

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) 03 CR 978
) Hon. Amy J. St. Eve
MUHAMMAD HAMID KHALIL SALAH,)
 a/k/a “Muhammad Abd Al-‘Hamid Salah,”)
 a/k/a “Abu Ahmad”)

**GOVERNMENT'S OBJECTIONS TO THE PSR
AND SENTENCING POSITION PAPER**

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully submits the following objections to the PSR and sentencing position paper:

I. Offense and Related Conduct

A. Count Three Conduct

Defendant Muhammad Salah was convicted on the Count Three charge of obstruction of justice. That charge arose from sworn written answers Salah gave to interrogatories in civil litigation in the case *Boim v. Quranic Literacy Institue, et al.*, 00 C 2905 (N.D. Ill.). The *Boim* suit specifically alleged that Salah and a number of other Hamas members in the United States and abroad, as well as named defendant Hamas cover organizations in the United States, facilitated the operation of Hamas whose terrorist activities included the murder of a teenaged American citizen named David Boim. The *Boim* suit was brought pursuant to 18 U.S.C. § 2333. That statute, enacted as part of the Anti-Terrorism Act of 1990 (and codified as part of the “Terrorism” chapter of Title 18 of the United States Code) authorizes civil damages suits by the victims or the heirs of victims of acts of international terrorism by terrorists and terrorist organizations and those providing material support to them. In essence, the statute creates a civil damages action for conduct that gives rise to criminal liability under the Anti-Terrorism Act, including, specifically, conduct giving rise to criminal liability under the material support to terrorism prohibition of 18 U.S.C. § 2339B.

The *Boim* suit alleged more specifically that Salah engaged in numerous specific acts facilitating the operation of the Hamas military, including the international laundering of funds to support military operations by terrorist cells based in the West Bank and Gaza. The suit further

alleged that within the United States Salah recruited, indoctrinated and trained Palestinian men to be Hamas terrorist operatives in the West Bank and that these activities were done at the direction of and with funding from Mousa Abu Marzook. Many of the allegations mirrored allegations previously advanced against Salah in a civil forfeiture action brought against Salah-held assets, (*see United States v. One 1997 E-35 Ford Van et al.*, 50 F. Supp. 789 (N.D. Ill. 1999), and later allegations against Salah set forth in the Count One racketeering conspiracy charge against Salah in the Second Superseding Indictment upon which this case proceeded to trial. Salah, along with other named defendants, including specifically the designated terrorist organization Holy Land Foundation and the Islamic Association of Palestine, was found civilly liable by Magistrate Judge Keys. *Boim v. Quranic Literacy Institute, et al.*, 340 F. Supp. 2d 885 (N.D. Ill. 2004).¹ The district court entered a judgment of approximately \$150 million against Salah and certain other defendants following a jury trial on damages. (The case is presently on appeal to the Seventh Circuit.)

In the pre-trial discovery phase of that *Boim* suit regarding Hamas and Salah's material support of it, the plaintiffs served interrogatories or written questions on Salah calling for sworn answers from him to specific questions regarding certain facts underlying the case. As detailed in the trial testimony of the lead lawyer for the *Boim* plaintiffs, interrogatories are one of the means by which parties in the case conducted their underlying investigation of the facts at issue. Trial testimony established that through the interrogatory procedure provided for under the Federal Rules of Civil Procedure, a party in a federal lawsuit can get answers to questions that help them better focus their inquiry and investigation (and ultimately the trial) on subjects and areas that truly matter and eliminate needless expenditure of time and resources on matters that are of lesser or secondary significance. Those purposes are served only if the answers to the questions or interrogatories is complete and wholly truthful. Among the consequences ensuing from false, partial or omitted information is a misdirection of investigative resources in the litigation by the party acting on the false answers, thus impeding the progress of the lawsuit and obstruction of justice.

Salah, with the assistance of his attorneys, responded in writing to the interrogatories posed to him as a defendant in the *Boim* civil terrorism suit and provided a set of answers that he swore

¹ The organizational defendants and their leaders were the same Hamas American leaders and front organizations that attended the Philadelphia meeting led and facilitated by Ashqar.

and verified under oath were “true and correct.” The evidence at trial established that Salah lied, either through the affirmative assertion of a falsehood or through omission of responsive information, regarding everything having to do with Hamas and his relationship to it. In overview, the evidence established Salah lied in answering the following interrogatories:

Interrogatory No. 2

“Identify each institution, organization and group with which you have been affiliated as a student, member, employee, officer, director, shareholder, or otherwise from January 1, 1989 to date, stating the nature of your affiliation and the period of that affiliation.”

Detailed confessions and statements by Salah, orally, in his own handwriting, as recorded by Israeli intelligence and police, and as admitted by Salah in pleading guilty to terrorism-related charges in Israel, not to mention various forms of corroborative evidence, including Salah’s own notes, bank records, address book, telephone calls and records, and so on, all reflected a longstanding and extensive relationship with Hamas, and the Hamas military political and wings and its leadership in particular. Salah’s sworn answer to Interrogatory 2 did not acknowledge his relationship with and to Hamas, its precursor organization, the Muslim Brotherhood, or Hamas in America, in the form of the Organization of Palestine, but rather acknowledged only a limited relationship with certain American religious and non-profit entities.

Interrogatory Number No. 4

“State the date, location, duration and purpose of each occasion on which you have met with any of the named defendants in this actions.”

Hamas leader Mousa Abu Marzook, like Salah, was a named defendant in the *Boim* suit. There was extensive evidence admitted at trial reflecting Salah’s extensive relationship with Marzook extending over a number of years: that evidence again included numerous of Salah’s oral and written statements corroborated, most notably, by financial records reflecting the movement of approximately \$1 million in funds from Marzook accounts directly to Salah, a sizable portion of which Salah transferred to the West Bank. Salah successfully transferred portions of that Marzook money to Hamas military operatives and cells in the West Bank and Gaza in September 1992 and again in January 1993. Phone records introduced into evidence reflected that certain of the funds

were directed to Salah immediately after the two men had been in phone communication.² It further was uncontested at trial that more than \$97,000 in Marzook money was seized from Salah's East Jerusalem hotel room following his arrest in Israel on January 25, 1993. The evidence further established that the remainder of the million dollars in Marzook money was kept by Salah and his family who lived off of it until the late 1990's (using it for, among other things, a nearly \$100,000 payoff of the mortgage of the Salah family home in Bridgeview). In his answer to Interrogatory 4, Salah nevertheless swore under oath that he had not met Marzook (or any of the individual defendants).

Interrogatory No. 10

“Identify each person to whom you have given or transferred funds in excess of \$1,000, for any purpose.”

Salah's response listed three transfers of funds overseas, but concealed money he personally directed to Marzook, as reflected, for instance, in a \$2,000 November 24, 1989 check from Salah to Marzook, and his own transfer of other Marzook-originated funds reflected, for example in Salah's transfer of \$50,000 in Marzook money to Bridgeview money changer Waleed Ottman (who testified at trial about the transfer and the misrepresentations told to him by Salah to conceal the terrorist support purposes behind the transfer).

Interrogatory No. 6

“Identify each and every occasion or event on which, or at which, you have

² For example, the government introduced into evidence records reflecting 6 calls between Salah and Marzook on September 25, 1992. Business and bank records admitted into evidence established that on the same day, Salah purchased plane tickets for Hamas military trainees Rizik Saleh and Sharif Alwan (the same Alwan who later was convicted of criminal contempt in relation to a Chicago grand jury investigation into Salah and Hamas) and, days later, Salah received a \$50,000 check from Marzook. Similarly, phone records and analysis established that Hamas leader Marzook and Salah were briefly in phone contact on August 8, 1992, the same day Marzook wrote a \$5,000 check to Salah which Salah deposited into a personal account in Chicago. Likewise, phone records showed phone contact between the two men on November 28 and 29, 1992, corresponding to a November 29, 1992, check to Salah for \$2,110 from a Marzook account. (Salah's name and Bridgeview phone number were listed in Marzook's phone book entered into evidence.)

participated in the training of individuals for service in the cause of, or for Hamas, Palestine, or Palestinian causes.”

Salah answered under oath that “he has never participated in such activity.” Salah’s handwritten and orally recorded statements taken from him in Israel and admitted into evidence at trial established this too was a false statement because the statements establish that Salah trained Sharif Alwan and Rizik Saleh and others in the use of explosives, toxins, agricultural chemicals, timing devices for bombs. In doing so, Salah brought in people from Lebanon and other locations to assist in aspects of the training. Business and financial records admitted at trial corroborated these statements, demonstrating that Salah using Hamas moneys, purchased plane tickets used by Rizik Saleh and Sharif Alwan to fly from Chicago to Damascus, Syria in September 1992. Further corroborating Salah’s military training of Alwan and Saleh, on March 19, 1993, the day after Salah was confronted with the handwritten accounting in which he first disclosed Alwan and Saleh’s Hamas involvement, Salah met with U.S. consular official Robert Seibold. Seibold, testifying at trial, related that on this occasion, Salah asked the U.S. consulate to “tell Sharif and Rizik not to go to Louisiana as planned, but to stay in Chicago.” Thus, Salah, now aware that he had unwittingly compromised Alwan and Saleh, attempted to use the consular official to pass a coded messages to his Hamas trainees to warn them off of prior plans. As reflected in the PSR, Alwan himself made documented statements confirming these activities as directed and facilitated by Salah. PSR at lines 275-290.

Interrogatory No. 9

“Identify each and every document which you have authored, or which constitutes a statement by you concerning the subject of Hamas, Palestine, or Palestinian causes.”

