

1 EILEEN M. DECKER  
 United States Attorney  
 2 PATRICIA A. DONAHUE  
 Chief National Security Division  
 3 B. CELESTE CORLETT (Cal. Bar No. pending)  
 Arizona State Bar No. 021724  
 4 Assistant United States Attorney  
 8000 United States Courthouse  
 5 411 West Fourth Street  
 Santa Ana, California 92701  
 6 Telephone: (714) 338-3541  
 Facsimile: (714) 338-3708  
 7 E-mail: Celeste.Corlett@usdoj.gov

ANNAMARTINE SALICK (Cal. Bar No. 309254)  
 8 Assistant United States Attorney  
 312 North Spring Street  
 9 Los Angeles, California 90012  
 Telephone: (213) 894-3424  
 10 Facsimile: (213) 894-6436  
 E-mail: Annamartine.Salick2@usdoj.gov

11 Attorneys for Plaintiff  
 12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT  
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 15 SOUTHERN DIVISION

16 UNITED STATES OF AMERICA,  
 17 Plaintiff,  
 18 v.  
 19 ADAM DANDACH,  
 Aka, Fadi Fadi Dandach,  
 20 Defendant.  
 21

No. SA CR 14-109-JVS

GOVERNMENT'S RESPONSE TO  
 PRESENTENCE INVESTIGATION REPORT  
 AND POSITION WITH RESPECT TO  
 SENTENCING

Sentencing Date: July 25, 2016  
 Sentencing Time: 9:00 a.m.  
 Before Honorable James V. Selna

22  
 23 Plaintiff United States of America, by and through its counsel  
 24 of record, the United States Attorney for the Central District of  
 25 California and undersigned counsel, hereby files the Government's  
 26 Response to the Pre-Sentence Investigation Report (CR 80) and  
 27 Position with Respect to Sentencing of Defendant Adam Dandach.  
 28

1 This response to the Presentence Investigation Report and  
2 sentencing position are based on the attached Memorandum of Points  
3 and Authorities, the Presentence Investigation Report, the records  
4 and files of this case, the expert reports of Evan Kohlmann and Dr.  
5 Saul Faerstein, the evidence presented at the Evidentiary Sentencing  
6 Hearings, and any further evidence or argument the Court may allow.

7 Dated: July 1, 2016

Respectfully submitted,

8 EILEEN M. DECKER  
9 United States Attorney

10 /s/

11 \_\_\_\_\_  
12 CELESTE CORLETT  
13 ANNAMARTINE SALICK  
14 Assistant United States Attorneys

15 Attorneys for Plaintiff  
16 UNITED STATES OF AMERICA  
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SENTENCING MEMORANDUM

**I. INTRODUCTION**

Adam Dandach ("defendant") attempted to provide material support, himself, to a foreign terrorist organization, that is, the Islamic State of the Iraq and the Levant ("ISIL"), and in order to obtain a duplicate passport to travel to join ISIL, Defendant made a false statement in his passport application. For these offenses, a sentence of 240 months' imprisonment and a lifetime term of supervised release is a just and fair punishment for one count each of violating 18 U.S.C. §§ 2339B and 1542.

The government agrees with the Probation Officer's summary of the offense conduct and the Guidelines calculation, but it does not agree with the recommended departures or the recommended sentence of 180 months' imprisonment.

**II. FACTUAL BACKGROUND**

**A. Defendant's Background**

Defendant is twenty-two years old. (PSR, p. 2.) He is a United States citizen who is a native of Orange County, California, and prior to his arrest in this matter lived in Orange, California with his mother and juvenile sister. (PSR, p. 2, ¶ 59, 61, 62.) His father was ordered deported from the United States on July 7, 2008 based on a domestic violence conviction and a petty theft. (Attachment 1.) Defendant has an older sister and brother from his mother's previous marriage who also live in Orange County. (PSR ¶ 62.) In 2012, defendant graduated from high school and then successfully attended a community college, both in Orange, California. (PSR ¶ 78.)

1 Beginning in 2013, defendant underwent a dramatic physical  
2 transformation. In March 2013, defendant had gastric bypass  
3 surgery. (PSR ¶ 70.) At the time of the surgery, he weighed  
4 approximately 500 pounds. (Id.) From February 2013 until his  
5 arrest in July 2014, the defendant lost approximately 250 pounds.  
6 (PSR ¶ 68.)

7 **B. Defendant's Supports Violent Jihad**

8 In May 2013, defendant was attending college and living at home  
9 with his mother. (PSR ¶ 67.) By this time, he was already deep  
10 into consuming and promoting terrorists' lectures, videos, and  
11 graphic pictures of violent terrorist acts. (See Expert Report of  
12 Evan Kohlmann ("Kohlmann")). Through his different social media  
13 cites including Facebook, Youtube, and an online chat forum,  
14 defendant posted terrorists' lectures and pictures, discussed the  
15 radical ideas of the terrorists he followed, and encouraged other  
16 people to do the same. (Testimony of Special Agent Scott Wales,  
17 April 21, 2016, Reporter's Transcript ("04/21/2016 RT"), pp. 12-14;  
18 Kohlmann, pp. 5, 14, 16, 19-30.)

