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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
) Case No. 1:15-CR-00148A
) (RJA) (JJM)
Plaintiff,)
)
vs.) January 22nd, 2018
)
ARAFAT M. NAGI,)
)
Defendant.)

**TRANSCRIPT OF PLEA
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR.
UNITED STATES ATTORNEY
BY: TIMOTHY C. LYNCH, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: JEREMY SCHWARTZ, ESQ.
300 Main Street
Buffalo, NY 14202

Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, NY 14202

U.S. v. NAGI -- PLEA

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1 THE CLERK: Criminal action 2015-148A. United States
2 v. Arafat M. Nagi. Change of plea. Counsel, please state
3 your name and the party you represent for the record.

4 MR. LYNCH: Timothy Lynch for the government, Your
5 Honor.

6 MR. SCHWARTZ: Good morning, Judge. Jeremy Schwartz
7 for Mr. Nagi.

8 THE COURT: Good morning.

9 MR. LYNCH: Judge, it's my understanding that today
10 the defendant is prepared to enter a plea of guilty to Count 1
11 of the indictment, pursuant to a plea agreement that was
12 finalized by the parties, was executed in court today and has
13 already been handed up to the Court.

14 THE COURT: That's your understanding, Mr. Schwartz?

15 MR. SCHWARTZ: It is, Your Honor.

16 THE COURT: Would you please administer the oath or
17 affirmation to the defendant? What does he prefer?

18 MR. SCHWARTZ: To affirm, Judge.

19 (The defendant was affirmed at 11:29 a.m.)

20 THE COURT: Mr. Nagi, you're now affirmed to tell the
21 truth. During the course of these proceedings, I'll be asking
22 you a lot of questions. You'll have to answer those questions
23 honestly and truthfully. If you were to give me any false
24 answer, that false answer may be used against you in a further
25 prosecution brought by the government on a charge of making a

1 false statement. Do you understand that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: It's also very important, sir, that you
4 understand what your rights are. If at any time during the
5 course of these proceedings, there's something you do not
6 understand, you want to ask me a question, you want something
7 more fully explained to you, you want to consult with
8 Mr. Schwartz, you're free to do so. You're encouraged to do
9 so.

10 It's not important that we get this over with as
11 quickly as possible. What's important is that I'm satisfied
12 that you fully understand what all your rights are. Do you
13 understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, it's my understanding you're here
16 today to waive certain rights and to plead guilty to Count 1
17 of the indictment under the terms and conditions of the plea
18 agreement. Do you understand this charge, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. Schwartz, you've gone over the charge
21 with your client. Are you satisfied he understands it?

22 MR. SCHWARTZ: I have gone over it with him and
23 he says -- my understanding is that he does understand it.

24 THE COURT: Any reason for me to go through any
25 further explanation?

1 MR. SCHWARTZ: No, Your Honor.

2 THE COURT: And you explained to him his rights under
3 Rule 11, right to a trial, et cetera?

4 MR. SCHWARTZ: I have, Judge.

5 THE COURT: And you've reviewed with him the terms
6 and conditions of the plea agreement?

7 MR. SCHWARTZ: Yes, Your Honor.

8 THE COURT: Now, sir, you discussed this whole matter
9 with your attorney. He's explained to you what your legal
10 rights are, what your legal options are. You probably didn't
11 like to hear what he had to tell you, but he's not there to
12 make you feel good. He's there to be your counsel. And
13 apparently, based on those discussions, you're here today to
14 waive certain rights and plead guilty to this charge under the
15 terms and conditions of the plea agreement. Are you fully
16 satisfied with the advice and counsel you received from
17 Mr. Schwartz?

18 THE DEFENDANT: Yes.

19 THE COURT: Any complaints, sir?

20 THE DEFENDANT: No.

21 THE COURT: Okay. Let's proceed to the plea
22 agreement, Mr. Lynch.

23 MR. LYNCH: Thank you, Judge. This is an agreement
24 between Arafat M. Nagi and the United States Attorney for the
25 Western District of New York.

1 Paragraph 1. The defendant agrees to plead guilty to
2 Count 1 of the indictment, which charges a violation of
3 Title 18, United States Code, Section 2339B(a)(1), attempting
4 to provide material support to a designated foreign terrorist
5 organization, for which the maximum possible sentence is a
6 term of imprisonment of 15 years, a fine of \$250,000, a
7 mandatory \$100 special assessment and a term of supervised
8 release of life.

