States. See PSR ¶ 36.

³⁰ At trial, witnesses testified about the information on these
exhibits, specifically, that "Amirul Mu'mineen" refers to ISIL leader
Abu Bakr al-Baghdadi; that the Twitter account "atawaakul" was used

1 Britani sent a series of tweets celebrating the Garland, Texas,
 2 attack, and these were also found on Badawi's iPhone and Elhuzayel's
 3 Twitter account. Gov't Exhs. 15/15A, 16/16A, 17/17A, 18, 19/19A,
 4 367; PSR ¶ 18; see also Gov't Exh. 382 (Twitter vanity photo of Abu
 5 Hussain al-Britani from Elhuzayel's Twitter account). Al-Britani
 6 tweeted, *inter alia*, "Kill Those That Insult the Prophet -
 7 #GarlandShooting" and "If there is no check on the freedom of your
 8 speech, then let your hearts be open to the freedom of our actions
 9 #GarlandShooting #TexasAttack." Gov't Exhs. 15/15A, 16/16A (from
 10 Badawi's iPhone).

11 10. Defendants Badawi and Elhuzayel Bought Elhuzayel's
 12 Plane Ticket and Badawi Celebrated More ISIL Recruits

13 On May 7, 2015, four days after the Garland, Texas, shootings,
 14 defendants Badawi and Elhuzayel made travel arrangements. While
 15 together, defendant Badawi, using a debit card linked to his Pell
 16 grant funds, purchased for codefendant Elhuzayel a one-way airline
 17 ticket on Turkish Airlines for travel on May 21, 2015, from Los
 18 Angeles International Airport to Tel Aviv, Israel, with an
 19 approximately six-hour layover in Istanbul, Turkey. See Gov't Exhs.
 20 732, 734, 970, 972; PSR ¶¶ 20, 21. Although defendants both stated
 21 in their post-arrest statements that, at the time the plane ticket
 22 was purchased, Elhuzayel gave Badawi in cash the price of the ticket,
 23 defendant Badawi never replenished these Pell Grant funds in his
 24 HigherOne account (the account that held his federal financial aid
 25 money). Gov't Exh. 968; see PSR ¶¶ 35, 36.

26

27

28 by one of the shooters, Elton Simpson; and that the profile photo for
 the @atawaakul Twitter account is a photo of Anwar al-Awlaki. (See
 footnote 40 *infra* regarding Anwar al-Awlaki).

1 On the evening of May 7, 2015, after the plane ticket purchase,
2 defendant Badawi sent the following text messages to codefendant
3 Elhuzayel.

4 MB: Good news more people at [name of a specific local mosque]³¹
5 now are islamic state supporters

6
7 We are 5 now ;)

8 NE: Allahuakbar [God is great]
9 I want to meet them

10 MB: I'm gonna convert more lol

11 Gov't Exh. 63 (text messages on Badawi's iPhone); PSR ¶ 22.

12 Two days later, on May 9, 2015, in a recorded conversation,
13 defendants Badawi and Elhuzayel again talked about their joint goal
14 to join ISIL as fighters.

15 NE: My next move is just to bounce. Oh, learn Arabic actually.
16 That's what I'm doing.

17
18 We'll - we'll meet up in the Islamic state.

19 MB: [God willing. Lord of the Worlds]. Do your parents know?

20 NE: (Laughing) Nah, are you crazy?

21 (Elhuzayel's mother speaks in the background: "Not on the
22 phone.")

23
24 MB: Tell her I'm going too.
25 Tell her I'm going too.

26 NE:
27 I said we would meet up in the Islamic state.

28 MB: Tell her -- tell her I'm going. Allah will guide me, man.
29 Tell her this is like Ibrahim *peace upon him* when he talked
30 to his parents, he said I will go to my Lord! He will
31 surely guide me! I'm going to my lord. He will guide me.
32 And this life is temporary. What your son is doing is -
33 it's very beautiful, man.

34 NE: Yeah. Apparently they don't see it like that, man.

35 MB: They don't see it like that, but in *God willing, God*
36 *willing*, tell her on the day of judgment I'll make *Shafa'ah*
37 [intercession] for you.

38 NE: *Inshallah* [God willing]. Yeah, man. If I'm going to
39 *Shaheed* [martyr] I will -- I will intercede -

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³¹ Although defendant Badawi used the name of a specific local mosque, this name has been omitted here. Identifiable names of mosques are treated similarly throughout this pleading.

1 MB: You will intercede for 70 people, by God's willing.
2 Gov't Exh. 741/741A (recorded telephone conversation); PSR ¶ 23.

3 11. Defendant Badawi Found a Route to ISIL for Elhuzayel

4 On the evening of May 9, 2015, defendant Badawi communicated via
5 his Twitter account, @darrulislam, with "Mosuly." Defendant Badawi
6 told Mosuly that one of his friends was "determined to immigrate for
7 Jihad" and was "looking for a way to reach the Islamic State" and
8 would "be traveling through Palestine." Gov't Exh. 68/68A (found on
9 Badawi's iPhone). Mosuly advised that Badawi's friend should go
10 through Rafah (a Palestinian city), and from there to Sinai -- one of
11 the States (referring to the Islamic State in the Egyptian Sinai).
12 Id.; PSR ¶ 24. Defendant Badawi stated, "Whoever equips a Ghazi
13 [fighter] in the way of Allah is as if he has taken part in the
14 fighting himself." Id. Defendant Badawi also communicated via
15 Twitter with Mosuly on the following day, May 10, 2015, when Mosuly
16 wrote, "I asked a Levantine merchant, 'how did you cross the
17 borders?' He said, 'I didn't cross the borders, we are in the
18 #Islamic_State.'" Gov't Exh. 210/210A.

19 On May 10, 2015, following his communications with Mosuly,
20 defendant Badawi advised codefendant Elhuzayel that he should go to
21 the "Islamic State" in Egypt, referring to ISIL's territory there.

22 MB: I was talking to a brother from Mosul on Twitter.
23 . . . he said the easiest way to go to Egypt from Palestine
24 -- you go to the Islamic State in Egypt.
25 . . . he said . . . can somebody from Twitter, like known,
26 say this guy is good, so I can give you the way -- the
27 route.

28 NE: So -- so Egypt is easiest route; right?

MB: Yeah.

NE: It's much easier than going to Libya?

MB: Of course it is easier because the border between Palestine
and . . .

NE: Egypt is very close.

1 MB: Yeah. The Islamic State. You gonna go to the *seigniory of*
2 *Sinai* [Islamic State of Sinai].
3 NE: Oh man. They already established a state there, huh?
4 MB: Yeah.
5 NE: *Praise be to Allah.* It's not the *Levant* though. Is Egypt
6 the *Levant*?
7 MB: No, Egypt is Egypt.
8 NE: Just Egypt.
9 MB: Egypt is Africa.
10 NE: *Glory be to Allah.*
11 MB: But they need you there *akhi* [my brother].
12 NE: Yeah.
13 MB: They're not like the *Levant and Iraq* where there's a lot of
14 peoples. Egypt there is not a lot of people.
15 NE: *Glory be to Allah. Glory be to Allah and Praise Him.*
16 MB: *Glory be to Allah, The Supreme.*
17 NE: Can you imagine, man? Being with that army?
18 MB: Yeah.
19 NE: *Mujahideen* [jihadi fighters].

20 Gov't Exhs. 742/742A, 743/743A (recorded telephone conversations);
21 see PSR ¶ 25. Later, in the same conversation, defendant Badawi
22 suggested to codefendant Elhuzayel that he offer to forgive a debt if
23 the debtor accepted Islam, and explained how people who are forced to
24 accept Islam benefit from it.

25 MB: You know, there's some people accept Islam by force, and
26 they still end up in *Jannah* [paradise].
27 NE: What do you mean?
28 MB: Like, *Prophet, peace and blessings be upon him* he said
29 Allah was amazed from the people that enter paradise
30 handcuffed. So *the companions* are like how do they enter
31 paradise handcuffed *O' messenger of God?* He said when the
32 Muslims go to their *Jihad* and they bring prisoners of war,
33 these people accept Islam out of fear, but Allah yet still
34 forgives them.

35 Gov't Exh. 743/743A (recorded telephone conversation). Still later
36 in the conversation, defendant Badawi counseled codefendant Elhuzayel
37 about law enforcement surveillance.

38 NE: What's wrong with my phone, man?
39 MB: The government. The government.
40 NE: You think so?
41 MB: Yeah. You shouldn't have talked about it on the phone.
42 Like, --
43 NE: Huh?
44 MB: -- this kind of stuff.

