

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

- against -

HAMZA AHMED,

Defendant.

DECLARATION IN SUPPORT OF
MOTION TO AMEND/CORRECT FOR
CONCURRENT SENTENCING

FILED UNDER SEAL
15-CR-49 (MJD/FLN)

JANEANNE MURRAY, attorney of record for defendant HAMZA AHMED, respectfully submits this declaration in support of Mr. Ahmed's motion to amend/correct for concurrent sentencing:

1. On November 15, 2016, this Court sentenced Hamza Ahmed to an aggregate total of 15 years in custody: 10 years on the material support charge and a consecutive 5 years on the financial aid fraud charge. In determining whether to impose multiple sentences consecutively or concurrently, the Sentencing Reform Act requires the Court to consider the factors set forth in 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3584(b). One such factor is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *See* 18 U.S.C. § 3553(a). Unlike his three non-cooperating co-defendants who pled guilty, Mr. Ahmed has an additional count of conviction – the financial fraud count. Because this conviction does not reflect Mr. Ahmed's heightened culpability in relation to his co-defendants but rather the unfortunate circumstances related to the documented improper interference with plea bargaining in this case, this extra count does not justify a sentence that is 50% greater than that received by Mr. Ahmed's co-defendants.

2. I set forth below additional facts related to Mr. Ahmed's guilty plea to that count. I submit this declaration under seal because it addresses Mr. Ahmed's efforts to cooperate in the

government's investigation into the interference in the plea bargaining process in this case, as well as sensitive matters relating to the actions of by family members of Mr. Ahmed and his co-defendants.

3. On September 4, 2015, the government offered Mr. Ahmed a plea agreement in which he would plead to one count of material support to a designated terrorist organization, a charge that carried a maximum of fifteen years in prison – an offer simultaneously made to three of his non-cooperating co-defendants, Zacharia Abdurahman, Hanad Musse and Adnan Farah. Aware of the likelihood of this offer, Mr. Ahmed had indicated to the undersigned his interest in accepting it. He noted, however, that he first needed to discuss this decision with family members. The U.S. Attorney's Office agreed to set up meetings with family members in its conference rooms to facilitate the delicate process of bringing the families on board with a public plea of guilty.

4. Initially, I met with counsel for the other three defendants to discuss the issue of a joint plea in one court proceeding. This was because a joint allocution would make it easier for the four to bear the likely opposition from some members of the community to their incrimination of their co-defendants, as required in the factual statements in their proposed plea agreements. It was also hoped that the joint plea by all defendants would encourage the remaining three defendants to plead.

5. On September 9, 2015, Mr. Musse entered a plea of guilty in a solo court proceeding.

6. Thereafter, counsel for Abdurahman, Farah and myself continued our discussions regarding a joint plea by our three clients. It was my understanding at the time that all three defendants wished to plead guilty – the issue was when, how (i.e. could there, for example, be

some negotiation on the content of the allocutions), and would these pleas come with family support.¹

7. It later transpired that Mr. Musse's plea generated some aggressive, behind-the-scenes effort to persuade the three defendants with outstanding plea offers to proceed to trial. As recounted in the declaration of Jon Hopeman, filed on March 31, 2016 (Docket #394):

On the night before Zacharia Yusuf Abdurahman entered his guilty plea [he pled guilty on September 17, 2016], his father Yusuf Abdurahman received a telephone call from Sheikh Hassan Jami [a member of the defense team for Mohammed Farah], who stated he was waiting for Yusuf Abdurahman on the street outside his home and wanted to talk to him. Yusuf Abdurahman walked from his apartment out to the street and met with Sheikh Hassan Jami. Sheikh Hassan Jami brought with him Abdihamid Farah, the father of Adnan Abdihamid Farah. Sheikh Hassan Jami said to Yusuf Abdurahman in the presence of Abdihamid Farah that he should tell his son Zacharia that Zacharia should not plead guilty, and no defendant in the case should plead guilty. Sheikh Hassan Jami further said that all of the defendants should stick together and go to trial, and if they did, good things would happen. Yusuf Abdurahman replied that his son was going to take the advice of his attorneys, which was to plead guilty. Yusuf Abdurahman further replied that he had talked to his son and his son's lawyers, and he was going to do what was best for his son, which was to support his son's decision to plead guilty. The next day Zacharia Yusuf Abdurahman pled guilty.

Declaration of Jon Hopeman at ¶ 11.²

8. On September 15, 2016, Mr. Ahmed was scheduled to meet with his mother in a conference room in the U.S. Attorney's Office to discuss his decision to plead guilty. He had already met with his father, who was in full support of the decision. That morning, Mr. Ahmed communicated to me that he had had a change of heart, and now planned to reject the plea offer. I communicated his decision to the prosecutors that day. The plea offer later expired.

¹ I note that Mr. Musse's plea had no bearing on this resolve, which existed prior to Mr. Musse's plea.

² See Docket #394.

9. On March 18, 2016, I received a substitution of counsel form, signed by Mr. Ahmed, in favor of Mitchell Robinson, a local criminal defense lawyer allegedly hired by Mr. Ahmed's family to replace me. On March 18, 2016, the Court rejected the motion for substitution of counsel. I have no direct information regarding who had precipitated this effort to replace me. I note that counsel for Adnan Farah – who had also rejected a plea offer to one count of material support – had been replaced by retained counsel on September 30, 2015. I note also that I had been told that Shekih Jami met regularly with the families (including that of my client) and that at these meetings he urged that the co-defendants stick together and go to trial.