19 Defendant listened to Anwar al-Awlaki, a specially designated  
20 global terrorist and a prominent figure among individuals who seek  
21 to join foreign terrorist organizations.<sup>1</sup> (Kohlmann, p. 11-12.)  
22 Defendant publicly posted on his social media page at least seven of  
23 al-Awlaki's lectures, which included "44 Ways to Support Jihad"  
24 wherein Awlaki stated that would-be Muslim fighters must support  
25 their land and religion, even if they were children whose parents  
26

---

27 <sup>1</sup> In 2010, the United States Treasury Department listed Anwar  
28 al-Awlaki as a specially designated global terrorist. See also  
Kohlmann, p. 9-12.

1 refuse to do so. (Id. at 11.) Defendant expressed support for Osama  
2 bin Ladin, members of the Al-Muhajiroun (a terrorist group in the  
3 United Kingdom ("UK")), and Shaykh Faisal (convicted of soliciting  
4 murder in the UK). (Id. at 8, 16, 17, 19-20, 22.) On September 5,  
5 2013, defendant posted in a chatroom a video copy of a *nasheed* which  
6 praised Usama Bin Ladin:

7  
8 [The] leader bin Laden terrorizes America. Our  
9 strength is in our iman and our weapon is the PK. If  
10 they call me a terrorist, I say that this is an honor.  
A blessed form of terrorist; A divine da'wah. We  
destroyed America with a civilian airplane.

11 (Kohlmann, pp. 8, 9.)

12 Defendant also read material that supported terrorism and he  
13 encouraged his social media friends to do the same. He explained to  
14 social media friends that he had read the Black Flags of Syria,  
15 *Inspire* magazine, and a Taliban website to keep updated on the  
16 *mujahideen*, meaning those who practice jihad as "holy warriors."

17 (Kohlmann, pp. 28, 42, 61.) The Black Flags is a series of  
18 documents published by ISIL that describe the background of ISIL and  
19 provided guides to guerilla warfare and other violent tactics. (Id.  
20 at 42.) *Inspire* magazine claims it "is geared towards making the  
21 Muslim a mujahid in Allah's path." (Id.) It includes instructional  
22 material on guerilla war tactics, bomb making techniques, weapons  
23 training, and other information on self-radicalization. (Id., p.  
24 26.)

25 Defendant read materials on achieving martyrdom through jihadi  
26 fighting, including *The Revivers of the Khalifah*. (04/21/2016, RT,  
27 pp. 50-56.) This book included directions on how to reach Syria;  
28 examples of English-speaking persons who were fighters in Syria; and



1 "Muslims who left the West," were in Syria, and could be contacted  
2 to answer further questions through Twitter accounts. (Id., p. 56;  
3 Ex. 12, pp. 101, 104.) All of these Twitter accounts were on  
4 defendant's phone. (04/21/2016 RT, p. 56.)

5 Defendant continued his support for terrorism throughout 2013  
6 and began expressing his desire to join ISIL. In June, while  
7 discussing the fighting in Syria, defendant told his friend that the  
8 Khilafah was coming soon, and he wished to fight one day.

9 (04/21/2016 RT, p. 59; Ex. 11.) In July 2013, defendant claimed to  
10 follow updates of "mujahideen" who were fighting in Syria, and he  
11 shared the website link with his friend, so his friend could also  
12 get updates of the fighting in Syria. (Kohlmann, p. 58.) Defendant  
13 downloaded hundreds of Tweets from terrorist supporters including  
14 ISIL's daily battle updates on the "successes" of ISIL in Syria,  
15 pictures of military fighters in Syria, executions, and decapitated  
16 heads. (04/21/2016 RT, p. 33-37.) In August 2013, defendant  
17 described a "brother" who was martyred during Ramadan and then  
18 stated that he wished he (defendant) could be in his (the martyr's)  
19 position. (Kohlmann, p. 58.)

20 Defendant also communicated personally with at least two people  
21 in Syria. Defendant admitted to FBI Special Agents that one of his  
22 social media friends, Abu Turab al-Canadi, was fighting in Syria for  
23 ISIL. (Kohlmann, pp. 48-49.) The FBI also located on his phone  
24 communications with this person. (Id.) It was through this friend  
25 that defendant learned that ISIL would provide him basic weapons  
26 training; in addition defendant admitted to watching ISIL training  
27 videos. (Kohlmann, pp. 30, 36, 49.) Another friend in Syria, who  
28 defendant called "Mohammed Z," claimed to be in Syria to help the

1 widows and orphans. (Kohlmann, pp. 46-48.) A review of Mohammed  
2 Z's website revealed discussions of support for ISIL and encouraging  
3 others to join ISIL, nearly exclusively. (04/21/2016 RT, pp. 46-  
4 47.)

5 Defendant admitted to having recordings of multiple *nasheeds*  
6 and encouraged others to listen to them. (Kohlmann, pp. 7-9.)  
7 (*Nasheeds* are Islamic songs, often sung in Arabic; foreign terrorist  
8 organizations commonly share *nasheeds* that praise battle victories  
9 and martyrs). These particular *nasheeds* were focused on violent  
10 jihadi themes. (Id., p. 7.) "[S]elect nasheed songs have become  
11 virtually synonymous with jihadi military operations, and in  
12 particular, videos of suicide bombings." (Id.) A few months before  
13 defendant requested his expedited passport in his attempt to travel  
14 to Syria a second time, he pasted in a document the lyrics of a  
15 jihadi *nasheed* that stated:

16  
17 I am a terrorist. . . . By the sword, by the fire, we  
18 repel the plot of the evildoers . . . They killed and  
19 committed treachery and oppression and explosions. So  
20 today, woe, woe, woe to the aggressors, woe to the  
aggressors. I am a terrorist. . . . One day in  
hatred, they killed an old man at home. And today, in  
reply, a young man takes his revenge.

