

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14 CR 564
)	Judge John J. Tharp, Jr.
MOHAMMED HAMZAH KHAN,)	
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

Defendant, **MOHAMMED HAMZAH KHAN**, by and through his attorneys, **THOMAS ANTHONY DURKIN** and **ROBIN V. WATERS**, pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, the opinions of the United States Supreme Court in *United States v. Booker*, 543 U.S. 220 (2005), *Rita v. United States*, 551 U.S. 338 (2007), *Gall v. United States*, 552 U.S. 38 (2007), *Kimbrough v. United States*, 552 U.S. 85 (2007), and *Nelson v. United States*, 555 U.S. 350 (2009), as well as 18 U.S.C. § 3553(a), respectfully submits Defendant’s Sentencing Memorandum in support of counsel’s request for a sentence that would permit Mr. Khan to enroll in college for the Fall semester of 2017.¹

Needless to say, this is a difficult case, and difficult criminal cases are just that, difficult. And, as in every case, sentencing is always the most difficult issue. This is no different, though this case is, perhaps, made all the more difficult because of its uniqueness—especially the

¹ That sentence, assuming counsel’s calculations for Bureau of Prisons (“BOP”) good time credits are correct, is a sentence of 40 months, which would permit him to begin developing his sorely needed critical thinking skills. According to estimated calculations from the BOP, based upon Defendant’s time in custody since his arrest on October 4, 2014, a sentence of 40 months would likely result in a release date of August 29, 2017. The College of DuPage where Defendant is most likely to seek enrollment begins classes on August 21, 2017. In that Defendant is likely to receive approximately three (3) months in a halfway house, it seems possible he could begin classes in a timely fashion. A sentence of 39 months would likely result in a release date of August 4, 2017, and would obviate the need for permission from the halfway house to attend the first classes.

emotionally charged atmospherics presented by the barbarousness of ISIS and the global terror threat it now presents. Whether, and to what extent, this threat was of such magnitude in the Fall of 2014 is but another question that need not necessarily be belabored for our present purposes.² However, this is not a mere fanciful question. According to a Brookings' Project Analysis Paper written by Princeton Ph.D. candidate in Near Eastern Studies, Cole Bunzel, prior to the U.S. bombing campaign in September of 2014, ISIS "had long prioritized the Middle East over the West—focusing on seizing and holding territory in its home theater then bringing down neighboring governments."³ Apparently however, the U.S. air campaign altered the group's strategic calculus. As Bunzel points out, and as is also referenced in the government chart in its Sentencing Memorandum, it was not until September 21, 2014, that "Islamic State official spokesman Abu Muhammad al-'Alnani called on all supporters to kill Westerners arbitrarily throughout the world—Americans, Canadians, Australians, and their allies, both civilians and military personnel." *Id.* While this of course occurs shortly before Mr. Khan and his siblings Minors 1 and 2 attempted to take off for Syria, it lends credence to the concept that the Caliphate,

² However, see footnote 8, *infra*, regarding the antithetical tension created by bringing foreign policy issues into the area of domestic law enforcement. Whether ISIL is an "existential" threat to the U.S. was, and continues to be, a subject of considerable debate among international relations scholars and government experts. See, e.g., Patrick J. Buchanan, *ISIS Poses No Existential Threat to America*, THE AMERICAN CONSERVATIVE, June 17, 2014, <http://www.theamericanconservative.com/2014/06/17/isis-poses-no-existential-threat-to-america/>; Mazzetti, Schmitt and Landler, *Struggling to Gauge ISIS Threat, Even as U.S. Prepares to Act*, NEW YORK TIMES, September 10, 2014, <http://www.nytimes.com/2014/09/11/world/middleeast/struggling-to-gauge-isis-threat-even-as-us-prepares-to-act.html>, ("Daniel Benjamin, who served as the State Department's top counterterrorism advisor...said the public discussion about the ISIS threat has been a 'farce,' with 'members of the cabinet and top military officers all over the place describing the threat in lurid terms that are not justified."); Ramzy Mardini, *The Islamic State threat is overstated*, WASHINGTON POST, September 12, 2014, https://www.washingtonpost.com/opinions/the-islamic-state-threat-is-overstated/2014/09/12/acbbebb2-33ad-11e4-8f02-03c644b2d7d0_story.html, ("...the Islamic State's fundamentals are weak, and it does not have a sustainable endgame. In short, we're giving it too much credit."). Needless to say, however, no one is minimizing the terrible threat ISIS now poses globally regardless of whether they are an existential threat or not, even today. And, no one is more grateful than Hamzah's parents for the FBI's intervention than they for saving the lives of their children.

³ See Cole Bunzel, *From Paper State to Caliphate: The Ideology of the Islamic State*, The Brookings Project On U.S. Relations with the Islamic World, Analysis Paper No. 19, March 2015. Bunzel's paper also provides a lucid history of the development of the Islamic State and provides significant insight to the complexities of the fight in which we are now deeply entangled.

as opposed to violent jihad, was the driving force behind the trip. Again, this is not to excuse, but only to explain.

Nonetheless, and regardless of Middle Eastern Islamic politics, a foolish and extremely dangerous plot instigated by radical foreign terrorist online recruiters, hatched by cloistered or “cocooned” young American Muslim children⁴ sorely lacking in emotional maturity, sophistication, and critical thinking skills, presents itself in a federal criminal court. Not being able to discern ISIS’ asinine utopian recruitment promises of a life far more exciting and purposeful than anything in Bolingbrook, Illinois, Hamzah Khan now finds himself a convicted felon having already spent over two years in jail, and facing the possibility of more incarceration and stringent, invasive Supervised Release conditions that will follow him into his middle age. Thus, the difficulty presented by this sentencing is the quandary of trying to fashion a sentence under § 3553(a) that is “sufficient but not greater than necessary” to comply with the multiple goals of federal sentencing set forth in § 3553(a)(2).

Fortunately, and much to their credit, the prosecutors realize the complexity of this extraordinarily unique case, and have agreed to recommend a relatively reasonable sentence of sixty (60) months, at least insofar as most “terrorism” cases are concerned.⁵ Equally to the point of the government’s reasonableness, the plea agreement also permits Defendant to seek an even lower sentence, which counsel do by asking instead for the forty (40) month sentence that would

⁴ See, Janet Reitman, *The Children of ISIS*, ROLLING STONE, March 25, 2015 (“The problem with this [parenting] approach, notes Ahmed Rehab, executive director of the Chicago branch of the Council on American Islamic Relations, is by ‘cocooning’ one’s children in Islamic schools, parents run the risk of setting them up for profound isolation. When they emerge, he asks, ‘will the kids be prepared for what they see?’”).

