

1 P R O C E E D I N G S

2 COURTROOM DEPUTY: On the docket is District Court
3 Case Number 1:16-CR-19: *United States of America versus Munir*
4 *Abdulkader*.

5 We're here this morning for an initial appearance and Plea
6 on Information.

7 THE COURT: Okay. Guys, I apologize. I'm a little
8 under the weather, so if I trail off or anything like that,
9 just tell me to speak up.

10 Mare, we're under seal.

11 So will counsel enter their appearances for the record,
12 please.

13 MR. MANGAN: Tim Mangan on behalf of the government.

14 MR. SMITH-MONAHAN: Richard Smith-Monahan on behalf
15 of the defendant, Munir Abdulkader.

16 THE COURT: Munir, do you mind if I call you by your
17 first name? Is that okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. So we are here to discuss
20 proceeding under an Information. And I'm sure that Richard
21 has discussed this with you, but the Information involves
22 three counts, all violations of Title 18. One is Section
23 924(c), the other is 1114, and the other is 2339B.

24 The Information indicates that while you were a resident
25 in the Southern District of Ohio on or about October 15th, the

1 Secretary of State designated al-Qa'ida as a Foreign Terrorist
2 Organization on May 15th. There was an amendment to that.
3 There was al-Qa'ida, and also looks like ISIS was added.

4 And Tim, you correct me if I'm not saying what I need to
5 say on the record here.

6 The first count of the Information indicates that you
7 engaged in conduct wherein you were attempting to unlawfully
8 kill officers, employees of the United States while they were
9 engaged in or performing their official duties. There was an
10 attempt to organize or engage in an attack to kill identified
11 military employees on account of his position. And, in
12 furtherance of that, a firearm was purchased.

13 Then the second count is the actual purchase of the
14 firearm that says you knowingly possessed an AK-47 assault
15 rifle, and the purpose of you possessing that firearm was to
16 carry out the offense that's described in Count One of the
17 Information.

18 Then Count Three is that --

19 THE COURT: What's the matter?

20 COURTROOM DEPUTY: I'm going to go get the agents.
21 They are in the Clerk's office.

22 THE COURT: Can I keep going?

23 MR. MANGAN: Yes, sir.

24 THE COURT: Then Count Three of the Information
25 indicates that you attempted to knowingly provide material

1 support and resources and services to those previously
2 described and defined by the Secretary as Foreign Terrorist
3 Organizations, in this case: ISIL.

4 That's the 2339B violation.

5 There are also forfeiture counts that go along with the
6 particular information in this case, including the AK-47
7 assault rifle.

8 Now, what I'm going to do is, I am going to ask you some
9 questions about proceeding in the Information, Munir, because
10 what we have is, we have two tracks of criminal prosecutions
11 in this country. One is called Information, and the other is
12 by Indictment. You have a right to Indictment. So I'm going
13 to discuss the differences with you.

14 I'll also discuss the constitutional rights that anybody
15 charged with an offense has in this country, and we'll talk
16 about how we're going to proceed. Okay?

17 But what's going to have to happen is, I'm going to have
18 to ask you some questions. Are you okay with that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you're going to have to give the
21 answers. But I'm going to have Miss Crum administer an oath
22 or affirmation to you, which means that you're going to agree
23 to answer truthfully to any questions I ask, anything we say.

24 Theoretically, if you lied to me about something,
25 Mr. Mangan could bring a criminal charge. But the questions

1 I'm asking you are just about your knowledge of what we're
2 doing today, that is: the Information versus the Indictment;
3 also your knowledge of the constitutional rights and your
4 willingness to waive those, if we get that far; and then a
5 discussion of the facts of the case.

6 Okay? So are you okay with all that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right.

9 So Barb, will you administer an oath or affirmation?

10 (The defendant was duly sworn by the courtroom deputy.)

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Munir, do you have a middle name
13 or is your full name as it's stated on the Information?

14 THE DEFENDANT: Full name, sir.

15 THE COURT: Okay. Great. How old are you?

16 THE DEFENDANT: I'm 21, sir.

17 THE COURT: And I had an off-the-record conversation
18 with Richard before we came out. My understanding is you
19 attended, what, Lakota High School? Lakota school system? Is
20 that where you're from?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you graduate?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How about after high school, any post-
25 high school education?

1 THE DEFENDANT: Yes, sir. I completed my second year
2 at Xavier University.

3 THE COURT: Okay. All right. So I can take it from
4 that, and based upon the conversations we're having so far,
5 that you are competent and able to understand English and all
6 that stuff, that your comprehensive skills are okay; right?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Have you ever been treated --
9 This goes to your ability to have a knowing discussion
10 with me today.