1 You know yesterday when we were talking, and your mom told
2 you don't say that on the phone?

3 NE: Yeah.

4 MB: You shouldn't have said it.

5 These people -- because right now they know for sure a lot
6 about you, so they track you down.

7 NE: You think so?

8 MB: Yeah, man. You shouldn't have made it publicly like that.

9 NE: *Glory be to Allah.*

10 MB: But don't worry, man. We're still going to get you there.

11 Gov't Exhs. 744/744A (recorded telephone conversation).

12 12. Defendant Badawi Promised Abu Hussain al-Britani That
13 Badawi Would Take Action When the Time Was Right

14 On the same day, May 10, 2015, defendant Badawi communicated via
15 the Internet with ISIL operative Abu Hussain al-Britani. Gov't Exh.
16 65.³² During the communication, defendant Badawi asked "is that u in
17 the picture," and Abu Hussain Britani answered "yes." Id. The
18 "picture" the two were discussing was a photograph of a male with
19 dark hair, wearing an outdoor jacket, holding a military-type firearm
20 and pointing the end of the firearm's barrel directly into the
21 camera. Id.³³ Defendant Badawi's communication with Abu Hussain al-
22 Britani continued, as follows:

23 MB: Right now I am in *darrulkufr*
24 I will put it when the time is right *inshallah* [God
25 willing]

26 ³² In the Internet communication that is Government Exhibit 65,
27 the individual identified himself as "Abu Hussain Britani" and used
28 an account handle that referenced this name. See Gov't Exh. 65.

29 ³³ This photograph is identical to the photograph in Exhibit 382,
30 which is a Twitter message found in defendant Elhuzayel's Twitter
31 account. Compare Gov't Exh. 65 with Gov't Exh. 382. In Exhibit 382,
32 defendant Elhuzayel re-tweets a message, with the attached
33 photograph, asking others to follow and support Abu Hussain al-
34 Britani. See Exh. 382. On the photograph attached to the re-tweet,
35 at the top, are the words "Abu Hussain Britani." At trial, William
36 Braniff testified that he recognized the person in the photograph in
37 Exhibit 382 as Abu Hussain al-Britani, aka Junaid Hussain. Exh. A,
38 at 89. In addition, this same photograph appears in multiple Twitter
communications concerning the Garland, Texas, shootings that were
sent by Abu Hussain al-Britani. See Gov't Exhs. 15, 16, 17, 18, 19
(Twitter messages found on Badawi's iPhone with same photograph and
identification banner "AbuHussainAlBritani").

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Attached to the communication "You wanna see my picture" was the above photo. Gov't Exh. 65 (found on Badawi's iPhone). As explained above, the Arabic term "darrul" means "house of." Thus, defendant Badawi's statement to Abu Hussain al-Britani that he was in "darrulkufr" meant he was in the house of the *kufr* (disbelievers or infidels). Presumably, Badawi's statement, "I will put it when the time is right *inshallah*," was a reference to the knife held by the person in the photograph, who was dressed as an ISIL fighter.

On May 13, 2015, defendant Badawi received a Tweet from Abu Dujana, whose vanity photo depicted an ISIL fighter, that stated, "Guess whose back . . . Spread the word . . . Make dua [supplication prayer] for the Ummah [nation of Islam]. . . Kill a kaffir [infidel] . . . #IS." Gov't Exh. 4/4A (found on Badawi's iPhone).

1 13. Defendant Badawi Continued to Work to Radicalize
2 Others

3 On May 15, 2015, while in a vehicle together, defendants Badawi
4 and Elhuzayel had an extended recorded conversation about their
5 admiration for Abu Malik al-Tamimi, a prominent ISIL cleric and
6 leader. Defendant Badawi stated, "I love Abu Malik al-Tamimi, man.
7 . . . Bro, by God, man. I love him so much." Gov't Exh. 802.1/802.1A
8 (recorded conversation in vehicle); see also Gov't Exh. 3.3A (photos
9 of al-Tamimi from Badawi's iPhone with quotation praising martyrdom).
10 At trial, William Braniff testified that Abu Malik al-Tamimi, a
11 cleric, fled Saudi Arabia in 2009 to join al-Qa'ida in
12 Afghanistan/Pakistan, and then left there to join ISIL in Syria,
13 becoming an ISIL leader. Exh. B, at 117-119; see Gov't Exh. 9/9A
14 (photo of al-Tamimi from Badawi's iPhone with description of him as
15 being former al-Qa'ida who swore allegiance to the Islamic State).
16 Al-Tamimi is featured for about 24 minutes of the 30-minute ISIL
17 video titled, Until There Came to Them Clear Evidence. In the video,
18 al-Tamimi explains ISIL's rationale for why Christians can be
19 subjugated by Muslims. As stated above, the video ends with the
20 murder of approximately 30 Ethiopian Christians; one group is
21 murdered by beheading -- the other group is murdered at gunpoint.
22 Exh. B, at 117-119.

23 Later in this conversation on May 15, 2015, defendants Badawi
24 and Elhuzayel talked about radicalizing others, and an anticipated
25 FBI interview of Badawi that would occur after Elhuzayel left to
26 fight with ISIL.

27 MB: We gotta convert these people before you go.
28 NE: The ones at [name of a specific local mosque]?
MB: Everywhere we go.

1 NE: *Insha'Allah* [God willing]. Maybe three days before I leave
I will start like a
2 MB: All right. Radicalize.
NE: Radicalize the people [unintel], you know, just in case. I
3 don't know. I don't want to get you in trouble though.
MB: No worries.
4 NE: Where did he go?
MB: Imagine they - they - they bring me over to the private FBI
5 room --
NE: Yeah.
6 MB: Where did your friend go? Are you guys part of the
organization of ISIS?
7 NE: We've gotten a lot of intel coming from people talking
about you guys trying to radicalize people. Is it true?
8 Where is your friend? We've been searching for him for -
for weeks now. We can't find him. Where did he go?
9

10 Gov't Exh. 802.1/802.1A (recorded conversation in vehicle); see PSR
11 ¶ 27.

12 Later on the same day, May 15, 2015, defendants Badawi and
13 Elhuzayel were together in a vehicle with another young man, KN.³⁴
14 Defendant Elhuzayel and KN discussed ISIL, the extermination of the
15 Shia, and beheadings.

16 KN: I think the Islamic State is a good cause.
NE: It's the best cause.
17 KN: It is.
NE: That's the best nation in the earth.
18 KN: But they have to do it according to the Sunna.
NE: That's what they're doing. [Unintel] they're expanding.
19 They're - they're giving victory. The coalition cannot be
expanded. They cannot stop the expansion. It's like
20 [unintel].
KN: The coalition is increasing in numbers and they still can't
21 make a difference. That's because Allah [unintel].
NE: The coalition, man. May Allah destroy them.
22
KN: I wonder what's going to happen to Iran when the *Mahdi*
23 shows up.
NE: *Insha'Allah* [God willing], the Shia will be exterminated.
24
Disbeliever! I would like to behead Asad.
25 KN: Actually, beheading -- beheading is not really -- is not
really barbaric.
26

27 ³⁴ "KN" was another one of several young men to whom defendant
28 Badawi advocated joining ISIL (see supra conversations between Badawi
and NA, ID, AI, IM, and KB; see infra conversations between Badawi
and KN and AB).

1 NE: It's not.
2 KN: It might seem that way to an ignorant person, but it's
3 actually very good. It's a good way -- it's a good way to
4 take someone's life.
5 NE: Yeah. Exactly. . . . Because it's fast. I mean people
6 don't feel it.
7 KN: You cut -- you cut their throat and the blood comes out.
8 It looks gruesome --
9 NE: They won't feel -- they won't feel [unintell].
10 KN: It looks gruesome to the one who watches.
11 NE: Yeah, but it's --
12 KN: It's not.
13 NE: That's funny. Man, [unintell] this is a gruesome, like, you
14 know it's, like, ah [unintell] get them freaking out
15 because, like, the guy's head is coming off. But in
16 reality it's not even that bad, you know. It's just --
17 it's whatever. [unintell].

18 Gov't Exh. 803.2/803.2A (recorded conversation in vehicle). William
19 Braniff testified at trial that ISIL considers the Shia Muslim
20 community³⁵ to be legitimate targets for violence. Exh. A, at 89.
21 While defendant Badawi, who was present in the vehicle, did not speak
22 during the above conversation, he had on his iPhone a Twitter
23 communication from a Twitter account (@the Night of Diyala State,³⁶
24 whose profile photo depicted an ISIL fighter), that stated, in
25 Arabic, "Screw you and al-Zawahiri,³⁷ Al-Nusra [Front], and the Free
26 [Syrian] Army. We are coming to behead you all indiscriminately."
27 Gov't Exh. 40/40A (Twitter communication found on Badawi's iPhone).

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³⁵ The "Shia" refers to one of the two main branches of Islam, the other being the "Sunni." According to ISIL, the Shia are apostates and legitimate targets of violence. ISIL also considers Christians, Jews, Yazidis, and Sunnis who do not subordinate themselves to ISIL's interpretation of Sharia law to be legitimate targets of violence. Exh. A, at 89 (Braniff trial testimony).

³⁶ Diyala is a governorate in Iraq (ISIL uses the term "Wilayat" to mean governorate). At the time of this Twitter communication, ISIL controlled Diyala. See Gov't Exh. 102 (volume one of Dabiq), at 48-49.

³⁷ "al-Zawahiri" is a reference to Ayman al-Zawahiri, the current leader of al-Qa'ida.