⁵ Without the terrorism enhancement, however, Mr. Khan’s total offense level would be a level 25, which when combined with a criminal history category I, would result in an advisory guidelines range of 57 – 71 months’ imprisonment. As is clear from the plea agreement, each party obviously agrees that the terrorism enhancement, U.S.S.G. § 3A1.4, considerably overstates both the seriousness of the offense and Mr. Khan’s criminal history. Nor is this to say in any fashion that a sixty (60) month or forty (40) month sentence for a nineteen year-old first offender is a light sentence.

permit Mr. Khan to enroll in college for the Fall semester of 2017. Counsel submit such a sentence is one that makes the most sense when everything is taken into account. In fact, it is submitted, that such a sentence is virtually imperative in order for Mr. Khan to comply with the stringent conditions of the lengthy period of Supervised Release with which he has already agreed to comply in the plea agreement.

The plea agreement—again thanks to the reasonableness of the prosecutors—while providing unusually strict and invasive monitoring of Defendant, also provides the much needed assistance Defendant needs and, unfortunately, has not been provided during his pretrial detention. For example, upon his release and at Probation’s direction, Defendant shall participate in a mental health treatment program, which may include the use of prescription medication. (PSR, p. 17, ¶ 9) Defendant will also be obligated to participate in an approved job skills training program unless he is registered as a full-time student pursuant a degree. (Dkt. #95, Ex. A, p. 3) Likewise, Mr. Khan must attend violent extremism counseling from providers directed by Probation. (Dkt. #95, Ex. A, p. 4)

This is exactly the kind of assistance defense counsel had sought for Mr. Khan in its pleading captioned “Defendant’s Motion to Modify the Conditions or Pretrial Detention to Permit Release on Conditions so as to Permit Counseling,” filed on April 17, 2015. (Dkt. #58) A copy of said motion without its voluminous attachments is attached hereto as Ex. A, and incorporated by reference. While the motion was not litigated due to Defendant’s agreement to cooperate,⁶ several of its points remain salient in relation to sentencing and it is worthy of a second read.

First and foremost, it cannot be overstated that Mr. Khan has not received any counseling in the form of mental health treatment or countering violent extremism (“CVE”) treatment since

⁶ See Dkt. #71 (Order granting government’s agreed motion to stay briefing schedule).

the date of his arrest in the Fall of 2014. Nor is it likely any such counseling will be available in the Bureau of Prisons.⁷

Second, whether Mr. Khan gets out of custody today, at the end of a forty (40) month sentence, or at the end of the sixty (60) month sentence recommended by the government, Mr. Khan will still require “intense education training and therapy” to protect him from recruitment or radicalization, as recommended by Stephen N. Xenakis, M.D., the board certified psychiatrist from Arlington, Virginia, who conducted a clinical evaluation and psychiatric interview of Defendant at the Jerome Combs Detention Center in Kankakee on March 18-19, 2015. Counsel set forth a summary of Dr. Xenakis’ findings in the Defendant’s bond motion. (*See* Dkt. #58, pp. 5-6) At the Court’s direction (Dkt. #65) a written disclosure of his expert opinion was provided to the government on April 27, 2015. A copy of Dr. Xenakis’ written opinion and findings is attached hereto as Ex. B and incorporated herein.

Like the bail motion, Dr. Xenakis’ report is equally deserving of a second read as it, too, is as poignant today as it was then. In fact, many of Dr. Xenakis’ findings as to Mr. Khan’s lack of present dangerousness ring similar to those set forth in the prosecutor’s sentencing memorandum. Dr. Xenakis’ findings as to the underlying psychological motivations that lead Mr. Khan into this mess, also echo the conclusions of both Probation and the prosecutors. That is, as Dr. Xenakis stated:

⁷ A lengthy period of imprisonment at an institution more severe than the MCC or Jerome Combs Detention Center in Kankakee, even for the sixty (60) months the government recommends could very well have the reverse effect with respect to recidivism. That is, a long period of imprisonment may increase instead of decrease the likelihood of recidivism. This is all the more true based on the fact that, in undersigned counsel’s experience, many defendants serving time for terrorism-related offenses end up together in Communications Management Units “CMU” facilities where the risk for radicalization and exposure to more serious offenders only increases. *See, Statement of Chairman Peter T. King (R-NY) Committee on Homeland Security, “Threat of Muslim-American Radicalization in U.S. Prisons,”* June 15, 2011 (“The Obama Administration recognizes prison radicalization is a serious threat and that prisons are fertile ground for recruitment.”); Noemie Bisserbe, *European Prisons Fueling Spread of Islamic Radicalism*, THE WALL STREET JOURNAL, July 31, 2016.

Hamzah decided to resolve the tension and contradictions of his social situation and developmental challenges by subscribing to an unrealistic and simplistic vision of a utopian caliphate. He lacked the social network and relationships with supportive adults to work through the contradictions and questions he faced. His actions have long been recognized as not uncommon, but often ineffective, resolutions by adolescents who leave home and, in some cases, join cults.

(Xenakis Report, p. 5)

Finally, and directly to the point of counsel's recommendation that the Court fashion a sentence so as to permit Mr. Khan to return to college in the Fall of 2017, is the repeated reference in Dr. Xenakis' report to Defendant's lack of critical thinking skills. While Dr. Xenakis—like the prosecutors and Probation—recommends mental health treatment and violent extremism counseling, nothing can better provide one with critical thinking skills than a college education, especially as compared to the alternative of a prison cell. And, like it or not, if Mr. Khan does not obtain critical thinking skills, he will be back before this Court. Those who have had contact with Mr. Khan, including his parents, undersigned counsel, and Dr. Xenakis, agree there is reason to believe that Mr. Khan—having been provided with nothing but time to think—is very receptive to making the changes not only to his critical thinking skills, but also to his entire young life.