11 Have you ever been treated for any kind of mental illness?

12 THE DEFENDANT: No, sir.

13 THE COURT: How about any problems with substance
14 abuse, alcohol abuse or anything like that?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Okay. Obviously you're incarcerated, so
17 can I assume that you haven't taken any type of illegal
18 narcotics, drugs or medicines in the past 24 hours?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Good. All right.

21 Richard, could you, just briefly on the record, describe
22 the kinds of conversations you've had with Munir and whether
23 or not you believe he is capable of entering a knowing,
24 intelligent and voluntary plea and a waiver at this time?

25 MR. SMITH-MONAHAN: Yes, Your Honor. I've actually

1 had a lengthy period of contact with my client prior to this
2 time. We've had extensive conversations about the nature of
3 the evidence the government has, the nature of this
4 Information, an Information as opposed an Indictment, and
5 we've have talked many, many times about plea options and the
6 plea negotiations.

7 I believe he is fully informed of the nature of those
8 negotiations, and I believe he is fully competent to enter a
9 plea and that he would be doing so knowingly, intelligently
10 and voluntarily.

11 THE COURT: Okay. All right. I have not read the
12 Information in its entirety; I've just basically tried to
13 capture the essence of it.

14 Richard, do you want a formal reading of the Information
15 at that time or are you willing to waive the reading?

16 MR. SMITH-MONAHAN: We would waive reading of the
17 Information, Your Honor.

18 THE COURT: Okay.

19 Even though we're not reading it in its entirety in open
20 court, Munir, I'm assuming that you and Richard have read it
21 together and discussed; right?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. Did he explain to you what the
24 three counts of the Indictment meant?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. Did he talk to you about the
2 potential penalties that would happen if you were convicted of
3 those three counts of the Indictment?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. What normally happens in a case
6 is, the lawyer, in this case Richard, would call the lawyer
7 for the government, and he'd say, "Okay. What kind of
8 evidence do you have? How do you intend to proceed?"

9 The lawyer for the government would then tell your lawyer
10 what kind of evidence they had.

11 Did you and Richard have a conversation about what kind of
12 evidence the United States claimed it can present in an open
13 court proceeding, like a trial, against you?

14 Did you guys have that conversation?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. Did you guys then talk about,
17 "Okay. Do we have any defenses? Is there any way that we
18 should challenge this, or is the smartest thing to do is to
19 enter into negotiations to try to resolve the case?"

20 Did you have that kind of a conversation?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. And do you think that Richard has
23 fully informed you about all the facts and circumstances you
24 need to know about the situation as it stands today?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And is it safe for me to assume then
2 that, based upon the conversations that you and Richard had,
3 you decided that the smartest thing to do was to enter into
4 some type of an agreement or negotiation with the United
5 States?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Now, I told you before --
8 Excuse me guys, I'm sorry.

9 (Pause in proceedings.)

10 THE COURT: One of the discussions we would have
11 would be the difference between proceeding by Information and
12 the difference between proceeding by Indictment.

13 Unless you waive the right to have the case presented to a
14 grand jury, then the United States has to proceed by
15 processing the case with the grand jury and trying to seek an
16 Indictment. A grand jury is composed of at least 16 people,
17 and there could be as many as 23 people present during any
18 type of a hearing. At least 12 of those present must find
19 that there was probable cause that you believe that a crime
20 was being committed and that you were the person that
21 committed the crime before an Indictment was returned against
22 you.

23 In other words, what would happen is: those people would
24 meet in a room; there would be a United States Attorney
25 present; they would present testimony in this case likely from

1 the agents that are in the courtroom today; this grand jury
2 would hear that and decide whether or not that there was a
3 crime that was committed and whether or not you are the person
4 that committed the crime.

5 Now, a grand jury might indict you or it might not indict
6 you. If you waive your right to Indictment by a grand jury,
7 then this case will proceed based upon the paper Information,
8 which we've already discussed, just as though you had been
9 indicted. In other words, there would be the three charges
10 you will be facing in Counts One, Two and Three of the
11 Information.

12 Do you understand that, Munir?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. Now, just like an Indictment, with
15 an Information you have the right to plead not guilty, and you
16 can demand a trial on the Information. If we had a trial, it
17 would be in open court. You would be represented by counsel.
18 In this case, it would be Richard.

19 Richard would do a number of things if there were a trial
20 that would inure to your benefit.

21 He would provide cross-examination, which means anybody
22 that would come in and attempt to testify against you, you
23 have the right to ask them questions under oath. We call that
24 cross-examination. In layman's terms, he would try to shake
25 their testimony.

1 If you thought that there were any witnesses that could
2 give favorable evidence and Richard could get those people
3 served with subpoenas, then the marshals would make sure they
4 showed up in court.