9 The defendant understands that the penalties set
10 forth in this paragraph are the maximum penalties that can be
11 imposed by the Court at sentencing.

12 THE COURT: Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you explain to him the importance of
15 this paragraph?

16 MR. SCHWARTZ: I did, Judge.

17 THE COURT: What is the importance, Mr. Lynch?

18 MR. LYNCH: Judge, paragraph 1 satisfies a
19 requirement of Rule 11 by notifying the defendant of the
20 maximum penalty. The Court must consider, but is not bound by
21 the sentencing guidelines. These guidelines went into effect
22 on November 1st, 1987 and apply to all offenses committed
23 after that date. The purpose of the guidelines is to
24 establish a sentencing system in which Courts will impose
25 similar sentences for similar crimes upon defendants who are

1 similar in ways under the guidelines. If the sentencing
2 procedure is followed by the Court, the Court would impose a
3 sentence within a range on the sentencing table in the
4 sentencing manual. The range would depend on the defendant's
5 criminal conduct and his criminal history.

6 THE COURT: Do you understand everything he just
7 said?

8 THE DEFENDANT: Yes.

9 THE COURT: We're going to go through the guidelines
10 in a few minutes. If you have any questions, you let me know,
11 okay? We've got all day.

12 THE DEFENDANT: Yes.

13 THE COURT: Okay.

14 MR. LYNCH: Paragraph 2. The defendant understands
15 that if it's determined that the defendant has violated any of
16 the terms or conditions of supervised release, the defendant
17 may be required to serve in prison a period of supervised
18 release, up to two years, without credit for time previously
19 on supervised release.

20 As a consequence, in the event the defendant is
21 sentenced to the maximum term of incarceration, a prison term
22 imposed for a violation of supervised release may result in
23 him serving a sentence of imprisonment longer than the
24 statutory maximum set forth in paragraph 1 of this agreement.

25 THE COURT: Do you understand that, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay.

3 MR. LYNCH: Paragraph 3 lays out the elements the
4 government would have to prove beyond a reasonable doubt if
5 this case proceeded to trial; that on or about the dates
6 charged in the indictment, the defendant knowingly attempted
7 to provide material support and resources, that is personnel,
8 to a foreign terrorist organization, that is ISIS or ISIL;
9 that the defendant knew the organization was a designated
10 terrorist organization or that the organization had engaged in
11 or was engaging in terrorist activities and terrorism and that
12 the defendant is a United States national.

13 THE COURT: Do you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay.

16 MR. LYNCH: Paragraph 4 lays out the factual basis
17 agreed to by the parties that form the basis for his entry of
18 a plea of guilty, including relevant conduct.

19 From in or about November 2012 to in or about August
20 2014, the exact dates being unknown, in the Western District
21 of New York and elsewhere, the defendant, Arafat M. Nagi, a
22 citizen of the United States, did knowingly -- knowingly did
23 attempt to provide material support and resources, that is,
24 personnel, specifically himself, to a designated foreign
25 terrorist organization, namely the Islamic State of Iraq and

1 Levant, ISIL, also known as the Islamic State of Iraq and
2 al-Sham, ISIS; knowing that ISIL and ISIS were a designated
3 foreign terrorist organization and had engaged in and was
4 engaging in terrorist activity and had engaged in and was
5 engaging in terror.

6 Beginning in November 2012, after the defendant
7 failed to enter Syria a month earlier due to a gallbladder
8 infection, the defendant began making preparations for another
9 trip to Syria so he could join ISIL/ISIS. As part of his
10 preparations before the October 2012 trip, the defendant
11 sought advice from an individual regarding the type of
12 clothing and supplies he would need if he had to live
13 outdoors.

14 The defendant's preparations also included purchasing
15 combat and survivalist gear through eBay, including tactical
16 gloves, a face mask, a hunting knife, a burn kit, a black
17 Shahada flag, which is the flag used by ISIS, camouflage
18 pants, night vision goggles and a camouflage shirt.

19 In early 2012, the defendant also purchased through
20 eBay a tactical vest with armor plates, combat boots and body
21 armor plates. During a search of the defendant's computer, a
22 photo was retrieved depicting the defendant dressed in combat
23 gear holding an AK-47 and standing in front of the Shahada
24 flag.

25 MR. SCHWARTZ: Judge, with respect to this

1 subparagraph, I want to put something on the record briefly.
2 And just to clarify, November 2012, Mr. Nagi's interest was
3 not really focused on Islamic State at that point. They
4 hadn't come to prominence. That was more the Free Syrian
5 Army. However, we certainly agree with the factual basis and
6 the rest of it, but just want to clarify that the activities
7 in 2012 were more the Free Syrian Army, as opposed to ISIS or
8 ISIL.