Salah’s sworn written response acknowledged only (1) an affidavit he provided in an extradition proceeding against Mousa Abu Marzook in the Southern District of New York in 1995,³

³ *In the Matter of the Extradition of Dr. Mousa Mohammed Abu Marzook*, 96 Civ. 4107. Evidence at trial established that Marzook was detained while entering the United States on July 25, 1995. Extradition proceedings were initiated against him on the basis of a request from the State of Israel which had charged him, as a function of his leadership of Hamas, with conspiring in numerous Hamas terrorist murders of innocents in Israel. Among the evidence introduced against Marzook in support of the extradition were statements of Muhammad Salah detailing Marzook’s direct oversight of Hamas military affairs. Salah provided assistance to

and (2) a legal fundraising leaflet he assisted in preparing that he attached to his interrogatory answers. Salah's sworn response omitted the series of statements about Hamas and his relationship to and involvement in Hamas that Salah gave to Israeli authorities in the days and weeks following his January 25, 1993 arrest in Israel. The statements included police statements taken from him in January and February 1993, a 53-page handwritten statement that Salah gave to individuals whom he believed to be Hamas leaders in prison in early March 1993, and numerous oral statements he gave to Israel Security Agency (ISA) interrogators including, most notably, a lengthy March 18, 1993 audio-recorded interview with an ISA interrogator known as Nadav. In the 53-page handwritten statement (Gov. Trial Exs. Salah Handwritten Statement and Translation) and the audio-recorded interview (Gov. Trial Exs. 3/18/93 Tapes 1-5 and Translations), Salah detailed his lengthy and extensive history with and work for the Hamas organization, and particularly secret operations in the United States and the West Bank in Gaza to directly support the activities of the military wing of Hamas engaged in terrorist operations.⁴

In March 2006, the Court conducted a lengthy and complex evidentiary hearing on a motion by Muhammad Salah to suppress written and oral statements the government sought to introduce against Salah. Salah's motion was predicated on a sworn affidavit from him averring that the various statements obtained from him (written and oral) were not voluntary and willful, but rather were the product of Israeli torture. The court heard testimony from ISA interrogators known by the operational names "Nadav" and "Haim," and received extensive evidence that included classified

Marzook in the extradition proceedings by providing to Marzook a sworn affidavit claiming the statements taken from him were obtained through torture. Notably, Salah never denied the statements were his, or that he had met Marzook on numerous occasions as the statements indicated.

⁴ Salah's sworn answers to the *Boim* interrogatories also omitted an agreement he personally negotiated, wrote and signed with Israeli officials in which Salah traded his knowledge of the location of the burial location of Hamas kidnap and murder victim – Ilan Sa'doan – for the release of certain Hamas prisoners and the return of the more than \$97,000 in United States currency seized from his East Jerusalem hotel room following his arrest. In trading on the highly sensitive and secret burial location of this Hamas victim in order to gain the release of Hamas prisoners and funds, Salah was aiding and abetting a Hamas kidnaping and murder conspiracy.

information. In those proceedings, the government established by clear and convincing evidence, and to the court's satisfaction, that Salah's handwritten and audio-recorded statements, as well as numerous other oral statements by Salah and certain statements he gave to an Israeli National Police Officer, were indeed willful and voluntary statements by Salah.⁵

Interrogatory No. 11

“Identify all state(s) and country(ies) which you have visited and the state the date(s), duration and purpose of the visit.”

To this straightforward question, Salah stated under oath that he traveled to Israel and the occupied territories in December 1992 and August 1992, to Pakistan in 1985, and to extensive travels across the United States dating back nearly 30 years. Salah failed to disclose in his sworn answer a trip to the West Bank in 1989. Salah discussed that trip in his 53-page handwritten statement detailing his activities for Hamas. There Salah expressly referred to that 1989 trip as his first overseas trip for Hamas. At trial the government proved that Salah in fact had made the 1989 trip through evidence of his re-entry to the United States on an international flight in August 1989.⁶

⁵ The Court's suppression hearing ruling in the instant case, *United States v. Marzook, et al.*, 435 F.Supp. 2d 708 (N.D. Ill. 2006), in which the Court ruled that Salah's handwritten and recorded statements in Israel were admissible at trial constituted a rejection of Salah's sworn claims that he was tortured by Israeli authorities, and in essence, a finding that Salah's sworn affidavit in support of the suppression motion was perjurious. This perjurious conduct is a further instance of criminal obstruction by Salah and, as the PSR indicates, warrants imposition of the obstruction enhancement. Salah's submission of a similar perjurious affidavit in the Marzook extradition proceedings described above was also obstruction of a court proceeding warranting Guideline consideration as set forth below.

⁶ The PSR reflects Salah's recent acknowledgment of the 1989 trip, which he characterized to the Probation Office as being for the purpose of visiting his family "after his half-brother, Ibrahim, was released after serving ten years in prison for fighting the Israeli occupation." PSR at 17, lines 577-78.

Interrogatory No. 21

“Identify every transmission of funds in which you have participated directly or indirectly from the continental United States to any entity or person outside the United States.”

Salah’s sworn answer to this interrogatory stated that he had never transmitted funds from the United States to an entity or person outside the United States, but that he had \$200,000 wired from his bank account in the United States to the U.S. bank account of a money changer in the West Bank who then provided Salah the money in Israel, which Salah in turn distributed to certain individuals in the West Bank and Gaza. Salah’s answer omitted other significant international transfers he made or arranged. For example, financial records admitted into evidence at trial showed that on January 19, 1993, while on his Hamas mission in the West Bank, Salah executed three checks to cash, each for \$10,000, or \$30,000, all drawn against the Salah Chicago area bank accounts into which he had received hundreds of thousands of dollars from an account held by Hamas leader Mousa Abu Marzook.⁷

B. Additional Salah Conduct

All of the foregoing was tried to verdict in conjunction with the racketeering conspiracy charged in Count One of the Second Superseding, on which the jury acquitted both defendants Ashqar and Salah. The conspiracy alleged the Hamas terrorist organization as the racketeering enterprise that as alleged spanned from as early as 1988 to the time the grand jury returned the charge in August 2004. Its organizational charter and the statements and actions of its leaders and operatives reflect that Hamas was formed and exists with the objective of removing the State of Israel from the map, and forcing Israelis to cede physical and political control over the lands comprising Israel, the West Bank, and the Gaza Strip, which Hamas collectively refers to as Palestine, and replacing the Israeli governmental authority over these lands with an Islamic government.

⁷ Financial records and testimony at trial similarly established that Salah transferred thousands of dollars from one of his Chicago area bank accounts to the West Bank through his execution on September 3, 1992 of ten checks made payable to cash, each in the amount of \$5,000, for a total of \$50,000. Salah’s statements introduced into evidence established that Salah directed that money to Hamas military leader Salah Al-Arouri to be used for the purchase of weapons to be used in terrorist operations.

More particularly, and as established at trial through testimonial evidence adduced through both government and defense experts, as well as materials in the possession of the defendants variously introduced against one or the other of them, during the charged period, the West Bank and Gaza Strip were disputed territories often referred to as the Occupied Territories. Hamas pursued the objective of a Palestinian/Islamic state by fostering support among Palestinians through community building and social welfare activities in the West Bank and Gaza Strip and has also engaged in numerous terrorist attacks aimed at Israeli military personnel, police officers and civilians. These terrorist activities, for which Hamas has repeatedly and publicly claimed credit, have as their broadly represented purpose the undermining of the Israeli-Palestinian peace process, and, more generally, forcing the State and citizens of Israel to cede physical and political control over the lands comprising Israel, the West Bank, and the Gaza Strip, and replacing the Israeli governmental authority over these lands with an Islamic government. In or about 1988, Hamas published a charter calling for such violent terrorist attacks. According to the Hamas Charter, the means of confronting the “usurpation of Palestine by the Jews” is proclaimed to be “*jihad*” (holy war). Hamas defines *jihad* as violent activities with such violent activities being carried out by Hamas’s so-called military wing, commonly known as the Izz Al-Din Al-Qassam Brigades (“Al-Qassam Brigades”). Hamas has been comprised of various committees or bureaus, including among others, a political committee, a military committee, and a social/charitable committee, all of which worked together, under the general guidance and directive of the political branch leaders, including among others over the years of the conspiracy, Mousa Abu Marzook, Abdel-Aziz Rantisi, Mahmoud Zahar, Ahmed Yassin, Imad al-Alami, Khalid Misha’al and Ismael Haniyeh, to achieve the goals of Hamas.

Hamas operates through offices located around the world. Hamas placed members of its leadership in countries in the Middle East and elsewhere, with these leaders being referred to by members of Hamas as the “outside,” while Hamas also maintained leadership members, cells and committees inside the West Bank and Gaza Strip, with these elements being referred to by members of Hamas as the “inside.” The presence of Hamas in the United States has existed since at least the late 1980s and has served, among others, two primary Hamas purposes: (1) recruitment of members; and (2) fundraising. Over the years, hundreds of thousands of dollars have been raised in the United States for Hamas. Further, individuals in the United States have been conduits for money coming

from overseas to be channeled through sequential, concealing transactions in U.S. financial institutions, back to Hamas on the “inside.

The evidence at trial (introduced through both government and defense experts) established both the existence of Hamas and the Hamas conspiracy and that Hamas pursues its objectives through various means that have included the promotion and execution of acts of terrorism. Since at least 1989 through and including the date of the Grand Jury’s return of the second superseding indictment, defendant Salah was an active member in Hamas who engaged in the provision of logistical, financial, strategic and administrative support to further the objective of Hamas.⁸

The following summary of Salah’s participation in and unlawful activities in furtherance of Hamas and the Hamas conspiracy as charged is based in significant part on the following trial evidence: Salah’s own statements to ISA agents, Israel National Police Officers and U.S. consulate officials; Salah’s handwritten accounting of his involvement in Hamas; documents found in connection with Salah’s arrest in Israel; testimony of former New York Times journalist Judith Miller’s detailing her observations of a portion of defendant Salah’s ISA interrogation; Salah’s guilty plea in Israel; documents found in the December 1993 search of defendant Ashqar’s residence; statements, recordings of calls and meetings of other Hamas members, including those of co-defendant Ashqar with various co-conspirators, including Muhammad Jarad; the address books of defendant Salah, defendant Ashqar and co-conspirator Marzook; bank and telephone record.

The PSR finds by a preponderance of the evidence that Salah committed the crimes charged in the racketeering conspiracy.