5 Anybody charged with an offense in this country has two
6 very important rights. The first is, no one could make you
7 admit you committed a crime --

8 We'll talk about that in a minute.

9 -- and the second one is, if there were a trial, nobody
10 can make you testify. In other words, Mr. Mangan couldn't
11 call you as a witness and ask you questions. The only way
12 that could happen would be if you and Richard thought that it
13 was smart for you to testify. Then Richard would put you on
14 the stand. First he'd ask you questions, and then and only
15 then could Mr. Mangan ask you questions after you've waived
16 your right not to testify.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. The government's burden of proof
20 in any criminal case is beyond a reasonable doubt. There's
21 what's called a presumption of innocence.

22 Now, what does that mean?

23 Anytime we have a trial in this courtroom, whether it's a
24 civil case or a criminal case, I tell the jury every time we
25 take a break that they are not to really form an opinion or

1 decide a case based upon pieces of evidence. In fact, I tell
2 them they have to keep an open mind until they've heard the
3 entire presentation, the arguments of the lawyers, and have
4 been instructed on the law by me. I tell them only then can
5 they decide the case.

6 In a criminal case, I go a step further. I say, "As a
7 matter of fact, in a criminal case you have to presume that
8 Munir is innocent unless or until all 12 of you get together
9 in the back of the courtroom after the case is concluded and
10 you decide that the government has met its burden by proving
11 each and every element to beyond a reasonable doubt."

12 That's called a presumption of innocence. Okay?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. I had mentioned before that nobody
15 could make you admit you committed a crime. If, in fact, we
16 proceed through the Information process, one of the agents, or
17 else perhaps the United States Attorney, will read to me a
18 Statement of Facts.

19 After that Statement of Facts is read, I will ask you if
20 it's accurate. And if you say, "Yes, Judge, it is," that, in
21 all likelihood, means you're admitting to the offenses
22 contained in each of the three counts of the Information.

23 Okay?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. Do you have any questions about

1 proceeding on Indictment versus Information?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Okay. Do you think at this time you wish
4 to waive the right to have the case presented to a grand jury
5 and wish to continue with the Information as has been filed in
6 court?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Richard, do you have a waiver in that
9 regard?

10 MR. SMITH-MONAHAN: We do, Judge, and we've had the
11 chance to read it before court started. With your permission,
12 I'll have him sign it now.

13 THE COURT: Thank you.

14 Munir, if you agree with everything that you and I have
15 been talking about, then go ahead and sign that document which
16 means you are willing to waive your right to have the case
17 presented to a grand jury. Okay?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay.

20 (Defendant signing the document.)

21 MR. SMITH-MONAHAN: Your Honor, Mr. Abdulkader has
22 executed the waiver form.

23 THE COURT: Thank you.

24 Okay, Munir, I saw you sign this in front of me. Just for
25 the record, above where it says "Defendant's signature," that

1 is your signature; correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And Richard, leading up to this moment
4 you've had full conversations with Munir and advised him of
5 all of his rights as it relates to the presentation of a grand
6 jury and the risks and benefits of both; is that correct?

7 MR. SMITH-MONAHAN: Yes, Your Honor.

8 THE COURT: Okay.

9 Therefore, I'll accept the waiver.

10 Miss Crum will file this under seal with the rest of the
11 documents in the case.

12 I'll accept the waiver because I find that it's knowingly
13 and intentionally made, and he understands his rights to
14 proceed by grand jury versus Information and has decided to
15 proceed by Information.

16 Okay. Now, a few moments ago, Munir, I said if we
17 proceeded by Information, just as if there was an Indictment,
18 you have the right to plead guilty or not guilty to the
19 Information.

20 Is it my understanding, based upon the conversations you
21 and Richard have had with Tim Mangan, that you wish to enter a
22 plea of guilty to Counts One, Two and Three of the
23 Information? Is that correct?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. Now, if you entered this plea of

1 guilty, you'll be waiving the constitutional rights we talked
2 about just a moment ago as it relates to your ability to have
3 a trial and all that. Right?

4 THE DEFENDANT: Yes. Yes, Your Honor.

5 THE COURT: Okay. Now, you said that you and Richard
6 have had a conversation about the charges, but I want to go
7 through these with you for just a moment just to make sure.

8 And, guys, if I say anything incorrectly, please let me
9 know.

10 Okay. Count One of the Information, which I had already
11 outlined, is the Attempted Murder of Government Officials, in
12 violation of 18 U.S.C. 1114. That has a possible term of
13 imprisonment not to exceed 20 years.

