

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**SENTENCING MEMORANDUM
AND OPINION**

Criminal File No. 15-46 (01) (MJD)

ABDULLAHI MOHAMUD YUSUF,

Defendant.

John Docherty, Andrew Winter and Julie Allyn, Assistant United States Attorneys, Counsel for Plaintiff.

Manvir K. Atwal, Assistant Federal Defender and Jean M. Brandl, Brandl Law LLC, Counsel for Defendant.

I. SUMMARY OF SENTENCING DECISION

The Defendant pleaded guilty to Count 1 of the Information which charged Conspiracy to Provide Material Support to a Designated Terrorist Organization, in violation of 18 U.S.C. § 2339B(a)(1). When imposing a sentence in any criminal case, this Court must take into consideration the applicable guideline range calculated pursuant to the United States Sentencing Guidelines (“USSG”), the

statutory sentencing factors set forth in Title 18 U.S.C. § 3553(a) and, when applicable, the nature and substance of assistance a defendant has provided to the government, as provided in USSG § 5K1.1.

The Court has carefully considered all of these factors and finds that a substantial variance from the applicable sentencing guideline range of 180 months¹ is warranted based on the extraordinary assistance this Defendant provided the government. Accordingly, the Court finds that a sentence of one year, eight months and 22 days is supported by the extraordinary assistance this Defendant provided to the government and that such sentence satisfies the statutory sentencing factors set forth in § 3553(a).

II. INTRODUCTION

Crimes that involve acts of terrorism “represent[] a particularly grave threat because of the dangerousness of the crime and the difficulty of deterring and rehabilitating the criminal [] thus [] terrorists and their supporters should be incapacitated for a longer period of time.” United States v. Meskini, 319 F.3d 88,

¹The applicable guideline range in this case is based on a total offense level of 35 and the criminal history category is VI, which results in a guideline range of 292 to 365 months. However, because the crime of conviction carries a statutory maximum sentence of 15 years (180 months), the guideline range is adjusted to 180 months.

92 (2d Cir. 2003).

In 2014, the Defendant agreed to conspire with others to join one of the most dangerous and violent terrorist organizations the world has ever known, the Islamic State of Iraq and the Levant (“ISIL”). By joining this conspiracy, the Defendant agreed to be part of the largest group of committed ISIL travelers from Minnesota; an ISIL terrorist cell that, left unchecked, could have caused immense destruction and the loss of many lives, both here and abroad.

The Defendant pleaded guilty to a violation of 18 U.S.C. § 2339B - Conspiracy to Provide Material Support to ISIL. In addition to entering a plea of guilty to the crime charged, the Defendant also provided substantial assistance to the government. As discussed below, when imposing sentence the Court must consider the United States Sentencing Guidelines, certain statutory factors and, when applicable, the nature and substance of the assistance the Defendant provided the government.

In this case, the assistance provided by the Defendant was extraordinary. In fact, the United States Attorney for the District of Minnesota, Andrew Luger, took the unusual step of personally addressing the Court in support of this Defendant.

In many conspiracy cases, the government seeks the cooperation of co-defendants who are willing to admit their guilt, discuss in detail with agents and prosecutors what they have done and testify truthfully at trial about their crimes and the crimes of the remaining defendants. It is often a daunting task for a defendant to testify against their friends, even more so in this case for reasons that I and Mr. Docherty will address.

Every day in this courthouse and federal courthouses around the country, co-conspirators take the witness stand and assist the government in revealing the criminal conduct of others. When co-conspirators testify, they give the jury an inside look into the thinking and actions of the defendants on trial. They put statements, texts, and other communications into context, and they debunk mythical defenses such as entrapment. But all of this hinges on two things: the defendant's willingness to admit his or her own guilt and their ability to tell the truth on the witness stand with close friends sitting at defense table. And to be clear, the government operates under very strict rules. We cannot put any cooperator on the witness stand unless we believe that person is telling the truth.

In this case, under strong pressure not to cooperate, defendant Yusuf came forward, admitted his own guilt, and testified truthfully against close friends. While this is difficult in any trial, it was made far more stressful for Mr. Yusuf. Not only was he subjected to community pressure, so was his family who was present in court only to provide support for their son.

I sat in the courtroom during his testimony, and we all saw and felt the hostility toward him and his family. . . .Yusuf and his family were harassed, but Yusuf withstood the anger and hostility and came through stronger and better.

(Doc. No. 104, Sentencing Transcript, p 5-6.)

III. FINDINGS OF FACT

The Court adopts the factual statements contained in the presentence

report (“PSR”) as its findings of fact. In addition, the Court adopts those facts set forth in Common Appendix A to the Government’s Position on Sentencing [Doc. No. 98] and attached hereto as Common Appendix A.

The Defendant joined a terrorist cell based in this District, whose sole purpose was to provide material support to ISIL. As part of this cell, the Defendant watched some of the propaganda videos produced by ISIL.