1. Salah’s Beginning With Hamas

As referenced above, in August 1988, the Gaza Strip branch of the Muslim Brotherhood (a radical Egyptian-based Islamist organization) issued a charter for Hamas. The organizational charter set forth as its purpose and objective the transformation of Israel into an Islamic state, and specified *jihad*, to include killing Israelis, as a means by which the enterprise’s objectives were to be

⁸ In a pre-trial ruling on the government’s *Santiago* proffer, which was contested by the defense, the district court held that the government established by a preponderance of the evidence the existence of the charged Hamas conspiracy and the participation of both defendants in the conspiracy. *United States v. Salah*, 03 CR 978 (N.D. Ill.), Doc. # 692 (Sept. 18, 2006).

achieved. At this time, Salah, who had moved to the United States in 1971 and become an American citizen in 1979, was a member of the Muslim Brotherhood dating back to the late 1970's. Co-conspirator Marzook was a fellow member of the Muslim Brotherhood who resided in the United States for much of the 1980's while pursuing graduate studies. Salah and Marzook began a closer association in the late 1980's in association with an organizational offshoot of the Brotherhood devoted to supporting Hamas. Bank records admitted at trial (Gov. Trial Ex. Marzook Salah Transaction Chart and supporting documents) reflect that Marzook and Salah had a financial relationship dating back to at least November 1989, when Salah directed a \$2,000 check to Marzook. Salah himself would relate (consistent with border records) that he traveled to Palestine on Hamas-related work in 1989.

2. Salah's Recruitment and Training of Military Operatives for Hamas

By 1990, Marzook had recruited Salah's participation in a small United States-based Hamas "security committee. The activities of the security committee included, among other things, the identification of Palestinian men presently studying in the United States for the purpose of recruiting them into Hamas. Acting on behalf of the committee, Salah compiled information on the potential recruits which included their fields of study, the projected completion dates of their study, the projected date of their return to the West Bank and Gaza Strip, and their capacity to participate in terrorist activities against Israel. This process produced numerous names that the security committee sorted based on their knowledge of chemistry, physics, computer science, and military operations.

The individuals identified by the security committee were tested and eventually narrowed down to several individuals who were believed to be candidates for operational roles in Hamas terrorist activities. Those candidates, including co-conspirators Sharif Alwan and Rizik Saleh, were provided with advanced training in military munitions and operations, including the manufacture of explosive devices and detonators. Around September 1992, to facilitate the training of co-conspirators Alwan and Saleh, and under the direction of Hamas leader Mousa Abu Marzook, Salah purchased airline tickets for travel between the United States and locations in the Middle East for the two military trainees. Both Alwan and Saleh flew to Syria with the tickets Salah provided and received advanced training in bomb-making from, among others, Hamas military operatives who had fought in Afghanistan. The purpose of all of these activities were to further the Hamas military wing that as far back as the late 1980's was engaged in orchestrated kidnappings, hostage-takings and

murders.

3. Salah's September 1992 Military Mission For Hamas

In approximately August 1992, Salah met with co-conspirators Marzook and Mohammed Qassem Sawalha regarding the need to revitalize Hamas terrorist operations in the West Bank. During the meeting, Sawalha, who had previously been in charge of Hamas terrorist operations within the West Bank, identified specific Hamas members still residing in the West Bank who could be used to revitalize Hamas' terrorist activities. Among these individuals were co-conspirators Adel Awadallah and Salah Al-Arouri.

At the time of this meeting, co-conspirator Adel Awadallah was a rapidly rising Hamas military leader in the West Bank. Awadallah is generally regarded as responsible for directing several deadly terrorist attacks carried out in Israel including a series of suicide bombings of civilian buses in the mid-1990's. On September 9, 1998, Awadallah, who was also known as "Engineer 3" for his prowess in devising and implementing suicide bombing operations, was killed during a shootout with Israeli defense forces in the West Bank town of Hebron. Co-conspirator Salah Al-Arouri was a high-ranking Hamas military leader dating back to his days as a Hamas student cell leader at Hebron University in the early 1990s.

In early September 1992, after meeting with Marzook in the U.S. and receiving funds from Marzook's associates to facilitate Hamas work, Salah traveled to the West Bank.⁹ While there, Salah, who used the name Abu Ahmad (father of Ahmad) in his dealings with Hamas co-conspirators, met with Awadallah on several occasions. During these meetings, Salah and Awadallah discussed both Hamas terrorist activities and political activities in the West Bank and

⁹ The money Salah distributed to Hamas military leader Salah Al-Arouri during his August 1992 trip to Israel and the territories, as well as the money he distributed to various Hamas military leaders and operatives during his January 1993 trip discussed below, were provided to him by Marzook either directly or through named co-conspirators Ismael Elbarasse and Nasser Al-Khatib, who were Marzook's personal secretaries in the United States. Bank records and financial summary charts based on the records that were introduced at trial established that nearly all of that money Marzook money originated overseas. The Salah money trail is another one example of the operation of a financial network headed by Marzook (and facilitated and directed in part by co-defendant Ashqar, through which money was transferred from abroad (most commonly from sources in the Arab Gulf states), laundered through U.S. bank accounts, and then further transferred back overseas for ultimate distribution, as evidenced by Salah's activities, to the Hamas' military wing.

Gaza. Awadallah informed Salah that he, Awadallah, would need several months to reorganize Hamas' terrorist cells in the West Bank because Awadallah, after an arrest by Israeli authorities, had directed Hamas members to burn Hamas organizational documents containing information about Hamas cells in the West Bank. Salah also discussed with Awadallah the latter's proposal to murder Sari Nusseibah, a moderate Palestinian leader regarded as a leading proponent of a peace with Israel. Salah regarded the proposal as having merit and agreed to carry it back to Mousa Abu Marzook for further discussion and possible approval. Salah in fact did speak with Marzook about the assassination proposal, who viewed it with favor, but Awadallah's need to flee underground frustrated Salah's further efforts to carry forward with the proposal.

Also while in the West Bank in September 1992, Salah met with co-conspirator Salah Al-Arouri. Al-Arouri informed Salah that Hamas needed money to purchase weapons to carry out terrorist activities. Salah agreed to provide Al-Arouri money for the purchase of weapons and other military apparatus and, thereafter, provided Al-Arouri at least approximately \$50,000 for these purposes. Salah was able to provide the money to Al-Arouri by making structured withdrawals from one of his Chicago bank accounts through ten \$5,000 checks that Salah executed in the West Bank on September 3, 1992, which he had cashed through money changer in Ramallah, West Bank. In order to do so, Salah prevailed upon Chicago area money changer Waleed Ottman, who happened to be visiting family in Ramallah in September 1992, to vouch for him with the local money exchanger. In order to conceal the fact that he was transferring funds from the U.S. for the purpose of funding Hamas terrorist weapon procurement and operations, Salah lied to Ottman, telling him the money was needed to start up a taxi service business in the West Bank. As explained by Ottman at trial (and as reflected in bank records corresponding to the transactions), most of Salah's checks bounced. Salah subsequently covered the bounced checks by obtaining upon his return to the U.S. a \$50,000 check from Mousa Abu Marzook, which Salah deposited directly into Ottman's Chicago area bank account (along with additional Hamas funds).

During his September 1992 trip, Salah also met with several other Hamas members. This included co-conspirator Abu Sai'b, who was involved in Hamas terrorist operations in the Gaza Strip. Abu Sai'b informed Salah of the state of the military organization in Gaza, including armament, assistance to cell members being sought Israeli authorities, the fact that he had approximately 53 Hamas recruits who were prepared to carry out terrorist attacks, but that funding

was needed to help carry out the attacks. Salah agreed to and did pass on the information provided by Au Sai'b and Abu Sai'b's request for money to senior Hamas co-conspirators. Salah also met with Hamas co-conspirator Abu Mujahid, who related operational information and concerns that Salah related to Hamas Marzook upon Salah's subsequent return to the U.S.

4. Salah's 1993 Mission to Rebuild The Hamas Military

In December 1992, in a response to escalating violence and a series of Hamas kidnaping/murder operations against Israeli military and civilian personnel, Israel deported approximately 415 radical Islamists (primarily Hamas) individuals out of Israel, the West Bank and Gaza and removed them to a tent camp set up at Marj Al-Zuhour in southern Lebanon. In response to Israel's mass deportation, Marzook contacted Hamas members throughout the Middle East and elsewhere to discuss how to deal with the resulting organizational crisis. Among those individuals Marzook called to discuss the issue of the Hamas deportees was Salah. In addition, in late December 1992 and early January 1993, in response to the mass deportation, Hamas leadership, including Marzook as the chairman of the Hamas delegation, met in high-level summits in Tunis and Sudan, with leaders of other Palestinian organizations to discuss responses to Israel's deportation action, including whether to terminate ongoing Palestine Liberation Organization peace discussions with Israel, and to increase its violent resistance against Israeli settlers and government personnel in the West Bank and Gaza Strip. Discussions also covered changes in organizational structures with the purpose of best promoting "armed struggle against the Zionist enemy." (The minutes of these meetings were found during the search of defendant Ashqar's residence in Mississippi in December 1993). Co-conspirator Marzook asked Salah to meet him in Sudan, but Salah declined, noting that the appearance of Sudanese travel stamps on his American passport would make him a marked man in the United States and Israel and thus limit his options for traveling and acting on behalf of Hamas.

When not otherwise engaged in these high-level summits, Marzook was working to address the decimation of the Hamas leadership ranks, and particularly its military operations, in the wake of the Israeli deportations. To assist him in those efforts, Marzook turned to defendant Salah. In late December 1992, at the request of Marzook, Salah agreed to travel to the West Bank and Gaza Strip to assess the ability of Hamas to function after the mass deportation and to deliver money to Hamas members in the individual regional cells within the West Bank and Gaza Strip. Marzook

provided general instructions to Salah on the amounts to be distributed in the regions. Salah also was directed by Salah to assess Hamas' ability to continue to carry out terrorist attacks. Thereafter, Salah received into his Chicago based bank accounts a series of wire transfers totaling \$985,000 from accounts jointly held by or otherwise associated with Marzook. This money was to be distributed to Hamas members in the West Bank and Gaza Strip. Salah was directed to meet in London with fugitive Hamas operative and co-conspirator Muhammad Qassem Sawalha before traveling to Israel and the territories. Phone records reflect a series of crossing contacts between Salah, Sawalha, Marzook (and Ashqar) during the period leading up to Salah's scheduled departure of January 13, 1993.