Nor should any of these comments ignore consideration of the deterrent effect of a sentence as the Court is required to consider under § 3553(a)(2). Attempting to provide material support by providing personnel in the form of one's own body to a designated foreign terrorist organization, which has now become the scourge of the earth to Western civilization, is certainly serious; and a very serious problem for U.S. national security purposes. It has also now become a problem for domestic law enforcement. But the nature of this problem, and how to resolve it, depends upon whether one views the issue from a national security standpoint or from a domestic

law enforcement standpoint.⁸ It is an alarming, yet not unprecedented historical phenomena that an American citizen would choose to leave his country to join a foreign civil war.⁹ Nor is terrorism limited only to post 9/11 America, and fundamentalist Islamic groups.¹⁰

However, the circumstances of Defendant's admitted conduct and how he came to commit this offense provides needed social and political context that—while not excusing the conduct—both mitigates and explains this behavior. In particular, the recruitment of Mr. Khan and his minor siblings by savvy ISIL recruiters using persuasive propaganda on social media to capitalize on their susceptibility to this messaging, played a very significant role in the commission of this offense. Moreover, as set forth in detail below and as acknowledged in the government's sentencing memorandum,¹¹ the sympathy of the Khans for the Syrian children massacred by Assad's regime, their religious motivations to make *hijrah* to ISIL's self-proclaimed caliphate,¹² their perceived opportunity to participate in the creation of the so-called utopian Islamic society,

⁸ Counsel would submit that the foreign policy issue regarding the serious danger of ISIS on a global scale and the domestic policy issues concerning ISIS recruitment or brainwashing of susceptible American youth are antithetical to one another. But, counsel would daresay that this is a byproduct of the attempt to shoehorn foreign policy matters into domestic criminal prosecutions. *See, e.g.*, Thomas Anthony Durkin, *Permanent States of Exception: A Two-Tired System of Criminal Justice Courtesy of the Double Government Wars on Crime, Drugs & Terror*, Val. U. L. Rev., Vol. 50, No. 2 (2016). Without elaborating a far more complicated topic, or attempting to minimize Defendant's conduct, this too, is the consequence of the political decision after 9/11 to treat terrorism on the "war" model versus the "criminal" model. *See, e.g.*, James B. Steinberg and Miriam R. Estrin, *Harmonizing Policy and Principle: A Hybrid Model for Counterterrorism*, 7 J. Nat'l Security L. & Pol'y 161.

⁹ *See*, Joshua E. Keating, *Is It Legal for Americans to Fight in Another Country's Army?* FOREIGN POLICY, September 2, 2011 ("The U.S. government certainly doesn't encourage citizens to go off and fight in foreign wars, but there's a long history of it—from the Abraham Lincoln Brigade that fought against Francisco Franco during the Spanish Civil War to the many Jewish Americans who have served in the Israel Defense Forces."). The famous French Foreign Legion also comes to mind.

¹⁰ Daniel Deudney, *Omniviolence, Arms Control, and Limited Government*, THE LIMITS OF CONSTITUTIONAL DEMOCRACY, Princeton University Press (2010) ("The recent focus on violent fundamentalist Islamic groups operating in many parts of the world has been appropriate but should not obscure the fact that the world is filled with other groups with revolutionary, if not apocalyptic, goals.... Terrorism in something like its current form has been around for at least a century.") ch. 15, p. 311.

¹¹ *See*, Govt. Sent. Memo, Dkt. #95, p. 2 ("[Khan] explained how [recruiters] influenced his transition from a student empathetic to the plight of the victims of the Assad regime to supporting [ISIL]"); *see also*, p. 8 ("[T]he genesis of Khan's interest in the conflict of Syria appears to have initially focused on the plight of the Syrian people under attack by the Assad regime.").

¹² *Hijra* refers to the Islamic teaching of mandatory emigration to the caliphate. *Encyclopedia Britannica* <https://www.britannica.com/event/Hijrah-Islam>.

and their search for belonging and identity each played a crucial role. *See, Case by Case: ISIS Prosecutions in the United States*, Center On National Security at Fordham Law, March 1, 2014 – June 30, 2016, <http://news.fordham.edu/law/center-on-national-security-releases-report-on-isis-prosecutions/> (“Overall, there is a sense of identity crises and alienation from society across the wide range of [ISIS] cases.”).¹³

As set forth in the PSR, in February of 2014, an eighteen (18) year-old Mr. Khan and his sibling, Minor 1, then sixteen (16) years-old, secured introductions to ISIL members in Syria. (PSR, p. 5, ¶ 9) However, the online recruitment of the Khan children by ISIL recruiters began well before 2014. Almost two years earlier, when Minor 1 was a mere fourteen years old, Minor 1 developed an interest in the humanitarian crisis in Syria by viewing articles on Facebook. Minor 1 was eventually contacted by a Facebook user who claimed to be a male ISIL supporter based in Syria working with an aid group to provide humanitarian relief to Assad’s victims. Playing on the compassion and empathy of this child, the Facebook user encouraged Minor 1 to come to Syria to support the ISIL cause. Eventually, Minor 1’s contact with ISIS recruiters increased and intensified, and Minor 1 put Mr. Khan in communication via social media with the recruiters and sympathizers. (PSR, p. 5, ¶9)

ISIS’ powerful ability to recruit American youth on social media is by now a well-documented phenomenon. *See, e.g.*, Lorenzo Vidino and Seamus Hughes, *ISIS in America: From Retweets to Raqqa*, Program on Extremism, The George Washington University (December 2015) (“U.S. authorities estimate that several thousand Americans consume ISIS propaganda online creating what has been described as a ‘radicalization echo chamber.’”); Testimony of James B.

¹³ *See also*, Defendant’s Detention Hearing Ex. #18 (collecting abstracts of articles regarding adolescent behavioral psychology and juvenile offenders). However, anyone having raised teenagers does not need to consult scholarly texts to comprehend the identity issues teenagers often struggle and act out over.

Comey, Director, Federal Bureau of Investigation (FBI), Senate Select Committee on Intelligence, *Counterterrorism, Counterintelligence, and the Challenges of "Going Dark,"* July 8, 2015 (“Social media has allowed groups, such as ISIL, to use the Internet to spot and assess potential recruits. With the widespread horizontal distribution of social media, terrorists can identify vulnerable individuals of all ages in the United States—spot, assess, recruit, and radicalize—either to travel or to conduct a homeland attack.”);¹⁴ *see also*, Defendant’s Detention Hearing Ex. #17, (ISIS’ ultra-slick online magazine *Dabiq*).

Though Mr. Khan ultimately made his own choice to travel overseas, and is in no way blaming his siblings or anyone else, the recruiters’ preying upon his immature and simplistic religious beliefs cannot go unmentioned or underappreciated.¹⁵ Indeed, the influence of ISIS’ recruitment is evident in Mr. Khan’s three-page goodbye letter to his parents,¹⁶ where he repeats the stupidly simplistic, naïve, and dogmatic messaging spewed by the religiously fundamentalist ISIS propagandists:

¹⁴ There is no evidence whatsoever to indicate that Mr. Khan ever intended to commit a violent act of any kind in the United States. Counsel submit that due consideration of this factor is critical, for it distinguishes Mr. Khan many from other defendants charged under § 2339B who have received harsh sentences under the guidelines.