Each member of the conspiracy took affirmative steps to travel overseas to join and fight with ISIL. Some of the conspirators successfully traveled to Syria and joined ISIL; most of whom have since been killed.

The evidence at trial clearly demonstrated that each member of the conspiracy knew that what they were doing was wrong. To avoid the scrutiny of their families, friends and most importantly, law enforcement, they followed the ISIL playbook, which counseled “fake it till you make it.” This strategy required the conspirators to remain under the radar by going to school, working to provide financial assistance to their families, attending the Mosque, and remaining otherwise law-abiding. This strategy also provided that if confronted by law enforcement, they should loudly complain that they were being profiled because they were Muslim. In order to carry out this strategy, however, the

conspirators had to lie to their parents and family, to the FBI agents investigating this case, to the grand jury and to the prosecutors.

The members of the conspiracy were deeply committed to the violent jihadist ideology of ISIL. Because of this commitment, they were **not** deterred when subpoenaed to testify before the grand jury or when they received a target letter² from the United States Attorney's Office. Members were **not** deterred when physically prevented from boarding flights here in Minneapolis or in New York City in their effort to join ISIL in Syria. They were **not** deterred when confronted by their parents, grandparents or siblings.

Despite all of the obstacles put in their way, the members of this conspiracy continued the march toward their admitted objective; to be a committed jihadi warrior, and to travel to Syria to fight, kill and become a martyr.

IV. SENTENCE

The Defendant is sentenced to a term of imprisonment for one year, eight months and 22 days,³ followed by a twenty (20) year term of supervised release.

²A target letter is sent from the United States Attorney's Office informing the recipient that he/she is a target of a federal criminal investigation.

³As of the date of sentencing, the Defendant received credit for "Time Served" - one year, eight months and 22 days.

Based on the Defendant's current economic condition, the Court did not impose a fine, but did impose a special assessment in the amount of \$100.

V. STATEMENT OF REASONS

Pursuant to the Supreme Court decision in United States v. Booker, 543 U.S. 220 (2005), the United States Sentencing Guidelines are no longer mandatory. The Court is nonetheless required to take into account the applicable Guideline range and the pertinent Sentencing Commission policy statements. In addition, the Court must impose a sentence sufficient, but not greater than necessary, to comply with the following sentencing purposes:

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

18 U.S.C. § 3553(a).

The Court also considers the nature and circumstances of the offense and the history and characteristics of the defendant; the kinds of sentences available;

the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense.

Another important factor that is taken into consideration when imposing sentence is whether the government has moved for a downward departure under U.S.S.G. § 5K1.1 based on the Defendant's substantial assistance. Section 5K1.1 authorizes the Court to depart below the advisory guideline range. To assist in determining the appropriate reduction, § 5K1.1 lists the following factors for the Court's consideration:

(1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered; (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant; (3) the nature and extent of the defendant's assistance; (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from this assistance; (5) the timeliness of the defendant's assistance.

Section 5K1.1(a)(1)-(5).

A. Substantial Assistance

The government has filed a motion for a downward departure pursuant to

U.S.S.G. § 5K1.1 based on the Defendant's substantial assistance in the investigation and prosecution of other persons who have committed an offense. The government has filed, under seal, a memorandum discussing in detail the assistance provided by the Defendant. In addition, the Court takes into consideration the fact that the Defendant testified for two days at the trial of three of his co-conspirators. The Court finds his testimony was detailed, credible and persuasive, and that the Defendant's testimony did not waiver even after he witnessed his mother being harassed in the courtroom.

Based on the Defendant's substantial assistance, the Court will grant the government's motion. The assistance provided to the government by this Defendant warrants a substantial variance from the guideline range of 180 months.

A reduction based on substantial assistance must nonetheless satisfy the statutory sentencing factors set forth in § 3553(a). As discussed below, the Court finds that a sentence of one year, eight months and 22 days is warranted based on the Defendant's substantial assistance and satisfies these statutory factors.

B. Section 3553(a) Factors

1. Nature and Circumstances of the Offense

On May 28, 2014, the Defendant attempted to travel to Syria to join ISIL. He was intercepted by law enforcement at the airport and lied when asked about his travel plans. He also failed to disclose the fact that his friend, Abdi Nur, was planning to travel overseas to join ISIL. In fact, the next day, the FBI learned that Nur had already departed for Turkey. Abdi Nur joined ISIL and has since died while fighting with ISIL. The Defendant agreed that had he been truthful with law enforcement, and told them of Abdi Nur's travel plans, he could have saved Nur's life.

2. History and Characteristics of the Defendant

The Defendant was born in a refugee camp in Kenya and came to the United States when he was still a young child. His father was not able to travel with the family to the United States initially, but joined them five years later. When he was 13 years old, his family moved to Burnsville, Minnesota. Thereafter, he began to get into trouble with his friends by participating in petty crimes, smoking marijuana and skipping school. His family moved again in order to separate the Defendant from negative peers.