1 14. Defendants Badawi and Elhuzayel Anticipated ISIL's
2 World Domination and Re-Affirmed Their Desire for
3 Martyrdom

4 On the same day, May 15, 2015, defendants Badawi and Elhuzayel
5 discussed with approval the prospect of ISIL's world domination.

6 NE: One day, *Insha'Allah* [God willing], you're gonna see an
7 army over here.

8 MB: Here?

9 NE: Yeah.

10 MB: For what?

11 NE: People shooting each other.

12 MB: Nah, man. The war is going to be chaos.

13 NE: Ninety-five percent of Anaheim has been conquered
14 [unintell].

15 MB: *God's glory*.

16 NE: *God's glory*, can you imagine?

17 Fifty percent of Cypress has been conquered.

18 MB: Wow. [unintell].

19 Gov't Exh. 804/804A (recorded conversation in vehicle).

20 Subsequently, in the same conversation, on May 15, 2015,
21 defendants Badawi and Elhuzayel re-affirmed their shared desire to
22 attain martyrdom.

23 NE: *Insha'Allah* [God willing]. I'll give you a call. We have,
24 like, five days left.

25 MB: Okay.

26 NE: *Insha'Allah. Insha'Allah.*

27 Can you take me to the airport Thursday?

28 MB: Of course. Allah is the greatest.

29 NE: Say my farewells to Muhanad over there.
30 [MB explains he has an exam]

31 MB: Yeah. I can drop you off at -- by 1:00 if you want.

32 NE: 1:00. *Insha'Allah*. [Unintell] at the airport. All right,
33 *akhi* [my brother].

34 MB: We'll think about it. I'll -- I'll -- I'll --

35 NE: All right, brother. Stay safe. Drive safe. May Allah
36 grant you *Shaheed* [martyrdom].

37 MB: Amen, and you too.

38 Gov't Exh. 804/804A (recorded conversation in vehicle); see PSR ¶ 28.

1 15. Defendant Badawi Continued to Recruit ISIL Fighters
2 and Urged Elhuzayel to Announce His Decision to Join
3 ISIL So That Others Would Follow Him

4 On the evening of May 16, 2015, defendant Badawi met with a
5 young man, KB,³⁸ at the mosque after prayers, and asked KB if he
6 wanted to join him for a while. (Testimony of KB at trial). While
7 together, defendant Badawi explained to KB, in a recorded
8 conversation, why ISIL's terrorism is justified.

9 MB: Okay. But actually, the Islamic State, they don't mind if
10 they look that worse. They even - they were - they don't
11 mind because they want to terrorize the enemy. Like the
12 messenger of Allah said, "I got victory with terror." So
13 they don't mind --

14 KB: When did he say that?

15 MB: When?

16 KB: When?

17 MB: The messenger of Allah, says - okay - [unintel] the
18 messenger of Allah, said hadith he said, "I was given five
19 things. The prophet has given me that job before."

20 KB: Oh, when they put the fear in the heart of the enemy;
21 right?

22 MB: Yeah. He said, "I got victory over fear in" - in like a -
23 like a "distance of a month." So the son said I'll follow
24 that path.

25 And if you call them terrorists, they'll be, like, "Yes, we
26 are terrorists. We terrorize the enemy of Allah," like the
27 messenger of Allah, said [unintel], Chapter 7 - I mean,
28 Chapter 8. He said, "And prepare for them what you can to
terrorize the enemy of Allah and your enemy." So Allah
used the word "terror." So you call them terrorists,
they'll be like, "yeah, we are terrorists."

KB: I still disagree with you on that. I want to just make
myself better as a person. [Unintel] make myself a better
person, make Dawa.

Gov't Exh. 828.1/828.1A (recorded conversation in vehicle); see PSR

¶ 29.

Defendant Badawi then drove, with KB, to codefendant Elhuzayel's
residence. Codefendant Elhuzayel came out to the vehicle, and Badawi

³⁸ "KB" is identified supra in footnote 23.

1 and Elhuzayel, in front of KB, discussed as follows that Elhuzayel
2 might die, but even if he did, he would be a martyr.

3 NE: I just wanted to give you those pants because I don't want
4 to, like, owe you.

4 MB: Okay, man.

5 NE: You know.

5 MB: Yeah.

6 NE: In case I never see you again after I leave, you know.

6 MB: *Insha'Allah* [God willing].

7 NE: I do want to see you, though. *Insha'Allah* Islamic State.

7 MB: Who knows what's going to happen, though?

8 MB: Yeah. What's going to happen?

8 NE: I might die, you know.

9 MB: You won't die. I mean, even if you die, *Shaheed*

9 [martyrdom], bro.

10 NE: *Insha'Allah*. Yeah.

11 Gov't Exh. 828.2/828.2A (recorded conversation in vehicle with KB
12 present); see PSR ¶ 30. In the same conversation, defendant Badawi
13 told codefendant Elhuzayel in front of KB that Elhuzayel should
14 announce he was going to the Islamic State so that people could
15 follow in his footsteps.

16 MB: So you announced it publicly now?

17 NE: Huh?

18 MB: You announced it publicly to everybody?

19 NE: No. Not everybody knows, not yet. Should I announce it?

20 MB: Why not? Who cares? Tell people so they can follow your
21 footsteps.

22 NE: Yeah.

23 MB: You'll get the reward. The messenger of Allah said whoever
24 made a good deed and people follow him like that, he's
25 going to get the reward of everybody behind him.

26 NE: Wow. So announce it at [name of a specific local mosque]
27 or what?

28 MB: No. I mean, like announce it like - like - basically,
29 don't care about it, but at the same time, you got to be
30 careful.

31 NE: Yeah. Maybe I should announce it on Twitter.

32 MB: No, no, no, . . . privately announcement.

33 NE: Like - like who, exactly?

34 MB: Like me and you right now, you know, how you told me?

35 NE: Yeah.

36 MB: . . .
37 Go for it, bro.

38 NE: I just don't want to sabotage my chances, you know.

39 MB: I support you 100 percent, whatever you want to do.

40 NE: *Insha'Allah* [God willing].

1 Gov't Exh. 828.2/828.2A (recorded conversation in vehicle with KB
2 present); PSR ¶ 30.

3 After codefendant Elhuzayel went back inside his residence,
4 defendant Badawi and KB remained in the vehicle. Defendant Badawi
5 defended the Islamic State, expressed his hope that Elhuzayel ended
6 up there, and stated that he [Badawi] was going to join Elhuzayel
7 soon.

8 MB: Yeah. This guy is going to the Islamic State, *akhi*
[brother].

9 KB: You guys are tripping, man. . . . Why does he want to go?

10 MB: For *Jihad*. He had a good amount of knowledge, you know,
11 Islamic knowledge. So he feels it's obligatory for him to
12 go for *Jihad* now.

[MB and KB argue at length about whether scholars who say
13 *Jihad* is obligatory are right.]

14 MB: Bro, *God willing* he's going to be fine. He knows what he's
15 doing.

16 KB: Okay. He doesn't know what he's doing because he's going,
17 dude. . . . Even if they [the scholars] are right, we
18 don't know 100 percent.

19 MB: Well, I know they are on the *truth*.

20 KB: 100 percent?

21 MB: Yeah. But *God willing* [unintelligible].

22 Gov't Exhs. 829.1/829.1A (recorded conversation). Defendant Badawi
23 continued his conversation with KB.

24 MB: *God willing* he ends up in the Islamic State. I'm going to
25 join him soon. I don't know how soon, but I will go. I'm
26 planning to go. Bro, these are people that are going to -
27 *Jesus son of Mary* will fight with them *God willing*.

28 Gov't Exh. 829.2/829.2A (recorded conversation).³⁹ Defendant Badawi
also argued to KB, using references to Islamic writings, the
legitimacy of the Caliphate announced by Abu Bakr al-Baghdadi. Id.

³⁹ Here, defendant Badawi is making reference to his belief,
based on his understanding of Islam, that Jesus (Isa in Islam) will
descend to earth to command an army of Muslims that will fight

1 In addition, defendant Badawi played an Anwar al-Awlaki⁴⁰
 2 recording for KB that advocated in favor of the Islamic State. Id.;
 3 see also Gov't Exh. 55 (photo of and quote by Anwar al-Awlaki from
 4 Badawi's iPhone). In his final words to KB, defendant Badawi re-
 5 affirmed his desire for martyrdom.

6 KB: I want to see you alive, dude.

7 MB: [Unintelligible]. But if I die *Shahada* [martyr], that's
 8 the best thing.

9 KB: But you don't know if it's *Shahada* because you don't know
 10 if it's right.

11 MB: Pay attention, bro.

12 KB: You're - you're better off getting shot in the head here.
 13 That's - isn't that *Shaheed*?

14 MB: That's also *Shaheed*, yeah.

15 Gov't Exhs. 830.1/830.1A (recorded conversation).

16 16. Defendant Badawi Continued to Recruit Another Young
 17 Man

18 On May 17, 2015, defendant Badawi, in a telephone conversation
 19 with KN, spoke again of his desire for martyrdom and his admiration
 20 for Abu Malik al-Tamimi, aka *Anas Alnashwan*.