9 THE COURT: All right.

10 MR. LYNCH: Beginning in late 2013, the defendant
11 activated a Twitter account, which he used as a platform to
12 announce his formal pledge to Abu Bakr al-Baghdadi, the leader
13 of ISIS, to extol his Twitter followers to support ISIS and to
14 display photographs depicting individuals who were killed by
15 members of ISIS.

16 These posts included the following: On January 11,
17 2014, he tweeted, I'm Abu Amir al-Yemeni of the Quhayf tribe
18 and pledge -- give my pledge to hear and obey Abu Bakr
19 al-Baghdadi.

20 On April 15th, 2014, he tweeted, whose wisdom is
21 better than God's? The Islamic State of Iraq and the Levant.

22 On April 25th, 2014, swear your allegiance to the
23 prince of the believer al-Baghdadi. May God protect him. May
24 you perish in your resentment, you traitors.

25 Between November of 2012 and July of 2014, the

1 defendant regularly spoke to some of his family members and a
2 friend about ISIS, his allegiance to al-Baghdadi and his
3 desire to join ISIS to create the Islamic State. Furthermore,
4 the defendant regularly viewed videos and photographs created
5 by ISIS depicting their terrorist activities, including
6 beheadings. The defendant also told members -- told family
7 members that he intended to die a warrior's death in Syria.

8 On July 24th, the defendant left the United States
9 for Turkey. When he left, he was in possession of night
10 vision goggles, which he intended to use in Syria. Once he
11 arrived in Istanbul, Turkey, the defendant conducted internet
12 research regarding transportation to and hotels in Iskenderun,
13 Turkey, which is located near the Syrian border. He also
14 researched border crossings into Syria from Turkey.

15 The defendant discarded the SIM card to his Nokia
16 cellular telephone in Istanbul and never went to Syria because
17 he was concerned he was under surveillance by the
18 United States and Turkish law enforcement.

19 On August 4th, 2014, the defendant left Turkey for
20 Yemen, where he stayed for approximately six weeks before
21 returning to the United States. Once the defendant returned,
22 he began making plans to return to Turkey so he could make
23 another effort to enter Syria. Between late 2014 and early
24 2015, the defendant expressed his support of ISIS's violent
25 activities to Person 1, including his support for the burning

1 of a Jordanian pilot. During these discussions, the defendant
2 asked Person 1 whether Person 1 was interested in going with
3 him to Syria. In July 2015, the defendant went to Person 2 to
4 make arrangements to purchase an airline ticket for a trip to
5 Turkey, so that he can enter Syria. On July 29, 2015, the
6 defendant was arrested by the FBI.

7 The parties agree that during the time period charged
8 in Count 1 of the indictment, Islamic State of Iraq and
9 Levant, ISIL/ISIS, was a designated foreign terrorist
10 organization. The parties also agree that during this time
11 period, the defendant was aware of ISIS's designation as a
12 foreign terrorist organization, as well as the fact that they
13 engaged in terrorist activities.

14 THE COURT: Do you understand that, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: How would you prove all this, Mr. Lynch?

17 MR. LYNCH: Judge, the government would call first an
18 Officer Trout, who was at the Detroit border when the
19 defendant re-entered the United States in September of 2014.
20 At that time, three electronic devices were seized from the
21 defendant. A search of those devices established that the
22 defendant: One, had spoken to family members prior to leaving
23 the United States that he did not intend to return; two, that
24 he had researched travel plans while he was in Turkey to make
25 arrangements to go into Syria.

1 We would also call a convicted terrorist from the
2 Lackawanna community, who would testify that in approximately
3 2012 and continuing through 2014, he had discussions with the
4 defendant regarding activities at terrorist training camps, as
5 well as what he should wear to the terrorist training camps.

6 Two. We would call this witness to testify that the
7 defendant engaged in target practice, shooting with an
8 AK-47 -- I'm sorry, an AR-15, at a shooting range located near
9 Akron, New York and that following one of the times when he
10 was with him, the defendant had indicated that he thought his
11 target shooting was up-to-par for where he was going. We
12 would also call family members, including close family
13 members, who would testify that prior to the defendant
14 leaving, he told them that he intended to enter Syria and that
15 he had hoped to die a warrior's death.