The Defendant asserts that he became involved with his co-conspirators in the spring of 2014 after his good friend Hanad Mohallim left to join ISIL. At that

time, he was still in high school. During the short time he was involved in the conspiracy, the Defendant became devoted to the cause and shortly after he turned 18 years old, he attempted to fly to Turkey so he could join ISIL in Syria. The Defendant claims his youth and immaturity most likely contributed to his involvement in the conspiracy and to his decision to lie to law enforcement during the early part of his cooperation. The Court disagrees.

The Court has previously addressed the issue of youth as a factor in sentencing in United States v. Robert James Jefferson. In that case, the Court re-sentenced the defendant who had previously been sentenced to a mandatory life term of imprisonment for murders committed when he was sixteen years old, pursuant to the decision of the United States Supreme Court in Miller v. Alabama, 132 S.Ct. 2455 (2012).

In Miller, the Court held that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” Id., 132 S. Ct. at 2469. The Court found that a mandatory sentencing scheme of life in prison was unconstitutional because it did not allow the sentencing court to consider that children are constitutionally different from adults for purposes of sentencing. “Because juveniles have diminished

culpability and greater prospects for reform, we explained ‘they are less deserving of the most severe punishments.’” Id., at 2464 (citations omitted). In reaching this conclusion, the Court also recognized that children “lack [] maturity and [have] an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking”; are more susceptible to peer pressure and have a limited control over their own environment; and their character is not well-formed and their “actions [are] less likely to be evidence of irretrievable depravity.” Id. Because of these attributes, the Court held that “the penological justifications for imposing the harshest sentence” on juveniles are diminished, “even when they commit terrible crimes.” Id. at 2465.

Applying the principles set forth in Miller, and specifically as to whether the crimes of conviction involved reckless or impulsive behavior due to a lack of maturity in the Jefferson case, this Court found that

[w]hile the criminal conduct at issue here is certainly reckless, the Court finds that such criminal conduct did not involve rash or impulsive behavior. The fire bombing of the Coppage home involved planning, the creation of molotov cocktails and then waiting until dark to set the house on fire. Jefferson had plenty of time to consider what he was doing and the consequences of starting a home on fire. He had plenty of time to back out of the plan, but he did not do so.

United States v. Jefferson, No. 97-276, 2015 WL 501968, at * 5 (D. Minn. Feb. 5,

2015).

Applying the Miller principles to the facts of this case, the record is clear that this Defendant had the opportunity to withdraw from the conspiracy multiple times - when he made the decision to fly to Syria and join ISIL, he could have backed out. After he applied for a passport, and bought supplies for the trip, he could have backed out. When his father dropped him off at school the morning of his failed trip, he could have confessed his plans to his father and backed out. After he was intercepted at the airport and questioned by the FBI, he could have told the FBI the truth about his plans and those of his co-conspirators, but he did not do so. Instead, he continued to lie and to accuse the FBI of profiling him because he was Muslim. After receiving a target letter, he could have admitted his criminal conduct to the government, but he did not do so. Finally, after he was arrested, he again was provided the opportunity to admit to his actions, but he failed to do so until months later. Based on these facts, the Court finds there was nothing impulsive or reckless about the Defendant's criminal conduct, therefore his age is not a mitigating factor with respect to the appropriate sentence imposed.

3. Seriousness of the Offense, Respect for the Law and Just

Punishment, Deterrence and Protection of the Public

The crime of conviction is an extremely serious crime, and at least four people have died in Syria as a result of this conspiracy, Douglas MacArthur McCain, Hanad Mohallim, Abdi Nur and Yusuf Jama. Despite his extremely slow start in cooperating with the government, ultimately, the Defendant began to fully cooperate and provided testimony at the trial of three co-conspirators. He has demonstrated the potential to be a law-abiding and productive member of society with appropriate and continuing intervention, which weighs in favor of a downward variance from the applicable guideline range.

4. Unwarranted Sentencing Disparities

The government has filed reports on national terrorism sentencings that summarize sentencing data from cases around the country in which one or more defendants have been convicted of charges involving the provision of material support and resources to a designated foreign terrorist organization.

The report includes information on 26 defendants. Of these, 20 have been convicted of charges under § 2339B, either standing alone or combined with other charges, and 13 were sentenced to a term of imprisonment of 180 months or more.

The Court has reviewed the information concerning these terrorism sentencings and determined that of the 20 defendants convicted of violating § 2339B, 10 defendants pleaded guilty to at least one count of violating § 2339B, and their criminal conduct underlying the criminal charges is somewhat similar to the Defendant in this case in that the defendant attempted to travel to join a terror group or they recruited and/or assisted others to join a terror group. For these 10 defendants, the sentences ranged from 82 months to 180 months.