21 KN: *Alhamdulillah* [Praise be to God]. I was thinking about
 22 that - that brother from the video.

23 MB: *Anas*.

24 KN: Yeah.

25 MB: *Anas Alnashwan*.

26 against the infidels. In his post-arrest statement, defendant Badawi
 27 stated the Prophet said Syria is where Jesus will descend, and that
 28 the righteous people will go to Syria. (Dckt. No. 111, at 120-125,
 180). See also Exh. C, at 180-181 (relevant pages from the 15th
 issue ("Break the Cross") of ISIL's publication, *Dabiq*).

⁴⁰ William Braniff testified at trial as follows about Anwar al-
 Awlaki. Al-Awlaki was the primary cleric and recruiter and
 propagandist for al-Qa'ida in the Arabian Peninsula ("AQAP"). He was
 the primary driver behind "Inspire" magazine, the English language
 propaganda magazine released by AQAP. Al-Awlaki was in contact in
 person with a number of the 9/11 hijackers, leading up to the plot of
 September 11, 2001. He was also in e-mail contact with Nidal Hasan,
 the Fort Hood shooter. Al-Awlaki's propaganda, sermons, and speeches
 are prolific, widely available on the Internet, and often are found
 in cases of radicalization in the United States. Exh. A, at 98-99;
see PSR ¶ 19, n.7. The al-Awlaki recording that defendant Badawi
 played for KB is entitled "Battle of the Hearts and Minds."

1 KN: [Unintelligible], you know.
MB: *Anas Alnashwan*?
2 KN: Yeah, [unintelligible], you know?
MB: Yeah, he's a -- he's a -- I was listening to one of his
3 talks right now, he's very strong -- he has a very -- very
strong character.
4 KN: Very strong conviction for Islam.
MB: Huh?
5 KN: Very strong conviction for Islam.
MB: Yeah.
6 KN: Yeah, bro.
MB: Yeah, bro. May Allah grant me *alshahada* [to be a martyr].
7 KN: God willing. [Unintelligible] Yeah, Allah grants you
alshahada man if you wanted *shahada*, if you wanted to be a
8 *Shaheed* [martyr] but even you don't go to a battle and you
die, of a regular death, you are a *Shaheed* [martyr], right?
9 MB: Yeah.

10 Gov't Exhs. 756/756A (recorded telephone conversations).

11 On May 20, 2015, defendant Badawi was observed alone in a
12 vehicle listening to an Arabic-language recording of a speech by Abu
13 Bakr al-Baghdadi; the English-language translation of a part of that
14 recording is:

15 · There is no excuse for any Muslim who is capable of *Hijrah* to
the Islamic State, or capable of bearing arms wherever he is.
16 · God, Almighty, commanded him to make *Hijrah* and wage *jihad*;
God destined him to fight.
17 · And we call upon every Muslim everywhere to make *Hijrah* to the
Islamic State or to fight wherever he is located.

18
19 Gov't Exh. 840/840A (recording).⁴¹

20 On the same day, May 20, 2015, defendant Badawi had another
21 telephone conversation with KN, in which Badawi asked KN if KN would
22 be willing to make *Hijra* to Syria.

23 MB: Will you be willing to do *Hijra* [religious migration]?
KN: Of course.
24 MB: To Syria?
KN: I mean, we can talk -- we can talk -- we can talk about
25 that later.
MB: Why later?
26 KN: Huh?

27
28 ⁴¹ On May 14, 2015, codefendant Elhuzayel sent to defendant
Badawi a link to a new speech by Abu Bakr al-Baghdadi. See Gov't
Exh. 66.

1 MB: Why later?
2 KN: Well, I think the -- the FBI has bugged my phone, bro.
3 MB: Really?
4 KN: Yeah.
5 MB: Well, why do you say that?
6 KN: No, because they police, they took my phone away . . .
7 . I think they're tracking my number.
8 MB: Oh, really? Okay, *insha'Allah*. We'll talk about it
9 another time then.

10 Gov't Exh. 758/758A (recorded conversation). Later in the same
11 conversation, in response to KN's admission that he was having
12 trouble practicing Islam sincerely, defendant Badawi advocated for
13 jihad.

14 MB: So the prophet said my *Umma's* tourism is in *Jihad*. And the
15 *Prophet Peace be upon him* also said *Jihad* is a door - is a
16 gate of *Janna* [paradise]. Allah gets rid of anxiety and -
17 like hardship and stress with *Jihad*. Like if you - I - I
18 see that - the videos of the *mujahideen* every day, and I
19 hear them like getting down and doing *nasheeds* and having
20 fun and like the reverse and they don't have like any
21 stress even though they're in *Jihad*. So --

22 KN: Yes. Yes.

23 MB: -- it's amazing. They're - they don't have the problems
24 that we are facing here.

25 KN: *Insha'Allah*. So you're saying that *Jihad* is kind of like
26 it relieves your - it relieves your - your problems?

27 MB: Oh, yeah. Yeah, yeah, yeah. You will - you wouldn't find
28 - you wouldn't care about anything when you do *Jihad*.

29 Gov't Exh. 758/758A (recorded conversation).

30 17. Defendant Badawi Counselor Elhuzayel About
31 Preparations for His Travel to ISIL and Re-Affirmed
32 His Own Desire for Martyrdom

33 On the evening of May 20, 2015, the day before codefendant
34 Elhuzayel was to travel, defendant Badawi sent him text messages,
35 counseling him to delete all his history on his electronic devices.

36 MB: No worries are u ready for tomorrow

37 NE: Lol yeah more than ready One way trip

38 MB: Did u delete all ur history

39 NE: Yeah:)

40 MB: OK

41 NE: I gotta do the same for my computer

1 Gov't Exh. 67 (texts on Badawi's iPhone); see PSR ¶ 31.⁴²

2 On May 21, 2015, defendant Badawi had a telephone conversation
3 with another young man, AB,⁴³ about jihad and martyrdom.

4 MB: May Allah grant me and you *jihad for His sake*.

5 AB: What?

6 MB: May Allah grant us *Hijra and jihad for God's sake*.

7 AB: Amen.

8 MB: May Allah grant us *Shahada* [martyrdom] *for His sake*.

9 AB: May Allah grant us the highest place in heaven.

10 MB: Bro, I don't want to go to heaven unless I do something
11 great. . . . I don't want to die a worthless death, like,
12 you know, you just live and came like nothing happened, you
13 know? . . . I -- I want to do something big for Allah, you
14 know?

15 Gov't Exh. 759/759A (recorded conversation).

16 18. Defendant Badawi Demonstrated His Knowledge About ISIL
17 in His Post-Arrest Statements

18 On May 21, 2015, defendant Elhuzayel arrived at Los Angeles
19 International Airport, where he was arrested after passing through
20 security screening. See PSR ¶ 32.

21 On the same date, May 21, 2015, defendant Badawi was arrested,
22 after which he made *Mirandized* post-arrest statements. PSR ¶ 32.
23 While defendant Badawi was generally cooperative with law enforcement
24 during his post-arrest interview, he was not always honest,
25 particularly during the first part of the interview. For example,
26 defendant Badawi stated falsely that he believed codefendant
27 Elhuzayel was planning on "coming back" after getting married in
28

25 ⁴² During his post-arrest interview, codefendant Elhuzayel
26 admitted that he deleted the history and erased all the contacts on
27 his cell phone just in case he was arrested by law enforcement. PSR
28 ¶ 37.

⁴³ "AB" was yet another one of several young men to whom
defendant Badawi advocated joining ISIL.

1 Palestine. (Dckt. No. 111, at 48).⁴⁴ Defendant Badawi also stated
2 falsely, "I don't know," when asked whether, among the Muslim groups
3 in Syria, there was any one group that Nader Elhuzayel supported.
4 (Dckt. No. 111, at 59) When asked what codefendant Elhuzayel's
5 travel plans were, and whether there was more beyond "marriage,"
6 defendant Badawi stated falsely, "That's all he told me." (Dckt. No.
7 111, at 65-71). In addition, contrary to what he argues in his
8 sentencing position paper, defendant Badawi was often evasive during
9 the interview.

10 After the interviewing agents began to confront defendant Badawi
11 with some of what they knew, defendant Badawi admitted that he knew
12 codefendant Elhuzayel had wanted to join ISIL since July or August
13 2014, after ISIL announced a new Caliphate, and that codefendant
14 Elhuzayel had posted on Twitter that he was going to join the Islamic
15 State. PSR ¶ 33. Defendant Badawi also admitted that codefendant
16 Elhuzayel had called him and told him that he wanted to buy a plane
17 ticket to Palestine, to join ISIL, and he wanted to use Badawi's
18 card. PSR ¶ 33. Defendant Badawi admitted that he and codefendant
19 Elhuzayel used defendant Badawi's card to purchase the ticket, and
20 codefendant Elhuzayel re-paid defendant Badawi immediately with cash.
21 PSR ¶ 34. Defendant Badawi also said that codefendant Elhuzayel said
22 that he was communicating on Twitter with mujahideen in Syria. PSR
23 ¶ 34. Defendant Badawi told the interviewing agents that once
24
25

26 ⁴⁴ Docket Number 111 is the Government's Opposition to Defendant
27 Badawi's Motion to Suppress Post-Arrest Statement, filed on May 9,
28 2016, to which was attached as Exhibits A, B, and C, transcripts of
defendant Badawi's post-arrest interview. The referenced page
numbers are to the page numbers located at the bottom-center of each
page.

