

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|--------------------------|---|------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | |
| |) | Crim. No. 15-10153-WGY |
| NICHOLAS ROVINSKI, |) | |
| |) | |
| Defendant. |) | |

GOVERNMENT’S SENTENCING MEMORANDUM

The defendant Nicholas Rovinski was a strong supporter of the Islamic State of Iraq and Syria (“ISIS”). He intended to kill United States citizens on ISIS’s behalf. He conspired with David Wright (“Wright”) and Usaamah Rahim (“Rahim”) to commit violent attacks within the United States to support ISIS. Rovinski agreed to assist Wright in his plan to behead Pamela Geller. Rovinski and his conspirators (and similar ISIS inspired jihadists were planning attacks in the summer of 2015 -- some of which were tied to the Fourth of July holiday) posed a grave threat to the United States in June 2015. Even after his arrest in June 11, 2015, Rovinski continued to engage in activity designed to further the conspirators’ plan to commit violent attacks inside the US.

What differentiates Rovinski from many other terrorist defendants is that he has recognized the wrongfulness of his prior beliefs and actions, publicly repudiated his support for ISIS, and testified against his co-defendant thereby providing extensive cooperation to the government, which was critical in the government convicting Wright for his terrorism offenses. Through his testimony, Rovinski has also risked his own public safety and exposed himself to retribution from ISIS. In addition, as described in the Presentence Report and defendant’s sealed submission, Rovinski suffers from cerebral palsy and cognitive deficits. For the reasons set forth herein, and contained in the PSR and defendant’s sealed submission, the United States urges this

Court to sentence the defendant to a term of imprisonment of 15 years (10 years' imprisonment for Count 4 and 5 years' imprisonment on Count 1 to run consecutively) and upon release from prison, supervised release for life. This sentence is sufficient but not greater than necessary to satisfy the factors set forth in 18 U.S.C. § 3553(a).

I. FACTUAL BACKGROUND

A. Guilty Plea

On September 22, 2016, Rovinski pled guilty to all counts in which he is named in the Superseding Indictment: conspiracy to provide material support to ISIS, a designated foreign terrorist organization, in violation of 18 U.S.C. § 2339B(a)(1) (Count One); and conspiracy to commit acts of terrorism transcending national boundaries, in violation of 18 U.S.C. § 2332b(a)(2) & (c) (Count Four).

B. The Plot to Support ISIS

As detailed in the PSR, in November 2014, Rovinski met Wright on Facebook and they began communicating online. In December 2014, Rovinski and Wright began discussing their mutual support of ISIS. Wright, Rovinski, and Rahim shared a common goal to support ISIS. Prior to meeting Wright online and continuing until his arrest, Rovinski knew and was aware that ISIS was a designated terrorist organization and engaged in terrorism activity. Indeed, Wright and Rovinski repeatedly discussed online and over the phone, ISIS's use of violence and calls to kill and behead non-believers in the United States.

In January 2015, Wright began discussing ISIS's calls to kill the "kufar," non-believers, in the United States with Rovinski and Rahim. On January 20, 2015, Rovinski downloaded all six issues of ISIS's glossy online magazine, Dabiq, which Wright had sent him via e-mail. ISIS uses Dabiq for recruitment and propaganda purposes. Using Dabiq, ISIS boasts of its military

victories and killings, criticizes Western governments, and calls on its supporters to kill non-believers and commit acts of violence.

Wright also sent Rovinski links to other ISIS materials including beheading videos and eBooks. For example, on January 26, 2015, Wright sent Rovinski a link to “The Islamic State 2015 Full eBook,” which contained instructions on how to get to ISIS’s controlled territory in Syria through Turkey and also contained a list of Twitter accounts for people that live in the Islamic State. Although, initially, Rahim, Wright, and Rovinski planned to travel overseas to join ISIS, over time, their plans changed and they began plotting to commit violent attacks in the United States.

Rahim had numerous conversations with ISIS members located overseas beginning in at least February 2015 and continuing until his death in June 2015. One of the ISIS members with whom he communicated was Junaid Hussain (“Hussain”).¹ Rovinski also had several conversations with people located overseas using various internet based message applications. For instance, on May 20, 2015, he told a person named Khaled from the United Kingdom that he would be “carrying out things” in the United States rather than traveling overseas to join ISIS. Similarly, on that same day, Rovinski told a woman located in the United Kingdom during a chat conversation that he had “chosen the path of jihad,” which referred to his desire to commit violent jihad in the United States.

¹Hussain, a British born and English speaking ISIS member, used Twitter to encourage terrorist attacks in the United States and Europe against persons whom ISIS believed should be targeted for execution, including Pamela Gellar. On August 24, 2015, Hussain was killed in an airstrike in Raqqah, Syria, a city in which ISIS considers to be its capital. Prior to his death, Hussain was a central figure in ISIS’s online recruitment campaign and hacking activities.

In or around March 2015, Rovinski, Wright, and Rahim had agreed to commit attacks and kill persons inside the United States, which they believed would support ISIS's objectives. Their attack plans included the beheading of at least one person, Pamela Gellar ("Gellar").