21 (Kohlmann, p. 7.) Defendant posted another *nasheed* on an online  
22 chat room he visited, and he shared the same jihadi *nasheed* on  
23 Facebook and told he friend that he should listen to it. Some of  
24 the lyrics include the following:

25 ///

26 ///

27

28

1 In the path of Allah, we have walked, And announced  
2 Jihad . . . . We have returned with a machine gun . .  
3 . And we have followed the awakening of this  
4 generation, Groups and Individuals . . We have come  
to you with an elucidating Qur'an and a machine gun  
(rata-tat-tat-tat-tat).

5 (Id.)

6 **C. Defendant's First Attempt to Travel to Syria to Join ISIL**

7 On the November 22, 2013, defendant applied for an expedited  
8 United States passport. (Plea Agrt., p. 9.) On December 6, 2013,  
9 located on Defendant's computer was a four page document that  
10 "appeared to offer advice on the steps necessary 'to give the Bay'ah  
11 (oath) of allegiance to an Ameer starting from the land of ash-Sham  
12 [Syria]," a document the FBI later found after defendant's July 3rd  
13 arrest. (Kohlmann, p. 55.) Defendant's expedited passport was  
14 issued in early December 2013. (Plea Agrt., p. 9.) Shortly  
15 thereafter, defendant booked a one-way flight with an arrival on  
16 December 26, 2013 in Istanbul, Turkey. (Id.) Before he departed, a  
17 family member learned of his plans to travel to Turkey, and fearing  
18 for his safety, took his passport and cash, so he could not travel.

19 (Id.)

20 **D. Defendant's Second Attempt to Travel to Syria to Join ISIL**

21 Defendant continued to make plans to carry out his intention to  
22 provide material support and resources to ISIL after his family  
23 intervened in his first attempt to travel. Defendant corresponded  
24 and planned with others who were in Syria, including at least one  
25 person who was in Syria fighting for ISIL, so he could travel to  
26 Syria to work under the direction and control of ISIL. (Id.)

27 Defendant obtained information and guidance to achieve this purpose,  
28

1 including by acquiring booklets on how to travel to Syria, flights  
2 to the area, and maps of ISIL-controlled areas. (Id.) Defendant  
3 applied for an expedited 2014 passport and falsely stated on his  
4 application that he had lost his 2013 passport when he accidentally  
5 threw it in the trash in June 2013. (Id.) Defendant knew at the  
6 time that he made the statement it was false because he knew that  
7 his mother had taken his passport in December 2013, and that he had  
8 not lost it. (Id.)

9 On July 1, 2014, defendant received his duplicate expedited  
10 passport. (Id.) On the very same day, he booked a flight that  
11 departed John Wayne Airport in Santa Ana, California, the very next  
12 day, July 2, 2014, with a final destination of Istanbul, Turkey.  
13 (Id.) On July 2, 2014, defendant went to John Wayne Airport and  
14 taking with him luggage, a laptop computer, and a Smartphone. (Id.  
15 at 10.) Located in the Smartphone, he had downloaded *nasheeds*  
16 supporting ISIL fighting, maps of ISIL controlled areas, Twitter  
17 updates on ISIL fighting in Syria and Iraq, and a pamphlet on how to  
18 reach a Syrian border city from Istanbul (guidance that he last  
19 accessed earlier that day). (Id. at 10.) Also on that day,  
20 defendant emailed his friend to say that he did not know why people  
21 did not step forward and help the situation, and complained "how  
22 people expect a khilafah to arise without bloodshed" and claimed  
23 that "it's a golden opportunity." (Id. at 10.)

24 On July 2, 2014, during an interview at the airport, defendant  
25 told FBI Special Agents that ISIL had declared a caliphate on June  
26 29, 2014, and that it was mandatory for every able Muslim to migrate  
27 to the land of Islam. (Id. at 10.) He stated that if someone  
28 wants to invade "our land, we have to fight back." (Id. at 10.) He

1 described the invaded lands as Afghanistan, Iraq, and the Syrian  
2 regime. (Id. at 10.) Defendant admitted to the agents that he  
3 intended on that date to fly to Istanbul, Turkey, and his ultimate  
4 destination was ISIL-controlled Syria. (Id. at 10.) He intended to  
5 pledge allegiance to the leader of ISIL, Abu Bakr Al-Baghdadi. (Id.  
6 at 10.) And, he intended to live under the control of ISIL. (Id.  
7 at 10.) Defendant admitted that he intended to take weapons  
8 training from ISIL to defend himself. (Id. at 10.)

9 **E. Defendant's Post-Arrest Obstruction and Continued Support**  
10 **of Violence**

11 After defendant was arrested and detained, he quickly began to  
12 seek his family's help to eliminate internet postings he had made  
13 prior to his arrest. Defendant was a regular contributor to an  
14 internet chat room, Ummah.com. (See Kohlmann, p. 55-59.) He  
15 admitted that it was through this forum that he communicated with an  
16 ISIL fighter and learned about ISIL training. (04/21/2016, pp. 42-  
17 44.) After he was detained, defendant immediately began asking his  
18 family to delete postings he had made on the website to his very  
19 close friends. (PSR ¶ 31.) Defendant eventually convinced a family  
20 member to go into his online account and delete all his posting  
21 history. (Id.) The material was deleted and could not be recovered  
22 by the FBI. Although it is not known what material defendant had  
23 deleted, it is known that he often posted the jihadi videos in this  
24 chatroom and learned from persons fighting in Syria what type of  
25 training to expect. (04/21/2016 RT, pp. 42-44.)

