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 UNITED STATES OF AMERICA

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

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

No. SA CR 14-109-JVS

GOVERNMENT'S REPLY TO DEFENDANT'S
OBJECTIONS TO PRESENTENCE
INVESTIGATION REPORT

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

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 22
 23 Plaintiff United States of America, by and through its counsel
 24 of record, the Office of the United States Attorney for the Central
 25 District of California, hereby files the Government's Reply to the
 26 Defendant's Objections to Pre-Sentence Investigation Report.

27 Defendant makes several variations of objections to the Pre-
 28 Sentence Investigation Report's ("PSR") discussion of the

1 designation of the Islamic State of Iraq and the Levant ("ISIL") as
2 a Foreign Terrorist Organization ("FTO"). Each of these objections
3 is without merit; the facts were admitted to by defendant in the
4 plea agreement and at the change of plea hearing as discussed in
5 detail below.

6 **A. Response to Defendant's Objection, Paragraph 2**

7 Defendant makes a "continuing objection to the date of
8 designation of 'ISIL' as a Foreign Terrorist Organization." (CR 125
9 at 2.) This is in opposition to defendant's plea agreement.

10 Defendant admitted he was guilty of the offenses to which he pled
11 guilty and to the facts supporting the guilty plea. (CR 71 at 22.)
12 The plea agreement's factual basis stated, in part, that on October
13 15, 2004, the U.S. Secretary of State designated al-Qa'ida in Iraq
14 ("AQI") as an FTO, and on May 15, 2014, the Secretary of State
15 amended the designation of AQI as an FTO to add the alias Islamic
16 State of Iraq and the Levant as its primary name, and various
17 aliases including the Islamic State of Iraq and al-Sham ("ISIS").
18 (Id. at 21-22.) Further, the factual basis stated, "Thus,
19 continuously since October 15, 2004, ISIL has been a designated
20 foreign terrorist organization." (Id. at 8.)

21 During the change of plea hearing, these facts were read aloud
22 to defendant (id. at 23) and defendant, under oath (id. at 5), told
23 this Court that he understood everything that was stated in the
24 factual basis and that it was true and correct (id. at 27). He also
25 admitted that he understood that the U.S. government had designated
26 ISIL as an FTO. (Id. at 30.)

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1 **B. Response to Defendant's Objection, Paragraph 3**

2 Next, defendant claims that he could not know that ISIL was a
3 designated FTO beginning in November 2013 because he argues it was
4 not designated as an FTO at that time. (CR 125 at 2.)

5 First, defendant takes the PSR statement to which he is
6 objecting out of context. The PSR begins in paragraph eleven,
7 reciting the exact language in the plea agreement, as described
8 above regarding the designation of AQI as an FTO and the later
9 amendments including the various AQI aliases, such as ISIL and ISIS.
10 (PSR at ¶ 11.) The PSR notes, "Hereinafter, the name 'ISIL' will be
11 used to reference the organization and its various names." (PSR at
12 n.4.) The paragraph concludes, the same as the plea agreement,
13 "[t]hus continuously since October 15, 2004, ISIL has been
14 designated as a FTO." (Id.) The reference to November 13 is in the
15 next paragraph:

16 Beginning in approximately November 2013 and continuing
17 through July 2, 2014, Dandach attempted to travel from the
18 United States to Syria for the purpose of providing
19 material support and resources, including services and
20 personnel, namely himself, to ISIL, knowing he would be
working, and intending to work, under ISIL's direction and
control. Dandach knew that ISIL was a designated FTO . . .

21 . . .
22 PSR at ¶ 13.) The date, November 2013, is referencing when the
23 defendant began to attempt to travel to Syria, not when
24 defendant knew ISIL was a designated FTO.

25 Second, the name ISIL is used in the PSR, the same as it
26 was used in the plea agreement (CR 71 at n.1), to reference AQI
27 and all of its aliases. As stated in the plea agreement, the
28 FTO AQI was designated in October 2004, thus, throughout the

1 time referenced in the PSR, the organization known as AQI, and
2 later ISIL, was a designated FTO. Again, defendant admitted to
3 these facts in the signed plea agreement and acknowledged the
4 same under oath.

5 Next, Defendant disputes the language used to describe
6 ISIL, such as "mass destruction." (CR 125 at 2-3.) The plea
7 agreement stated, "[a]t all relevant times, defendant knew that
8 ISIL's goal was to intimidate and coerce a civilian population
9 . . . by mass destruction (CR 71 at 8.) Defendant has
10 previously admitted to these facts in the plea agreement.