¹⁵ See Ex. B, p. 3. Dr. Xenakis concluded that Hamzah has “fanciful, simplistic, and immature perceptions about himself and the world at large.” “Hamzah demonstrates limited understanding of Islam... By his own admission, he memorized the *Koran* while attending a small private school but has limited fluency or understanding of Arabic.” On the same page, Dr. Xenakis goes on to comment that “[d]espite simplistic explanations of Muslim theology he does not express vehement or so-called ‘radical’ thinking on jihad.” Simplistic radical thinking based upon religious fanaticism is not, however, limited only to Islam. *See* Defendant’s Detention Hearing Ex. 1, *Affidavit of Professor Susan Schreiner*, November 2, 2014 (“With regard to the themes of repentance, suffering, sacrifice, the devil and martyrdom, the reader need to look no further than the Bible... the theme of suffering persecution and death for the true faith was not limited to the early Christians.”) Professor Schreiner traces this theme through the 10th century Cluniac monk Adso of Montier-en-der, to Martin Luther, Thomas Müntzer, Second Great Awakening evangelists such as Charles Finney—who coined the term “the burned-over district” of central and Western New York—through Dietrich Bonhoeffer and the Confessing Church of Germany during World War II.

¹⁶ Khan’s parents also made their feelings regarding the online recruitment of their children known when Mr. Khan’s mother Zarine Khan made an emotional statement to the press after her son’s arraignment, stating: “We condemn the brutal tactics of ISIS and groups like them. And we condemn the brainwashing and the recruiting of children through the use of social media and the internet. And we have a message for ISIS, [ISIS leader] Mr. Baghdadi, and his fellow social media recruiters: Leave our children alone!” Jason Meisner, *Terror suspect’s parents tell ISIS: ‘Leave our children alone,’* CHICAGO TRIBUNE, January 14, 2015.

First, I am considered an adult and will be obliged to pay taxes to the government. This in turn would be used automatically to kill my Muslim brothers and sisters.... Secondly, an Islamic state has been established and it is thus obligatory upon every able bodied male and female to migrate there. I cannot live under a law in which I'm afraid to speak my beliefs.... Thirdly, I do not want my progeny to be raised in a filthy environment like this. We are all witness that the Western societies are getting more immoral day by day.

(Govt. Detention Hearing Ex. 4)

Such high minded purpose has been identified as a common factor among ISIL recruits, and is certainly in keeping with teenagers seeking a more meaningful solution to their identity problems. As noted by Lorenzo Vidino and Seamus HIGhes, “In many cases examined by our research team [the Program on Extremism at George Washington University], an underlying sense of sympathy and compassion appeared to play an important role in initially motivating young Americans to become interested and invested in the Syrian conflict.” *ISIS in America: From Retweets to Raqqa*, THE GEORGE WASHINGTON UNIVERSITY (2015) p. 15. *See also*, Testimony of Peter Bergen, Director, International Security Program, New America and Profession of Practice at Arizona State University, U.S. Senate Committee on Homeland Security and Governmental Affairs, *Jihad 2.0: Social Media in the Next Evolution of Terrorist Recruitment*, May 7, 2015 (“In the minds of ISIS’ recruits, the group is doing something that is of *cosmic importance* that is sanctioned by Allah: defending Sunni Muslim civilians from the terrible onslaughts of the Assad regime, which has not hesitated to use chemical weapons in its war against its own people.”)(emphasis in original). In his interview with the probation officer, Mr. Khan’s father, Shafi Khan, echoed this sentiment, noting that his son likely wanted to assist suffering persons in the Middle East but chose the wrong way to do so. (PSR, p. 11, ¶ 53)

It is in this confusing social context that—not unlike many children of first generation Americans—Mr. Khan has struggled to find his own identity. He was raised with his parents’

traditional value system, yet lived his entire life in this country, embracing many Western practices and values. The vexing social and political implications of cultural assimilation by immigrants is a topic too unwieldy for this pleading, but should not go without mention—for it provides valuable context to Mr. Khan’s life and conduct.¹⁷

Finally, it should not go unmentioned that, at the time of his arrest, Mr. Khan was only nineteen (19) years-old and that this was a process of indoctrination that began when he, too, was a minor. While Khan was not legally a minor at the time of the flight to Istanbul, this factor should weigh heavily in his favor. In *Miller*, the Supreme Court articulately delineated several of the important differences between juvenile and adult offenders, which is quite poignant to this discussion:

[C]hildren are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, [] they are less deserving of the most severe punishments... First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to a recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as well formed as an adults’; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.

Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012)(internal quotations omitted)(holding mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishment).

Counsel submit that these important considerations apply in equal force to a young Mr. Khan, who with insufficient critical thinking skills was extremely vulnerable to the negative and ubiquitous influence of social media. Compounding that negative influence, Mr. Khan’s restrictive

¹⁷ See generally, Samuel P. Huntington, *Who Are We? The Challenges to America’s National Identity*, Simon & Schuster (2014); Noel Ignatiev, *How the Irish Became White*, Routledge (2008).

cultural environment likely exacerbated the problem. Even more to the point, the treatment and education urged by counsel strike at the very core of the Supreme Court's reasoning in *Miller*; that is, Mr. Khan's ideas are less fixed at a young age than an older adult—and he is therefore far more likely to be able to be reformed with treatment, education, and therapy as a consequence.

Furthermore, and equally to the point, this approach is consistent with President Obama's pledge to "offer an alternative vision" to the American youth who have fallen prey to ISIS' social media propaganda machine.¹⁸ That is, counsel strongly suggest that this Court consider the overwhelming need for Mr. Khan's sentence to reflect a coherent, effective response to the very real practical problem of American children attempting to join ISIS that is consistent with the CVE positions articulated by the federal government including the White House and Department of Justice.

In August 2011, President Obama signed the *National Strategy for Empowering Local Partners to prevent Violent Extremism in the United States* ("National Strategy"), which outlines a community-based approach to preventing violent extremists from inspiring, radicalizing and recruiting individuals in the United States.¹⁹ The National Strategy includes the provision that the government strive to use a wide range of good governance programs including those that provide "social services" to prevent and address radicalization. *Id.* at 8. A few months later, in December of 2011, the White House released its *Strategic Implementation Plan for Empowering Local*

¹⁸ Remarks by President Obama in Address to the United Nations, UN General, September 24, 2014, <https://www.whitehouse.gov/the-press-office/2014/09/24/remarks-president-obama-address-united-nations-general-assembly>.

¹⁹ Office of the President of the United States, *Empowering Local Partners to Prevent Violent Extremism in the United States*, August 2011, https://www.whitehouse.gov/sites/default/files/empowering_local_partners.pdf ("Communities are best placed to recognize and confront the threat [of radical ideology] because violent extremists are targeting their children, families, and neighbors. Rather than blame particular communities, it is essential that we find ways to help them protect themselves. To do so, we must continue to ensure that all Americans understand that they are an essential part of our civic life and partners in our efforts to combat violent extremist ideologies and organizations that seek to weaken our society.").