Before heading overseas, Salah, in January 1993, met in Chicago with co-conspirator Anwer Hamdan, a U.S.-based Hamas member, who was at that time returning to the United States from the Middle East. In the meeting, Hamdan provided Salah with a message from and two pictures of co-conspirator and West Bank Hamas military leader Adel Awadallah for the purpose of having Salah arrange for the creation of a false passport to be provided to Awadallah to facilitate the latter's flight out of the West Bank and out of the reach of Israeli authorities who were looking for him. (Salah ultimately provided the pictures to co-conspirator Mohammed Qassem Sawalha in order to have a false passport produced.) The evidence relating to Salah's facilitation of travel document fraud for Hamas was not limited to Salah's later disclosure of it following his arrest in Israel, but a number of other corroborating details about co-conspirator Hamdan and his activities, including passport office records reflecting a long history of fraudulent passport activities by Hamdan, (Gov. Trial Ex. Anwer Hamdan Passport Group), travel records reflecting his entry to the United States from abroad at a time that dovetailed with Salah's later admission, and documents in defendant Ashqar's possession reflecting Hamdan ties to Hamas, including his role as a conduit of approximately \$149,000 in enterprise funds transmitted from Kuwait through an account Hamdan held in the Chicago area, and his appearance in phone and address books of both defendants Salah and Ashqar.

On January 13, 1993, (as reflected in travel documents and records introduced at trial), Salah left the United States en route to the West Bank and Gaza for the purpose of assessing Hamas' ability to function after the deportation, as well as to deliver money to Hamas members. While en route to the Middle East, Salah in fact stopped in London, England and met with co-conspirator Sawalha. Sawalha directed Salah to provide money to various Hamas members in the West Bank

and Gaza Strip, and provided contact information for meetings with, among others, Hamas co-conspirators that included military operatives Adel Awadallah and Abu Mujahid..

Between January 17, 1993 and January 19, 1993, after arriving in Israel, Salah transferred approximately \$230,000 of the Marzook originated funds from his Chicago bank accounts to the West Bank through a money changer in Ramallah. Salah transferred \$30,000 of that amount by executing three \$10,000 checks made out to cash and providing them to the money changer. The transfer of the additional \$200,000 was effected through a wire transfer made by Salah's wife from one of Salah's Chicago accounts directly to a Chicago account associated with the Ramallah money changer. Salah collected the \$230,000 in cash from the money changer for distribution to Hamas members in the West Bank and Gaza Strip. This was yet a further instance (along with the September 1992 structured transfers discussed above), of Salah conducting acts of international money laundering in violation of 18 U.S.C. § 1956(a)(2)(A) for the purpose of assisting Hamas terrorist activities.¹⁰

After arriving in Israel, Salah also met with co-conspirator Adel Awadallah. Salah and Awadallah conferred on Hamas personnel issues and specific planned terrorist attacks, including a contemplated plan by Awadallah to kidnap and murder three Israeli civil engineers. Salah expressed approval of the murder plan in part because it would result in Hamas's seizure of the sidearms the engineers would have with them for protection. Salah arranged for \$60,000 to be provided to Awadallah for various Hamas needs. He also took from Awadallah, the names of associates with whom Salah could further meet to assess the situation on the ground and develop contacts with which to rebuild the Hamas military leadership structure that had been decimated by recent Israeli actions. Salah would conduct a series of meetings with these referred individuals, who functioned in various civil and charitable offices that provided cover for their assistance to the Hamas military.

Salah also traveled to the Gaza Strip and met with Hamas operative Abu Mujahid, with whom he also had met in secret in September 1992. Salah provided Abu Mujahid money from "the

¹⁰ The government established that all of the funds Marzook directed to Salah in December 1992 and January 1993 originated overseas. Gov. Trial Exs. Salah 12/92-01/93 Charts 1 & 2. The uses to which Marzook and Salah put the funds qualifies the initial transfer into the United States also as acts of 1956(a)(2)(A) money laundering, with the transfers from Marzook to Salah themselves constituting transfers of the proceeds of specified unlawful activity in violation of both 18 U.S.C. §§ 1956(a)(1)(a)(i) and 1957.

outside” or abroad, for various Hamas organizational needs. Salah also agreed to carry messages from Abu Mujahid to Hamas leaders abroad. Salah also again met with Hamas member Abu Sai’b. Salah and Abu Sai’b discussed various terrorist attacks carried out by Hamas and the state of the Izz Al-Din Al-Qassam Brigades in the Gaza Strip. Abu Sai’b informed Salah that Hamas now had eight underground shelters for hiding fugitives and that Hamas members in Rahat had: (1) three M-16 rifles; (2) three Kalishnikov rifles; ad (3) two Uzi machine guns. Abu Sai’b informed Salah that there would be an increase in terrorist activity during the month of Ramadan. Abu Sai’b asked Salah for additional money to continue terrorist activity and to purchase weapons. Salah agreed to provide additional money.

5. Salah’s Arrest, Confessions, and Conviction in Israel

On January 25, 1993, Salah was arrested at the Ezra checkpoint in Gaza by Israeli authorities based on his involvement in Hamas. On the day of his arrest, Israeli authorities, armed with a search warrant, recovered approximately \$97,000 in cash in Salah’s East Jerusalem hotel room. They also recovered several notes related to Hamas activities. Salah was taken into the custody of the Israel Security Agency. At various times between January 25, 1993, and February 21, 1993 Salah was interrogated principally by an ISA agent code name “Nadav,” who was in almost daily contact with Salah. (Nadav testified about his dealings with Salah both at trial and in closed session during the March 2006 suppression hearing conducted by the Court.)

On January 27, 1993, just two days after his arrest, Salah signed a written statement in the presence of Israeli police officer Meron Sulieman. On January 30, 1993, approximately five days after his arrest, Salah signed a second written statement in the presence of Israeli police officer Hezi Eliyahu. (Eliyahu testified during the March 2006 suppression hearing.) On February 21, 1993, Salah provided a third written statement in the presence of Sulieman. These statements largely mirrored the information Salah was providing to the ISA regarding his role (as well as the role of others) in Hamas.¹¹

¹¹ Based on the March 2006 suppression hearing, the Court barred the introduction of the Salah statements made to Israel police officer Meron Sulieman as substantive evidence against Salah because Suleiman did not come from Israel to testify at the hearing. While those statements were not admitted at trial against Salah, they were admitted for certain purposes against defendant Ashqar because Ashqar was found to have been in possession of translated versions of those Salah statements (and would through subsequent actions treat them as reliable

a. Salah's Negotiation of a Deal Trading the Burial Location of a Hamas Kidnap/Murder Victim for the Release of Hamas Prisoners and Seized Funds

Beginning on January 31, 1993, during the course of his interrogation by ISA, Salah attempted to trade the release of various Hamas prisoners and the return of the seized \$97,000 in Hamas money in exchange for his disclosure of location of the body of Hamas-kidnaped and slain Israeli soldier Ilan Sa'doan. Salah initially attempted to negotiate the release of then-jailed Hamas founder and military mastermind Salah Shahadah, but the Israelis refused. The Israelis eventually agreed to release certain categories of prisoners and the return of the \$97,000 in Hamas money seized from Salah's East Jerusalem hotel room, in return for the actual discovery of Sa'doan's body. (The agreement between the ISA and Salah, which was written and signed by Salah in Arabic, was admitted into evidence at trial.) Salah also was permitted to call his wife to have her find a map of the body's location that he claimed to have at his home in Chicago. Because his wife could not locate the map (which Salah later revealed he was provided by Hamas members), Salah hand drew a map from memory and then accompanied agents to the location to assist in the search efforts. (Salah's crude hand-drawn map was admitted into evidence at trial.)

Ultimately, the efforts to find the body proved unsuccessful. However, a few years later, Sa'doan's body was discovered. As established through testimony at trial (and in the March 2006 suppression hearing), analysis of the location of the body with the information Salah provided in 1993 reflected that Salah's information was generally accurate, but misconstrued because of construction and road building that had occurred in the intervening years since the 1989 kidnaping, murder and burial of Sa'Doan. The fact that Salah agreed to the exchange and appears to have known the location of a kidnaped and murdered soldier's body is compelling evidence of his involvement in the upper echelon of Hamas. As established through the testimony of multiple witnesses at trial, Hamas knows that, for the Israelis, recovering a soldier's body is of supreme importance. Therefore, the location of the body of a kidnaped and murdered Israeli soldier was highly valuable proprietary information that would be known only by those with a need to know and those who are supremely trusted within the Hamas leadership. Salah's utilization of the valuable Hamas proprietary information for the specific purpose of securing benefits for Hamas in the form

information to be relied upon by Hamas co-conspirators.)

of the release of prisoners and seized funds renders Salah an after the fact aider and abetter of Hamas' kidnaping and murder of Sa'Doan.

b. Salah's unwitting disclosure to Israel of his role in Hamas and his subsequent attempt to pass a coded message to military operatives he had unwittingly exposed to the Israelis.

Toward the later part of February 1993, the ISA came to believe that defendant Salah was not providing them with complete and truthful information. ISA decided to temporarily cease their questioning of him and planned a ruse referred to as a "bird drill," in which individuals simulated a terrorist command center in prison. During his time with the birds, Salah hand wrote a 53-page statement detailing his activities and knowledge of Hamas activities, believing that his accounting would be provided to the organization in the field. (The handwritten statement was admitted at trial based on the Court's suppression hearing finding that it was a willful and voluntary statement by Salah.)

On March 18, 1993, ISA interrogator Nadav confronted Salah with his handwritten accounting. What ensued was a tape recorded conversation regarding Salah's role with Hamas. Although defendant Salah provided Nadav with new information he had never before revealed and also admitted that certain of the information he had previously provided to ISA was false, there were categories of Hamas information Salah refused to discuss with Nadav. The taped session essentially ended ISA's interrogation of Salah, but Salah continued his attempts to assist Hamas. It was in the handwritten accounting and the recorded March 18th interview that Salah for the first time admitted to his involvement in recruiting and training U.S.-based co-conspirators Sharif Alwan and Rizik Saleh. On March 19, 1993, the day after Salah was confronted with the handwritten accounting in which he first disclosed Alwan and Saleh's Hamas involvement, Salah met with U.S. consular official Robert Seibold. Seibold, testifying at trial, related that on this occasion, Salah asked the U.S. consulate to "tell Sharif and Rizik not to go to Louisiana as planned, but to stay in Chicago." Thus, Salah, now aware that he had unwittingly compromised Alwan and Saleh, attempted to use the consular official to pass a coded messages to his Hamas trainees to warn them off of prior plans.

c. Salah's Israeli guilty plea to Hamas-related charges

Ultimately, Salah was indicted for his role in Hamas. In January 1995, Salah pled guilty to a revised indictment that charged him with participating in Hamas affairs. Among other things,

Salah admitted: (1) he was a member of Hamas from 1988 until the day of his arrest and was a representative for, among others, Sawalha; (2) he was an envoy for Hamas members outside the occupied territories; (3) he was chosen to be the head of military operations in the West Bank at the request of Marzook and Sawalha; (4) he provided Marzook with reports from the occupied territories; (5) he provided information to a particular Hamas member about where weapons were stashed; and (6) he repeatedly met with Adel Awadallah and Salah Al-Arouri regarding Hamas matters. He was sentenced to 5 years in prison.

