

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

- against -

HAMZA AHMED,

Defendant.

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

FILED UNDER SEAL

15-CR-49 (MJD/FLN)

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

1. The government's response does not dispute any assertion in my motion. Rather,
the government's position is that Mr. Ahmed rejected an opportunity to present these issues at a
hearing on the conflicts of co-defendants' counsel, in which such counsel had already conceded
their conflict and were voluntarily withdrawing. Notably, it was not until after that hearing that
the undersigned uncovered additional information relevant to the interference in plea bargaining,
as well as engaged in extensive negotiations with the government to secure a re-offer of Mr.
Ahmed's original proposed plea agreement.

2. While the government takes the position that counsel for Mr. Ahmed should have
raised these plea-bargaining issues with the Court prior to any resolution, the undersigned begs
to differ. First, on April 1, 2016, the undersigned was unaware of several of the issues set forth
in my sealed declaration yesterday, including the circumstances surrounding Ms. Fathia's
direction to Mr. Ahmed to reject the initial plea offer, as well as the information reported in the
Star Tribune that Hassan Jami was providing financial support to the families of the defendants.
The undersigned did not believe it appropriate to bring speculation and conjecture to the Court's

attention. In any event, these issues were properly raised – as they were – with the government in confidence, where they could be investigated and adjudicated in the plea-bargaining context, and presented to the Court when they reached their conclusion.¹ At Mr. Ahmed’s plea hearing, the government informed the Court that the reason for the re-extension of a modified version of the original plea offer related to improper interference in the plea bargaining process. Ahmed Plea Transcript at 55.

3. The issue to be addressed here is (a) the Court’s authority to revisit its sentence of Mr. Ahmed, and (b) whether such re-visitation is necessary. On both questions, I submit that the answer is yes. Under 18 U.S.C. § 3582(c), there are three methods by which a district court can modify a previously imposed sentence, one of which is applicable here: “[T]he court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.” 18 U.S.C. § 3582(c)(1)(B). Rule 35, in turn, allows a court to change a sentence for two reasons: (1) “Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error”; and (2) “[u]pon the government’s motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.” Fed.R.Crim.P. 35.

¹ I note that my investigations in this matter included extensive meetings with my client and his family; extensive discussions with several prosecutors at the U.S. Attorney’s office (including a meeting in person with the U.S. Attorney), during which I communicated the results of my investigation and also offered to bring all parties (including Mr. Ahmed) into the U.S. Attorney’s office for proffers.

4. In *United States v. Jett*, 782 F.3d 1050 (8th Cir. 2015), noting that Rule 35 grants “very narrow” authority to a district court to make corrections, the Eighth Circuit clarified the parameters of Rule 35:

“[O]ur circuit has drawn the line under Rule 35(a) at sentences that are incorrect or unreasonable as a matter of law, such that they would ‘almost certainly be remanded to the district court for further action’ in the event of an appeal.” *United States v. Cannon*, 719 F.3d 889, 891 (8th Cir.2013) (quoting *Sadler*, 234 F.3d at 374). This occurs when, for example, the district court misapplies the sentencing guidelines or fails to consider the relevant statutory factors. *See id.*; *United States v. Ellis*, 417 F.3d 931, 933 (8th Cir.2005) (applying the guidelines as mandatory is the type of clear error to which Rule 35 applies); *Sadler*, 234 F.3d at 373–74 (district court did not have the authority to reopen a sentence to perform a required alternate calculation because the sentence it imposed was “one of two acceptable sentences within its discretion, neither of which would be reversed on appeal. [This] attempt to resentence [defendant] under Rule 35[a] illustrates an impermissible ‘change of heart as to the appropriateness of the sentence’ rather than a correction in the application of the guidelines” (quoting *United States v. Abreu–Cabrer*a, 64 F.3d 67, 72 (2d Cir.1995))).

5. We are still within the 14-day period set forth in Rule 35. *See United States v. Fortino*, 281 Fed.Appx. 629 (8th Cir. 2008) (affirming court’s doubling of original sentence where it was determined that the defendant had submitted false letters of support at sentencing, and the resentencing occurred within the requisite time period set forth in Rule 35(a)); *Cf. United States v. Thompson*, 417 Fed.Appx. 429 (5th Cir. 2011) (overturning court’s order of concurrent sentencing instead of consecutive sentencing because the order was issued more than 14 days after the original sentence and the order did not result from the client’s substantial assistance).

6. I submit that an order making Mr. Ahmed’s sentences on both counts of conviction concurrent is appropriate to avoid the error of unwarranted disparities between similarly-situated defendants. The avoidance of sentencing disparities is at the heart of our

federal sentencing scheme. It drove the Sentencing Reform Act. *See* 28 U.S.C. § 991(b)(1). It is the *raison d'être* of the Sentencing Commission. *See* Sentencing Commission Annual Report to Congress, 2015 at A-6 (noting that the Sentencing Guidelines are “core” to its mission, *inter alia*, “providing certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct”). It is enshrined in the factors this Court is obligated to consider at sentencing, including in the context of considering concurrent versus consecutive sentencing. *See* 18 U.S.C. § 3553(a)(6); 18 U.S.C. § 3584(b).

7. But where the Court sentences multiple defendants in one case, the potential for sentencing disparity is ever present – since a court sentences *seriatim*, and an individualized analysis in one case may change the considerations for other defendants, including those already sentenced.²

8. Here, as set forth in my earlier declaration, Mr. Ahmed was before the Court with two counts of conviction rather than one. However, the circumstances under which he came to face the Court with an additional count of conviction reflect the unusual plea bargaining process in this case, in which powerful individuals in the Somali community attempted to interfere with the defendants’ attorney-client relationships. Critically, the extra count of conviction does not reflect Mr. Ahmed’s additional *culpability* vis a vis his codefendants, something the government effectively conceded by seeking the same 15-year sentence as to all non-cooperating defendants who pled.

² I note, for example, that the government lowered its sentence recommendation for Abdirizak Warsame after the Court sentenced Abdulahi Yusuf to time-served on November 14, 2016, in order to achieve “parity” between the two cooperating defendants.

9. I urge the Court to issue an order rendering Mr. Ahmed's two sentences concurrent, such that his sentence is equal to his three non-cooperating co-defendants – all of whom conspired to travel to Syria again illegally, in defiance of FBI target letters and their families, *after* two of them and Adnan Farah's brother had been intercepted at JFK in early November 2014 and Abdulahi Yusuf's arrest later that month.

10. I submit this declaration under seal because it addresses attorney-client communications, attorney-client work product, defense strategy, and confidential communications with my client's family that could prove damaging to them in their community.

Date: November 29, 2016

Respectfully Submitted.

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