16 In addition, Judge, we would introduce Twitter
17 postings by the defendant, which number more than 7,000,
18 almost exclusively pertaining to events in the Middle East,
19 including the activities of ISIS and ISIL and the creation of
20 an Islamic State in the Middle East.

21 We would also introduce Facebook records that would
22 establish that while the defendant was in Turkey, he obtained
23 a Turkish cell phone number, made contact with other
24 individuals whose purpose was to put the defendant in touch
25 with individuals in Turkey who would then assist the defendant

1 in crossing into Syria. In addition, Judge, the government
2 would call an expert in the field of ISIS, who would testify
3 to the manner in which ISIS recruits individuals like the
4 defendant through social media. Once they get to Turkey, they
5 are then brought to the Syrian border and then they're
6 assimilated into ISIS or the Islamic State.

7 THE COURT: Do you understand all that, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: You don't have to answer this question if
10 you don't want to. Why did you do this? Why did you want to
11 do this? You don't have to answer it if you don't want to.
12 I'm just curious.

13 THE DEFENDANT: Can I --

14 THE COURT: Yes. Sure.

15 MR. SCHWARTZ: Judge, I think that's something he's
16 thought a lot about and that's something that he would like
17 the Court to consider at sentencing --

18 THE COURT: All right.

19 MR. SCHWARTZ: -- more so than today. But that's
20 certainly a thought that's been going on through this entire
21 case and he is eager to speak at sentencing. That, I think,
22 is the more appropriate time.

23 THE COURT: Okay. Well, I agree with you. I just
24 wanted to know because I'm just curious.

25 MR. SCHWARTZ: Understood.

1 THE COURT: All right.

2 MR. LYNCH: Thank you, Judge. The next section deals
3 with the sentencing guidelines. The government and the
4 defendant agree that Guideline Section 2M5.3(a) applies to the
5 offense of conviction and provides for a base offense level of
6 26.

7 THE COURT: Do you understand that, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: You explained that to him?

10 MR. SCHWARTZ: I did, Judge. We went over the
11 sentencing, Judge.

12 THE COURT: My understanding of the calculation here,
13 it's going to end up over the maximum --

14 MR. SCHWARTZ: That's right, too, Judge.

15 THE COURT: -- provided by the statute.

16 MR. SCHWARTZ: Literally, the guidelines were off the
17 chart. So, in showing him the chart, we were dealing with
18 numbers that are higher than would be on the chart and it
19 would exceed the statutory maximum. But, as the Court is
20 aware, pursuant to this plea agreement, we were allowed to ask
21 the Court to consider anything within the range which would be
22 as low as, theoretically, time served up to the maximum.

23 THE COURT: Okay. Do you understand all that, sir?

24 THE DEFENDANT: Yes.

25 MR. LYNCH: Next paragraph deals with the specific

1 offense characteristics. There's a two-level increase because
2 the offense involved material support with intent, knowledge
3 or reason to believe that they would be used to commit -- or
4 assist in the commission of a violent act. Under chapter 3,
5 there's a 12-level upward adjustment because the offense
6 involved the promotion of a federal crime of terrorism. And
7 the adjusted offense level now is --

8 THE COURT: What does that mean?

9 MR. LYNCH: Promote a federal crime of terrorism?
10 So, 2339B would be a federal crime of terrorism, assisting or
11 attempting to assist a designated foreign terrorist
12 organization.

13 THE COURT: Which ISIS has been described as?

14 MR. LYNCH: Correct.

15 THE COURT: Okay.

16 MR. LYNCH: So, now, the calculation for the adjusted
17 offense level is a 40. If he should receive the acceptance of
18 responsibility by virtue of his plea of guilty, it would
19 result in a 37. And then, because this case, again, involves
20 an attempted -- attempting to provide material support to a
21 terrorist organization, the guidelines state his criminal
22 history category must be considered to be a six.