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. A possible fine of up to a quarter
17 of a million dollars. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. And it could be followed by a term
20 of supervised release up to the rest of your life. We'll
21 discuss supervised release in more detail in a moment, but do
22 you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Anytime there is a conviction in a
25 criminal case, whether it's by plea or by jury trial, there is

1 a one-hundred-dollar special assessment for any count. So for
2 the first count, there would be a one-hundred-dollar special
3 assessment. Okay?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Now, Count Two of the
6 Information is Possession of a Firearm in Furtherance of the
7 crime that was described in the first count. This particular
8 charge carries a mandatory minimum of five years'
9 imprisonment.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. The possible term of imprisonment
13 is up to life. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: The fine, again, is a quarter million
16 dollars. Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: In this case, the term of supervised
19 release is not more than three years. Again, we'll talk about
20 supervised release in a minute. Okay?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And because it's a count, there's a
23 one-hundred-dollar special assessment for that. All right?
24 Do you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Thanks.

2 All right. Now, Count Three is the supporting the Foreign
3 Terrorist Organization, as defined by the Secretary, and
4 that's a violation of 18 U.S.C. 2339B. That could be a period
5 of imprisonment not to exceed 15 years. Okay?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: A possible fine is \$250,000 again. All
8 right?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And this one has the potential of
11 supervised release, like the first count, of up to life.
12 Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And there's also the one-hundred-dollar
15 special assessment.

16 Now, the Plea Agreement states that there is no agreement
17 as to what the sentence will be, and we will have a further
18 discussion about that a little bit later, if that's all right
19 with you. Okay? But you understand that, in terms of the
20 record, there is no agreement as to what the sentence will be.
21 Okay?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. Now, if I go ahead and accept
24 the plea, it is possible that I could impose a sentence just
25 the same as if a jury found you guilty. Do you understand

1 that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. Obviously, these are serious
4 felony charges.

5 I'm assuming he has no record; right?

6 MR. SMITH-MONAHAN: No record, Your Honor.

7 THE COURT: Okay.

8 But what happens now, and this applies in any type of
9 felony for any type of crime, you will become what's called a
10 prohibited person, which means you're not going to be able to
11 own, use or possess a firearm or dangerous ordnance, and not
12 just during the term of supervised release but for the
13 remainder of your adult life. Okay?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Also, there will be other
16 things that may come up. I don't know what the long view
17 looks like, but there may be applications for jobs, benefits,
18 a number of things that might come up that have routine
19 questionnaires.

20 You've probably filled these out before on school
21 applications. It says, "Have you ever been convicted of a
22 crime punishable by more than a year imprisonment?" In other
23 words, it's a felony.

24 And from now on you're going to have to inform the asker
25 of that question that the answer is yes, you have a felony

1 conviction on your record.

2 Okay?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. You understand that the weapon in
5 this case is going to be forfeited.

6 Is there anything else, Tim, that's going to be subject to
7 forfeiture?

8 MR. MANGAN: Just the weapon, Your Honor.

9 THE COURT: Okay.

10 So you understand that; right?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay.

13 The way the other issues have come up, Richard, have you
14 discussed with Munir, in your judgment, the potential
15 ramifications in addition to the criminal penalties
16 themselves?

17 MR. SMITH-MONAHAN: Yes, Your Honor.

18 THE COURT: All right.

19 Let's talk about the sentence in this case.

20 In 1984, Congress passed the Sentencing Reform Act. What
21 that did was, they created a calculus, sort of a formula for
22 how probation officers, lawyers and judges are to calculate
23 sentences in criminal cases.

24 What they did was, they included a number of things called
25 sentencing factors.

1 So what they do is, anytime there's a criminal conviction,
2 there is what's called a Base Offense Level, a number of
3 points assigned to an offense itself.

4 Then a number of things are looked at which can either add
5 to the calculation or detract from the calculation, things
6 like: use of firearms; you know, is the person acting alone
7 or in concert with others; what's their role.

8 There's a number of things that may come into play.

9 But what happens is, at the end of the day the Probation
10 Department writes a presentence investigation report, Munir.
11 In that report, they take a look at each of the counts, and
12 they say, "Here's what the calculation should be for the
13 sentence in this case."

14 Up until about seven or eight years ago, somebody in my
15 position, if they had done the calculation correctly, would
16 have been obligated to impose a sentence in that calculated
17 guideline range. Now the Supreme Court says that's where
18 judges should start. And I could look at a number of other
19 things called the 18 U.S.C. 3553 factors and other things that
20 I think are relevant.

21 In the appropriate case, I could actually go below the
22 calculated sentence if I think it's appropriate and can
23 justify it in the report, or I could actually go above it as
24 long as I didn't exceed any maximum sentences in the case and
25 as long as I could justify it in the record.

1 The one thing I cannot do, absent agreement of all the
2 parties, is go below any type of mandatory minimum sentence.
3 We've already talked about the five years being out there.