6. Salah's 1995 False Federal Court Affidavit in Support of Hamas Leader Mousa Abu Marzook

In August 1995, federal authorities detained co-conspirator Marzook at Kennedy International Airport in New York as he attempted to re-enter the U.S. with his wife and children. Marzook was ultimately held in custody on an extradition warrant to stand trial in Israel for among other things, murder and murder conspiracy through his leadership of Hamas, which by this time had fully engaged the tactic of suicide bombings of civilian targets which over the years would result in the deaths of approximately 40 Americans and injuring of scores more. The Hamas related murders for which Marzook faced extradition included Hamas operations as early as a July 28, 1990 bombing that killed a Canadian tourist to an October 19, 1994 suicide bus bombing in Tel Aviv that killed 22 and wounded 46.¹² All of the incidents upon which the charges were based attacks on civilians or civilian targets. *See In the Matter of the Extradition of Mousa Mohammed Abu Marzook*, 924 F.Supp. 565, 568 (S.D.N. Y. 1996) (hereinafter *In re Marzook Extradition*). Among the central pieces of evidence provided by Israel to support extradition were defendant Salah's various custodial statements, namely Salah's three statements to Israel National Police officers

¹² The incidents at issue were attacks for which Hamas itself took credit. Many were the subject of trial testimony in the instant case. And many were suicide bombings. Expert and fact witness testimony in the instant case established that Hamas first had attempted to use suicide bombers in a failed operation in November 1992. The first successful operation was on a government target in Israel proper in March 1993. The first successful suicide attack on a purely civilian target occurred in the spring of 1994. Handwritten notes seized from Salah's possession following his arrest on January 25, 1993 included Salah's own hand-written notation referencing "suicide bombings" in the context of other notations concerning Hamas, Salah's meetings with certain operatives, his transfer of funds from America to them, among other things. Gov. Trial Ex. Salah Note 1 (and translation).

Suleiman and Eliyahu, Salah's 53-page handwritten accounting, and the March 18th taped debriefing of Salah by ISA interrogator "Nadav" based on Salah's handwritten accounting. Marzook challenged the statements as unreliable based on the claim that they were obtained through torture and mistreatment of Salah (as Marzook also claimed with respect to the confessions of other Hamas members provided by the Israelis to support extradition). To bolster the defense, Marzook's attorney obtained and filed affidavits from Salah and co-conspirator Muhammad Jarad.

Salah swore out the affidavit on November 8, 1995, while still serving his five year sentence in Israel. Salah stated at the outset of that affidavit that he was providing it "on behalf of Dr. Mousa Abu Marzook in response to Israel's request that he be extradited to that country and [he] remain[s] ready, willing and able to testify in the United States or in any other jurisdiction on behalf of Dr. Marzook, subject to full cross-examination by any of the parties to th[e] controversy." Salah Marzook Aff. ¶ 2 (attached hereto). Salah's willingness to make false declarations in public proceedings concerning the extradition of the political leader of Hamas signaled his continuing participation in the conspiracy, and, at a minimum, his non-withdrawal from it. The affidavit also manifested Salah's active involvement in Hamas while in prison in Israel, as it was offered by Salah in an effort to secure the release, or at the very least prevent the extradition of Hamas leader Marzook, and done at a time when Marzook and Hamas were designated terrorists by the United States government and Salah himself also so designated because of his relationship with and activities for both.

Salah's affidavit claims of mistreatment were not credited by the district court in ordering Marzook's extradition to Israel, although, because of the more limited nature of the proceeding, no hearing was held on Salah's claims. In ordering the extradition, the district court relied extensively on Salah's handwritten statement, which it found to be substantially corroborated independently by tendered statements of other Hamas co-conspirators and American bank records establishing Salah's relationship with Marzook. *In re Extradition of Marzook*, 924 F. Supp at 587-92. However, Salah's affidavit for Marzook overlapped in significant degree the sworn affidavit he submitted to trigger a suppression hearing in the instant case which this Court concluded, following an extensive evidentiary hearing, to be not credible. This Court's conclusions regarding Salah's sworn suppression affidavit therefore can and should be applied equally to the sworn affidavit he submitted in Marzook's behalf in New York in 1995. In other words, as in the suppression hearing in this case

(and the *Boim*) litigation, Salah made false and obstructive sworn statements in the context of a federal district court proceeding.

II. Government’s Objections to the PSR

A. The Current Guideline Manual Should be Used to Calculate Salah’s Sentence

The Presentence Investigation Report (“PSR”) uses the 2000 Sentencing Guideline Manual to calculate Salah’s advisory guideline range. In fact, under current Seventh Circuit law, the 2006 Guideline Manual, that is, the Guideline Manual in effect on the date of Salah’s sentencing, should be used resulting in an increase in Salah’s base offense level for obstruction from a 12 to a 14.

Guidelines Section 1B1.11(a) requires, as an initial matter, that the “court shall use the Guidelines Manual in effect on the date that the defendant is sentenced.” U.S.S.G. § 1B1.11(a). However, if applying the Manual in effect at the date of sentencing would violate the *ex post facto* clause of the Constitution, then the court must apply the Manual in effect on the date that the offense was committed. U.S.S.G. § 1B1.11(b)(1).

Prior to the decision in *United States v. Demaree*, 459 F.3d 791 (7th Cir. 2006), the government continued to take the position, post-*Booker*, that if the Manual in effect on the date of sentencing called for a higher advisory Guidelines range than that advised by the Manual in effect on the date of the offense, then applying the later Manual would violate the *ex post facto* clause because the Guidelines, even though advisory, still play an important and substantial role in determining sentences.

However, in *Demaree*, the Seventh Circuit held that applying the higher Guideline range called for by the later Manual does **not** violate the *ex post facto* clause because of the now-advisory nature of the Guidelines. 469 F.3d at 795. The district court in *Demaree* had consulted the higher advisory range derived from the later Manual in a wire fraud and tax offense case, and the Seventh Circuit affirmed that application despite the government’s attempt to concede error. *Id.*

In light of *Demaree*, district courts (in the Seventh Circuit) must apply the Manual in effect at the time of sentencing. The Seventh Circuit did not simply approve the use of the Manual in effect at sentencing and leave the choice of Manual to the district court, but rather started the opinion with this observation: “The judge applied the 2004 guidelines [the one in effect at sentencing], as he was *required* to do by the Sentencing Reform Act, 18 U.S.C. § 3553(a)(4)(a)(ii)” 459 F.3d at 792 (emphasis added). Section 3553(a)(4)(a)(ii) does dictate that the district court consider the

sentencing range established by the Manual “in effect on the date the defendant is sentence,” with exceptions not material here. Thus, in addition to Guidelines § 1B1.11(a), there is a statutory requirement to use the Manual in effect on the date of sentencing (unless, of course, to do so would be an *ex post facto* violation), one which was recognized by *Demaree*.

Accordingly, as required by the Seventh Circuit, the Court should use the 2006 Sentencing Guideline Manual to calculate defendant Salah’s advisory guideline range.

B. Salah’s Base Offense Level Should be Increased Three Levels Because the Offense Resulted in “Substantial Interference with the Administration of Justice.”

Pursuant to sentencing guideline §2J1.2(b)(2), the Court should increase Salah’s offense level by 3 levels to level 17 because the offense resulted in substantial interference with the administration of justice. The PSR took a “conservative position” (PSR at 10, line 350) and did not apply the “substantial interference” enhancement because (a) there was a judgment entered against Salah in the civil case and (b) the Probation Department could not find any cases applying the adjustment in a civil setting. As to the former, the standard as to whether to apply this enhancement should in no way be based on the ultimate outcome of the litigation. Indeed, whether the government or a civil litigant prevails in certain litigation is wholly independent of whether, due to an individual’s obstruction, there was a “substantial interference with the administration of justice.” According to the Application Notes to §2J1.2, “‘substantial interference with the administration of justice’ includes . . . the unnecessary expenditure of substantial government or court resources.” The unnecessary expenditure of resources, as occurred in the *Boim* case, is completely unrelated to the outcome of the actual case.

In addition, the PSR’s suggestion that this enhancement has only been applied in the criminal context is inaccurate. The “substantial interference” enhancement applies to those defendants who commit perjury as well as other forms of obstruction of justice. *See* §2J1.3. Defendants who commit obstruction or perjury “in a *non-criminal proceeding* may be eligible for enhanced sentencing under [the “substantial interference” enhancement].” *United States v. Norris*, 217 F.3d 262, 273-74 (5th Cir. 2000) (applying enhancement based on false declarations in bankruptcy proceeding) (emphasis added); *accord United States v. Tankersley*, 296 F.3d 620, 623-24 (7th Cir. 2002) (finding enhancement applied where defendant failed to comply with injunction entered in civil suit by

selling assets and concealing the proceeds); *United States v. Weissman*, 195 F.3d 96, 100 (2nd Cir. 1999) (finding enhancement applied when Senate subcommittee staff had to spend considerable resources based on defendant's obstruction); *United States v. Kocsak*, 1997 WL 610457 (N.D. Ill. Sept. 19, 1997) (Williams, J.) (applying "substantial interference" enhancement to obstruction and perjury in a civil lawsuit). Indeed, the term "includes" within the Application Note to §2J1.2(b)(2) "clearly indicates that the subsequent listing of acts warranting [the "substantial interference"] enhancement is not exclusive and other acts — if similarly or even more disruptive of the administration of justice — could serve as bases for the section 2J1.2(b)(2) enhancement." *United States v. Amer*, 110 F.3d 873, 885 (2nd Cir. 1997).

In the instant case, the preponderance of the evidence demonstrates that Salah's lies in the *Boim* litigation resulted in a substantial expenditure of time and money by the plaintiff lawyers pursuing the litigation and therefore the enhancement is appropriate. Salah's material misstatements and omissions adversely affected plaintiffs in the *Boim* civil litigation in several ways. It forced plaintiffs to do unnecessary extra work, incurring additional fees and costs, and diminished the quality of evidence plaintiffs were ultimately able to present at trial. Further, Salah's false answers impacted not only the case against himself, but also the case against the Quranic Literacy Institute ("QLI"), the only defendant that proceeded to trial in the litigation and, not coincidentally, Salah's former employer.