1 codefendant Elhuzayel was in Syria, they planned to communicate with
2 each other via the Internet. PSR ¶ 34.

3 In addition, during the interview, defendant Badawi stated that
4 ISIL wants to take over all of Syria, all of Iraq, and extend to
5 Saudi Arabia, Jordan, or Palestine -- free Palestine. He stated that
6 ISIL does not believe in Israel -- they are at war with the Israeli
7 government, and that ISIL has committed attacks against the
8 governments of Iraq, Syria, Libya, and Egypt in the Sinai Peninsula.

9 Gov't Exh. 1011/1011A (recording and transcript). Defendant Badawi
10 also stated that when ISIL captures people and videotapes some of the
11 beheadings, ISIL's intention is "to put terror in their enemies."
12 (Dckt. No. 111, at 100-101). Defendant Badawi also talked about Abu
13 Malik al-Tamimi, admitting that he [Badawi] used al-Tamimi's photo as
14 his Twitter banner, and that al-Tamimi was part of al-Qa'ida in
15 Afghanistan, he was part of the Islamic State, he was looked up to as
16 a scholar by the people in ISIL, and he was killed on the battlefield
17 in Syria. Gov't Exh. 1012/1012A (recording and transcript).

18 III. SENTENCING GUIDELINE RANGE CALCULATION

19 All sentencing proceedings must begin by calculating correctly
20 the applicable United States Sentencing Guidelines range. United
21 States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008) (en banc). The
22 advisory Guidelines are "the starting point and the initial bench
23 mark and are to be kept in mind throughout the process." Carty, 520
24 F.3d at 991 (internal quotation marks and citation omitted). It is
25 "procedural error for a district court to fail to calculate -- or to
26 calculate incorrectly -- the Guidelines range." Id. at 993.

A. Defendant Badawi's Advisory Sentencing Guideline Calculation Should Be the Same As the Calculation for Codefendant Elhuzayel

Defendant Badawi's advisory sentencing guideline range calculation should be the same as that made by the Court for codefendant Elhuzayel. Therefore, Badawi's sentencing guidelines range should be calculated as follows:

Violation of 18 U.S.C. § 2339B

Base Offense Level:	26	USSG § 2M5.3
Specific Offense Characteristics:	+2	USSG § 2M5.3(b)(1)(E)
Terrorism Adjustment:	+12	USSG § 3A1.4(a)
Total Offense Level Group 1:	40	

Violation of 20 U.S.C. § 1097(a)

Base Offense Level:	6	USSG § 2B1.1(a)(2)
Specific Offense Characteristics:	+0	USSG § 2B1.1(b)(1)(B) (loss = \$671.60)
Terrorism Adjustment:	--	USSG § 3A1.4(a) (raises offense level to 32)
Total Offense Level Group 2:	32	USSG § 3A1.4(a)

Multiple Counts Adjustment

Multiple Counts Adjustment:	+1	USSG § 3D1.4(b)
Total Offense Level:	41	
Criminal History Category:	VI	USSG § 3A1.4(b) ⁴⁵
Advisory Sentencing Guideline Range:	360 months - life	

⁴⁵ The application of the terrorism adjustment makes defendant Badawi's criminal history category VI. However, when defendant Badawi's offense level is calculated properly, even his pre-enhancement criminal history category of I yields a sentencing guideline range of 324-405 months of imprisonment.

1 The minimum advisory guideline sentence is a term of
2 imprisonment of 360 months. Imprisonment for 360 months is the
3 appropriate sentence here, and, as discussed further below, no
4 downward departure or variance from that advisory guideline sentence
5 is warranted. See United States v. Ressam, 679 F.3d 1069, 1089 (9th
6 Cir. 2012) (reversing an outside-Guidelines sentence in a terrorism
7 case where the justification for the deviation from the guideline
8 sentence was insufficiently compelling to support the extent of the
9 variance).

10 **B. The Two Upward Adjustments Apply to Defendant Badawi's**
11 **Terrorism Convictions As They Did For Codefendant Elhuzayel**

12 Two upward adjustments apply to the guideline calculation for
13 defendant Badawi's terrorism convictions -- the 2-level increase in
14 USSG § 2M5.3(b)(1)(E) and the 12-level increase in USSG § 3A1.4(a).
15 The Court applied both in sentencing codefendant Elhuzayel, and the
16 PSR recommends their application to defendant Badawi. While
17 defendant Badawi has not objected to their application, defendant
18 Badawi seeks a downward Booker variance⁴⁶ that would effectively
19 negate the terrorism adjustment. As discussed below, this variance
20 is not warranted here.

21 1. The 2-Level Increase Set Forth in USSG
22 § 2M5.3(b)(1)(E) Applies Here

23 The 2-level increase set forth in USSG § 2M5.3(b)(1)(E) applies
24 here because defendant Badawi's offenses of conviction, conspiring to
25 provide and attempting to provide material support or resources to
26 ISIL, a designated foreign terrorist organization, "involved the
27

28 ⁴⁶ Defendant Badawi is referencing United States v. Booker, 125
U.S. 738 (2005).

1 provision of . . . material support or resources with the intent,
2 knowledge, or reason to believe they [were] to be used to commit or
3 assist in the commission of a violent act.”⁴⁷ As the plain language
4 of the guideline provision makes clear, the 2-level upward adjustment
5 applies even when a defendant did not himself engage in an act of
6 violence so long as he acted in support of such violence. See United
7 States v. Ali, 799 F.3d 1008, 1031 (8th Cir. 2015) (upholding
8 application of 2-level upward adjustment in USSG § 2M5.3(b)(1)(E)
9 where defendants provided money to terrorism organization al-Shabaab,
10 knowing that al-Shabaab engaged in violent acts).

11 The record in this case fully supports the application of this
12 2-level upward adjustment. Defendant Badawi agreed to provide
13 personnel,⁴⁸ namely, codefendant Elhuzayel, to fight with ISIL.
14 Defendant Badawi knew well that ISIL fighters engage in violent acts,
15 including beheadings, burning prisoners alive, etc. Defendant Badawi
16 also knew that when codefendant Elhuzayel joined ISIL as a fighter,
17 he would be fighting under the direction and control of ISIL.
18 Therefore, defendant Badawi intended, knew, and had every reason to
19 believe that codefendant Elhuzayel would be used by ISIL to assist in
20 the commission of violent acts. Thus, the 2-level increase in USSG
21
22
23

24 ⁴⁷ The applicable guideline provision, states, in pertinent part:
25 If the offense involved the provision of . . . material
26 support or resources with the intent, knowledge, or reason
27 to believe they are to be used to commit or assist in the
28 commission of a violent act, increase by 2 levels.
USSG § 2M5.3(b)(1)(E).

⁴⁸ “Material support or resources” includes personnel, including
oneself. See 18 U.S.C. § 2339B(g)(4), (h); 18 U.S.C. § 2339A(b)(1).

1 § 2M5.3(b)(1)(E) applies here as the Court found in calculating the
2 sentence of codefendant Elhuzayel.⁴⁹

3 2. The Terrorism Adjustment Set Forth in USSG § 3A1.4(a)
4 Applies Here

5 The terrorism adjustment set forth in USSG § 3A1.4(a) also
6 applies because defendant Badawi's offenses of conviction are
7 felonies that involved, or were intended to promote, a federal crime
8 of terrorism. See USSG § 3A1.4.⁵⁰ For purposes of this guideline,
9 "federal crime of terrorism" has the meaning given that term in 18
10 U.S.C. § 2332b(g)(5). USSG § 3A1.4, comment.(n.1). Section
11 2332b(g)(5) defines the term "federal crime of terrorism" to mean an
12 offense that is calculated to influence or affect the conduct of
13 government by intimidation or coercion, or to retaliate against
14 government conduct; and is a violation of any one of enumerated
15 statutes that include 18 U.S.C. § 2339B.

16 To satisfy the first prong of the "federal crime of terrorism"
17 definition, the government need only prove⁵¹ that the offense was

18
19 ⁴⁹ The government does not seek an upward departure under USSG
20 § 2M5.3, comment n.2(B) ("In case of a violation during time of war
21 or armed conflict, an upward departure may be warranted."). However,
the government believes the Court should consider this application
note in evaluating the § 3553(a) factors.

22 ⁵⁰ The applicable sentencing guideline provision states, in
relevant part:

23 If the offense is a felony that involved, or was intended
24 to promote, a federal crime of terrorism, increase by 12
levels; but if the resulting offense level is less than
level 32, increase to level 32.