4 Okay?

5 So I've got some latitude, but not a whole lot.

6 Usually the first thing I look at are any types of
7 agreements, and we'll discuss those a little bit later.

8 Okay?

9 But you understand that if you were to ask me right now,
10 "Judge, what kind of a sentence am I looking at?", I'd say
11 "Munir, all I can tell you is what the possible maximum
12 sentences are and what the mandatory minimum is. Where it
13 shakes out aside from that I really don't know at this point
14 in time."

15 Are you okay with that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Now, we talked about supervised
18 release. Since you don't have any type of criminal record,
19 you've probably never been under any type of community
20 control.

21 But what happens is, upon a release from imprisonment, a
22 person is assigned basically a probation officer. That
23 probation officer goes over a set of rules and regulations.
24 They come up with terms and conditions for supervised release.

25 Obviously, not committing any new crimes is the first and

1 foremost. Not possessing firearms is always included.

2 Because of the nature of this offense, there may be
3 conditions such as access to computers and a number of things.
4 I can't even figure out what they may want to do or not do.

5 In any event, they do all of that, and then you have to
6 live under those terms and conditions. All right? If they
7 think there is a violation --

8 Sometimes it's something small, not reporting, or who
9 knows what.

10 -- sometimes they deal with it directly with you and your
11 lawyer in the first place, and other times they file an actual
12 violation report. In that case, it comes to me. I have to
13 figure out whether or not you have abided by the terms and
14 conditions of supervised release.

15 If the answer is you've not, that you've broken the terms
16 and conditions, then I have to decide what the appropriate
17 sanctions should be. It can be anywhere from extending the
18 period of supervised release to just talking to you about it,
19 but many times it also results in the person who is in
20 violation of their release being sent back to jail for the
21 term of supervised release. Okay?

22 So, at the end, I've got a fair amount of discretion in
23 that regard. Okay?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay.

1 THE COURT: Tim, at this time I'm going to ask the
2 United States to put any particular items in the Plea
3 Agreement that either, if I've misstated, you can correct the
4 record; or, if you think they need to be spelled out in
5 addition to what I've said, you can do that for the record as
6 well. Okay?

7 MR. MANGAN: Sure. Thank you, Your Honor.

8 With respect to the Plea Agreement, paragraph 1 sets forth
9 the defendant's rights to plead not guilty and have a trial.
10 He is agreeing to waive those rights and go forward with
11 pleading guilty to Counts One, Two and Three as described in
12 paragraph 2 of the Plea Agreement.

13 In paragraphs 3, 4 and 5 of the Plea Agreement, it sets
14 forth the maximum penalties for the counts, which the Court
15 has already addressed with the defendant.

16 In paragraph 4, it explains that the sentence will be
17 imposed by and is within the sole discretion of the Court.
18 There is no agreement as to what the sentence will be. The
19 Court could impose the statutory maximum. The defendant
20 understands that the guidelines are advisory and not
21 mandatory, although the Court is required to consider the
22 Sentencing Guidelines. The defendant does not have the right
23 to withdraw his guilty plea if the Court imposes a sentence
24 that is higher than expected.

25 Paragraph 5 explains that the defendant is pleading guilty

1 because he is, in fact, guilty; and that the Statement of
2 Facts in this case that is attached to the Plea Agreement is
3 true and correct, is made a part of the agreement, and will be
4 submitted to the Court as evidence.

5 Paragraph 6 sets forth several non-binding Sentencing
6 Guidelines stipulations between the parties:

7 First, the defendant would be entitled to a two-level
8 reduction for acceptance of responsibility as provided in
9 Section 3E1.1(a).

10 And then if the Probation Office recommends the reduction
11 and the defendant timely complies with all requirements, the
12 government will recommend an additional one-level reduction
13 pursuant to 3E1.1(b) for acceptance of responsibility.

14 In addition, as to Count One, the Sentencing Guideline
15 applicable to the offense of Attempted Killing of a Government
16 Employee is Sentencing Guideline Section 2A1.5, which has a
17 Base Offense Level of 33. Three levels are added for a victim
18 enhancement pursuant to Section 3A1.2. Twelve levels are
19 added for a terrorism enhancement pursuant to Section 3A1.4.

20 As to Count Two, the Sentencing Guideline applicable to
21 the offense of Possession of a Firearm in Furtherance of a
22 Crime of Violence is Section 2K2.4.

23 As to Count Three, the Sentencing Guideline applicable to
24 the offense of Material Support of a Foreign Terrorist
25 Organization is Sentencing Guideline Section 2M5.3, which has

1 a Base Offense Level of 26. Two levels are added for a
2 connection to a firearm or violence pursuant to Section
3 2M5.3(b) (1). Twelve levels are added for a terrorism
4 enhancement pursuant to Section 3A1.4.

5 And in accordance with Section 3A1.4, the defendant is
6 automatically deemed to having a Criminal History Category of
7 VI.