23 THE COURT: Well, that would put him in a range of
24 360 months to life.

25 MR. LYNCH: Correct.

1 THE COURT: But the statutory maximum is 12.
2 MR. LYNCH: Fifteen, 180 months.
3 THE COURT: I'm sorry.
4 MR. LYNCH: Yeah.
5 THE COURT: Yeah. Do you understand all that, sir?
6 THE DEFENDANT: Yes.
7 THE COURT: Okay. You explained all this to him?
8 MR. SCHWARTZ: I did, Judge.
9 THE COURT: Okay. I'm making sure you understand it,
10 all right? Okay.
11 MR. LYNCH: So, paragraph 12 deals with that. It
12 talks that he's an offense level 37, a criminal history
13 category of six, but because the statutory maximum penalty is
14 15 years, the sentencing range would be a recommended term of
15 imprisonment of 180 months, a fine of \$40,000 to \$250,000 and
16 a period of supervised release of one year to life. And not
17 withstanding this, the defendant understands that at
18 sentencing, he is subject to the maximum penalty set forth in
19 paragraph 1 of the agreement.
20 THE COURT: All right. What happens with -- there's
21 two counts here. What happens to this Count 2?
22 MR. LYNCH: Count 2. At sentencing, the government's
23 going to move to dismiss that count.
24 THE COURT: What's the effect of that?
25 MR. LYNCH: Well, in effect, he saves the benefit

1 of -- if he went to trial, he could conceivably receive a
2 sentence of 35 years.

3 THE COURT: So, this put him at a maximum of 15?

4 MR. LYNCH: Fifteen.

5 THE COURT: Do you understand all that, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: That's basically the benefit that
8 Mr. Schwartz has been able to obtain from the government. As
9 you know, we're scheduled for jury selection tomorrow, I
10 believe. And as a result of that, you have a right to trial
11 and I'll go through all that in a few minutes. Do you
12 understand all this, though, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The government is going to move to
15 dismiss this count which, if you were convicted -- if you went
16 to trial and if you were convicted, that you could be facing a
17 term of imprisonment of up to 35 years. Do you understand
18 that?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 MR. LYNCH: Paragraph 13. The parties agree that the
22 calculations in the agreement are correct. The defendant and
23 the government, however, reserve a right to recommend a
24 sentence outside the sentencing guideline range. And this
25 reserves the right of the government and the defendant to

1 bring to the attention of the Court all information deemed
2 relevant to the determination of a proper sentence in this
3 case.

4 THE COURT: How would the government reserve the
5 right to ask for a sentence outside the guideline range? You
6 mean below the guideline range?

7 MR. LYNCH: No. Well, I guess conceivably under
8 paragraph -- in the -- what we are still disputing to is the
9 supervised release range. Mr. Schwartz is going to ask for a
10 period, I assume, much lower than the government would ask and
11 we're going to be asking for a range much higher. So, we
12 aren't asking -- we can't ask for a range outside --

13 THE COURT: What is the range of supervised release?

14 MR. LYNCH: One year to life.

15 THE COURT: Oh, I see. Okay.

16 MR. LYNCH: The defendant understands that the Court
17 is not bound to accept any of the guideline calculations, but
18 the defendant will not be entitled to withdraw the plea of
19 guilty based on the sentence imposed by the Court.

20 THE COURT: Do you understand that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay.

23 MR. LYNCH: Statute of Limitations.

24 THE COURT: Any reason to read that, Mr. Schwartz?

25 MR. SCHWARTZ: No, Judge. He understands that.

1 THE COURT: And how about Government Rights and
2 Reservations?

3 MR. SCHWARTZ: That's the same, Judge.

4 THE COURT: He understands that?

5 MR. SCHWARTZ: Yes, Judge.

6 THE COURT: You understand both those paragraphs,
7 sir?

8 THE DEFENDANT: Yes.

9 THE COURT: Any reason to read those?

10 MR. SCHWARTZ: I don't think so, Judge.

11 THE COURT: Okay.

12 MR. LYNCH: The appellate section, Judge. Section 6
13 states that the defendant understands that Title 18,
14 United States Code, Section 3742 affords him a limited right
15 to appeal. The defendant, however, knowingly waives the right
16 to appeal and collaterally attack any component of a sentence
17 imposed by the Court which falls within or is less than the
18 sentencing range for imprisonment, fine and supervised release
19 set forth in section 3, paragraph 12, above, notwithstanding
20 the manner in which the Court determines the sentence.

21 In the event of an appeal of the defendant's sentence
22 by the government, the defendant reserves the right to argue
23 the correctness of the sentence.

24 THE COURT: Do you understand that, sir?

25 THE DEFENDANT: Yes.

1 THE COURT: This is pretty much, basically, your day
2 in court. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay.

5 MR. LYNCH: By agreeing not to collaterally attack
6 the sentence, he's waiving the right to challenge the sentence
7 in the future if he becomes aware of a previously unknown fact
8 or a change in the law which he believes would result in a
9 decrease in his sentence.