11 **C. Response to Defendant's Objection, Paragraph 4**

12 Defendant next objects to the statement, "[i]n December
13 2013, Dandach first attempted to travel to Syria for the above-
14 described purposes." (CR 125 at 3.) Defendant objects because
15 he claims, again, that in "December 2013, ISIL and/or ISIS were
16 not a designated FTO," so he could not have traveled to Syria
17 for the purpose of aiding an FTO. (Id.) This is the same
18 argument and counterargument as described above. As agreed to
19 in the plea agreement and discussed above, AQI, also under the
20 alias' ISIL and ISIS, has been a designated FTO since October
21 2004.

22 **D. Response to Defendant's Objection, Paragraph 5**

23 Defendant objects to the PSR's description of the
24 defendant's obstruction of justice conduct charged in the First
25 Superseding Indictment. (CR 125 at 4.) Defendant argues that
26 there is no evidence in the record that a family member deleted
27 his posts. (Id.)

1 The plea agreement specifically provided, and defendant
2 agreed, that at the time of sentencing, the Court may "consider
3 any dismissed charges in determining . . . the sentence to be
4 imposed." (CR 71 at 3.)

5 Defendant was charged with attempting to destroy and
6 conceal a record with the intent to impair its integrity and
7 availability for use in an official proceeding, in violation of
8 18 U.S.C. § 1512(c)(1). (CR 28 at 5.) The basis for the
9 charge was that defendant, while detained pending these
10 charges, called from the jail to a family member and directed
11 her to delete posts he made on an internet website. (See
12 Attachment 1.) Defendant told his family member he needed her
13 to do this in case the FBI tried to use the information against
14 him. (See Attachment 1 at ¶ 3.) These tape recordings of
15 defendant's phone calls were provided to defendant in
16 discovery.

17 The PSR did not add an adjustment for obstruction to the
18 Guidelines calculation. (PSR at ¶ 31.) However, defendant's
19 conduct should be considered by the Court in determining an
20 applicable sentence to be imposed. Defendant attempted to
21 destroy and conceal his internet records so that FBI would not
22 have the records to use against him in legal proceedings.

23 **E. Response to Defendant's Objection, Paragraph 6**

24 Defendant appears to object to some portion of paragraph
25 29 which adds a 12-level adjustment for committing a crime that
26 involved a federal crime of terrorism. (CR 125 at 4.)

27 In the plea agreement, defendant agreed the 12-level
28 adjustment was appropriate, "Defendant and the USAO agree that

1 the following is the applicable Sentencing Guidelines
2 calculation: . . . Terrorism Adjustment: +12 (U.S.S.G. §
3 3A1.4(a)). . . ." (CR 71 at 11-12.)

4 Perhaps, defendant is arguing against the specific
5 language used to describe ISIL's terrorist acts in paragraph
6 29. Defendant claims that prior to his arrest, ISIL was not
7 engaged in "wanton killing of civilian prisoners . . ." and
8 other terrorist acts.

9 However, defendant admitted in his plea agreement that he
10 knew that ISIL was a designated terrorist organization, as
11 described previously. Additionally, as described through the
12 testimony of FBI Special Agent Wales and the expert report,
13 defendant possessed hundreds of pages of materials supporting
14 that he knew ISIL was a terrorist organization.

15 SA Wales testified that he found in defendant's property
16 materials supporting martyrdom, Jihad, and training manuals
17 promoting violence with terrorist groups." (RT 4/21/2016 at
18 31.) Further, SA Wales testified that when the FBI interviewed
19 defendant the day before his arrest, defendant admitted that he
20 believed that "the tactic of decapitating and beheading
21 prisoners of war" was justified. (Id. at 38.) Defendant even
22 had on his personal cellular telephone a tweet by an ISIL
23 facilitator that pictured four decapitated heads. (Id.)
24 Defendant's objections to the description of ISIL in paragraph
25 29 are without merit.

26 **F. Response to Defendant's Objection, Paragraph 7**

27 Defendant objects to the PSR description of the offense of
28 making a false statement in a passport. (CR 125 at 5.) The

1 language used to describe the offense is almost identical to
2 the language in the plea agreement which defendant signed and
3 admitted under oath to be true and correct. (CR 71 at 9; CR 77
4 at 25.) Additionally, at the time of the change of plea, the
5 defendant specifically described his offense conduct to the
6 Court. (CR 77 at 29-30.) He told the Court that he made a
7 "silly excuse on a passport application about how I lost my
8 original passport when I went to apply for a new one." (Id. at
9 29.) He admitted that he knew it was false when he made it, he
10 voluntarily made the statement, and he understood that passport
11 authorities would rely upon it. (Id. at 29-30.) The PSR's
12 description is mirrored in the plea agreement and court record.