26 While detained, pending the outcome of this case, defendant  
27 composed several writings. These writings discussed themes of  
28 violence and support of domestic and international terrorism. One

1 item, entitled "The Price of Freedom of Speech," dated January 10,  
2 2015, was sent by defendant to a reporter at the Orange County  
3 Register where it was published. (Attachment 2.) The writing  
4 concerned the January 7, 2015 terrorist murders of journalists in  
5 Paris. (Id.) In his writing, Defendant expressed support for the  
6 terrorists and condemned the journalists. (Id.) In his cover  
7 letter to the newspaper, Defendant wrote, "[t]his poem does not  
8 necessarily reflect my personal opinion of the recent situation in  
9 France. I do not at all feel any sympathy for the dead cartoonists  
10 and I do not condemn the brothers for their defense of the Prophet's  
11 name. . . . If I have offended anyone, that was my intention."

12 (Id.) In his writing, he stated to the victims, "rot in a grave of  
13 fire, right were you belong." (Id.) Then, defendant concluded by  
14 stating, "Je Su[is] Al Qaeda. Leaving another scar." (Id.)

15 In May 2015, defendant read to his brother a "rap" he authored.  
16 (Attachment 3.) Defendant read his brother a disturbing story about  
17 a "rejected young boy, bullied since elementary" with an abusive  
18 stepfather. (Id.) In this story, defendant described how the boy  
19 decided to "show the world he's not afraid, and punish everyone."

20 (Id.) He then described the boy shooting his parents, teachers, and  
21 students with an AK-47 and being killed via "suicide by Cop," but  
22 claimed it made him feel "like a God." (Id.) Defendant ended the  
23 rap with "think hard of the punishment that God will inflict upon  
24 you . . . ." (Id.) This occurred just a few days after his brother  
25 had told Defendant that his writings were alarming to the Santa Ana  
26 Jail staff. (Attachment 4.) He told defendant to be careful about  
27 what he writes and told him to rip it up into pieces and make it  
28 hard for them to piece together. (Id.)

1           Although detained defendants are not allowed to search the  
2 Internet while at the Santa Ana Jail, defendant repeatedly had his  
3 family members search the web for books on ISIL, news articles on  
4 the San Bernardino terrorist shootings, updates from ISIL, and known  
5 terrorists such as Anjem Choudary (see Kohlmann, p. 14).  
6 (Attachment 5.)

7 **III. PROCEDURAL HISTORY**

8           On March 4, 2015, a Grand Jury charged defendant, also known as  
9 Fadi Fadi Dandach, in a First Superseding Indictment with Attempting  
10 to Provide Material Support and Resources to a Designated Foreign  
11 Terrorist Organization, ISIL, in violation of 18 U.S.C. § 2339B;  
12 Making a False Statement on a Passport Application and Use of a  
13 Passport Obtained through a False Statement to Facilitate  
14 International Terrorism, in violation of 18 U.S.C. § 1542; and,  
15 attempting to Destroy Records in an Official Proceeding, in  
16 violation of 18 U.S.C. § 1512 (c)(1). (CR 28.)

17           On August 10, 2015, defendant pled guilty pursuant to a plea  
18 agreement to an Information charging him with Attempting to Provide  
19 Material Support and Resources to a Designated Foreign Terrorist  
20 Organization, ISIL, in violation of 18 U.S.C. § 2339B and False  
21 Statement in a Passport Application, in violation of 18 U.S.C.  
22 § 1542. (CR 69, 71.)

23           At the time defendant committed the § 2339B offense, the  
24 statutory maximum term of imprisonment was 15 years. The statutory  
25 maximum sentence for a violation of § 1542 is 10 years. Thus, the  
26 total statutory maximum is 25 years' imprisonment.

1 On April 21 and June 2, 2016, the Court heard testimony and saw  
2 evidence at the sentencing evidentiary hearings concerning the  
3 defendant's dangerousness and mental health. (CR 107.)

4 Prior to the hearings, on October 14, 2015, the United States  
5 Probation Office ("USPO") prepared a Presentence Investigation  
6 Report ("PSR") calculating defendant's total offense level as 37 and  
7 defendant's criminal history category as VI, for an advisory  
8 guideline range of 360 months to life imprisonment. (PSR ¶ 86.)  
9 However based on the statutory maximums, the guideline range was  
10 adjusted to 300 months. (Id. 87.) The Probation Office recommended  
11 a sentence of 180 months imprisonment based on departures for  
12 defendant's age, mental health, and physical condition pursuant to  
13 the United States Sentencing Guidelines ("USSG") Sections 5H1.1,  
14 1.3, and 1.4. (United States Probation Office Sentencing Letter  
15 ("Sentencing Letter"), p. 6.)

16 The government respectfully but strongly disagrees with the  
17 PSR's departures and recommended sentence. As described below, the  
18 government contends that, in the context of a defendant who sought  
19 to join the world's most dangerous terrorist organization,  
20 defendant's age, which, sadly, is consistent with that of others  
21 committing federal terrorism crimes, is an entirely inappropriate  
22 basis on which to recommend a reduced sentence. Moreover,  
23 defendant's characteristics, including his health, are already  
24 accounted for in the plea agreement and do not warrant leniency in  
25 the form of a further reduction from the dramatically higher 300-  
26 month range reflected in the Guidelines.