25 USSG § 3A1.4(a).

26 ⁵¹ "The preponderance of evidence standard is generally the
appropriate standard for factual findings used at sentencing."
27 United States v. Felix, 561 F.3d 1036, 1045 (9th Cir. 2009).
However, in the Ninth Circuit, "when a sentencing factor has an
28 extremely disproportionate effect on the sentence relative to the
offense of conviction, the government may have to prove the factor by

1 calculated to influence or affect the conduct of government by
2 intimidation or coercion, or to retaliate against government conduct.
3 Application of USSG § 3A1.4(a) does not require a finding that the
4 defendant was personally motivated by a desire to influence or affect
5 the conduct of government, or to retaliate against government
6 conduct. See United States v. Awan, 607 F.3d 306, 316-318 (2d Cir.
7 2010) (holding that government need not show defendant was personally
8 motivated to influence government if it shows that he intended to
9 promote a crime calculated to have such an effect); United States v.
10 Jayyousi, 657 F.3d 1085, 1114-15 (11th Cir. 2011) (holding that the
11 first prong of USSG § 3A1.4(a) focuses on the "the intended outcome
12 of the defendant['s] unlawful acts--i.e., what the activity was
13 calculated to accomplish, not what the defendant['s] claimed
14 motivation behind it was [d]efendant's motive 'is simply not
15 relevant.'"); accord United States v. El-Mezain, 664 F.3d 467, 571
16 (5th Cir. 2011) (citing with approval Awan and Jayyousi opinions).

17 Defendant Badawi's convictions for conspiring to provide, and
18 aiding and abetting an attempt to provide, material support or
19

20 clear and convincing evidence. Id. (internal quotation marks and
21 citations omitted). The government recognizes that under current
22 Ninth Circuit law, it must prove the application of USSG § 3A1.4 by
23 clear and convincing evidence. See United States v. Tankersley, 537
24 F.3d 1100, 1106 & n.5 (9th Cir. 2008) (assuming, without deciding,
25 that "clear and convincing" standard of proof applies to
26 determination of facts underlying application of USSG § 3A1.4);
27 United States v. Thurston, 2007 WL 1500176, *19 (D. Or. 2007)
28 (finding that "clear and convincing" standard of proof applies to
determination of facts underlying application of USSG § 3A1.4). The
government submits that it has done this. However, for purposes of
preserving its position on appeal, and due to the circuit split on
this issue, the government argues that the standard of proof for all
sentencing factors should be proof by a preponderance of the
evidence. See, e.g., United States v. Graham, 275 F.3d 490, 517 n.19
(6th Cir. 2001) (holding that preponderance of evidence standard of
proof applies to determination of facts for application of USSG
§ 3A1.4).

1 resources to ISIL, "involved" violations of § 2339B, and the record
2 in this case establishes by clear and convincing evidence that these
3 offenses were "calculated to influence or affect the conduct of
4 government by intimidation or coercion," and "to retaliate against
5 government conduct." See 18 U.S.C. § 2332b(g)(5)(A). The evidence
6 established that ISIL holds destructive intentions towards the United
7 States and other governments, that ISIL thinks that violent acts
8 against military personnel and civilians will influence government
9 conduct, and that ISIL believes such attacks are justified
10 retaliation against governments whose fundamental values are
11 antithetical to the subjugation of all people to Shariah law as
12 practiced by ISIL. Moreover, the evidence at trial demonstrated
13 beyond peradventure that defendant Badawi endorsed these intentions
14 and intended to further ISIL's goals. The following are a few
15 examples. Using his Facebook and Twitter accounts, defendant Badawi
16 repeatedly promoted ISIL's territorial conquests and its subjugation
17 of individuals to Sharia law. See, e.g., Gov't Exhs 213 (it is
18 obligatory upon every capable Muslim to defend the caliphate), 418
19 (ISIL will take over Jordan, implement sharia and have access to
20 Israel), 419 (the caliphate has been established and it is time for
21 jihad, attaching photograph showing ISIL beheadings of Ethiopian
22 Christians on a beach in Libya). In recorded conversations,
23 defendant Badawi expressed his desire to fight with ISIL and
24 subjugate non-believers to Islam. See, e.g., Gov't Exh. 701/701A
25 (expressing his desire to fight and die on the battlefield and show
26 these captors, these crusaders, and these Jews what Islam is about).
27 On his iPhone, defendant Badawi carried (1) photos of ISIL
28 executions, see Gov't Exhs. 36 (photo of ISIL execution of four

1 prisoners), 37 (graphic photo of beheading); (2) photos of Jihadi
2 John, see Gov't Exhs. 43 (brandishing knife), 45 & 48 (beheading
3 victim);⁵² (3) photos of dead soldiers in khaki uniforms lying on
4 Middle Eastern battlefields, see Gov't Exhs. 58 & 59; and (4) a photo
5 showing the ISIL flag flying over the White House, see Gov't Exh. 50.

6 Accordingly, the terrorism adjustment, set forth in USSG
7 § 3A1.4, applies to defendant Badawi's § 2339B convictions, as it did
8 to codefendant Elhuzayel's convictions.

9 3. The Downward Booker Variance Sought by Defendant
10 Badawi Based on His Opposition to the Terrorism
Adjustment Is Not Warranted

11 Although defendant Badawi admits the USSG § 3A1.4 terrorism
12 adjustment "technically" may apply here, he seeks a Booker downward
13 variance that effectively negates it. (Dckt. No. 228, at 11-14).
14 Defendant argues generally that the "sentencing guidelines as applied
15 [in] this case make no sense and lack justification." (Dckt. No.
16 228, at 14). More specifically, defendant Badawi argues that (1)
17 "[t]here is no empirical data or rational reason provided by the
18 sentencing commission to justify this drastic increase," and (2)
19 "[t]here is no evidence that this Defendant engaged in any violence
20 or any pattern of criminality (as is the subject of the career
21 offender adjustments)." (Dckt. No. 228, at 11). Both of these
22 arguments lack merit and should be rejected in their entirety by this
23 Court.

24
25
26
27 ⁵² At trial, William Braniff testified that "Jihadi John" is the
28 name given to the ISIL fighter who, beginning in August 2014, was
responsible for beheading multiple victims, including American
journalists James Foley and Steven Sotloff, and humanitarian aid
worker Peter Kassig. Exh. B, at 113-116.

1 Every court of appeals to have considered the rationality of the
2 USSG § 3A1.4 terrorism adjustment has upheld the adjustment. In
3 United States v. Meskini, the Second Circuit explained:

4 Congress and the Sentencing Commission had a rational basis
5 for concluding that an act of terrorism represents a
6 particularly grave threat because of the dangerousness of
7 the crime and the difficulty of deterring and
8 rehabilitating the criminal, and thus that terrorists and
9 their supporters should be incapacitated for a longer
10 period of time. Thus, the terrorism guideline legitimately
11 considers a single act of terrorism for both the offense
12 level and the criminal history category.

13 Meskini, 319 F.3d 88, 92 (2d Cir. 2003); see, e.g., United States v.
14 Ali, 799 F.3d 1008, 1031 (8th Cir. 2015) (adopting "Second Circuit's
15 well-reasoned conclusion in Meskini"). The Second Circuit explained
16 further why the creation of a uniform criminal history category
17 pursuant to USSG § 3A1.4 was rational:

18 Congress and the Sentencing Commission had a rational basis
19 for creating a uniform criminal history category for all
20 terrorists under § 3A1.4(b), because even terrorists with
21 no prior criminal behavior are unique among criminals in
22 the likelihood of recidivism, the difficulty of
23 rehabilitation, and the need for incapacitation.

24 Meskini, 319 F.3d at 92; see also Ressay, 679 F.3d at 1091
25 ("Terrorists, even those with no prior criminal behavior, are unique
26 among criminals in the likelihood of recidivism, the difficulty of
27 rehabilitation, and the need for incapacitation."). Noting that
28 district courts had the discretion to depart downward in a specific
29 case, the Second Circuit continued in Meskini to explain why the
30 sentencing guidelines for terrorism cases were rational:

31 Considering the serious dangers posed by all forms of
32 terrorism, the Guidelines are in no way irrational in
33 setting the default for criminal history at a very high
34 level, with downward departures permitted in exceptional
35 cases.

1 Meskini, 319 F.3d at 92. Therefore, every court of appeals to have
2 addressed this issue has found a rational basis for the creation of
3 sentencing guidelines that impose higher sentences on defendants
4 convicted of terrorism crimes, and this Court should reject defendant
5 Badawi's argument.