The principal impact of the Salah's repeated interrogatory lies regarding his involvement and membership in Hamas was to force plaintiffs to spend time and effort, and incur fees and costs, to prove their case that they would not have had to had Salah told the truth. Instead of obtaining Salah's truthful answers to prove their case and establish Salah's involvement in the Hamas conspiracy, plaintiffs had no recourse but to rely heavily on two types of documents: (1) Salah's handwritten confession in Israel and the transcripts of the March 18, 1993 interrogation session that followed; and (2) Salah's financial records. In both instances, plaintiffs were forced to take numerous costly steps to establish the admissibility of the documents.

With regard to the bank records, Salah's refusal to truthfully answer questions required plaintiffs' attorneys to spend approximately 15 hours in communicating and meeting with bank representatives and in drafting an affidavit for a bank representative. Plus, the bank's documentation was not complete by that time. None of this effort would have been necessary had Salah truthfully

answered plaintiffs' interrogatories.

More significantly, with regard to the Israeli materials, plaintiff's hardship was far more pronounced. Not only did Salah lie about his involvement with Hamas, Salah thereafter used as one of his principal defenses in the *Boim* litigation that the Israeli materials demonstrating his involvement in Hamas should be deemed inadmissible and/or given no weight by the fact finder because they were the product of torture in a system that was inherently unfair to detainees and did not comply with United States notions of due process. To combat this defense and because plaintiffs had to rely on Salah's Israeli statements due to Salah's interrogatory lies, plaintiffs were forced to do the following:

Hire an expert witness, Dr. Emanuel Gross, to defend the Israeli legal system and specifically the due process afforded to detainees of the military authorities in the disputed territories. Plaintiffs paid Dr. Gross approximately \$9,000;

Spend attorney time with Dr. Gross, corresponding and assisting with an affidavit and expert report. This took approximately 40 hours;

Have a plaintiff attorneys travel to Israel to take the deposition of Salah's Israeli attorney on the circumstances surrounding Salah's arrest, detention, and conviction. This took approximately 50 hours. Ordering the deposition transcript cost approximately \$500;

Plaintiffs were forced to take the deposition of Salah's wife, Azita, in an attempt to establish the case that the financial records demonstrate Salah's Hamas connections and to disprove Salah's false statement in the interrogatories that the money he was given was for "charitable purposes." Preparing for and taking the deposition took approximately 30 hours plus the cost of the transcript;

Plaintiff's counsel was forced to go to extreme difficulty in securing certificates of authenticity for the Israeli documents. This required both time spent by counsel (approximately 10 hours) and the hiring of a prominent Israeli law firm for approximately \$9,000 to interface with the appropriate Israeli government entities. This process also took up the time and attention of officials of the Israeli government;

Much of plaintiffs' counsel's time and effort in arguing the cross-motions for summary judgment in their case against Salah was devoted to the issues surrounding Salah's Israeli statements. Had Salah been truthful in his interrogatory responses, this time would have been largely if not entirely saved. Plaintiffs' counsel spent approximately 200 hours on this briefing and argument;

Plaintiffs were forced to file (and brief) a motion to compel the deposition of Salah's Israeli attorney. This took approximately 15 hours. The Court also had to hear and decide the

motion.

These steps each took significant time and effort on the part of the plaintiffs, and some also used governmental and judicial resources, as indicated above. In addition, Salah's false statements made it more difficult for plaintiffs to prove their case against QLI which, in part, revolved around the nature and scope of Salah's relationship with Hamas and QLI. Again, because of Salah's false answers the plaintiffs were forced to rely in some part on Salah's Israeli statements to prove its case against QLI. In addition, QLI filed a motion to bar certain evidence which plaintiffs would not have been forced to defend had Salah answered plaintiffs' interrogatories truthfully. The briefing and argument took plaintiffs approximately 25 hours. It also took the Court's time to decide.

"In order to warrant a substantial interference with justice enhancement, the government need not particularize a specific number of hours expended by government employees." *Weissman*, 195 F.3d at 100 (quotation omitted); *accord Tankersley*, 296 F.3d at 623-24 (finding enhancement applied where "many weeks" of work went into tracking down and determining what happened to improperly sold assets). Here, Salah's lies caused plaintiffs in the *Boim* litigation to expend considerable resources and hours that would have been unnecessary had Salah told the truth in the interrogatories. Because Salah's lies caused "substantial interference" with the administration of justice, the three-level adjustment applies.

C. Salah's Offense Level Should be Increased Under the Terrorism Adjustment at Guideline §3A1.4.

Although the PSR does not apply the Terrorism adjustment at Guideline §3A1.4 to Salah's offense level on the theory that the Terrorism adjustment does not apply to an obstruction of justice in civil litigation (PSR at 11), the Court should apply the Terrorism adjustment in the instant case. Under the Terrorism adjustment at Guideline §3A1.4, "[i]f the offense is a felony that involved, or was intended 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." In addition, if the Terrorism adjustment applies a defendant's criminal history category "shall be Category VI." §3A1.4. For obstruction offenses, "obstructing an investigation of a federal crime of terrorism, *shall* be considered to have involved, or to have been intended to promote, that federal crime of terrorism." §3A1.4, Application Note 2 (emphasis added).

There is nothing in the plain language of §3A1.4 that limits its applicability to a defendant's obstruction of criminal investigations of a federal crime of terrorism as opposed to civil

investigations. As the facts of the *Boim* litigation make clear, Salah's obstruction directly impacted an investigation of federal crimes of terrorism (most specifically Title 18, United States Code, Sections 2339A and 2339B, which are defined as federal crimes of terrorism pursuant to Title 18, United States Code, 2332b(g)(5)) which formed the basis of Salah and others' civil liability in the *Boim* case under Title 18, United States Code, Section 2333. Indeed, as the Seventh Circuit noted in considering the *Boim* litigation, the entire theory of liability in the *Boim* case was that "the defendants could be held civilly liable under section 2333 because they violated sections 2339A and 2339B, the criminal statutes prohibiting the provision of material support to terrorists." *Boim v. Quranic Literacy Institute*, 291 F.3d 1000, 1005 (7th Cir. 2002).

In fact, Section 2333's legislative history makes clear that Section 2333 "was intended to fill a gap in the law by establishing a civil counterpart to the existing criminal statutes." *Estate of Ungar*, 304 F.Supp.2d 232, 238 (D.R.I. 2004) (citing the Congressional record). "The legislative history of 18 U.S.C. § 2333 evinces a clear congressional intent to deter and punish acts of international terrorism." *Id.* One of the Senate sponsors of Section 2333 noted the statute "would allow victims to pursue renegade terrorist organizations, their leaders, and the resources that keep them in business, their money." *Id.* (quotation and citation omitted). Thus, Section 2333 established an avenue for citizens to become "private attorney generals" and investigate federal crimes of terrorism with the goal of holding terrorist organizations like Hamas and terrorists like Salah liable for their terrorist acts. Obstructing such terrorism investigations and civil lawsuits may be as harmful as obstructing criminal investigations.

In the instant case, the *Boim* litigation was an investigation into federal crimes of terrorism in order to support civil liability under Section 2333. Salah's obstruction directly impacted the *Boim* investigation and, therefore, the Terrorism adjustment is applicable to the instant case.

Salah's offense level with the Terrorism adjustment is increased to a level 32 and, with an adjusted criminal history Category VI, his Guideline range is 210 to 262.¹³

¹³ Even if the Court were to find that §3A1.4 only applied to obstruction of criminal investigations into federal crimes of terrorism, the Terrorism adjustment suggests that an upward departure is warranted in the instant case since Salah's obstruction still involved an investigation of a federal crime of terrorism. In essence, should the Court find the Terrorism adjustment only applies to criminal investigations into federal crimes of terrorism, but for the fact Salah's obstruction was related to a civil investigation as opposed to a criminal investigation, the Terrorism adjustment would apply. Under such a finding, by lying in the interrogatories into the investigation into federal crimes of terrorism, defendant Salah did everything necessary to merit

III. Upward Departures and Other Factors that Increase Salah's Final Guideline Range and Sentence.

Putting aside the Terrorism adjustment, there are a number of factors that should increase Salah's sentence to well over the statutory maximum of 120 months for a violation of Section 1503.

A. Acquitted Conduct – Racketeering Conspiracy

Count One of the Second Superseding Indictment in the instant case charged defendant Salah with participating in a racketeering conspiracy. Among the predicate acts alleged as part of the conspiracy were conspiracy to commit murder, money laundering, and hostage taking. At trial, defendant Salah was acquitted of Count One. That is, the jury did not find beyond a reasonable doubt that defendant Salah committed racketeering conspiracy. The standard at sentencing, however, is not proof beyond a reasonable doubt. Rather, it is now up to the Court to determine whether the government has proved by a preponderance of the evidence that defendant Salah committed racketeering conspiracy. *United States v. Horne*, 474 F.3d 1004, 1006 (7th Cir. 2007); *United States v. Masters*, 978 F.2d 281, 286-87 (7th Cir. 1992). The PSR concludes, by a preponderance of the evidence, that Salah did commit racketeering conspiracy. PSR at 11.

Incorporating for purposes of sentencing all of the evidence presented at trial, the preponderance of the evidence demonstrates that defendant Salah committed the charged crime of racketeering conspiracy. The Court may consider this additional crime to either upward depart from the calculated Guideline range or, alternatively, to simply find that a sentence above the calculated Guideline range is appropriate and reasonable under the factors set forth in Title 18, United States Code, Section 3553(a) and, most particularly, a need “to promote respect for the law” and to consider “the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1) & (a)(2)(A); *accord Horne*, 474 F.3d at 1006.

the Terrorism adjustment, and did so at a time that he knew there was a grand jury investigation occurring related to the conduct at issue in the *Boim* case. Indeed, there was a pending civil forfeiture lawsuit against Salah, with allegations substantially incorporated into the *Boim* lawsuit, that was stayed because of the pending criminal investigation. Thus, in the instant case, Salah would only avoid the Terrorism adjustment because his obstruction related to a civil proceeding, although he was fully aware of the pending criminal investigation and that truthful answers could impact the criminal investigation against him. Since Salah completed all of the conduct necessary to apply the Terrorism adjustment but for the fact his obstruction was in a civil investigation into terrorism, his Guideline range and sentence should be upwardly adjusted to Section 1503's statutory maximum of 120 months.