10 The government similarly waives its right to appeal
11 any sentence within the range or greater than the range of
12 fine or supervised release set forth in section 3,
13 paragraph 12. The defendant, however, reserves -- in the
14 event the defendant appeals the sentence, the government
15 reserves the right to argue the correctness of the sentence.

16 THE COURT: All right.

17 MR. LYNCH: Section 7 is the forfeiture provision,
18 Judge. And that is -- if I can summarize it, Judge? The
19 defendant agrees to criminally forfeit all of his interest in
20 the property attached as Exhibit A. That's been gone over by
21 the parties. In fact, changes were made as recently as this
22 morning, based on conversations with Mr. Schwartz.

23 THE COURT: What is Exhibit A?

24 MR. SCHWARTZ: It's at the end of the plea agreement.

25 THE COURT: Okay. Why don't you go through that?

1 MR. LYNCH: Sure, Judge. What he is agreeing to
2 forfeit is an Apple iPhone, an Apple iPad and a Nokia cellular
3 telephone. These were the items that were seized from the
4 defendant in September of 2014 when he re-entered the
5 United States.

6 He also agrees to forfeit an ISIS flag, headband and
7 a T-shirt bearing the ISIS symbol. He also forfeits his
8 interest in a Hi-Point .45 caliber rifle bearing serial
9 number R08853, with seven rounds of .40-caliber ammunition and
10 a fire control item for the firearm, an HP laptop, Toshiba
11 laptop, Samsung laptop, a digital camera, an LG tablet,
12 tactical gloves and various knives and swords that were seized
13 from 151 Olcott -- that's the defendant's residence -- on the
14 day of his arrest.

15 THE COURT: Do you understand that, sir?

16 MR. SCHWARTZ: As Mr. Nagi understands it, he's
17 forfeiting his right in, particularly, item 5, the .45-caliber
18 rifle. That actually belongs to his brother. And I've
19 advised him that if somebody else has an interest in that,
20 they can make an application to get that back. He's not
21 forfeiting anyone else's right. He's forfeiting his right to
22 seek that and possess, in fact, any firearms after today.

23 THE COURT: Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay.

1 MR. LYNCH: That's correct, Judge. Thank you. This
2 is the total agreement between the parties. There are no
3 promises made by anyone, other than those contained in this
4 agreement. This agreement supercedes any other prior
5 agreements, written or oral, entered into by the government
6 and the defendant. It was signed today, with the authority of
7 the United States Attorney, by me and dated January 22nd.

8 THE COURT: Do you understand that, sir?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Okay.

11 MR. LYNCH: On the last page, Judge, I saw Mr. Nagi
12 and Mr. Schwartz execute this in court. It states that: I
13 have read this agreement, which consists of 12 pages. I've
14 had a full opportunity to discuss this agreement with my
15 attorney, Jeremy Schwartz. I agree that it represents the
16 total agreement reached between myself and the government. No
17 promises or representations have been made to me, other than
18 what is contained in this agreement. I understand all of the
19 consequences of my plea of guilty. I fully agree with the
20 contents of this agreement. I am signing this agreement
21 voluntarily and of my own free will.

22 THE COURT: Sir, we have gone over the agreement in
23 court. You indicated you understand it. You signed it,
24 indicating you understand it. Your attorney says he's gone
25 over it with you and he's satisfied you understand it. Any

1 questions, sir?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are these all the terms and conditions of
4 the plea agreement which we just read here in court?