In addition, the Court has reviewed the sentences provided other cooperators in terrorism cases. See United States v. Mahamud, 11-191 (D. Minn. 2013) (Mahamud solicited funds for al-Shabaab, and never traveled or attempted to travel. He cooperated with the government and testified at the trial of Mohamed Omar. He was sentenced to 36 months.); United States v. Abdi Isse, 09-50 (D. Minn. 2013) (Isse traveled to Somalia and spent time in an al-Shabaab safe house. While in Marka, he raised money for an AK-47 and later accepted his own AK-47. He also worked in a jihadist camp for one week before leaving on his own volition. He returned to the United States and had no further contact with people in Somalia. Sometime later he arrested while on his way to board a flight to Tanzania. Isse also cooperated with the government and testified at the

trial of Mohamed Omar. He was sentenced to 36 months.); United States v. Conley, 14-163 (D. Colo. 2014) (Conley trained in the United States to obtain skills to use firearms and attempted to travel to Turkey. She cooperated with the government and was sentenced to 48 months.)

In this case, the Defendant attempted to travel on one occasion. There is no evidence that he recruited others to join the conspiracy. Once arrested, he entered a plea agreement early, and ultimately provided substantial assistance to the government. Comparing the Defendant's conduct with the cases listed above, the Court believes that a significant reduction from the guideline range will avoid sentencing disparities.

5. To Provide Needed Educational/Vocational Training, Medical Care or other Correctional Treatment in the Most Effective Manner

The Defendant submitted to a presentence examination and study to provide the Court a risk assessment evaluation and recommendations as to intervention needs for de-radicalization of defendants involved in terrorism related cases. The Court appointed Daniel Koehler, Director of the German Institute on Radicalization and De-radicalization Studies, to conduct this

examination.⁴

Koehler has provided the Court a report of his risk assessment evaluation and recommendations as to his intervention needs for de-radicalization⁵. His findings are based on interviews with the Defendant, family members, a prosecutor, and a probation officer, his review of transcripts, court filings, Heartland Democracy materials, excerpts from the PSR, an autobiographical statement by the Defendant and the Defendant's acceptance of responsibility Statement and open source information. The bases and reasons for Koehler's findings and opinions represent an overall qualitative assessment that includes elements of the VERA2 or ERG22+ protocols, and is based on Koehler's case worker experience.

In his report, Koehler found that based on his structured risk assessment, the Defendant displayed a medium to low risk of future offending and a comparatively advanced stage of disengagement.

⁴Koehler has extensive experience working with individuals involved with terror groups, including Somali jihadists and violent neo-nazi extremists. He has counseled approximately 200 cases in the last six years, and is working to develop programs for the successful de-radicalization of those involved in terrorism related cases.

⁵Koehler also testified during a two day hearing concerning his reports as to each defendant, and was subjected to cross examination by the Court, the government and the defense.

Based on this Court's experience handling a high number of terror cases, and imposing sentences on a number of defendants convicted of terrorism crimes, the Court substantially agreed with Koehler's analysis of this Defendant.

The Defendant has submitted reports about his participation in Heartland Democracy. He meets with the Director, Mary McKinley and a mentor, Ahmed Amin, who is of the same cultural background as the Defendant. Amin is a history teacher, debate coach and Vice Principal in the Minneapolis Public Schools. McKinley opines that based on her meetings with the Defendant, they are achieving a level of success they did not foresee. Overall, the process has achieved positive results.

While the Court acknowledges Heartland Democracy's efforts with the Defendant, the Court finds it does not meet the standards of a qualified disengagement and deradicalization program at this time.⁶ Also, Chief Probation Officer Kevin Lowry reported that the Court could not contract with Heartland Democracy because it does not have the proper evaluation and risk assessment tools or a treatment modality in place. Heartland Democracy has not developed

⁶Koehler has suggested that such a program should involve expert personnel in the areas of religion, psychology, education and socialization.

a program that meets the requisite standards of a successful disengagement and deradicalization program, the Court cannot hire Heartland Democracy to provide such a program.

The Defendant also submitted a psychological evaluation completed by Dr. Ernest Boswell. The Court does not find Dr. Boswell's report persuasive.

Accordingly, based on the Court's vast experience presiding over terrorism cases, it finds that Koehler's report supports a downward variance from the applicable guideline range.

6. Conclusion

Taking into account all of the above, the Court finds that a sentence of time served, which was one year, eight months and 22 days, is sufficient, but not greater than necessary, to comply with the sentencing purposes set forth in both § 3553(a) and the relevant guidelines.