8 These stipulations are not binding on the Court, and the
9 defendant understands that if the Court rejects any of these
10 stipulations, the defendant does not have the right to
11 withdraw his guilty plea.

12 Paragraph 8 of the Plea Agreement explains that the
13 defendant agrees to forfeit all rights, title and interest in
14 the AK-47 rifle that was purchased and possessed by him on or
15 about May 21st, 2015.

16 Paragraph 9 explains that the defendant has reviewed all
17 aspects of this case with his counsel and is satisfied with
18 his attorney's legal representation. It states that the
19 defendant has had meaningful and satisfactory explanations
20 from his counsel concerning each paragraph of the Plea
21 Agreement, the rights affected by the Plea Agreement, and the
22 alternatives available other than entering into the Plea
23 Agreement. And, after conferring with counsel, he has
24 concluded that it is in his best interest to enter into this
25 Plea Agreement in its entirety rather than to proceed to

1 trial.

2 Paragraph 10 explains that his guilty plea is freely and
3 voluntarily made and is not the result of force or threats or
4 promises apart from those set forth in the Plea Agreement.
5 There have been no representations by any agent or employee of
6 the government, or any other law enforcement agency, as to
7 what the final disposition in this matter should and will be.

8 Paragraph 11 explains the consequences if the defendant
9 were to violate the Plea Agreement, namely the government
10 could declare the Plea Agreement null and void, and the
11 defendant would thereafter be subject to prosecution for any
12 criminal violation including those set forth in the
13 Information.

14 Paragraphs 12, 13 and 14 set forth several additional
15 provisions, namely: Under paragraph 13, if the guilty plea is
16 not accepted by the Court or later set aside, then the
17 government has a right to void the agreement.

18 Finally, at paragraph 15, it says that in the event the
19 defendant does not plead guilty or seeks to withdraw a guilty
20 plea or violates the terms of the Plea Agreement, that he
21 waives any protection afforded by Section 1B1.8(a) of the
22 Guidelines, Rule 11(f) of the Federal Rules of Criminal
23 Procedure, and Rule 410 of the Federal Rules of Evidence.

24 Any statements made by the defendant in the course of any
25 plea discussions, any proceeding under Rule 11 of the Federal

1 Rules of Criminal Procedure, or any cooperation with the
2 government will be admissible against him without any
3 limitation in any civil or criminal proceeding.

4 THE COURT: Okay. Richard, can you show Munir page 7
5 of the Plea Agreement?

6 MR. SMITH-MONAHAN: We have, Your Honor.

7 THE COURT: Munir, that looks like the same signature
8 that's on the Waiver of Indictment Form. Is that your
9 signature?

10 THE DEFENDANT: Yes, Your Honor, it is.

11 THE COURT: And did you sign that because you think
12 this contains the understanding you've reached with the United
13 States?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And did you sign it because you actually
16 wish to plead guilty to Count One of the Information?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And do you wish to plead guilty to Count
19 Two of the Information?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And do you wish to plead guilty to Count
22 3 of the Information?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Now, as to each of those counts, did
25 anybody make you any special promises or tell you that I would

1 treat the case a certain way just in order to get you to plead
2 guilty --

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: -- or is this your own free and voluntary
5 act? Okay.

6 Other than the fact that you may be facing I don't know
7 what in terms of sentencing, did anybody put any kind of
8 pressure, force or duress against you such that the plea that
9 you're attempting to enter today is not your own free and
10 voluntary act?

11 THE DEFENDANT: No, Your Honor.

12 * * *

13 (Proceedings filed separately under seal.)

14 * * *

15 THE COURT: All right. Now the Statement of Facts.

16 MR. MANGAN: Special Agent Sherry Driessen will read
17 the Statement of Facts, Your Honor.

18 THE COURT: Richard, do you have any objection to the
19 agent reading it in an unsworn fashion or would you prefer
20 that she be sworn?

21 MR. SMITH-MONAHAN: I have no objection, Your Honor.

22 THE COURT: Are you okay with that, Tim? Do you want
23 it unsworn?

24 MR. MANGAN: That's fine, Your Honor.

25 THE COURT: Okay.

1 All right. Agent, if you could state your full name,
2 spell your last name, give us duty assignment and then just
3 the facts, we'd appreciate it.

4 AGENT DRIESSEN: Yes, Your Honor.

5 Sherry, S-H-E-R-R-Y, middle initial L, last name Driessen,
6 D-R-I-E-S-S-E-N.

7 THE COURT: Thank you.

8 AGENT DRIESSEN: And I'm a Special Agent with the
9 Federal Bureau of Investigation.

10 THE COURT: Thank you.

11 AGENT DRIESSEN: Statement of Facts. At all times
12 relevant, Munir Abdulkader has resided in West Chester, Ohio,
13 the Southern District of Ohio. He became a citizen of the
14 United States on September 22nd, 2006. During 2014 and 2015,
15 Munir Abdulkader was a college student at a university in
16 Cincinnati, Ohio.