27 The Court ordered the parties to file their Sentencing  
28 Memorandum and Objections by July 1, 2016, and, on July 15, 2016,



1 file their responses to the other party's Sentencing Memorandum and  
2 Objections. (CR 124.) The Sentencing Hearing is set for July 25,  
3 2016 at 9:00 a.m.

4 Defendant is in custody.

5 **IV. GOVERNMENT'S SENTENCING POSITION AND RECOMMENDATION**

6 The recommended sentence of 240 months' imprisonment and a  
7 lifetime term of supervised release, and a \$100 mandatory special  
8 assessment, is sufficient, but not greater than necessary, to  
9 address the factors set forth in 18 U.S.C. § 3553(a)(2). The  
10 factors set forth in § 3553(a) are addressed below.

11 **A. Sentencing Guidelines Calculation**

12 Pursuant to the Plea Agreement, the parties agreed to the  
13 following sentencing factors (Plea Agmt ¶ 14):

14 1. Violation of 18 U.S.C. § 2339B

15	Base Offense Level:	+26	[U.S.S.G. § 2M5.3]
16	Specific Offense		
17	Characteristic :	+2	[U.S.S.G. § 2M5.3(b)(1)(E)]
18	Terrorism Adjustment	+12	[U.S.S.G. § § 3A1.4(a)]

19 2. Violation of 18 U.S.C. § 1542(c)(1)

20			
21	Base Offense Level:	+8	[U.S.S.G. § 2L2.2(a)]
22	Specific Offense		
23	Characteristic :	+4	[U.S.S.G. § 2L2.2(b)(3)]
24	Terrorism Adjustment	+12	[U.S.S.G. § § 3A1.4(a)]

25 Pursuant to the application of USSG § 3A1.4(b), defendant's criminal  
26 history category under the Sentencing Guidelines is Category VI.

27 Defendant's advisory guideline range, based on a total offense  
28 level of 37 and a criminal history category of VI, is 360 months to

1 life imprisonment. (PSR ¶ 86.) However because the combined  
2 statutory maximum is 25 years, the guideline range was adjusted to  
3 300 months. (PSR ¶ 86.) The government contends that a sentence of  
4 240 months (20 years) imprisonment with lifetime supervised release  
5 is the appropriate sentence here.

6 **1. Acceptance of Responsibility (§ 3E1.1)**

7 At the time of sentencing, if defendant continues to  
8 demonstrate an acceptance of responsibility for the offense up to  
9 and including the time of sentencing, the government will recommend  
10 a reduction totaling three-levels pursuant to U.S.S.G. § 3E1.1.  
11 (Plea Agrt. ¶ 3.d).

12 **2. Application of the Terrorism Adjustment (§ 3A1.4(a))**

13 In Count One, the parties agreed that a twelve-level Terrorism  
14 Adjustment is warranted because the offense of Attempting to Provide  
15 Material Support "involved, or was intended to promote, a federal  
16 crime of terrorism." (U.S.S.G. § 3A1.4(a); Plea Agrt. ¶ 14.a.) A  
17 "federal crime of terrorism" has the meaning given under 18 U.S.C.  
18 § 2339b(g)(5), which includes 18 U.S.C. § 2339B, the offense charged  
19 in Count One. Likewise, the PSR agreed the adjustment applied to  
20 Count One. (PSR ¶ 29.)

21 In Count Two, the parties agreed that the same twelve-level  
22 Terrorism Adjustment was warranted. (Plea Agrt. ¶ 41.b.) The PSR  
23 did not recommend applying this adjustment because 18 U.S.C. § 1542,  
24 the felony at issue here, "is not among the list of enumerated  
25 offenses." (PSR ¶ 35.) That reasoning is misplaced. The  
26 adjustment applies to defendant's § 1542 felony because this felony  
27 was "intended to promote" a federal crime of terrorism, namely, the  
28

1 crime of providing material support to a foreign terrorist  
2 organization, § 2339B.

3       The Second Circuit held that under the "intended to promote"  
4 prong of § 3A1.4(a), "so long as the defendant's offense was  
5 intended to encourage, further, or bring about a federal crime of  
6 terrorism as statutorily defined, the defendant himself does not  
7 [even] have to commit an offense listed in § 2339b(g)(5)(B), and the  
8 defendant's offense need not itself be 'calculated' as described in  
9 § 2339b(g)(5)(B)." United States v. Awan, 607 F.3d 206, 315 (2nd  
10 Cir. 2010). In that case, the defendant had committed money  
11 laundering, in addition to material support of terrorism, and the  
12 government sought a terrorism enhancement under § 3A1.4(a) for the  
13 money laundering count. Id. at 311. The Court held that the  
14 application of the adjustment requires only that the defendant's  
15 offense was intended to promote a federal crime of terrorism as  
16 defined in § 2339b(g)(5)(B). Id. at 316.

17       Here, it is clear that defendant's crime of false statement in  
18 a passport application was intended to further or bring about the  
19 crime of material support to a foreign terrorist organization.  
20 Defendant had previously sought to depart the United States to join  
21 ISIL but could not do so because his passport had been taken from  
22 him. Undeterred, he lied in order to obtain another passport on an  
23 expedited basis. The very day he received that passport, he made  
24 his plane reservation to Turkey, and the next day went to the  
25 airport where he tried to use his fraudulently obtained passport to  
26 leave the United States and join ISIL, including by presenting the  
27 passport to the airline agent as he sought to check in for his  
28 flight to Turkey.