Partners to Prevent Violent Extremism in the United States (“Strategic Implementation Plan”), in an effort to form a coherent method to implement the National Strategy.²⁰ The Strategic Implementation Plan identifies three priority areas of action: (1) enhancing Federal engagement with and support to local communities that may be targeted by violent extremists;²¹ (2) building government and law enforcement expertise for preventing violent extremism; and (3) countering violent extremism propaganda while promoting our ideals. *Id.* The Strategic Implementation Plan tasks various federal agencies including the Department of Homeland Security, the Department of Justice, the Federal Bureau of Investigation, the State Department, and others with executing various CVE policies and programs.

On September 15, 2014—nineteen (19) days prior to Mr. Khan’s arrest—former Attorney General Eric Holder announced the DOJ’s *Pilot Program to Counter Violent Extremists* (“DOJ Pilot Program”).²² In announcing the DOJ Pilot Program, Holder stated that the program seeks to “bring together community representatives, public safety officials, religious leaders, and United States Attorneys to improve local engagement; counter violent extremism; and—ultimately—to build a broad network of community partnerships to keep our nation safe.” *Id.* Programs were subsequently launched in Boston, Los Angeles and Minneapolis.²³

²⁰ Office of the President of the United States, *Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States*, December 2011, <https://www.whitehouse.gov/sites/default/files/sip-final.pdf>

²¹ The government’s effort to enhance community outreach is not uncontroversial. The directive been criticized as a vehicle to exploit the communities for intelligence purposes. *See, Countering Violent Extremism (CVE): A Resource Page*, BRENNAN CENTER FOR JUSTICE, October 5, 2016, <https://www.brennancenter.org/analysis/cve-programs-resource-page> (collecting articles regarding the exploitation of community outreach for intelligence purposes).

²² Department of Justice, *Attorney General Holder Announces Pilot Program to Counter Violent Extremists*, September 15, 2014, <https://www.justice.gov/opa/pr/attorney-general-holder-announces-pilot-program-counter-violent-extremists>

²³ *See*, US Attorney’s Office, District of Massachusetts, *A Framework for Prevention and Intervention Strategies*, February 2015, <https://www.justice.gov/sites/default/files/usao-ma/pages/attachments/2015/02/18/framework.pdf> (developed by a collaborative of non-governmental and governmental stakeholders from the Greater Boston region); *The Los Angeles Framework for Countering Violent Extremism*, February 2015, <https://www.dhs.gov/sites/default/files/publications/Los%20Angeles%20Framework%20for%20CVE->

A few days later, on September 24, 2014, President Obama gave his speech at the United Nations imploring the international community to steps to “contest the space that terrorists occupy, including the Internet and social media,” noting that ISIL “propaganda” “has coerced young people to travel abroad to fight their wars, and turned students—young people full of potential—into suicide bombers. We must offer an alternative vision.”²⁴

To that end, in February of 2015, President Obama held *The White House Summit on Countering Violent Extremism*, which announced new steps to advance CVE efforts including appointing a full-time CVE Coordinator at the Department of Homeland Security, seeking additional funding to support DOJ CVE efforts, and establishing various domestic and international collaborative partnerships.²⁵ Later that same year, in September of 2015, the President again hosted a White House event focused on CVE—the *Leader’s Summit on Countering ISIL and Violent Extremism*.²⁶ That same month, the Department of Justice launched another initiative focused on the CVE, the *Strong Cities Network to Strengthen Community Resilience Against Violent Extremism*.²⁷ A sentence which would allow Mr. Khan to both attain CVE treatment and further his education would appear to counsel to comport with the National Strategy and the ongoing efforts of the federal government to address this issue.

For all the reasons set forth above, counsel would implore the Court to fashion a sentence that is tempered with mercy, which would further demonstrate to Mr. Khan that this a country that believes in fairness and redemption. His is a life well worth saving, and Mr. Khan needs

Full%20Report.pdf (developed by the Los Angeles Interagency Coordination Group in Collaboration with Community Stakeholders); *Building Community Resilience, Minneapolis-St. Paul Pilot Program, A Community-Led Local Framework*, February 2015, <https://www.justice.gov/usao-mn/file/642121/download>.

²⁴ See footnote 18, *supra*.

²⁵ <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism>

²⁶ <https://www.whitehouse.gov/the-press-office/2015/09/29/leaders-summit-countering-isil-and-violent-extremism>

²⁷ <https://www.justice.gov/opa/pr/launch-strong-cities-network-strengthen-community-resilience-against-violent-extremism>

desperately to start college next Fall if he is to succeed. A year in college versus a year in prison is what hangs in the balance. It is the right thing to do.

Respectfully submitted,

/s/Thomas Anthony Durkin
THOMAS ANTHONY DURKIN,

/s/Robin V. Waters
ROBIN V. WATERS,
Attorneys for Defendant.

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CERTIFICATE OF SERVICE

Thomas Anthony Durkin, Attorney at Law, hereby certifies that the foregoing Defendant's Sentencing Memorandum was served on November 7, 2016, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Thomas Anthony Durkin

THOMAS ANTHONY DURKIN,
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
v.)	No. 14 CR 564
)	Judge John J. Tharp, Jr.
MOHAMMED HAMZAH KHAN)	
)	

**DEFENDANT’S MOTION TO MODIFY THE CONDITIONS
OF PRETRIAL DETENTION TO PERMIT RELEASE
ON CONDITIONS SO AS TO PERMIT COUNSELING**

Defendant **MOHAMMED HAMZAH KHAN**, by and through his attorneys, **THOMAS ANTHONY DURKIN, CHRISTOPHER T. GROHMAN, ROBIN V. WATERS,** and **JOSHUA G. HERMAN**, pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3142, *et seq.*, as well as the Due Process, Effective Assistance of Counsel, and Excessive Bail clauses of the Fifth, Sixth and Eight Amendments to the Constitution of the United States, respectfully moves this Court to modify the conditions of Defendant’s pretrial detention so as to permit release on conditions for the purposes of obtaining mental health treatment and counseling in critical thinking skills, in conformity with the aforesaid statutes and constitutional provisions, as well as the written detention order of Judge Susan E. Cox, dated November 24, 2014. (Dkt #32).