17 Beginning in at least July of 2014 and continuing to 2015,
18 Munir Abdulkader established and used Twitter accounts. Using
19 his Twitter accounts, he posted statements, videos and other
20 content indicating his support for ISIL.

21 Munir Abdulkader posted an ISIL training video, lamented
22 that his cousin had died fighting for ISIL, stated that he
23 supported ISIL, expressed his desire to travel and join ISIL,
24 and expressed his desire to attain *shahada*, or martyrdom.

25 In January of 2015, Munir Abdulkader applied for a

1 passport and instructed that the passport be delivered to an
2 address that was not his residence.

3 From approximately March 2015 to mid-April 2015, he began
4 speaking with a Confidential Human Source, (CHS), about his,
5 Munir Abdulkader's, desire and intention to travel to Syria in
6 order to join ISIL as a fighter.

7 From approximately March 2015 through at least April 2015,
8 Munir Abdulkader made plans and preparations to travel to
9 Syria to join ISIL as a fighter. He expressed his support for
10 ISIL, expressed his intent to become a fighter for ISIL,
11 secured a passport, saved money for the trip, and researched
12 the logistical details of traveling to and joining ISIL.

13 In approximately late April of 2015, he expressed concerns
14 about the number of arrests of individuals who were trying to
15 travel to join ISIL. He researched other options and
16 postponed his original departure date of approximately May
17 2nd, 2015.

18 During at least May 2015, Munir Abdulkader was in
19 electronic communication with one or more individuals located
20 overseas whom he understood were members of ISIL. Through
21 those communications, the persons whom he understood were
22 members of ISIL directed and encouraged Munir Abdulkader to
23 plan and execute a violent attack within the United States.

24 In May 2015, Munir Abdulkader began discussing with the
25 CHS the possibility of executing a violent attack within the

1 United States. Munir Abdulkader discussed an idea of
2 attacking a police station, which, according to Munir
3 Abdulkader, had been declared a permissible target by an ISIL
4 cleric.

5 Munir Abdulkader then communicated with the CHS and
6 overseas members of ISIL about a plan to attack a military
7 base and/or kill an identified military employee on account of
8 his position with the United States government.

9 The plan included abducting the employee at the employee's
10 home and filming the execution of the employee. After killing
11 the employee, Munir Abdulkader planned to execute a violent
12 attack on a police station in the Southern District of Ohio
13 using firearms and Molotov cocktails.

14 In preparation for the attack, Munir Abdulkader took the
15 following actions:

16 a. Munir Abdulkader asked the CHS to purchase a vest for
17 holding ammunition.

18 b. On or about May 18, 2015, Munir Abdulkader traveled to
19 a police station in the Southern District of Ohio and
20 conducted surveillance of the police station.

21 c. On or about May 20th, 2015, Munir Abdulkader went to a
22 shooting range, learned how to operate certain firearms, and
23 practiced shooting the firearms. Munir Abdulkader also
24 negotiated the purchase of a firearm, namely an AK-47 assault
25 rifle, for \$350.

1 d. On May 21st, 2015, Munir Abdulkader provided funds for
2 the purchase of an AK-47 assault rifle and took possession of
3 the firearm.

4 THE COURT: Munir, again, it looks like your
5 signature is on that. There is a statement that says you have
6 reviewed those statements and you agree that they are
7 accurate.

8 Did you sign that document because it is accurate?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Is it incorrect or inaccurate in any way
11 that you think you need to tell me about at this point in
12 time?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Then can I understand that you are
15 offering to plead guilty to the first count, second and third
16 counts of the Information because you did commit the offenses
17 that are charged in those particular counts?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Now, we've had a number of
20 discussions about your right to proceed by Information versus
21 Indictment, also your right to proceed by plea versus a jury
22 trial. You previously indicated you wish to give up your
23 right to a jury trial and proceed by the guilty plea. Is that
24 correct?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. In light of all the conversations
2 I've had with you about your rights --

3 This is the last time I'm going to ask you.

4 -- how do you wish to plea to the charge in the first
5 count of the Information, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: How do you wish to plea to the charge in
8 the second count of the Information, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: And how do you wish to plea to the charge
11 in the third count of the Information, guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: All right.

14 Based upon my observations of Munir in court, his
15 appearance and the manner in which he has been answering the
16 questions that I've been asking, I'm satisfied that: he's in
17 full possession of his faculties; he is not suffering from any
18 apparent physical or mental illness; he is not under the
19 influence of narcotics; he understands the proceedings in
20 which we're engaged; he's an educated man that understands the
21 nature and the meaning of the charges set forth in the three
22 counts of the Information; and, based upon the conversations
23 we've had about the Plea Agreement, he is aware of the
24 potential consequences of his plea of guilty.