1           Ultimately, even if the Court declines the parties' contention  
2 that the terrorist enhancement applies to Count Two, it would not  
3 change the final guideline calculation because the calculation for  
4 Count One would control while the combined statutory maximums reduce  
5 the range to 300 months' imprisonment.

### 6           **3. Defendant's Age (§ 5H1.1)**

7           The PSR recommends a downward departure based on defendant's  
8 age pursuant to § 5H1.1. (PSR ¶ 100.) The Court should deny a  
9 reduction for age because defendant's age is not present to an  
10 unusual degree. Defendant has the burden of proof when requesting a  
11 downward departure. United States v. Howard, 894 F.2d 1085 (9th  
12 Cir. 1990). Defendant must prove he is entitled to such a departure  
13 by a preponderance of the evidence. United States v. Wilson, 900  
14 F.2d 1350 (9th Cir. 1990).

15           The government objects to a downward departure based on  
16 defendant's age. Defendant committed the offense when he was 19.  
17 This age is not an unusually young age for committing offenses,  
18 including federal crimes of terrorism. Additionally, while  
19 incarcerated for two years, defendant has not demonstrated that with  
20 age, he has matured and recognized his errors in judgment. To the  
21 contrary. As discussed below, defendant has adopted ISIL's violent  
22 ideology as part of his identity and there is no reason or evidence  
23 to suggest in any way that it was his age that contributed  
24 significantly to him committing this offense.

### 25           **4. Defendant's Mental Condition (§ 5H1.3)**

26           The PSR recommends a downward departure based on defendant's  
27 mental condition pursuant to § 5H1.3. (PSR ¶ 100.) Defendant did  
28 not prove by a preponderance of the evidence that he meets the

1 standards for a departure based on mental and emotional condition  
2 and the government objects to the PSR's departure recommendation  
3 based on this factor.

4 In § 5H1.3, the Guidelines allow for a departure based on  
5 "mental and emotional conditions" and "to an unusual degree and  
6 distinguish[es] the case from the typical cases." This provision  
7 has been understood to mean that a defendant's mental and emotional  
8 condition is relevant in the extraordinary case and as provided in  
9 Section 5K2.13. See United States v. Doering, 909 F. 2d 392, 394  
10 (9th Cir. 1990).

11 Defendant was evaluated by Dr. Saul Faerstein, who reviewed  
12 defendant's prior mental health treatment, the three hour video  
13 recording and transcript of the July 2, 2014 FBI interview of  
14 defendant, defendant's jail phone calls made after his arrest,  
15 defendant's handwritten notes, and mental health tests, among other  
16 items. (See Saul Faerstein Expert Report ("Faerstein"), pages 1-2.)  
17 Dr. Faerstein concluded that at the time of the offense, defendant  
18 "had the ability to reason, to plan, to think rationally, to  
19 calculate, to deliberate and to justify his actions." (Faerstein,  
20 p. 16.) Defendant knew right from wrong. Although defendant had a  
21 lengthy history of interactions with mental and medical health  
22 professionals, Dr. Faerstein concluded that, contrary to the PSR's  
23 view, defendant did not and does not have Autism or Asperger's  
24 Syndrome. (Id., p. 9.)

25 Dr. Faerstein stated that defendant's "thought process  
26 continues to be rigid and infused with a religious and political  
27 ideology which is inflexible in the face of factual and intellectual  
28 confrontation." (Faerstein, p. 18.) Dr. Faerstein concluded that

1 defendant "has a personal, an emotional, and a psychological  
2 investment in the ISIS entity and ideology because it defines who he  
3 has become." (Id.)

4       However, this expert assessment does not qualify defendant's  
5 case as extraordinary; nor does he so qualify under § 5K2.13.  
6 First, defendant's mental condition is not extraordinary. As  
7 described by Dr. Faerstein, and agreed upon by defendant's own  
8 expert, defendant experienced, at most, Major Depressive Disorder  
9 and Post Traumatic Stress Disorder. Dr. Faerstein did not find that  
10 he suffered from these disorders at the time of the offense.  
11 Instead, Dr. Faerstein concluded that at the time of the offenses,  
12 defendant was able to plan, think rationally, and make deliberate  
13 choices. This was based on Dr. Faerstein's complete review of the  
14 records, including watching and listening to defendant's three hour  
15 interview at the time of the offense. Defendant's expert did not  
16 watch or listen to the interview, but instead relied upon a  
17 transcript prepared by defense counsel. However, even if  
18 defendant's expert was correct, and the government contends that she  
19 was not, her diagnosis of defendant at the time of the offense does  
20 not rise to the level of an "unusual degree" and "distinguish the  
21 case from the typical case" as required by the Guidelines.

22       The Probation Officer relied upon defendant's self-report that  
23 he had Asperger's condition (PSR ¶ 71) but mistakenly concluded that  
24 defendant "was born with Asperger's and diagnosed with the disorder  
25 at age 14" (Id. at ¶ 69). The medical records cited in the PSR  
26 actually state that defendant did not have Asperger's or autism, and  
27 instead described a secondary finding of "autistic-like."  
28 (Faerstein, p. 9.) Dr. Faerstein explained in his report that this

1 is not a diagnosis of autism. (Id.) Additionally, at the time the  
2 Probation Office wrote the PSR in October 2015, he did not have the  
3 benefit of both the government's and defendant's expert reports.  
4 These reports were completed in 2016, and they both concluded that  
5 defendant did not have autism or Asperger's disorder at any time.