In support of this Motion, Defendant, through counsel, shows to the Court the following:

1. On October 4, 2014, after eleven (11) hours of interrogation, Defendant was arrested with his two juvenile siblings at O’Hare airport prior to boarding an Austrian Airlines flight to Istanbul, Turkey. On October 6, 2014, Defendant was charged in a one-count Criminal Complaint with attempting to provide material support to a Designated Foreign Terrorist Organization, the Islamic State of Iraq and the Levant (“ISIL”), in violation of 18 U.S.C.

§2339B(a)(1). (Dkt # 1). The government made an oral motion for detention based on danger to the community and risk of flight which Defendant did not contest at that time, but reserved the right to a subsequent hearing. As such, Magistrate Judge Susan E. Cox ordered that Defendant remain in custody until further order of the Court. (Dkt #3).

2. On October 10, 2014, the detention hearing was continued to October 21, 2014. (Dkt #13). On October 21, 2014, Defendant waived his rights to the statutory time frame for the detention hearing, and the hearing was re-set for November 3, 2014. (Dkt #22).

3. On November 3, 2014, evidence was heard via proffers from both sides, and Judge Cox granted the government's motion for detention. (Dkt #27). A copy of the transcript of the detention hearing is attached hereto as Exhibit A. Later, upon presentation of draft orders from both sides, Judge Cox issued a written detention order that was filed on November 24, 2014. (Dkt #32). Judge Cox found that Defendant presented a risk of flight, and could possibly present a safety risk to the community unless he was detained. *Id.* In expressing a question about the evidence supporting the government's claim that Defendant was a danger to the community, Judge Cox indicated that mental health treatment was warranted. (Detention Order, Dkt #32, p. 3). To date, no mental health treatment has been provided Defendant, who remains incarcerated by the U.S. Marshal at the Jerome Combs Detention Center in Kankakee, Illinois.

4. This case is one of first impression in this District with respect to the government's wrong-headed national security policy of detaining and charging American citizens who fall prey to the slick and sophisticated social media religious rhetoric of ISIL on-line recruiters who lure immature, idealistic and impressionable Muslim youths from around the world with psychologically coercive propaganda and the utopian lure of living in a Caliphate, such as that

which has been proclaimed to exist in the civil war zone regions of conflict in Syria and Iraq.¹

5. This recruitment problem and the “brainwashing” of American youth, as brought out at the detention hearing, was the subject of President Obama’s comments at the United Nations on September 24, 2014, prior to Defendant’s arrest. In his plea to the international community, President Obama, while not literally using the term “brainwashing,” might just as well have done so by referencing what he termed as ISIL’s coercive propaganda:

“That [rejecting the ideology of ISIL] means contesting the space that terrorists occupy, including the Internet and social media. Their propaganda has coerced young people to travel abroad to fight their wars, and turned students – young people full of potential – into suicide bombers. We must offer an alternative vision.”²

6. Additionally, and quite to the point of this motion, a week before President Obama’s United Nations speech Attorney General Eric Holder announced that the Department of Justice has launched its own Pilot Program to Counter Violent Extremists, which seeks to prevent the radicalization and the recruitment of Americans, particularly young people, to overseas conflicts by engaging community members and law-enforcement agencies through community

¹ The literature describing the ISIL on-line recruitment phenomena, and its media savvy and slick electronic on-line magazine *Dabiq*, was referenced in the detention hearing. See, TR. pp. 57-58. According the National Counterterrorism Center Director Matthew Olsen, ISIL “operates the most sophisticated propaganda machine of any extremist group.” (*The propaganda war Obama is losing*, POLITICO, September 9, 2014, <http://www.politico.com/story/2014/09/the-propaganda-war-obama-is-losing-110740.html>); See also, Audrey Kurth Cronin, “ISIS Is Not a Terrorist Group: Why Counterterrorism Won’t Stop the Latest Jihadist Threat,” *Foreign Affairs*, March/April 2015. Whether a legitimate Caliphate has, in fact, been established in the so-called Islamic State is a matter of some debate among Islamic Scholars. See, e.g., “The Open Letter to Abu Bakr Al-Baghdadi” authored and signed by a large number of world-wide Islamic scholars, <http://www.lettertobaghdadi.com>

² *Remarks by President Obama in Address to the United Nations General Assembly*, September 24, 2014, <https://www.whitehouse.gov/the-press-office/2014/09/24/remarks-president-obama-address-united-nations-general-assembly>

based programs.³ Subsequently, a widely publicized three-day Conference on Countering Violent Extremism (“CVE”) was recently held at the White House on February 17-19, 2015. The purpose of the conference was to “highlight domestic and international efforts to prevent violent extremists and their supporters from radicalizing, recruiting, or inspiring individuals or groups in the United States and abroad to commit acts of violence.”⁴

7. Notwithstanding all the public rhetoric and political concern over this issue of ideological “brainwashing” and coercive propaganda, the fact remains that Defendant Khan has received no counseling, therapy, treatment or even a kind word while incarcerated in Kankakee—now going on over eight months. Instead of helping Defendant Khan, the same branch of the government that expresses such public concern over this phenomenon and its impact on American youth, instead remains fixated on punishing or warehousing him so as to protect its contradictory national security purposes of preventing future terrorist attacks on American soil. This laudatory, but chimerical, national security goal widely misses the mark in this instance due to the simple but salient point that American teenagers like Defendant Khan have not yet been radicalized, and now find themselves charged and detained with what essentially amounts to a “thought crime;” *i.e.* the mere possibility that they might someday be trained to commit radicalized activities in the future.⁵

³ *Attorney General Holder Announces Pilot Program to Counter Violent Extremists*, Department of Justice Press Release, September 15, 2014, <http://www.justice.gov/opa/pr/attorney-general-holder-announces-pilot-program-counter-violent-extremists>

⁴ *Statement from the Press Secretary on the White House Summit on Countering Violent Extremism*, January 11, 2015, <https://www.whitehouse.gov/the-press-office/2015/01/11/statement-press-secretary-white-house-summit-countering-violent-extremis>

⁵ The aspect of the material support statute’s broadening substantive offense liability to prosecute preparatory or precursory conduct which does not directly involve violent actions themselves has been the subject of considerable scholarly debate. *See* Norman Abrams, *Anti-Terrorism and Criminal Enforcement*, 4th Edition (West, 2012) pp.57-59. *See also*, as cited therein, Robert M. Chesney, *Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism*, 80 S. Cal. L. Rev. 425, 426 (2001) (“But the early nature of prosecutorial intervention in these and other terrorism-related cases has not been welcome in every quarter. The prospect that the government has adopted a policy of prosecuting suspected

The inescapable fact remains that these youths such as Khan have not received any military training, or otherwise exhibited violent tendencies that could in some way present a current national security problem, as opposed to someone who might return home after being radicalized overseas. Defendant's current detention is proof positive that no "alternative vision" as espoused by President Obama or Attorney General Holder has been offered by the government for American children like Mr. Khan, who have become ensnared in this geopolitical morass.