5 THE DEFENDANT: Yes.

6 THE COURT: No one's made any other promises to you,
7 have they?

8 THE DEFENDANT: No, sir.

9 THE COURT: How old are you, sir?

10 THE DEFENDANT: Forty-seven.

11 THE COURT: And where were you born and raised?

12 THE DEFENDANT: Lackawanna, New York, United States.

13 THE COURT: Okay. And you speak English very
14 clearly. Do you speak any other language?

15 THE DEFENDANT: Arabic.

16 THE COURT: How did you learn how to speak Arabic?

17 THE DEFENDANT: My parents, school.

18 THE COURT: Okay. Where in the Middle East? What
19 country?

20 THE DEFENDANT: Yemen, southern Arabian peninsula.

21 THE COURT: Okay. Which city that would be near
22 there?

23 THE DEFENDANT: It would be the province of Ibb.

24 THE COURT: Which is?

25 THE DEFENDANT: It's called Ibb.

1 THE COURT: Is that in Lebanon?

2 THE DEFENDANT: No, no. Yemen.

3 THE COURT: Yemen. Oh, okay. All right. And what
4 is the extent of your education?

5 THE DEFENDANT: I didn't go past 12.

6 THE COURT: I'm sorry?

7 THE DEFENDANT: Twelfth.

8 THE COURT: Twelfth grade?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. And are you married?

11 THE DEFENDANT: Divorced.

12 THE COURT: Do you have any children?

13 THE DEFENDANT: Two.

14 THE COURT: And where do they live?

15 THE DEFENDANT: In Lackawanna.

16 THE COURT: Lackawanna. And how old are your
17 children?

18 THE DEFENDANT: They are 26 and 23.

19 THE COURT: Okay. And what kind of work have you
20 done over the years?

21 THE DEFENDANT: Mostly in self-employment, family
22 businesses, plumbing, you know.

23 THE COURT: Do you know how to do plumbing?

24 THE DEFENDANT: Excuse me?

25 THE COURT: Do you know how to do plumbing, fix pipes

1 and all that?

2 THE DEFENDANT: Yes.

3 THE COURT: How did you learn how to do that?

4 THE DEFENDANT: From a friend I worked with. I
5 picked up the trade.

6 THE COURT: Okay. And what kind of hobbies do you
7 have? What do you like to do in your free time?

8 THE DEFENDANT: Not too many hobbies.

9 THE COURT: Okay.

10 THE DEFENDANT: You know.

11 THE COURT: All right. Are you seeing a doctor for
12 any reason? I don't want to get into anything very personal,
13 just generally. Are you seeing a doctor?

14 THE DEFENDANT: I was just seeing him for lower back
15 pain.

16 THE COURT: Okay. How about a psychiatrist?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever been hospitalized or
19 treated for narcotic addiction?

20 THE DEFENDANT: No.

21 THE COURT: Are you today under the influence of any
22 drug, medicine or alcohol?

23 THE DEFENDANT: No, sir.

24 THE COURT: Mr. Schwartz, your client's obviously
25 very intelligent; appears to be alert, focused, attentive,

1 does not appear to be under the influence of any drug,
2 medicine or alcohol. Is that consistent with your
3 observations?

4 MR. SCHWARTZ: It is, Your Honor.

5 THE COURT: Now, sir, is anyone forcing you to plead
6 guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Any one threaten you in any way?

9 THE DEFENDANT: No, sir.

10 THE COURT: Your willingness to plead guilty, you
11 discussed the matter with your attorney, he discussed it with
12 the government's attorney. Based on these discussions, this
13 plea agreement was prepared and that's basically how this all
14 came about; is that true?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, do you understand the offense which
17 you are pleading guilty to, obviously, is a serious offense.
18 It's a felony offense. And if accepted by the Court, you'll
19 be found guilty. And there will be no appeal, as long as the
20 sentence is consistent with the terms and conditions of the
21 plea agreement. Do you understand all that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, do you understand that being found
24 guilty of this offense may deprive you of certain rights? You
25 may lose the right to vote, right to hold public office, right

1 to serve on a jury, right to possess a firearm, certain civil
2 service-type jobs. Do you understand that, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, do you understand all the possible
5 consequences? We talked about paragraph 1. We talked about
6 the guidelines. We talked about the forfeiture. We talked
7 about the possible fine, the cost, the mandatory special
8 assessment of \$100. Do you understand all that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, do you understand you have the right
11 to plead not guilty, which you've done, well, for at least two
12 or three years. And you have a right to persist in that plea
13 of not guilty and you have a right to a fair trial in this
14 courtroom, where a jury of 12 people will decide whether
15 you're guilty or not guilty.

16 First of all, I'd be the judge. And to the best of
17 my ability, I would conduct a trial fairly and impartially. I
18 have no interest in this case, other than to make sure that
19 you and the government get a fair trial. In selecting that
20 jury, we would have in this courtroom somewhere probably
21 around 75 to 100 persons; people who live in this area, people
22 from our jury pool. They live in this district. They'd be in
23 the courtroom. You'd be in the courtroom. Your lawyer would
24 be with you. They'd all be put under oath to answer all my
25 questions honestly and truthfully.

1 If there were anyone in that group that would not be
2 fair and impartial, that person would be removed. And you'd
3 have input on that through your lawyer. You'd say, hey,
4 Judge, that guy's already made up his mind. And if I agree
5 with you -- and there's no reason I wouldn't if it made
6 sense -- that person would be gone.