6 Second, defendant does not meet the requirements under  
7 § 5K2.13. This section, which allows for a departure based on  
8 diminished capacity, provides that the departure does not apply in  
9 cases where:

10 (2) the facts and circumstances of the defendant's  
11 offense indicate a need to protect the public because  
12 the offense involved actual violence or a serious  
threat of violence; . . . .

13 Id.

14 Here, the facts and circumstances of defendant's offense of  
15 attempting to provide material support to a foreign terrorist  
16 organization certainly indicate the need to protect the public from  
17 his serious threat of violence - it is hard to imagine a more  
18 serious such threat than that posed by ISIL or inspired by ISIL.  
19 The Probation Officer recognized as much when he recommended a  
20 lifetime term of supervised release because he was concerned "about  
21 Dandach's extreme views, and demonstrated not only by the offense  
22 but also Defendant's post-offense conduct espousing violent ideology  
23 and support for terrorist activities, and the risk Defendant would  
24 pose to the public if he were to still hold those views when  
25 released from custody." (PSR Letter, p. 7.)

26 Thus, defendant cannot prove by a preponderance of the evidence  
27 that he has a mental and emotional condition that is to an "unusual  
28 degree" and "distinguish[es] the case from the typical case." Dr.

1 Faerstein opined that he did not suffer from a mental health  
2 condition at the time of the offense. And even if defendant's  
3 expert opinion is reliable, and the government contends that it is  
4 not, the diagnosis does not rise to the level of unusual and  
5 distinguishable from other cases. Additionally, defendant is not  
6 eligible for a diminished capacity departure based on the need to  
7 protect the public.

8 **5. Defendant's Purported Physical Condition (§ 5H1.4)**

9 The PSR recommended a departure based on defendant's physical  
10 condition. (PSR ¶ 100.) Stated simply, the Court should deny a  
11 reduction for physical condition because the defendant does not have  
12 a physical condition. Apparently, the PSR concluded that defendant  
13 suffered from a physical condition because of the mistaken belief  
14 that he had Asperger's (Id. at ¶ 69) and because defendant weighed  
15 over 500 pounds three years prior to sentencing and over one year  
16 prior to committing his offenses. Putting aside whether a would-be  
17 terrorist's high body weight should ever be an appropriate basis for  
18 a reduced sentence, defendant never had Asperger's and at the time  
19 of the offense was not overweight. There is no basis for a  
20 departure.

21 As described above, neither the government's nor defendant's  
22 mental health expert diagnosed defendant with Asperger's Syndrome.  
23 The PSR concluded he had Asperger's Syndrome from defendant's self-  
24 report that was not supported by expert opinion. Similarly,  
25 defendant's claims of Asperger's effecting his motor skills, social  
26 interactions, and intellectual processes are without basis in fact.  
27 The evidence at the evidentiary hearing show that defendant  
28



1 demonstrated none of these problems on the date of his offenses.  
2 (04/21/2016 RT, pp. 19-24.)

3 While it is true that in early 2013, defendant weighed over 500  
4 pounds, at the time of the offense, he had lost over 250 pounds. In  
5 February 2013, he received the benefit of a gastric bypass surgery  
6 while he was receiving social security disability benefits. He  
7 dramatically lost weight and was lifting weights and running several  
8 times a week. Since he has been detained, he has maintained his  
9 lower weight, and his better health. There is no basis in law or  
10 fact for a departure based physical condition.

11 **B. Nature and Circumstances of the Offenses**

12 The nature and circumstances of the offenses are detailed at  
13 length above, and warrant the government's recommended sentence.  
14 Defendant had been planning for over a year to join ISIL, a  
15 murderous terrorist organization that he knew committed horrifically  
16 violent acts. He possessed videos of their decapitations and  
17 pictures of their atrocities on his cellular telephone. Defendant  
18 admitted that ISIL committed these atrocities to instill fear in its  
19 enemies. He admitted that he intended to pledge allegiance to the  
20 leader of ISIL. And, he admitted that he would do whatever ISIL's  
21 leader asked of him. Defendant watched ISIL training videos prior  
22 to his attempt to travel to join them. At approximately the same  
23 time he was listening to terrorist lectures and sharing them with  
24 his online friends, he began lifting weights and running. He  
25 communicated with fighters who were already on the battlefield. He  
26 regularly received updates of the ISIL battles. He had maps of the  
27 areas controlled by ISIL. He admitted that he was going to a  
28 battlefield and he would need to be trained to handle weapons. He

1 sang jihadi *nasheeds* claiming "I am a terrorist" in the months  
2 leading up to his attempted travel. He told his social media friend  
3 that he wished to fight one day. And, on the day he attempted to  
4 travel to join ISIL, he told his friend, "Idk [I don't know] how  
5 people expect a khilafah [the Islamic State] to arise without  
6 bloodshed and fitnah these days." Defendant intended to provide  
7 himself to ISIL, a foreign terrorist organization, and he intended  
8 to commit violent acts.

9 Even after his arrest and detention, defendant has not  
10 demonstrated that he has learned from his actions. Instead, from  
11 his detention facility, he immediately involved his family in trying  
12 to destroy evidence of his communications with like-minded persons.  
13 He continues to support ISIL, telling the psychiatrist for the  
14 government that "Muslims who do not fight for the implementation of  
15 Sharia law are backstabbing other Muslims." After a horrific  
16 terrorist attack in Paris, he wrote a poem attacking the victims and  
17 supporting the terrorists, stating "Je Suis Al-Qaida," French for "I  
18 am Al-Qaida," a cruel mockery of the victims of the Paris attack and  
19 the harm inflicted on that city. The nature and circumstances of  
20 the offenses speak for themselves and warrant a significant term of  
21 imprisonment.