Date: December 1, 2016

s/Michael J. Davis
Michael J. Davis
United States District Court Judge

COMMON APPENDIX A – THE SYRIAN INSURRECTION AND ISIL

This Appendix A to the Government’s Sentencing Positions describes (a) historical and Syrian current affairs context that is common to all nine Sentencing Positions being submitted to the Court by the government, and (b) a capsule summary of the facts proven at trial. This Appendix is reproduced in each of the government’s sentencing positions, and is identical in each. No attempt has been made to write a factual summary that is more comprehensive than the very thorough Reports of Pre-Sentence Investigation written in this case by United States Probation officers. However, this Common Appendix A does go into more detail than the PSRs about the history of the Syrian insurrection, and the role in that insurrection of the designated foreign terrorist organization the Islamic State in Iraq and the Levant, or “ISIL.” If there is interplay between events in Syria and events in Minnesota, Common Appendix A tries to correlate events in Syria with significant events that were happening in this case, here in Minnesota, at about the same time as the events in Syria.

As to the first part of Common Appendix A, history and current events, Common Appendix A relies upon the trial testimony of the government’s expert witness, Charles R. Lister, Senior Fellow at the Middle East Institute, Washington, D.C. Common Appendix A does not summarize all of Mr. Lister’s testimony. Instead, it highlights those parts of his testimony which are important to understanding the issues in these sentencings. These matters are a short history of the Syrian insurrection, the origins of ISIL, as well as ISIL’s extraordinary brutality and the part such brutality plays in ISIL’s recruitment of foreign fighters. Finally, this Common Appendix A concludes with a brief description of ISIL’s

understanding of the importance, to what in ISIL's view would be an observant Muslim, of participating in the fighting now taking place in Syria.

The second part of Common Appendix A seeks to provide an overview of the facts of the case, and to provide a description of the facts of the case that can be referred to in all of the government's sentencing position papers.

The facts concerning historical background and Syrian current events in Common Appendix A are taken from a transcript of the trial testimony of the government's expert witness, Charles R. Lister, Senior Fellow at the Middle East Institute, Washington, D.C. As to other trial facts, which have not yet been transcribed, Common Appendix A relies on the contemporaneous notes of Assistant U.S. Attorneys and FBI Special Agents.

Developments in Syria from the Arab Spring (2011) to 2013 Abu Musab al-Zarqawi's founding of ISIL (2013)

Syrian President Bashar al-Assad took power in 2000, continuing the reign of his father, Hafez al-Assad. Between them, the two Presidents al-Assad have ruled Syria as a dictatorship for more than forty years. Bashar al-Assad has used brutal repression against his political opponents, including extensive and intrusive police surveillance followed by arrest, torture, and execution. The efforts of ordinary citizens, during the "Arab Spring," to protest against the regime, were met by the Assad regime with violence.

The Arab Spring began at the end of 2011, and was triggered by a Tunisian man who burned himself to death in a desperate act of protest after being humiliated by the police. The Arab Spring anti-dictatorship movement spread across North Africa and the Middle East in the months that followed.

In Syria, the wealthy had for decades been supporters of the regime. After Bashar al-Assad took power in 2000, this increased, and the gap between rich and poor in Syria became even more stark than it had been. When Bashar al-Assad introduced economic liberalization measures, with support given to small businesses, it turned out that the small businesses that received assistance were the small businesses of regime supporters.

On March 6, 2011, the Syrian internal security services arrested 15 schoolboys in the southern Syrian city of Deraa, alleging that they had been chanting revolutionary songs as they walked home from school. All the boys were tortured, and several of them were killed. Peaceful protests of the boys' arrest were met by the regime with live ammunition, resulting in several deaths. Over the next few days, protests spread to numerous Syrian cities. The arrest and torture of these schoolboys in Deraa, and the regime's heavy-handed response to it, marks the beginning of the Syrian insurrection against President Bashar al-Assad. The insurrection soon transitioned from peaceful protest to armed revolt against the Assad regime.

The reaction of the Bashar al-Assad regime to the events in Deraa was consistent with the reaction to opposition of President Bashar al-Assad's father, Hafez al-Assad, during the time he had been Syria's president. For example, in the 1980s a splinter faction of the Muslim Brotherhood tried to rise up in arms against President Hafez al-Assad in the Syrian city of Hamaa. President Hafez al-Assad responded with months of artillery shelling of Hamaa, which killed between 10,000 and 40,000 of the city's inhabitants.

As protests and fighting spread across Syria during 2011, the United States expressed sympathy for Syrians engaged in peaceful, anti-Assad protests. U.S.

Ambassador to Syria Robert Ford attended several anti-regime protests, a clear signal of U.S. government support. The regime responded by physically threatening the U.S. Embassy, and at one point withdrew security personnel from around the embassy and allowed pro-regime thugs to ransack the building. The United States then withdrew its diplomats from Syria. The United States has had no diplomatic or consular representation in Syria since 2011.

Arab Spring opposition to the Assad regime spanned all sectors of Syrian society. One component of the anti-regime opposition was a specifically religious, Islamic opposition. For a time following the U.S. invasion of Iraq, President Bashar al-Assad was able to neutralize the Islamic opposition within Syria by busing Islamic fighters over the border into Iraq, where they could fight Americans and their Iraqi allies. Eventually some of these Islamic fighters returned from Iraq (or Lebanon, another place to which the Assad regime had sent them) to Syria.