6 Defendant Badawi's second argument, that the USSG § 3A1.4
7 terrorism adjustment should not apply to him because he did not
8 engage in any violence or any pattern of criminality is equally
9 without merit. Defendant Badawi is correct that the evidence does
10 not show that he personally engaged in any violence. If the evidence
11 did show this, defendant Badawi would likely have been charged with
12 additional crimes, and if convicted, would have faced a higher
13 sentence than what he currently faces. Rather, defendant Badawi
14 stands convicted of conspiring to provide, and aiding and abetting an
15 attempt to provide, material support or resources to ISIL. "The
16 material-support statute is, on its face, a preventive measure -- it
17 criminalizes not terrorist attacks themselves, but aid that makes the
18 attacks more likely to occur." Holder v. Humanitarian Law Project,
19 et al., 561 U.S. 1, 35 (2010). Aid that makes terrorism attacks more
20 likely to occur -- defendant Badawi's conduct -- is extremely
21 dangerous and must be deterred. Defendant Badawi's argument that he
22 did not engage in any pattern of criminality is soundly rebutted by
23 the evidence. Defendant Badawi conspired with codefendant Elhuzayel
24 to provide a fighter to ISIL, and the steps defendant Badawi took
25 towards this goal involved a lengthy pattern of criminal behavior,
26 one that involved several individuals, including ISIL operatives as
27 well as prospective fighters that defendant Badawi attempted to
28 recruit. Thus, defendant Badawi's conduct and characteristics fall

1 squarely within the behavior that the terrorism sentencing guidelines
2 are designed to address -- behavior that presents a "grave threat
3 because of the dangerousness of the crime and the difficulty of
4 deterring and rehabilitating the criminal." Meskini, 319 F.3d at 92.
5 Imposition of a within-guideline sentence on defendant Badawi is
6 therefore necessary and just.

7 C. The Terrorism Adjustment Applies to Defendant Badawi's
8 Fraud Offense for the Same Reasons the Court Applied It to
9 Codefendant Elhuzayel's Fraud Convictions

9 The terrorism adjustment in USSG § 3A1.4(a) applies to the
10 calculation of the offense level for defendant Badawi's financial aid
11 fraud offense for the same reasons the Court applied the terrorism
12 adjustment to the calculation of codefendant Elhuzayel's bank fraud
13 offense level. In addition, the PSR ultimately agreed with the
14 application of USSG § 3A1.4(a) to codefendant Elhuzayel's bank fraud
15 offenses and the reasoning underlying that decision applies here.
16 Defendant Badawi has not objected to this application.

17 The terrorism adjustment in USSG § 3A1.4(a) applies here
18 because, like codefendant Elhuzayel's bank fraud scheme, defendant
19 Badawi's financial aid fraud offense is a felony "intended to
20 promote" a federal crime of terrorism. See USSG § 3A1.4.
21 Specifically, defendant Badawi had, as one purpose of his financial
22 aid fraud, the intent to promote federal crimes of terrorism -- the
23 conspiracy and attempt to provide defendant Elhuzayel as a fighter to
24 ISIL. (See discussion supra.) Thus, the terrorism adjustment
25 applies to the financial aid fraud count, and, pursuant to USSG
26 § 3A1.4(a), increases the total offense level for the financial aid
27 fraud count to 32.

1 IV. SECTION 3553(a) FACTOR ANALYSIS

2 A sentence of a term of imprisonment of 360 months and a
3 lifetime of supervised release is necessary to effectuate the
4 purposes of sentencing set forth in section 3553(a).

5 A. The Need for the Sentence Imposed to Reflect the
6 Seriousness of the Offenses, Promote Respect for the Law,
7 and Provide Just Punishment Requires a 30-Year Term of
8 Imprisonment

9 The nature and circumstances of defendant Badawi's offenses of
10 conviction are extraordinarily serious. ISIL is "the most lethal
11 terrorist organization in the world."⁵³ ISIL has long been, and
12 remains, an enemy of the United States - an enemy⁵⁴ that has murdered
13 United States citizens overseas and that has promoted, and taken
14 credit for, lethal attacks on U.S. soil. Knowing this, defendant
15 Badawi conspired to provide, and attempted to provide, a resource
16 essential to ISIL's survival -- fighters. In addition, defendant
17 Badawi aspired to become an ISIL fighter himself.

18 Defendant Badawi committed his crimes to promote a terrorist
19 organization that, as he knew well, is engaged in armed conflict to
20 subjugate all people to Sharia law as interpreted and enforced by
21 ISIL, and perpetrates barbaric acts of violence against civilians to
22 terrorize them into submission. Defendant Badawi was particularly
23 skilled in articulating ISIL's ideology and defending ISIL's acts of

24 ⁵³ Exh. A, at 75; Exh. B, at 161 (William Braniff testimony).

25 ⁵⁴ ISIL has used the word "enemy" to describe the United States.
26 See Gov't Exh. 1006 (transcript of al-Baghdadi speech in which he
27 states "Terrify the enemies of Allah and seek death in the places
28 where you expect to find it."); Exh. A, at 83 (testimony of William
Braniff that in his speech, al-Baghdadi states the world is divided
into two camps, the camp of the Muslims and the Mujahideen against
the camp of the Jews, crusaders and their allies, with the United
States being the leader of the crusaders.)

1 terrorism. Defendant Badawi speaks, reads, and writes both Arabic
2 and English fluently. He has a deep and extensive knowledge of
3 Islamic writings, frequently reciting them from memory. He admires
4 al-Qa'ida and ISIL clerics such as Anwar al-Awlaki, Abu Malik al-
5 Tamimi, and Anjem Choudary, as well as Abu Bakr a-Baghdadi; he knows
6 their teachings and he has promoted their teachings to others.
7 Defendant Badawi used all of these skills in an effort to radicalize
8 and recruit several young men in his community to fight jihad for
9 ISIL.

10 Defendant Badawi joined with codefendant Elhuzayel and they
11 worked together to provide ISIL with fighters. Defendant Badawi made
12 a video in which Elhuzayel pledged to fight with ISIL, and on the
13 video, Badawi concurred in every pledge. Defendant Badawi's role in
14 creating the video is itself significant; although Badawi had not yet
15 carried out his own plan to travel to Syria and achieve martyrdom on
16 ISIL's behalf, by creating the video, Badawi perpetuated his role as
17 an ISIL propagandist by mimicking ISIL's use of media to spread its
18 murderous message and recruit fighters to its cause.⁵⁵ Defendant
19 Badawi provided Elhuzayel with the means to purchase his plane
20 ticket, by giving Elhuzayel access to his Pell grant funds.
21 Defendant Badawi corresponded with "Mosuly," an ISIL facilitator
22 overseas, to arrange Elhuzayel's travel to ISIL-held territory.
23 Defendant Badawi counseled codefendant Elhuzayel to wipe his
24 electronic media before he left, and together, the conspirators made
25

26
27 ⁵⁵ As history has unfortunately shown, such videos often appear
28 publicly after the person featured in them has died carrying out an
attack. Thus, the argument that, at the time of his arrest,
defendant Badawi had not yet broadcast his video of Elhuzayel is of
no moment here.

1 conscious efforts to conceal their behavior from law enforcement and
2 even discussed Badawi's future FBI interview. Defendant Badawi urged
3 Elhuzayel to announce his decision to join ISIL in Syria, bringing a
4 prospective recruit (KB) to hear their conversation.

5 Defendant Badawi aspired to become an ISIL fighter himself. He
6 repeatedly expressed to codefendant Elhuzayel and others his desire
7 for martyrdom. Defendant Badawi corresponded with the notorious ISIL
8 operative, Abu Hussain al-Britani, who promoted the Garland, Texas,
9 attack. In that correspondence, defendant Badawi presented himself
10 as an ISIL fighter, pointing a dagger towards the camera, telling al-
11 Britani that he was ready to act "when the time was right."

12 Thus, the nature and circumstances of defendant Badawi's crimes
13 require the sentence the government seeks.

14 **B. Defendant Badawi's History and Characteristics Require a**
15 **Guideline Sentence**

16 Defendant Badawi "requests that this Court look to the potential
17 that he possesses," and argues that "[a]s he matures, he will have
18 the ability to change his path and thinking." (Dckt. No. 228, at 8,
19 16). Nothing in the record before the Court provides any basis for
20 this Court to believe that defendant Badawi will change his path and
21 thinking, or use the potential he possesses for anything other than
22 spreading ISIL's message of death and destruction. Nothing in
23 defendant Badawi's history and characteristics mitigates either the
24 seriousness of his crimes or the need for a guideline sentence.

25 Defendant Badawi has enjoyed good health, intelligence, access
26 to a college education, and a loving, supportive family. Up until
27 his arrest, defendant Badawi lived in the family home with his father
28 (before he passed away in 2010), his mother, two brothers, and his

1 sister. He also has the loving support of an aunt and uncle who live
2 in Texas, who he visited approximately a month before his arrest.
3 (Dckt. No. 111, at 107-08). He has never experienced abuse or
4 persecution.

5 Defendant Badawi began attending Cypress Community College in
6 Fall 2012, and later also attended Fullerton College. He was the
7 recipient of Pell grants for four consecutive academic years, from
8 2012 through 2015. He worked for a variety of employers, including
9 Safeway (a supermarket chain) and Lyft (a personal transportation
10 service).