8. Mr. Khan's lack of radicalization and/or present danger to the community has been confirmed by a nationally known and highly respected forensic psychiatrist hired by undersigned counsel and the Khan family. At counsel's direction, Khan was assessed for two days on March 18 & 19, 2015, by Dr. Stephen N. Xenakis, M.D., of Arlington, Virginia, a psychiatrist and retired Brigadier General of the United States Army, who has extensive experience in conducting forensic psychiatric analysis of persons accused of terrorism. A copy of Dr. Xenakis' *Curriculum Vitae* is attached hereto as Exhibit B.

9. Counsel would proffer to the Court, and later present Dr. Xenakis's live testimony, if need be, that it is his professional opinion that, while being very immature and sorely lacking in critical thinking skills, Mr. Khan has not become radicalized and does not pose a present danger to the community. Should the Court desire a more thorough proffer, counsel would be willing to provide a more thorough report of Dr. Xenakis' findings in a subsequent *in camera* filing. Counsel would also proffer that Dr. Xenakis would testify that as a result of his eight months of detention which has permitted Mr. Khan to learn more about the fallacies of ISIL's on-line propaganda, that

terrorists at the earliest available opportunity has generated criticism from both the civil liberties and national security perspectives, with the former contending that we risk prosecuting dissenting thought uncoupled from culpable action and the latter contending that such a policy would sacrifice the benefits of additional intelligence and evidence gathering." These considerations unto themselves should give pause to the analysis of "danger to the community" under the Bail Reform Act.

with competent counseling focused primarily on developing Mr. Khan's critical thinking skills, conditions of release could be fashioned to reasonably ensure that Mr. Khan would not be a risk of flight.

10. Insofar as those conditions of pre-trial release are concerned, counsel would proffer conditions similar to those recently imposed by Chief Judge Michael J. Davis of the United States District Court for the District of Minnesota, in the similar case of *United States v. Abdullahi Mohamed Yusef* in Case No. 15 CR 46. In this ISIL material support case, which has also attracted considerable attention, Chief Judge Davis permitted pre-trial release to a half-way house with detention by means of electronic monitoring so as to permit Defendant to receive counseling. A copy of said order is attached as Exhibit C.

11. Counsel would also request an evidentiary hearing so as to further develop this meritorious argument for release on conditions.

Respectfully submitted,

/s/Thomas Anthony Durkin
THOMAS ANTHONY DURKIN,

/s/Christopher T. Grohman
CHRISTOPHER T. GROHMAN,

/s/Robin V. Waters
ROBIN V. WATERS,

/s/Joshua G. Herman
JOSHUA G. HERMAN,
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CERTIFICATE OF SERVICE

Thomas Anthony Durkin, Attorney at Law, hereby certifies that the foregoing Defendant's Motion to Modify the Condition of Pretrial Detention to Permit Counseling was served on April 17, 2015, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Thomas Anthony Durkin

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VIA ELECTRONIC MAIL

April 27, 2015

Re: ***U.S. v. Mohammed Hamzah Khan; No. 14 CR 564***

Dear Mr. Durkin:

This letter amplifies my clinical findings, impressions, and recommendations regarding Mohammed Hamzah Khan that I reviewed with you following a clinical evaluation including psychiatric interview on March 18-19, 2015.

I am board certified by the American Board of Psychiatry and Neurology in General Psychiatry, as well as Child and Adolescent Psychiatry, and have extensive experience in clinical psychiatry, research, teaching, and administration. I retired from the United States Army at the rank of brigadier general and served in multiple positions of responsibility as a clinician and commander. I commanded medical activities, medical centers, and medical regions for most of the last 10 years of duty. During my career, I had served as an Assistant Inspector General for The Surgeon General of the Army and had been the adjudicating authority for credentialing and privileging actions for numerous clinical providers.

The Federal Courts and the Office of the Military Commissions have qualified me as a psychiatric and medical expert in numerous cases of detainees at Guantánamo Naval Base and accused terrorists. I have had multiple interviews with detainees at Guantánamo, advised attorneys on their respective cases, and spent cumulatively over 6 months at Guantánamo Naval Base over the past 6 years. I have reviewed medical, intelligence, and military files of nearly 50 detainees and accused terrorists as a consultant to attorneys, US Government

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authorities, and human rights organizations. The respective cases have included high-value detainees, convicted belligerents, and others awaiting release and return to their homes. I have testified in cases of accused belligerents who were captured in the theater of operations and presented with extensive records of their association with and assisting identified terrorist organizations. I have been qualified as a psychiatric and medical expert in numerous cases in the Military Courts, Federal Courts, and State Courts.

Basis for Letter

This letter amplifies and further documents my opinions annotated in the Motion to Modify Conditions of Pre-trial Detention. I support the intent and purpose of the motion “to modify the conditions of Defendant’s pretrial detention so as to permit release on conditions for the purposes of obtaining mental health treatment and counseling in critical thinking skills, in conformity with the aforesaid statutes and constitutional provisions, as well as the written detention order of Judge Susan E. Cox, dated November 24, 2014. (Dkt #32).”

Background Information and Review of Records

This report follows a review of records including:

1. Approximately 18 documents and exhibits provided by defense counsel regarding the defendant, his co-defendant siblings, and related matters on terrorism and the threat of ISIS.
2. Correspondence from Hamzah and his siblings to their parents on or about the time of intended departure.

I conducted a clinical interview including psychiatric assessment of the defendant for approximately 7 hours on March 18-19, 2015, at Kankakee Jail.

Personal Data

Mohammed Hamzah Khan, a 19 y/o male of Southeast Asian descent, has been detained in federal custody since apprehended in October 2014 and jailed at the Jerome Combs Detention Center in Kankakee, Illinois, for approximately 6 months. He has received no counseling, therapy, treatment, or education since apprehended. Mr. Khan has no record of military training, violence, or history of serious offenses.

Relevant Findings and Impressions

These findings and impressions follow standard psychiatric interviews, including mental status examination, conducted at the Kankakee Jail with the defendant.

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Hamzah is a pleasant, affable, and youthful appearing 19 y/o adolescent. He converses comfortably with respect and deference to his attorneys and examiner. Speech is appropriate and sensible. Affect is even and friendly, without indication of aggression or hostility. Mood is mildly frustrated over the conditions of confinement. He does not express fear over his safety or security. Thought processes are simplistic and concepts are poorly formed. There is no evidence of bizarre ideation or suspiciousness. He does not manifest or reveal hallucinations, delusions, or illusions. He denies suicidal or homicidal ideation or intent. Formal cognitive testing could not be performed; intelligence seems average or slightly below average.