10. On March 25, 2016, I received discovery from the government indicating that Sheikh Jami had allegedly “preached jihad” to a cooperating witness in the case. I immediately contacted co-counsel Kenneth Udoibok (then counsel for Adnan Farah) and the government to request a meeting to discuss the issue of the potential corruption of plea bargaining efforts by someone who was also potentially a government target in the case. Mr. Udoibok and I met with AUSAs Docherty and Winter that afternoon. I also communicated my concerns that day to Jon Hopeman, whose client Zacharia Abdurahman had successfully withstood community opposition to his decision to plead guilty.

11. In the following weeks, the government conducted an extensive investigation into the matter. Upon information and belief, the government met with Mr. Udoibok and his client, Mr. Adnan Farah; obtained and reviewed jail visitation records and recordings of jail conversations; and had extensive communications with me about the reasons why my client rejected an offer he had initially indicated his intention to accept. The latter included my information from my client and/or his mother that:

- Mr. Ahmed advised his family of his intention to enter a guilty plea, and his father supported the decision, and initially, his mother supported it;
- On September 12, 2016, Mr. Ahmed's mother, Fathia Good, visited Mr. Ahmed at the jail and advised him of her support of his intention to plead guilty. As she exited the jail, she met Adnan Farah's mother in the parking lot, who told her that Mr. Ahmed should reject the offer. Ms. Good attempted to re-enter the jail to communicate her new position on the plea offer. The jail staff refused her readmission, as she was only permitted one visit in a 24-hour period. Ms. Good apparently rang one of the FBI agents assigned to the case to see if he could intercede on her behalf to get her readmitted to the jail. She was not, however, granted readmission that day.
- On or about September 13, 2016, Ms. Good contacted me and asked to move her scheduled meeting with Mr. Ahmed at the U.S. Attorney's office on September 14, 2015, to a different day. The meeting was rescheduled to September 15, 2016.
- On September 14, 2015, Ms. Good visited Mr. Ahmed at Sherburne County Jail and advised him to reject the plea offer.
- On September 15, 2015, Mr. Ahmed advised me that he had had a change of heart and was rejecting the plea offer.

12. In addition, Mr. Hopeman conducted his own independent investigation into the efforts to influence the defendants' decisions about their plea offers. On March 31, 2016, Mr. Hopeman filed the declaration described in ¶ 4.

13. On April 14, 2016, Adnan Farah entered a guilty plea to one count of material support.

14. On April 15, 2016, the Star Tribune reported a conversation with Sheikh Hassan Jami that his organization was providing financial support to the families of the defendants. *See* <http://www.startribune.com/isil-recruit-to-plead-guilty-in-minneapolis-this-morning/375701601/>.

15. On April 24, the government offered Mr. Ahmed a modified version of the offer made to him on September 4, 2015. This offer required Mr. Ahmed to plead guilty not only to one count of material support but also one count of financial aid fraud. It was explained to me that Mr. Ahmed was not getting his original offer, unlike his co-defendant Mr. Farah, because Mr. Farah had provided the government of direct interference by Sheikh Jami with his plea bargaining decision, whereas the interference with Mr. Ahmed was circumstantial and inferential.

16. On April 25, 2016, Mr. Ahmed pled guilty to the two counts of conviction. As the government explained at his guilty plea, it had re-extended the expired plea offer in essential terms “because we believe that there was sufficient evidence of impermissible interference which caused Mr. Ahmed not to have a full and fair opportunity to review the offer that was extended in September/October of 2015.” Ahmed Plea Transcript at 55.³

17. On November 10, 2016, in its sentencing position, the government effectively abandoned any distinction between Mr. Ahmed and his three non-cooperating co-defendants, because it advocated sentences of no more than 15 years for each of the non-cooperating defendants who pled guilty. The government could have advocated a 20-year sentence as to Mr.

³ *See also*, Ahmed Plea Transcript at 50-51 (in which Mr. Ahmed explains how he came to reject the plea offer).

Ahmed because of his additional plea to financial aid fraud, but it specifically elected not to do so.

18. In sum, Mr. Ahmed is entirely similarly-situated with his three non-cooperating co-defendants who pled guilty. Indeed, as argued in my sentencing position paper as well as at sentencing, he is *less* culpable because he disengaged from the conspiracy after his interception in November 2014, and, unlike his co-defendants, did not defy government, community and family efforts to deter him from additional plans to fly to Syria. He ceased tweeting, returned to school, and resumed his role as dutiful son caring for his younger siblings. Notably, Mr. Musse, who received a sentence of 10 years, not only attempted to fly in November 2014, he also joined the plans to travel to Syria again, *and was himself charged with financial aid fraud*. The fact that Mr. Ahmed pled to an additional count is not reflective of any additional culpability, but rather reflects the unfortunate circumstances surrounding his initial failed plea efforts and the fact that Mr. Ahmed, unlike Mr. Farah, was unable to provide *direct* evidence of interference in those efforts.

19. Accordingly, in the interests of justice and parity, I request that the Court grant this motion for concurrency.

20. This motion is made pursuant to Fed.R.Crim.P. 35(a), 18 U.S.C. § 3584(b); 18 U.S.C. § 3553(a); the Due Process Clause; and the Court's inherent supervisory powers over the administration of criminal justice, guided by considerations of justice. *Cf. McNabb v. United States*, 318 U.S. 332, 340 (1942).

Date: November 28, 2016

Respectfully Submitted.

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