I. THE SYRIAN HISTORICAL AND CURRENT EVENTS CONTEXT OF THIS CASE.

A. Abu Musab al-Zarqawi, the Origins of ISIL, and the Roots of ISIL's Extreme Violence

In 1999, Abu Musab al-Zarqawi was released from the Jordanian prison where he had been serving a sentence for support of a terrorist organization. Shortly after his release from prison, Zarqawi traveled to Afghanistan, where he made contact with the senior leadership of al-Qaeda. With \$200,000 of al-Qaeda's money, and a plot of land donated by the Taliban, Zarqawi established a terrorist training camp in Afghanistan. In 2000, Zarqawi and the organization he had founded attempted to perpetrate the "millennium

plot,” which included attacks on the Radisson Hotel in Amman, and several other western hotels in Amman. The plot was foiled.

When the U.S. invaded Afghanistan following the attacks of September 11, 2001, Zarqawi fought for a short while, but then fled Afghanistan, going first to Iran, and then on to northern Iraq. Following the U.S. invasion of Iraq, Zarqawi and his organization conducted a campaign of bombings against the United States military and other targets, including the United Nations and the Jordanian embassy. At this time, Zarqawi did not have any official relations with al-Qaeda, but in late 2003 and on into 2004 Zarqawi reached out to al-Qaeda in an effort to have his organization and al-Qaeda work together. In May of 2004, Zarqawi conducted his first videotaped beheading, of U.S. hostage Nicholas Berg. Several months after this atrocity, in October of 2004, Zarqawi “made *baya*” (swore allegiance) to al-Qaeda. Zarqawi’s organization took the name “al-Qaeda in Iraq,” and became al-Qaeda’s first international affiliate.

Zarqawi was ferociously anti-Shiah, and his organization in turn became deeply anti-Shiah. Zarqawi believed the Shiah had to be fought until they were all exterminated. Zarqawi dispatched his own father to carry out a suicide bombing at a Shiah shrine in the Shiah holy city of Qatib, in southern Iraq, which killed a Shiah ayatollah. Shiah were referred to by the insulting term “rafidi” which means “one who refuses,” specifically, one who refuses to recognize the legitimacy of the line of succession from the prophet that is recognized by Sunni Islam. The Assad regime, although its top members are Alawites, gets support from Iran, the dominant Shiah power in the middle east, and opposition or

support for the Assad regime tends to fall along Shiah-Sunni lines, with Shiah in support of the regime, and Sunni in opposition to it.

Following the pledge of *baya*, tension between Zarqawi and al-Qaeda persisted, primarily over the issue of brutality and the killing of Muslims. Zarqawi's bombing campaign in Iraq may have targeted non-Muslims, but the bombs were very powerful, were often detonated in public places, and as a result they killed many Muslims. In Zarqawi's view, such deaths were acceptable, because Zarqawi believed Iraqi society needed to be thoroughly cleansed of all western and secular influences. To al-Qaeda, however, Zarqawi's bombings were a catastrophe in terms of al-Qaeda's ability to maintain the support of ordinary Muslims. There was an exchange of letters between al-Qaeda and Zarqawi over this issue, at the end of which al-Qaeda ordered Zarqawi to be more discriminating in his bombing. In response, Zarqawi's behavior, if anything, actually got worse.

Zarqawi was killed by American military action in June of 2006. In October of 2006 one of his successors as the leader of al-Qaeda in Iraq renamed the organization "the Islamic State in Iraq." After some years in which it was not clear whether the Islamic State in Iraq was or was not still part of al-Qaeda, the two organizations formally split in 2013.

Before the split, in May through August of 2011, discussion began about opening a Syrian wing of the Islamic State in Iraq. In August of 2011, seven senior members of the organization crossed into Syria, and activated a dormant network of safehouses in northeastern Syria. In Syria, this group went by the name Jabhat al-Nusra, the "support group." When the split between the Islamic State and al-Qaeda occurred in 2013, Jabhat

al-Nusra remained a part of al-Qaeda, while the Islamic State went on its own, independent path.

In June of 2014, abu Bakr al-Baghdadi, then leader of what had become the Islamic State in Iraq and the Levant, or “ISIL,” mounted the steps of the pulpit in a mosque in Mosul, Iraq and proclaimed the re-establishment of a caliphate, a supreme Islamic religious and political entity that had a legitimate claim to the loyalty of every Muslim in the world.

B. ISIL’s Need for, and Recruitment of, Foreign Fighters

Several factors drove ISIL to need foreign fighters to fill its ranks.