7 You know, sir, in life, you meet a lot of people that
8 have a lot of opinions about a lot of things. And some of
9 those people may feel we don't need a trial. He's been
10 charged, he must be guilty. Well, those people wouldn't have
11 a Chinaman's chance of being in here. They would be removed
12 because they would not give you a fair trial. They have
13 already made up their mind. Do you understand all that, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And also, you'd have a right to remove up
16 to 10 people for any reason you want, other than race or
17 gender. You can't say, I don't want any women on my jury or I
18 don't want a particular race of people. You can't
19 discriminate in that sense. Do you understand that, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: And as I know you're aware, we're
22 scheduled to pick a jury tomorrow and we're ready to go
23 forward with that trial on that day. You're aware of that?

24 THE DEFENDANT: Yes.

25 THE COURT: And you're giving that right up.

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that? And during the
3 trial, Mr. Schwartz would represent you. You'd have a right
4 to hear and see all the witnesses and have him cross-examine
5 the witnesses. And after the government has rested its case,
6 you could put on a defense. You could subpoena witnesses or
7 any records that have any relevance to your defense. You
8 could testify in your own defense.

9 But you don't have to do anything. You're presumed
10 not guilty. You don't have to prove a thing. You can just
11 sit there and say, you prove it, Mr. Lynch. I'm not -- I'm
12 going to rely on the presumption of innocence, because the law
13 does not require you to put on a defense. The law requires
14 the government to convince all 12 jurors that you're guilty
15 beyond a reasonable doubt before you can be found guilty. Do
16 you understand all that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And by entering a plea of guilty, if it's
19 accepted by the Court, there will be no trial. You'll have
20 waived your right to a trial, as well as all the other rights
21 we've talked about. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Any questions, sir?

24 THE DEFENDANT: No.

25 THE COURT: You understand all the possible

1 consequences?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You're doing this voluntarily, of your
4 own free will? No one is forcing you to do this?

5 THE DEFENDANT: No. No one's forcing me.

6 THE COURT: Any questions you want to ask me?

7 THE DEFENDANT: No, sir.

8 THE COURT: Any questions you want to ask
9 Mr. Schwartz?

10 THE DEFENDANT: No, sir.

11 THE COURT: Counsel, do you have any reason why I
12 should not accept the plea in this case?

13 MR. LYNCH: No, Your Honor.

14 MR. SCHWARTZ: No, sir.

15 THE COURT: Are you both satisfied I complied with
16 all the requirements of Rule 11?

17 MR. LYNCH: Yes, Your Honor.

18 MR. SCHWARTZ: Yes, sir.

19 THE COURT: Mr. Nagi, how do you plead to Count 1;
20 guilty or not guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: It's the finding of the Court that the
23 defendant is fully competent and capable of entering an
24 informed plea. His plea of guilty is a knowing and voluntary
25 plea, supported by an independent basis in fact, containing

1 each of the essential elements of the offense charged. His
2 plea is therefore accepted and he's now judged guilty of Count
3 1.

4 Sentencing will be scheduled for May 7th at 12:30. A
5 written presentence report will be prepared by the probation
6 office to assist the Court in imposing sentence. Sir, you'll
7 be afforded an opportunity to meet with the probation officer
8 to provide information in that report. Mr. Schwartz should be
9 present during that interview. You'll receive a copy of the
10 report, as well as your attorney.

11 You'll be able to file any additional information or
12 any motions or objections or any memoranda that are consistent
13 with the terms and conditions of the plea agreement and both
14 you and your lawyer will have an opportunity to address the
15 Court at the time of sentencing and say anything you wish to
16 say in mitigation of the sentence. The scheduling for filing
17 all papers will be as follows.

18 THE CLERK: The initial presentence report shall be
19 due March 23rd. Statements of the parties with respect to
20 sentencing factors, objections, if any and motions, if any,
21 shall be due April 16th. Responses to objections or motions
22 shall be due April 23rd. Sentencing memorandum or character
23 letters in support of the defendant shall be due April 23rd.
24 Motion to adjourn sentencing shall be due April 27th. The
25 final presentence report shall be due April 30th and

1 government's response to legal arguments in defendant's
2 sentencing memorandum shall be due April 30th.

3 THE COURT: All right. Anything further?

4 MR. LYNCH: No, Judge.

5 MR. SCHWARTZ: No, Your Honor.

6 THE COURT: All right. Thank you, gentlemen.

7 MR. LYNCH: Thank you, Judge.

8 THE COURT: Court will be in recess.

9 THE CLERK: All rise.

10 (Proceedings ended at 12:31 p.m.)

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I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR
Court Reporter,