The Guidelines for racketeering conspiracy are calculated using Guideline §2E1.1. Under §2E1.1 the base offense level is 19 or “the offense level applicable to the underlying racketeering activity.” Here the evidence proved that the underlying racketeering activity in which defendant Salah was involved or conspired to commit included, among other crimes: (a) conspiracy to commit and solicitation of Illinois first degree murder; (b) hostage taking; and (c) money laundering. When the “underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.” §2E1.1, Application Note 2.

For purposes of conspiracy to commit and solicitation of Illinois first degree murder, Guideline §2A1.5 specifically covers “Conspiracy or Solicitation to Commit Murder” and has a base offense level of 33. An offense level of 33 and a Criminal History Category I yields a Guideline range of 135 to 168, over the 120 month statutory maximum proscribed by Section 1503. This, of course, would be before any Guideline Chapter Three adjustments, such as obstruction of justice. In addition, because Salah’s actions in providing money to terrorists led to victims being murdered, §2A1.5(c) cross-references the Sentencing Guideline murder provision at §2A1.1 which mandates an offense level of 43 and Guideline sentence of Life.

For purposes of hostage taking under Title 18, United States Code, Section 1203, Guideline §2A4.1 mandates a base offense level of 32. Because Hamas and defendant Salah made demands upon the Israeli government for release of certain prisoners in exchange for the release of the certain of the hostages taken, the offense level is increased by six levels to level 38. This alone brings the Guideline range, again assuming a Criminal History Category I, to 235 to 293. There is, however, a cross-reference in §2A4.1(c) that notes if the victim was murdered, as occurred with certain of the Israeli victims taken hostage by Hamas, the First Degree Murder Guideline at §2A1.1 should apply. Applying §2A1.1 yields an offense level of 43 and a Guideline sentence of Life.

For purposes of money laundering under Title 18, United States Code, Section 1956, Guideline §2S1.1(a)(2) begins with a base offense level 24 (8 plus an additional 16 levels under §2B1.1 for the over \$1 million in laundered or intended funds). Pursuant to §2S1.1(b)(1), six levels are added because Salah knew the laundered funds would be used for crimes of violence bringing the offense level to 30. Pursuant to §2S1.1(b)(2)(B), two levels are added because the crime was a violation of Section 1956, bringing the offense level to 32. Finally, pursuant to §2S1.1(b)(3), two levels are added because Salah used a sophisticated laundering system to bring the laundered funds overseas through the use of unlicensed money changers thus bringing the final offense level to 34. An offense level of 34 and Criminal History Category I yields a Guideline range of 151 to 188, again

well over the statutory maximum of 120 months proscribed under Section 1503.

In short, should the Court find by a preponderance of the evidence that defendant Salah committed racketeering conspiracy, the calculated Guideline range for such a crime would be well over Section 1503's statutory maximum of 120 months and likely Life. Such a finding justifies an upward departure under the Guidelines to a range that includes a 120 month sentence or, alternatively, suggests that under Section 3553(a) a "reasonable" sentence is Section 1503's statutory maximum of 120 months.

B. Uncharged Conduct – Underlying Racketeering Predicates

Because of the statute of limitations, the underlying predicates that were charged as part of the racketeering conspiracy could not be charged as substantive counts. Nonetheless, putting aside the issue of guilt on the charged racketeering conspiracy, there are numerous crimes that the government demonstrated by a preponderance of the evidence that Salah committed that further justify an upward departure from the Guideline range or a post-*Booker* "reasonable" sentence of 120 months.

The evidence presented at trial demonstrated easily by a preponderance of the evidence that Salah: (a) conspired to commit murder; (b) conspired to commit hostage taking; (c) committed money laundering; and (d) conspired to commit and attempted to commit false and fraudulent use of a passport. The Guideline ranges for most of these substantive crimes are detailed above and demonstrate that the actual crimes defendant Salah committed, regardless of whether they were part of a racketeering conspiracy, provide Guideline ranges anywhere from 155 months up to Life in prison.

Salah avoided being charged with these crimes merely by virtue of the fact that the statute of limitation had run on his crimes or, in the case of conspiracy to commit and soliciting the commission of Illinois murder, they were state crimes for which the federal government could not bring charges. Nonetheless, the evidence of Salah's commission of these crimes was clear and provide ample basis for the Court to upward depart to a Guideline range that includes a 120 month sentence or, alternatively, suggests that under Section 3553(a) a "reasonable" sentence is Section 1503's statutory maximum of 120 months.

C. Uncharged Conduct – 1995 Obstruction of Justice

In 1995, the United States instituted extradition proceedings against co-defendant Mousa Abu Marzook to return him to Israel for terrorist acts he committed as a leader of Hamas. *See generally In re Marzook*, 924 F. Supp. 565 (S.D.N.Y. 1996). Those terrorist acts included various

suicide bombings that resulted in numerous deaths. *Id.* at 568. The statements that Salah provided to Israel that were introduced against him in the instant trial were also used during the Marzook extradition proceedings and were relied upon by the district court in the Marzook extradition proceedings in determining whether Marzook should be extradited. *Id.* at 587-89; 590-93.

One of the major issues during the Marzook extradition proceedings were what weight to give to Salah's statements to the Israelis. In an attempt to assist Marzook and minimize the damage of his statements, Salah, much like in the instant case, provided Marzook with a false affidavit to be submitted to the district court in the Marzook extradition proceedings in which Salah claimed to have been tortured into providing statements to the Israelis and that his statements were "in material respects completely untrue, particularly insofar as they relate to my knowledge of and relationship with Dr. Mousa Abu Marzook." *Id.* at 592-93. The district court ultimately rejected the claims in Salah's affidavit and found that Salah's statements made while in Israeli custody corroborated other evidence of Marzook's guilt and that Salah's statements to the Israelis had "certain hallmarks of reliability that cannot be ignored." *Id.* at 593.

Thus, much like the instant case, in 1995 in an important federal court case defendant Salah submitted a materially false affidavit and attempted to obstruct justice and influence the extradition proceedings of co-defendant Marzook. This is further evidence of Salah's lack of respect for the law and willingness to attempt to obstruct justice, protect Marzook, and further the goals of Hamas when feasible. To date, Salah's criminal conduct in submitting the false affidavit to the federal court in New York has gone unpunished. This additional obstructive behavior, however, should be considered in sentencing Salah in the instant case. In fact, the PSR notes this conduct is a basis for an upward departure in the instant case. PSR at 27.

Accordingly, based on Salah's prior obstructive conduct, the Court should increase Salah's advisory Guideline range either through offense level or Criminal History category or, alternatively, use the prior obstructive behavior under Section 3553(a) to determine a "reasonable" sentence near Section 1503's 120 months statutory maximum.

D. Uncharged Conduct – 1990/1991 Bank Fraud

At the suppression hearing in the instant case the government presented evidence that Salah committed a blatant bank fraud in 1991 in violation of Title 18, United States Code, Section 1344. In 1991 Salah obtained a mortgage loan to build a home. On the mortgage loan application, Salah indicated that his salary was \$4,000 a month from an organization called the Quranic Literacy Institute ("QLI"). Gov. Supp. Hearing Ex. 8/20/91 Salah Mortgage Loan Application. The loan

application required that “signed Federal Income tax returns for [the] last two years” be submitted to obtain the loan. *Id.* In fact, Salah provided to the bank what he claimed were his 1988, 1989, and 1990 federal income tax returns. Gov. Supp. Hearing Exs. 1988 Salah Mortgage Loan Tax Return, 1989 Salah Mortgage Loan Tax Return, and 1990 Salah Mortgage Loan Tax Return. Salah signed the loan application in August 1991 and affirmed that he fully understood it was “a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions Title 18, United States Code, Section 1014.” Gov. Supp. Hearing Ex. 8/20/91 Salah Mortgage Loan Application.

In support of his mortgage application, Salah arranged for a letter dated September 4, 1991, from Amer Haleem, to be provided to the bank. Gov. Supp. Hearing Ex. 9/4/91 Salah Employment Letter. The letter, signed by Amer Haleem, stated:

To whom it may concern. This is to verify that Mr. Mohammad Salah has been employed with The Quran Project since January 1, 1991 as a Computer Analyst at a salary of \$36,000 per year.

Id.

As Salah well knew, both the tax returns he provided and the letter from Haleem were false and fraudulent.

As for the tax returns, both Internal Revenue Service (“IRS”) and Illinois Department of Revenue records show that Salah did not file tax returns in either 1988 or 1989. Thus, as an initial matter Salah provided the bank with tax returns that he never actually filed.¹⁴ In addition, the fraudulent nature of the tax returns is blatant on their face and proves they were produced after the fact and almost certainly for the sole reason of being provided to the bank to obtain the mortgage loan. The 1988 tax return was purportedly signed by Salah on April 10, 1988. Gov. Supp. Hearing Ex. 1988 Salah Mortgage Loan Tax Return. Of course, if the tax return were accurate it would have been signed in 1989, not early during the tax year of the return. In fact, the 1988 tax return forms were not even available in April 1988. In addition, there is no bank record evidence that Salah ever paid the money he allegedly owed to the IRS based on his alleged 1988 income.

The purported 1989 tax return is similarly and blatantly false. The 1989 tax return is dated March 5, 1989, again early in the tax year it purports to represent and before 1989 tax return forms

¹⁴ Assuming the tax returns Salah submitted with the mortgage loan application accurately stated Salah’s income in 1988 and 1989, then Salah committed the additional federal crime of failing to file income tax returns as required. *See* 26 U.S.C. 7203.

were available. Gov. Supp. Hearing Ex. 1989 Salah Mortgage Loan Tax Return. In addition, there is no bank record evidence that Salah ever paid the money he allegedly owed to the IRS based on his alleged 1989 income.