First, as testified to by Mr. Lister, ISIL did not govern populations so much as it controlled them. Its theological rulings were bizzare (the sale of ice cream was forbidden because ice cream did not exist in the prophet’s time, and the sale of cucumbers was forbidden because cucumbers were sexually suggestive, for example), and its punishments for even minor infractions were extraordinarily sadistic and carried out in public. ISIL could recruit from the local population only through fear, and as a result local recruits understandably tended not to be good fighters. Second, from August of 2013 until July of 2014, ISIL did not fight the Assad regime; instead, it waged war on other anti-regime opposition groups. Of the 7,000 people killed in combat by ISIL during the first six months of 2014, not one was an Assad regime soldier. At this same time, the Assad regime stopped fighting ISIL, probably because the regime recognized that ISIL was doing the regime’s work for it. These facts made it impossible for ISIL to augment its numbers by allying with other opposition groups.

In response, ISIL recruited very heavily from abroad, relying on three different recruiting messages.

First, abu Bakr al-Baghdadi, in his role as caliph and leader of the faithful, claimed that it was the duty of all Muslims throughout the world to come and join the Islamic State, and to fight for that state. Second, ISIL used its extreme brutality as a recruiting tool. To do so, ISIL characterized its actions to a local audience as expressions of power and dominance over a Shiah-dominated Iraqi government, and to an international audience as an organization that was bringing power back to Sunni Islam by showing no mercy to the enemies of Sunni Islam. To publicize its brutal acts, ISIL has proven very savvy at using electronic media. As the evidence at trial showed, many ISIL propaganda videos were enthusiastically viewed by defendants in this case.

Third and finally, ISIL has adopted an apocalyptic ideology about the end times which places great value on dying as a martyr in Syria at this particular time in human history. At the end of human history, ISIL preaches, Jesus will descend from heaven to the white minaret of the main mosque in Damascus, and from there will lead an army to the Syrian village of Dabiq, northeast of Aleppo, where the final battle between the forces of good and the forces of evil will be fought. As Mr. Lister explained:

. . . one of the reasons why ISIL has been so effective at recruiting so heavily from non-Syrian and Iraqi populations is because it has claimed to be operating in Syria within this broader mindset. The idea that you can go and fight in Syria in order to contribute towards bringing about the end of the world is something that its ideology – its propaganda, sorry, has made very clear for a long time. In fact, Dabiq was something that Abu Musab al-Zarqawi all the way back in the 2000s spoke about very clearly, our armies will one day reach Dabiq, and, you know, bring about the end of days. So

it's a core tenet, it's a core principle of ISIL's belief. And fundamentally, it's a core reason for why they wanted to operate in Syria all along.

When asked to link this ideology to the recruitment of a potential foreign fighter,

Mr. Lister continued:

I mean, generally speaking, there is a belief within these organizations that if you fight in the name of Allah, in the name of God, and you die as a martyr, you will automatically go to paradise. I believe their understanding is that if you die in these battles, which ISIL claims to be bringing out the end of days, then you will obtain a, you know, a high place in paradise alongside God. So the importance of fighting in Syria specifically, as I say, is of that utmost importance.

Finally, Mr. Lister pointed out in his testimony that some of the outrages perpetrated by ISIL, such as the beheadings of western hostages, were "trying to bait the west into intervening more," in order to precipitate the final battle between Muslims and non-believers.

As a result of all three factors, a vast majority of ISIL's forces at for example, the battle of Kobani, under the command of ISIL commander Omar al-Shishani, were foreigners, who sustained huge casualties. Of note, the battle of Kobani pitted ISIL against Kurdish militia. At no time, did the battle of Kobani involve combat between ISIL and Assad regime forces.

II. THE FACTS OF THIS CASE

The evidence at trial demonstrated the existence of a conspiracy among the defendants to travel to Syria via Turkey, cross the border into Syria, and there join, and fight for, ISIL. There were three major efforts by the defendants to reach Syria, in the Spring of 2014, the Fall of 2014, and the Spring of 2015.

The Spring of 2014 effort had two components. In one, defendant Guled Omar, together with Abdirahman Bashir (then a member of the conspiracy, later a cooperating human source for the FBI) and Yusuf Jama, attempted to drive to Mexico and travel onwards from Mexico to Turkey and then Syria. In preparation for this attempt, defendant Omar withdrew \$5,000 in cash using his federal student financial aid debit card. Those funds were never repaid, and as a result of this financial behavior, defendant Omar was later found guilty of federal financial aid fraud, in violation of 20 U.S.C. § 1097. The attempt at driving was thwarted by defendant Omar's family. Later, however, on June 9, 2014, Yusuf Jama left the Twin Cities by Greyhound bus, traveled to New York City's John F. Kennedy International Airport (hereinafter "JFK"), and flew from there to Turkey and onwards to Syria. Jama is believed to have later been killed in combat while fighting for ISIL and against Kurdish militia at the battle of Kobani.