25 And, obviously, because we have Plea Agreements, he is

1 aware of negotiations that were undertaken on his behalf.

2 Therefore, I find that the Waiver of Indictment and
3 proceeding by Information is a knowing and voluntary and an
4 intelligently-made act.

5 I also find that each plea of guilty is a knowing and
6 voluntary plea supported by an independent basis in fact which
7 contains each of the essential elements that are set forth in
8 the Information pursuant to Counts One, Two and Three.

9 Therefore, I'll accept the plea and make a finding of
10 guilty.

11 Before we proceed any further, do you think I hit all the
12 technical aspects I need to?

13 MR. MANGAN: Yes, Your Honor.

14 THE COURT: And we're clear that he's acknowledging
15 he wishes to plead guilty and enter a plea of guilty on the
16 record; correct?

17 MR. SMITH-MONAHAN: Yes.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right.

20 So here's the deal. I'm not sure what's going to happen
21 because this case is under seal. I'm just guessing there may
22 be other workings that are going on. But, in due course, the
23 probation officer will be contacting you to get background
24 information in terms of a presentence investigation.

25 Munir, any time you talk to the probation officer about

1 that, Richard should be with you. Okay?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Make sure your lawyer is with you.

4 They'll set up an appointment, and Richard knows how to do
5 that.

6 That information they get from you guys, together with the
7 information they get from the United States Attorney's Office,
8 they will write that presentence report we talked about. They
9 may or may not reference the items that we've also been
10 talking about off the record in the report, but those will be
11 considered.

12 In any event, if what they have inside the report that you
13 guys have issues with, both sides are allowed to object to
14 various findings that the Probation Office makes.

15 Usually what happens is, the lawyers will call the officer
16 in the first instance, see if they can work it out. If they
17 can, they can, and that's fine. If they can't, then both
18 sides have the right to file formal objections to what's
19 contained in the presentence investigation.

20 And I typically deal with that just prior to the
21 sentencing itself unless it's more complicated.

22 Is that okay? Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. So that will be -- as far as I
25 know, that will be the next step for you.

1 Now, my understanding was also that Munir was being held
2 under, I think, what, a temporary detainer, Barb?

3 COURTROOM DEPUTY: From the magistrate judge, yes.

4 THE COURT: From the magistrate judge. So at this
5 point in time do I, what, just order him into the custody of
6 marshals?

7 MR. MANGAN: Your Honor, the magistrate had
8 previously ordered him detained. But as far as a detention
9 hearing, the defendant had waived the time parameters for that
10 and periodically entered into those waivers in terms of having
11 a detention hearing. I think we're probably now at a point
12 where the Court could just enter a detention order, unless the
13 defendant feels differently.

14 THE COURT: Richard?

15 MR. SMITH-MONAHAN: No objection to that.

16 THE COURT: Okay. Well, based upon everything that's
17 in front of me, the documents in front of me and the admission
18 and the plea of guilty in this case, my order would be that he
19 be remanded to the custody of the United States Marshals
20 pending the sentencing in this case without bond.

21 And I don't think there's any exceptional circumstances
22 that I know of. I mean, he's just being held; right?

23 MR. MANGAN: That's correct.

24 THE COURT: In the routine fashion?

25 MR. MANGAN: Yes.

1 THE COURT: Okay. All right.

2 So Munir, do you have any questions you want to ask me
3 before we conclude this morning's proceedings?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. Are you satisfied with the
6 conversations we've had about the Plea Agreement and about
7 your various rights?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And are you satisfied with Richard's
10 advice and representation in this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. So what we've done here is, in
13 fact, knowingly, voluntarily and intentionally done as I
14 previously entered on the record; right?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. All right.

17 So Marshals, you'll take custody of Munir, and we'll stand
18 in recess.

19 And you guys will notify us as to when we're coming back;
20 right?

21 MR. SMITH-MONAHAN: Yes, Your Honor.

22 MR. MANGAN: Yes, Your Honor.

23 THE COURT: All right. Is this going through the
24 normal process, six to eight weeks? Is that where we are?

25 MR. MANGAN: Yes, Your Honor.

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THE COURT: Okay.

MR. MANGAN: I've already met with Probation to get that going.

THE COURT: So Munir, it usually takes six to eight weeks before they get that paperwork done. Okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So we'll see you then.
All right. Thanks, everybody. We'll stand in recess.

(The proceedings concluded at 11:56 a.m.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

S/MARYANN T. MAFFIA, RDR

Official Court Reporter