The 1990 tax return is likewise false. Most importantly, like the 1988 and 1989 tax returns, Salah erred when he forged the 1990 tax return by signing it April 10, 1990, again before the tax forms for the 1990 tax year were even available. Gov. Supp. Hearing Ex. 1990 Salah Mortgage Loan Tax Return. Thus, Salah simultaneously provided the bank with three years of tax returns, all of which were misdated. Also, the signature on the return purporting to be Salah's wife is clearly forged; indeed, the signature looks almost identical to Salah's own signature on the fraudulent return. Interestingly, however, unlike 1988 and 1989, it appears that Salah did, in fact, file a 1990 tax return, but it was substantially different than the return he presented to the bank. The Illinois Department of Revenue has a record of a 1990 Illinois tax return for Salah, but that return has been destroyed. Although the IRS has no record of a 1990 return for Salah, they did issue a refund check to Salah including an Earned Income Credit of \$953.00. Gov. Supp. Hearing Ex. 4/26/91 Salah Refund Check. According to the IRS, in order to receive an Earned Income Credit refund in the amount of \$953.00, Salah needed to report 1990 earned income of between \$6,800 and \$10,750. Obviously, this is markedly different from the 1990 return Salah provided to the bank in which he claimed to have an income of \$51,741. In fact, according to the 1990 return Salah provided to the bank, he owed the IRS \$15,818 in taxes. Thus, according to the forged tax return, he would not have received a tax refund at all, again proving the actual 1990 tax return filed was totally different than the fraudulent 1990 return Salah provided to the bank.

Salah's provision of fraudulent tax returns to the bank was material, as the bank loan officer working on Salah's loan informed the FBI that he would have recommended that Salah's loan be denied if the loan officer had known that Salah included fraudulent or falsified tax returns.

Salah materially lied to the bank to obtain his mortgage loan by providing fraudulent returns not filed and overstating his true income. Salah also lied in obtaining the employment letter from Amer Haleem. Regarding the letter, Salah lied to both the bank and to Haleem. During a grand jury appearance, Haleem testified that around the time the letter was drafted Haleem and others at the QLI were negotiating a formal employment relationship with Salah that would be backdated to January 1991 for tax purposes. Supp. Hearing Tr. 2625-2626. Haleem was clear, however, that the employment relationship was never formalized or developed; that is, Salah never actually became an employee of QLI. Supp. Hearing Tr. 2625. Haleem further testified that at the time of these

discussions, Salah told Haleem he was looking to move his family into a new apartment and needed verification of employment for his prospective landlord. *Id.* It was for this specific purpose that Haleem drafted the letter that Salah used to further his mortgage application. *Id.*

Haleem, in his testimony, was clear that Salah never mentioned that he was seeking a loan from a bank. Supp. Hearing Tr. 2626. Haleem explained to the grand jury that he never would have written the letter had he known it was going to be used for such purpose because Islamic law generally forbids Muslims from entering into financial relationships involving the collection of interest. Supp. Hearing Tr. 2626-2627. Haleem said that had he known that Salah was seeking to enter into such a relationship with a commercial bank, QLI not only would have refused to write the employment verification letter for Salah, but also would likely have terminated Salah's relationship with the organization and its work. Supp. Hearing Tr. 2627.

As demonstrated above, there is no doubt that Salah committed fraud in obtaining his mortgage loan and willingly lied to at least one friend to assist in obtaining the mortgage loan. In addition, he appears to have committed the additional crime of failure to file certain tax returns. The only reason that the bank did not suffer an actual loss from Salah's loan was because after his arrest in Israel Salah directed that Hamas funds be used to pay off the bank loan.

In short, Salah's bank fraud and tax crimes are further evidence of criminal conduct that justifies an upward departure in Guideline range and Criminal History Category or, alternatively, dictates a sentence of 120 months imprisonment to promote, pursuant to Section 3553(a), respect for the law, deterrence, and to account for Salah's criminal nature. In fact, the PSR notes this conduct is a basis for an upward departure in the instant case. PSR at 27.

E. Financial Ability to Pay

The PSR reflects that defendant did not include among his assets various bank accounts that have been the subject of Office of Foreign Asset Control blocking orders imposed since on or about February 10, 1995, on the basis of a determination that they constituted assets of the designated terrorist organization Hamas, and/or since July 1995 on the basis of their being assets of the defendant as a specially designated terrorist. As reflected in the detailed evidence introduced at trial, between December 29, 1992 and January 22, 1993, defendant received \$985,000 in wire transfers from accounts held or controlled by specially designated terrorist and Hamas leader Mousa Abu Marzook, including transfers directed to Salah from Marzook's personal secretaries in the United States at the time, Nasser Al-Khatib and Ismael Elbarasse. *See* Gov. Exh Salah 12/92-1/93 Transfer Chart 1. As reflected in uncontested evidence at trial, Salah transferred \$230,000 of those Marzook

funds from his U.S. accounts to the West Bank. As established through Salah's various Israeli statements, certain of the \$230,000 was distributed by Salah to Hamas operatives, and the remaining \$97,4000 was seized from his East Jerusalem hotel room following his arrest on January 25, 1993.

What remained in Salah's accounts after his arrest – approximately \$717,041.18 – was removed by his wife, Azita Salah (who was responsible for the transfer of \$200,000 of the aforementioned \$230,000 to Salah in the West Bank) who kept some for herself and deposited the rest into a new account she established at Standard bank and Trust. Azita Salah drew freely on these funds in the months and years following defendant's Israeli arrest. For example, and as detailed at trial, Azita Salah used \$97,067.93 to pay the near entirety of the mortgage loan Salah had secured a year prior through a series of false representations to Standard Bank.¹⁵ Azita Salah additionally made a series of structured cash withdrawals of the Hamas funds to pay for personal and family expenses in the ensuing months, as reflected in the trial testimony of government financial analyst Thomas Moriarty and related financial documents admitted into evidence. *See generally*, Gov. Exh. Salah Mortgage Payoff and financial documents included therein.

Following the January 1995 designation of Hamas in the first list of designated terrorist organizations, the remaining funds in these and other Salah accounts were blocked by the Treasury Department as Hamas assets. Salah's subsequent designation in July 1995 resulted in the blocking of all of his assets, including various bank accounts and the 9229 South Thomas, Bridgeview family residence settled with Marzook funds. As detailed in the testimony of Office of Foreign Asset Control witness Robert McBrien, and certain terrorist designations and OFAC blocking orders admitted into evidence through him, Salah and family were permitted to make a monthly draw from the OFAC-blocked accounts to pay living expenses until the funds and the residence were made the subject of the still-pending civil forfeiture action. At the time of the filing of the civil action the subject Salah accounts had the following amounts on deposit.

Standard Bank & Trust, Acct. 5580349268:	\$125,415.74
Standard Bank & Trust Acct. 239328806:	\$2,320.93
First National Bank of Chicago Acct. 8060700:	\$64,868.18

¹⁵ The amount financed on the August 18, 1992 mortgage note was \$98,633.89.

LaSalle Bank, F.S.B., Acct. 022034532:

\$3,413, 75¹⁶

These funds, while claimed by Salah in the civil forfeiture proceedings, are not reflected in the PSR and, (particularly when coupled with the Marzook-funded equity in Salah's house), constitute substantial money available to satisfy a fine imposed by the Court.

IV. Salah's Final Sentence.

Based purely on the Section 1503 count of conviction, Salah's Guideline range is 210 to 262 months and, accordingly, he should receive the maximum statutory sentence of 120 months. Even, however, if the Section 1503 Guideline range is calculated at a point below 120 months, the government has presented a preponderance of evidence that Salah committed: (a) racketeering conspiracy; (b) conspiracy to commit Illinois first degree murder; (c) solicitation of Illinois first degree murder; (d) conspiracy to commit hostage taking; (e) money laundering; (f) false and fraudulent use of a passport; (g) obstruction of justice in 1995; and (h) bank fraud. This additional criminal conduct makes clear that an upward departure in either offense level and/or Criminal History Category in order to obtain a Guideline range that includes 120 months is appropriate.¹⁷

¹⁶ These funds are in addition to the equity in Salah's Bridgeview residence that was purchased outright through the use of \$97,067.03 in Marzook-originated funds.

¹⁷ Certain of the criminal conduct established by a preponderance constituted separate violations of Israeli law for which Salah *was* convicted, based on his own negotiated plea. The Guidelines expressly countenance court consideration of foreign convictions in assessing whether the Guidelines computation "significantly under-represents the seriousness of the defendant's criminal history. *See* U.S.S.G. § 4A1.3(a)(1) and (a)(2)(B) (listing among the types of information forming the basis for upward departure "[p]rior sentence(s) not used in computing the criminal history *e.g., sentences for foreign . . . offenses*). (Emphasis supplied.). *See also* *United States v. Fonner*, 920 F.2d 1330, 1333 (7th Cir. 1990); *United States v. Simmons*, 343 F.3d 72, 77-78 (2d Cir. 2003). Moreover, the Guidelines endorse this court's application of the *Boim* judgment as a further basis for an upward departure based on Salah's prior criminal history not resulting in a criminal conviction insofar as they include "[p]rior similar misconduct established by a civil adjudication" in the roster of types of information to use in forming the basis for an upward departure. U.S.S.G. § 4A1.3(a)(2)(C).

If Salah had been convicted of the United States-based prior crimes he would have in the neighborhood of 20 to 25 criminal history points. Not only does this indicate a departure to Criminal History Category VI in the instant case is appropriate, but the fact Salah would have well over 13 criminal history points justifies an upward departure in offense level as well. *See* *United States v. Melgar-Galvez*, 161 F.3d 1122, 1124 (7th Cir. 1998) (18 criminal history points justified upward departure in offense level); *United States v. Ewing*, 129 F.3d 430, 437 (7th Cir.

Alternatively, based on the factors set forth in Section 3553(a), this additional criminal conduct beyond the count of conviction makes clear that 120 months is a “reasonable” sentence in the instant case.

In addition, the Court should impose the statutory maximum \$250,000 fine in light of the existence of Hamas-tainted assets possessed and claimed by Salah that are available to pay such a fine.

Respectfully submitted,
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1997) (25 criminal history points justified upward departure in offense level); *United States v. Lewis*, 954 F.2d 1386, 1397 (7th Cir. 1992) (22 criminal history points justified upward departure in offense level). The Seventh Circuit has approved an approach where the district court increases one offense level for every three criminal history points exceeding 15 (*i.e.* the theoretical high end of criminal history category VI, assuming that category spans three points). *United States v. McKinley*, 84 F.3d 904, 911 (7th Cir. 1997) (such a methodology “was reasonable and sufficiently linked to the structure of the Guidelines”).

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following documents:

Government's Objections to the PSR and Sentencing Position Paper

were served on June 8, 2007, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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