The second component of the conspirators' Spring of 2014 effort involved cooperating defendant Abdullahi Yusuf's attempt to travel on May 28, 2014, and Abdi Nur's successful travel on May 29, 2014. Yusuf was booked on an itinerary that would have taken him on the Russian airline Aeroflot from Minneapolis-Saint Paul to JFK, then on to Moscow, Russia, before taking an Aeroflot flight from Moscow to Istanbul. However, when Yusuf applied for a passport on April 28, 2014, he aroused the suspicions of an alert passport specialist in the Minneapolis passport office. The passport specialist relayed his suspicions to his supervisor, who told the FBI. As a result, FBI Agents were waiting for Yusuf when he arrived at the Minneapolis – Saint Paul airport on May 28 to

catch his flight to JFK. Yusuf was denied boarding, and after continuing to falsely claim to the FBI that he was going solo to Istanbul for vacation, sent home.

The Fall of 2014 effort also had two components. In the first, defendant Guled Ali Omar again tried to reach Mexico, this time by taking a flight from Minneapolis – Saint Paul to San Diego. The FBI was told that defendant Omar had made a travel booking, and federal agents met Omar at the airport. Omar arrived at the airport carrying no luggage, and in possession of his passport. He was denied boarding and sent home. After being turned away at the airport, defendant Omar telephoned defendant Hanad Musse, using “Magic Jack,” an application that disguises one’s telephone number. In that call, defendant Omar pleaded with defendant Musse to drop their own plans to travel to Syria. In that telephone call, defendant Omar told defendant Musse that “I just got caught up.”

The plans from which defendant Omar was trying to dissuade defendant Musse involved Musse and three other defendants – Mohamed Farah, Hamza Ahmed, and Zachariah Abdurahman – following the example of Yusuf Jama by taking Greyhound buses to JFK, and flying from there to various destinations in southeastern Europe, such as Athens, Istanbul, and Sofia, and then traveling on to Turkey and, ultimately, Syria.

Musse refused to drop the plans and “the JFK Four” continued to New York. There, they were met by agents of the FBI and denied boarding. Defendant Hamza Ahmed had boarded his flight, and was escorted off the aircraft by federal agents. When three of the four were interviewed by the FBI in New York (defendant Hanad Musse left JFK without being interviewed; however, Mohamed Farah, Hamza Ahmed, and Zachariah Abdurahman were interviewed at JFK), they lied, claiming that they did not know each other, and that

they were all traveling to Europe, by themselves, for vacation. In the case of defendant Mohamed Farah, this meant that he claimed to be traveling to Sofia, Bulgaria, in November, for a beach vacation lasting one day. Upon return to Minnesota, each of the defendants was given a target letter from the U.S. Attorney's office, telling them they were targets of a federal criminal investigation into allegations of conspiracy to provide material support to a designated foreign terrorist organization. The JFK Four were then again interviewed, this time by Minneapolis-based FBI agents. They maintained the fictions they had given to the New York FBI agents. (Defendant Hanad Musse had not been interviewed in New York.)

Later in November of 2014, defendant Abdullahi Yusuf, who had been at liberty since trying to leave in late May, was arrested on a criminal complaint charging him., together with Abdi Nur, with conspiring to provide material support and resources to ISIL, and with actually providing material support and resources to ISIL (the material support and resources provided was the person of Abdi Nur). In February of 2015, defendant Hamza Ahmed was arrested, and detained pending trial. Defendant Ahmed was therefore unable to conspire with his codefendants when, in the Spring of 2015, they began conspiring yet again to go to Syria to join ISIL.

The failure of the Fall 2014 attempt did not lead the defendants to drop their ambitions to travel to Syria. In the Spring of 2015, they again began planning to leave the United States, go to Turkey, then go onwards into Syria to join, and fight for, ISIL. Shortly after this third and final round of plotting began, Abdirahman Bashir decided to cooperate

with the FBI's investigation. He wore a recording device and recorded many hours of incriminating conversations between March and April of 2015.

The defendants had hoped to make a connection in Tijuana, Mexico, with a source for false passports. When this plan could not be completed, because Abdi Nur, in Syria, was unable to connect with the Mexican ISIL fighters who were to provide the contact information in Tijuana, Bashir, with the approval of the FBI, stated that he had a source for false passports in San Diego.

On April 17, 2015, Bashir, together with defendants Mohamed Farah and Abdirahman Daud, left home in defendant Daud's Honda Civic, bound for San Diego. Upon arrival in San Diego on Sunday, April 19, defendants Daud and Farah were arrested at a warehouse in San Diego when they took possession of fake passports from "Miguel," a San Diego police officer who had been acting the part of a procurer of fake passports. The arrests in San Diego were followed within minutes by the arrests in Minnesota of the remaining defendants: Guled Ali Omar, Adnan Abdihamid Farah, Zachariah Yusuf Abdirahman, and Hanad Mustofe Musse.