13 **G. Response to Defendant's Objection, Paragraph 8**

14 Defendant objects to the PSR's characterization of his
15 writings, specifically the writing entitled, "To Whom It May
16 Concern." (Attachment 2.) The PSR's description is an
17 reasonable interpretation of the writing. The defendant's
18 claim that he is not seeking personal revenge is belied by at
19 least one line in the referenced writing, "Oh, Allah avenge
20 me!" The claim that revenge by God is "universally held by
21 people of all faiths" clearly ignores the context of the
22 writing and the defendant's support of a terrorist organization
23 and its brutal acts.

24 **H. Response to Defendant's Objection, Paragraph 9**

25 Defendant's objection to the PSR's statement that
26 defendant was obese until he was 19 is unclear. (CR 125 at 5.)
27 The facts as described in the PSR are supported by the many
28

1 medical records reviewed by the mental health expert and
2 reported similarly. (See Dr. Faerstein report pp. 5-6.)

3 **I. Response to Defendant's Objection, Paragraph 10**

4 Defendant objects to the PSR statement that defendant
5 reported to a staff member at school that he and his brother
6 often go to a shooting range. (CR 125 at 6.) This is a
7 statement that was made in a medical record and it is reported
8 as such. Apparently defendant is now claiming that statement
9 was untrue.

10 **J. Response to Defendant's Objection, Paragraph 11**

11 This is not an objection but merely a claim by defendant
12 as to his reason for his violent writings and a claim that he
13 does not believe in the killing of innocent lives. (CR 125 at
14 6.) Again, this is belied by the hundreds of photos and
15 documents in his possession at the time of his arrest that
16 supported violence as described throughout the terrorism expert
17 report, the psychiatrist report, and the testimony of SA Wales,
18 as discussed previously.

19 **K. Response to Defendant's Objection, Paragraph 12**

20 Defendant claims that the violent statements in is
21 writings should not be attributed to his personal views. (CR
22 125 at 6.) The writings speak for themselves and they are
23 violent and specifically support violence. (See CR 127,
24 Attachment 2, 3, Government's Objections to PSR.)

25 **L. Defendant's Request for a Hearing Is Not Appropriate**

26 Defendant requests a hearing requiring the government to
27 prove the conclusions contained in the PSR. It is not
28 appropriate in this case.

1 When a defendant objects to facts in the PSR, the district
2 court must resolve the factual dispute. Fed. R. Crim. P.
3 32(i)(3)(B). The government "bears the burden of proof for any
4 fact that the sentencing court would find necessary to
5 determine the base offense level." United States v. Ameline,
6 409 F.3d 1073, 1085 (9th Cir. 2005). However, the Court "may
7 accept any undisputed portion of the [PSR] as a finding of
8 fact;" and "must—for any disputed portion of the [PSR] or other
9 controverted matter—rule on the dispute or determine that a
10 ruling is unnecessary either because the matter will not affect
11 sentencing, or because the court will not consider the matter
12 in sentencing." R. 32(i)(3)(A),(B).

13 In this case, defendant has not disputed all of the PSR
14 facts, thus, the Court may rely on the undisputed portions.
15 Next, those objections raised by defendant do not affect
16 sentencing. The base offense level and adjustments were agreed
17 to by the parties through a plea agreement and are not in
18 dispute. Thus, the government does not have the burden to
19 prove additional facts to support the base offense level or the
20 adjustments, since they have already been agreed and are not in
21 dispute.

22 Additionally, the government has already provided abundant
23 evidence to support the facts reflected in the PSR and the
24 agreed upon offense level. Defendant admitted under oath to
25 all of the facts in the plea agreement. The government
26 provided a thorough terrorism expert report describing the acts
27 of defendant and a psychiatrist's expert report describing
28 defendant's mental health and dangerousness. The Court also

1 held a two-day evidentiary hearing after the PSR was provided
2 to the parties. At the hearing, the Court heard testimony of
3 the case agent and psychiatrist regarding the defendant's
4 dangerousness and facts surrounding the offenses all of which
5 support the offense levels. Defendant had an opportunity to
6 present his own evidence to support any departures and to
7 contest the government's evidence at the two-day evidentiary
8 hearing. He did so through lengthy cross-examinations of the
9 government's witnesses and he presented his own witnesses to
10 support his position.

11 For all of these reasons, an additional evidentiary
12 sentencing hearing is not appropriate in this matter.

13 Dated: July 15, 2016

Respectfully submitted,

14 EILEEN M. DECKER
United States Attorney

15 /s/

16 _____
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18 Attorneys for Plaintiff
19 UNITED STATES OF AMERICA
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