### 22 **C. History and Characteristics of the Defendant**

23 The PSR provides details regarding the defendant's possible  
24 physical abuse as a child and his father's deportation in 2008.  
25 However, as an adult, defendant's brother, who experienced much of  
26 the same home environment as defendant, did not seek to join a  
27 terrorist organization. This court sees many persons who have  
28 troubled childhoods. The choice to join a foreign terrorist

1 organization, or to continue to support that terrorist organization,  
2 even after their incarceration, is not the usual response to a  
3 difficult childhood. Although the defendant did not have a wealthy  
4 lifestyle, he had financial support, he had an older sister and  
5 brother who supported him, he graduated from high school, he was  
6 successful in his classes in college, and there were many other  
7 opportunities he could have chosen. The mitigating factors of  
8 defendant's childhood difficulties, if any, his age at the time of  
9 the offense, and his emotional experiences are more than accounted  
10 for in the government's agreement to reduce the maximum sentence it  
11 would request by five years.

12 **D. Seriousness of the Offense, Respect for the Law, Adequate**  
13 **Deterrence, and Just Punishment**

14 Defendant's offense and the circumstances surrounding it as  
15 described in this case are extremely serious. Defendant's  
16 communications as well as his actions demonstrated his commitment to  
17 extremist principles, his support for a designated foreign terrorist  
18 organization, and his desire to engage in violent acts in  
19 furtherance of those extremist principles. These facts show that  
20 the defendant's conduct was serious with the potential for harm and  
21 loss of life had his conduct not been discovered. Further,  
22 defendant maintains those extremist views even now and seeks to  
23 spread his views through his writings. A significant term of  
24 imprisonment followed by the maximum period of supervised release is  
25 necessary to promote respect for the law, and to deter defendant  
26 himself, and others. The United States faces significant threat  
27 from terrorists' acts planned or committed by homegrown violent  
28 extremists like defendant who become radicalized online and seek to

1 engage in terror and support groups like ISIL. A substantial  
2 sentence here can provide deterrence to defendant and others from  
3 engaging in this type of conduct. The government's recommended 240-  
4 month sentence is both just and commensurate with defendant's  
5 conduct.

6 **E. Protection of the Public and Need to Provide Defendant**  
7 **with Training or Correctional Treatment**

8 It is essential that the Court's sentence "protect the public  
9 from further crimes of the defendant." 18 U.S.C. 3553(a)(2)(C).  
10 When evaluating the defendant's future dangerousness, and the need  
11 for the sentence to protect the public from further crimes by  
12 defendant, the offense conduct here is compelling. As discussed in  
13 detail above, this defendant remained undeterred in his goal to  
14 provide himself to ISIL. Additionally, the record shows that the  
15 defendant has maintained his support for terrorism. As Dr.  
16 Faerstein opined, the "prognosis for him to become a tolerant,  
17 broadminded person with more moderate and less dangerous goals is  
18 guarded." (Faerstein, p. 20.) The government's recommended  
19 sentence will help protect the public and achieve the objective goal  
20 of this statutory sentencing factor.

21 **F. Kinds of Sentences Available and Policy Considerations**

22 Defendant's advisory guideline range, based on a total offense  
23 level of 37 and a criminal history category of VI, is 360 months to  
24 life imprisonment. (PSR ¶ 86.) However because the combined  
25 statutory maximum is 25 years, the guideline range was adjusted to  
26 300 months. The government contends that a total sentence of 240  
27 months (20 years) imprisonment with lifetime supervised release is  
28 an appropriate sentence for a violation of both attempting to

1 provide material support to ISIL and making a false statement in a  
2 passport application.

3 **G. Need to Avoid Sentencing Disparities**

4 Section 3553(a)(6) is designed to avoid disparities in  
5 sentences between any one defendant and other defendants in other  
6 cases and in other districts. United States v. Saeteurn, 504 F.3d  
7 1175, 1181-82 (9th Cir. 2007) (noting that the purpose of  
8 "§ 3553(a)(6) was to promote national uniformity in sentencing  
9 rather than uniformity among co-defendants in the same case").

10 A sentence of imprisonment of 240 months' imprisonment and a  
11 lifetime term of supervised release is, taking into account the  
12 other factors and considerations set forth herein, likely to avoid a  
13 disparity with other cases nationwide, particularly where the total  
14 offense level is 37 and 240 months' imprisonment is below the  
15 resulting advisory Guidelines range. See United States v. Becerril-  
16 Lopez, 541 F.3d 881, 895 (9th Cir. 2008) ("Indeed, in the absence of  
17 any compelling argument about Becerril's particular circumstances,  
18 we have trouble imagining why a sentence within the Guidelines range  
19 would create a disparity, since it represents the sentence that most  
20 similarly situated defendants are likely to receive.").

21 The government's recommended sentence is consistent with recent  
22 cases of people convicted of attempting to join foreign terrorist  
23 organizations and apprehended en route, taking into consideration  
24 the defendant's particular characteristics as described above. (See  
25 Attachment 6.)

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27 ///

28

1 **V. CONCLUSION**

2 For the foregoing reasons, the government respectfully submits  
3 that an appropriate sentence for defendant is 240 months'  
4 imprisonment, lifetime term of supervised release, and a \$200  
5 mandatory special assessment.

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