11 Defendant Badawi is a legal permanent resident of the United
12 States, who immigrated to the United States in 2006. Before coming
13 to the United States, he lived in Khartoum, Sudan. During his post-
14 arrest interview, he described Khartoum as "pretty safe," somewhat
15 "westernized," with available cell phone and internet service.
16 (Dckt. No. 111, at 56-57). Defendant Badawi also stated in his post-
17 arrest interview that he went back to Sudan in 2011, and he needed to
18 go back again. (Dckt. No. 111, at 56). Based on the information in
19 the record, including that in the PSR, defendant Badawi appears to
20 have been quite comfortable in both Sudan and the United States.
21 Although the Recommendation Letter points to defendant Badawi's
22 immigrant status as a basis for a downward variance, Recommendation
23 Letter, page 6, a downward variance on this basis, either alone or in
24 combination with other factors, is not warranted here. Neither the
25 PSR nor the Recommendation Letter contain any particularized
26 information indicating that defendant Badawi had difficulty adjusting
27 to life in the United States. Absent such particularized
28 information, defendant Badawi's immigrant status is not a proper

1 basis for a downward departure, either alone or in combination with
2 other factors. To the contrary, although defendant Badawi has been
3 afforded ample opportunities to pursue a fulfilling life in American
4 society, he consciously chose to reject those opportunities and
5 devote himself to advancing the goals of a brutal, lethal terrorist
6 organization. He should be held fully responsible for his choice.

7 **C. A 30-Year Term of Imprisonment Is Necessary to Provide**
8 **Adequate Deterrence to Criminal Conduct and to Protect the**
9 **Public From Further Crimes by Defendant Badawi**

10 The sentence advocated by the government is necessary to deter
11 defendant Badawi and others from committing similar crimes. As
12 multiple courts of appeals have recognized, in the terrorism arena,
13 the difficulty of deterrence necessitates the imposition of lengthy
14 sentences. See Meskini, 319 F.3d at 92; Ali, 799 F.3d at 1031.
15 Although courts have recognized that recidivism ordinarily decreases
16 with age, courts have rejected this reasoning in terrorism cases.
17 Echoing multiple courts of appeals, the Ninth Circuit instructed in
18 United States v. Ressam, "Terrorists, even those with no prior
19 criminal behavior, are unique among criminals in the likelihood of
20 recidivism, the difficulty of rehabilitation, and the need for
21 incapacitation." Ressam, 679 F.3d at 1091 (quoting Jayyousi, 657
22 F.3d at 1117). There is no particularized information here that
23 overcomes the reasoning expressed by the Ninth Circuit and other
24 courts of appeals.

25 Defendant Badawi proposes that he be sentenced to 180 months
26 imprisonment and 20 years of supervised release. He argues that a
27 "lengthier sentence will not protect the public any more" than the
28 sentence he proposes. (Dckt No. 228, at 17). There is utterly no
basis for this Court to credit in any way defendant Badawi's

1 argument. Defendant Badawi's own words and actions have demonstrated
2 his deep commitment to the ISIL ideology and his corresponding
3 antagonism to the fundamental values of the United States. He has
4 maintained this commitment even when, on multiple occasions, family
5 and friends disagreed with him and attempted to convince him
6 otherwise. Knowing--and indeed planning for--the risk of arrest and
7 prosecution, he nonetheless conspired with codefendant Elhuzayel to
8 provide a fighter to ISIL, purchased codefendant Elhuzayel's plane
9 ticket, and investigated and counseled codefendant Elhuzayel about a
10 route to ISIL. Defendant Badawi has repeatedly expressed his desire
11 for martyrdom. Deterrence and rehabilitation of such an individual -
12 - one who is willing to die for his cause -- will be difficult
13 indeed, as this Court has recognized. Therefore, the lengthy
14 sentence at the low-end of the guideline range, coupled with a life
15 term of supervised release, is commensurate with defendant Badawi's
16 longer life span and is necessary to dissuade him, and others like
17 him, from future crimes.⁵⁶

18 **D. A Guideline Sentence Will Avoid Unwarranted Sentence**
19 **Disparities Among Defendants With Similar Records Who Have**
20 **Been Found Guilty of Similar Conduct**

21 Defendant Badawi will be the second defendant to be sentenced by
22 a district court after being convicted at trial of conspiring to
23 provide, and attempting to provide, material support to ISIL. The

24 ⁵⁶ In addition, it is difficult to predict when, if ever, removal
25 proceedings will be initiated against defendant Badawi, and what the
26 length and outcome of such proceedings will be. Furthermore,
27 imposition of a life term of supervised release is necessary for
28 public safety, and can be modified should defendant Badawi
demonstrate to the Court that such supervision is no longer needed.
See 18 U.S.C. § 3583(e) (court may terminate a term of supervised
release at any time after the expiration of one year if it is
satisfied that such action is warranted by the conduct of the
defendant released and the interests of justice).

1 first defendant was codefendant Elhuzayel. Thus, there are no other
2 cases that offer comparable records.

3 Defendant Badawi deserves the same sentence as codefendant
4 Elhuzayel. As the PSR found, defendant Badawi was equally culpable
5 as codefendant Elhuzayel -- only his role differed. Defendant Badawi
6 was a radicalizer, recruiter, and facilitator, and like codefendant
7 Elhuzayel, defendant Badawi aspired to die a martyr fighting jihad
8 for ISIL. Their crimes are equally serious, their prospects for
9 rehabilitation are equally bleak, and the need to protect the public
10 from their future crimes and crimes by others like them is the same.
11 Sentencing defendant Badawi to the same sentence as codefendant
12 Elhuzayel will avoid unwarranted sentence disparities among
13 defendants with similar records who have been found guilty of similar
14 conduct.

15 Defendant Badawi points to sentences imposed in cases in which
16 defendants pled guilty to attempting to provide material support to
17 ISIL or other terrorist organizations. Defendant Badawi argues that
18 "[t]he only real distinction" between these cases and this one "is
19 that [he] exercised his constitutional right to trial." (Dckt. No.
20 228, at 17). While it is true that very few defendants in terrorism
21 cases have proceeded to trial, this is hardly the only distinction
22 between defendant Badawi and other defendants.

23 Defendants who pled guilty to crimes of terrorism accepted
24 responsibility for their criminal conduct in open court, recognizing
25 that their conduct did, in fact, violate American law. In a
26 terrorism case, particularly in a case involving a terrorism
27 organization such as ISIL that adamantly rejects the validity of
28 American law, the act of accepting responsibility for one's criminal

1 conduct is evidence of the beginnings of rehabilitation. Thus, the
2 Ninth Circuit has soundly rejected, in terrorism cases, a downward
3 departure/variance based on comparing the sentences imposed on
4 defendants who went to trial with defendants who pled guilty. See
5 Ressam, 679 F.3d at 1094-95 ("We . . . reject the comparison of
6 Ressam's sentence to defendants who pleaded guilty.").

7 Another difference is that most defendants in other terrorism
8 cases were not sentenced for conspiracy -- a crime that increases the
9 threat to the public and decreases the likelihood of deterrence. As
10 the Supreme Court explained over fifty years ago:

11 [C]ollective criminal agreement - partnership in crime -
12 presents a greater potential threat to the public than
13 individual delicts. Concerted action both increases the
14 likelihood that the criminal object will be successfully
15 attained and decreases the probability that the individuals
involved will depart from their path of criminality. Group
association for criminal purposes often, if not normally,
makes possible the attainment of ends more complex than
those which one criminal could accomplish.

16 Callanan v. United States, 364 U.S. 587, 593-94 (1961). Not only did
17 defendant Badawi conspire with codefendant Elhuzayel, the evidence
18 makes clear that they reinforced each other's commitment to fight
19 with ISIL and gain martyrdom. Moreover, as a result of the
20 conspiracy, defendant Badawi was able to use Elhuzayel's commitment
21 to join ISIL overseas to try to recruit additional ISIL fighters.

22 Still another difference is that other terrorism organizations
23 are not like ISIL. ISIL is "the most lethal terrorist organization
24 in the world,"⁵⁷ and routinely inflicts particularly brutal and
25 heinous violence on civilians. Here, defendant Badawi not only knew
26 well ISIL's brutality, he defended it repeatedly. This further
27

28 _____
⁵⁷ Exh. A, at 75; Exh. B, at 161 (William Braniff testimony).

1 differentiates defendant Badawi from defendants who pled guilty in
2 other terrorism cases.

3 In addition, courts of appeals have cautioned against giving
4 excessive weight to the sentencing disparity factor. See, e.g.,
5 United States v. Khan, 461 F.3d 477, 500-01 (4th Cir. 2006) (holding
6 that the district court erred when it placed "excessive weight" on
7 § 3553(a)(6) and imposed a below-guidelines sentence). Several
8 courts of appeals have vacated sentences that were reduced based on
9 comparisons to sentences in terrorism cases where defendants were not
10 similarly situated. See Ressay, 679 F.3d at 1095; United States v.
11 Abu Ali, 528 F.3d 210, 265 (4th Cir. 2008); Jayyousi, 657 F.3d at
12 1117-18. Accordingly, here, the particular facts of this case,
13 including the gravity of the offense conduct and the need to deter
14 defendant Badawi and others from similar crimes, necessitates the
15 imposition of the low-end guideline sentence recommended by the
16 government.

17 **V. CONCLUSION**

18 For all the reasons above, the government respectfully submits
19 that the Court should sentence defendant Badawi to a term of
20 imprisonment of 360 months, a life-time term of supervised release,

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1 no fine, and a \$300 special assessment. The Court should also order
2 that defendant Badawi make the restitution payment indicated in the
3 PSR. See PSR ¶ 45.

4 Dated: October 7, 2016

Respectfully submitted,

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