Hamzah demonstrates limited understanding of Islam, the political and military tensions in Southeast Asia, and the threats to security and safety to our nation and communities. By his own admission, he memorized the Koran while attending a small private school but has limited fluency or understanding of Arabic. He expresses idealistic and unrealistic concepts of ISIS establishing a caliphate that delivers peace and security to Muslims, and then the world at large. He wanted to travel to Southeast Asia to be a part of that dream world he had conjured. Hamzah imagines a general, largely unformed, and unrealistic perception of the caliphate as a Utopia for Muslims. When confronted about the atrocities committed by ISIS, he objects to such heinous acts and proposes that he could magically dissociate from or ignore the conduct. Conversation over many hours reveals that he lacks critical thinking skills to analyze the implications of his actions and the policies and actions by ISIS and its consequences. His plans to travel through Turkey to Syria seemed utterly unrealistic and lacked elementary planning. Despite simplistic explanations of Muslim theology, he does not express vehement or so-called "radical" thinking on jihad or missionary work to promote Islam. He never expressed any desire or inclination to engage in hostile activity if he ever arrived in Syria and imagined he would act in a support role, e.g. a chef.

Hamzah has fanciful, simplistic, and immature perceptions about himself and the world at large. He has not received adequate or appropriate counseling, therapy, treatment, or education since being apprehended to adequately assess the basis of his conduct or its consequences on himself, his family, and community. His education and exposure as an adolescent and high school student did not provide a sound basis or reference for him to judge his ideas and opinions. He is not inherently inquisitive or intellectual to perceive the contradictions and/or limits of his opinions and judgments. His parents attempted to guide his thinking and beliefs, but his adolescent and immature mentality could not comprehend their more sophisticated opinions and reasoning. Unfortunately, the practices and attitudes of the leadership at the local mosques precluded exploring his concerns and ideas with mentors or other respected authorities. He did not receive supportive intervention or guidance from other members of the Muslim community.

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Hamzah discloses many contradictions in his life and shifts in his thinking and attitudes that are typical of adolescents. His best friend has been immersed in hip-hop and breakdancing, and is not adherent or involved with Islam or other religious activities. Hamzah describes a phase as a teenager of his own immersion in hip-hop culture and accompanying social activities. He moved back and forth between hip-hop and Muslim cultures without ever wondering about the contradictions or his conflicting instincts. He attended Benedictine College in Illinois, a Catholic institution, for a year before dropping out as a sophomore. His understanding of basic principles of theology, Christianity, Judaism, or Islam, is shallow despite his college experience. He indicates that he did not have the academic skills or disposition to follow through with studying science and potentially pursuing a career in healthcare as his parents had wished.

Hamzah has led a sheltered and restricted life. He attended private Muslim schools through high school with few extracurricular activities. He did not play organized sports or get involved with other students outside of a small social circle. He feels that his parents intended to retain as much of the Muslim culture as possible, and that his mother particularly did not wish to assimilate into mainstream Western society. He does not demonstrate the capacity to explore the differences between Western and Muslim culture and the impacts on him and other young people. He indicates feeling flooded by the social conditions and circumstances he confronted at college, and felt propelled to retreat into a uncomplicated and regimented Muslim world to escape them. Accordingly, he conjured that the idealistic and utopian caliphate advertised by ISIS propaganda offered him the setting to abide by his nascent convictions and reconcile the contradictions he encountered.

Hamzah has not expressed or demonstrated violent or aggressive behavior. He describes himself as making friends easily and being able to get along comfortably with many different students and adults. He has little or no disposition for confrontation and cannot recall when he has felt angry or tense in a social situation. He abhors fighting and violence towards others. Nonetheless, he is impulsive and lacks the capacity to scope out the consequences of his actions.¹ His limited capacity to conceptualize the elements of a complex situation and envision the consequences of his actions is consistent with the accepted findings in neuropsychological development. He had limited, if any, dating experience as an adolescent and lacks understanding of how to establish healthy relationships with young women his age. Moreover, the disposition to impulsive reactions to situations is recognized as a common phenomenon in adolescence.

¹ "Brief for the American Medical Association and the American Academy of Child and Adolescent Psychiatry as *Amici Curiae* in support of Neither Party" to the United States Supreme Court in *Graham v. Florida* (July 23, 2009).

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Hamzah decided to resolve the tensions and contradictions of his social situation and developmental challenges by subscribing to an unrealistic and simplistic vision of a utopian caliphate. He lacked the social network and relationships with supportive adults to work through the contradictions and questions he faced. His actions have long been recognized as not uncommon, but often ineffective, resolutions by adolescents who leave home and, in some cases, join cults.

Recommendations

1. The Government should arrange to provide Hamzah intense educational, socializing, and therapeutic services to help him develop critical thinking skills and appropriate perspectives and attitudes on being a Muslim male in American society. He has not been “radicalized” and denies intent to engage in military actions or commit violent acts. He has no history of drug or alcohol use or misconduct that mark him for criminal activity.
2. His continuing detention at the correctional facility aggravates his state of mind and inhibits his capacity to appreciate the appropriate and constructive role Muslims have in America. He requires expeditious release and involvement in a supportive program to assist with socialization and developing skills to work and study as a citizen.
3. He requires a comprehensive and intense therapy program that focuses on preventing radicalization, protecting adolescents from recruitment by hostile entities, and temptation to travel overseas conflicts. Such programs involve multiple modalities including individual and group therapy, education, and religious services and teaching.

Summary

Mohammed Hamzah Khan requires intense education, training, and therapy to further protect him from recruitment by hostile entities and prevent radicalization. He exhibits conduct and behavior that is not violent or aggressive. His demeanor, statements, and conduct are consistent with a characterization that he has not been “radicalized.” He lacks age-appropriate understanding of social and political issues and requires broader education and cultural exposure than he received during high school and adolescence. He also lacks critical thinking skills and understanding to discern the dangers presented by ISIS and other hostile entities. A comprehensive and multifaceted education, training, and therapy program provides necessary opportunities to broaden his perspectives and gain vital skills. Such programs generally are conducted for many months and involve group activities and other social events that help expand adolescents’ and young adults’ awareness.

*BG (Ret) Stephen N. Xenakis, M.D.
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I am pleased to assist with his case and am providing these statements to the best of my knowledge and experience without coercion or influence. If you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in cursive script, appearing to read "Stephen N. Xenakis". The signature is written in black ink and is positioned above the typed name.

Stephen N. Xenakis, M.D.
Brigadier General (Ret), U.S. Army