In May 2015, ISIS had issued a fatwa, or religious decree, to its supporters to kill Pamela Gellar, a New York woman. Gellar had organized a Muhammad Art Exhibit and Contest ("Prophet Mohammad Contest") at the Curtis Culwell Center in Garland, Texas, which included cartoons depicting the Prophet Mohammad. On May 3, 2015, two armed men, Elton Simpson and Nadir Soofi, attacked the Prophet Muhammad Contest, which Gellar had organized and was attending. During this attack, Simpson and Soofi wounded a security guard before law enforcement shot and killed them.

After the thwarted Garland attack, in May 2015, Wright identified Pamela Gellar as the first beheading target for his group, which consisted of himself, Rahim, and Rovinski. Wright believed that his group could do a better job than the Garland attackers in fulfilling ISIS's order to kill her. Wright, Rahim, and Rovinski each agreed to murder Pamela Gellar and they each were going to play a critical role in the planned beheading. Wright, Rahim, and Rovinski each took steps in furtherance of this plan. *See* PSR at ¶¶ 22, 24-27. For instance, Rovinski researched knives, saws, cutting tools, and weapons using the internet. Rovinski also viewed videos on how to make weapons on YouTube and downloaded them to his YouTube account. Additionally, in May 2015, Hussain, who was located in Syria, directly communicated instructions to Rahim concerning the murder of Gellar.

C. Attack on the Boys in Blue on June 2, 2015

During a telephone conversation on the morning of June 2, 2015, Rahim sought the guidance and advice of Wright because he could not wait until July 4th to go after their target

and wanted to “go after” the “boys in blue” (a slang term used to describe police officers) in Massachusetts. In response, Wright encouraged Rahim’s plan to attack the police and die as a martyr. Wright instructed Rahim to pursue martyrdom, remain firm, and not to let anything deter him. Less than 2 hours after Wright encouraged and directed Rahim to attack police officers in Massachusetts, Rahim was killed when he lunged towards police officers and FBI special agents with a large fighting knife in a parking lot in Roslindale and refused to drop his weapon despite numerous requests to do so.

Later, on June 2, 2015, law enforcement arrested Wright. On June 11, 2015, Rovinski was arrested for conspiring to provide material support to ISIS.

D. Rovinski Wrote Prison Letters Demonstrating his Commitment to ISIS and Desire to Conduct Violent Attacks in the United States

Even after Rovinski’s arrest on June 11, 2015, he continued to engage in activity designed to further the conspirators’ plan to commit violent attacks inside the United States. In August 2015, Rovinski wrote two letters addressed to his co-conspirator and co-defendant Wright. The government recovered both of these letters before they were delivered to Wright. Rovinski also attempted to recruit people while in jail to assist him and Wright in the execution of their plan to commit violent attacks and decapitate non-believers in the United States on behalf of ISIS.

1. First letter obtained on or about August 13, 2015:

On or about August 13, 2015, the government obtained a letter written by Rovinski (while in prison) to Wright. In this letter to Wright, which was undated, Rovinski wrote the

following on the backside of the criminal complaint charging him in this case:

Bismilliah Ir Rahman Ir Rahim [In the Name of Allah, the Most Gracious, the most Merciful]²

Assalam alaykum [Peace be upon you] ahki [brother] Dawud, may this find you in good health. You will receive this from either a man named . . . [name redacted] as legal work as he is a lawyer or by [name and person's description redacted] . . . This is my professional criminal contact to pull strings for we have mutual interests. I ask you give him contacts so we can take the Eastern coast down an ultimately the U.S. government. The contacts should include people from Khroresan [*sic* – correct spelling is Khorasan] to control influx of opiates. We will flood the market for a year or two, then shut it down causing law enforcement to hemorrhage. In the chaos establish our strategic points before shut off of supply; i.e. military posts and such. Use the proletariat and criminals to our advantage possibly employ emp [electromagnetic pulse] to cut their communications, leave no quarter. Place their juicy heads for display[.] The Victory will be ours. Use any resources possible, maybe ask for help on justpasteit.com[.] Should you be able to get funds to help . . . [name redacted] much appreciated. His men will give us some insight some strategy if you will. We will remain in contact with him. Surely we will persevere and win. In shaa Allah Sabr [Patience God willing], Takwah [piety and devotion to God], Qadrullah [what God has destined]

AMEEN I give full bayah [allegiance] to Emir [Commander] Abu Bakr al Baghdadi and the Khalifate [Caliphate means the Islamic State]
Signed Nuh Rovinski

2. Second letter Obtained during Search of Defendant's Prison Cell:

On August 28, 2015, during the search of Rovinski's prison cell, a second letter written by Rovinski to his co-defendant Wright was found. In this letter, Rovinski wrote the following:

Ya Akhi [brother] Dawud,

Remember when we said Kafir [non-Muslim or disbeliever] are more trusting with regards to Ad Dawla [the Islamic State]. I think this is a sufficient test to that theory. Should you have any persons domestic or foreign to help acquiesc [*sic* – correct spelling is acquiesce] our plans to capture the zalimun [wrong-doers] in this wretched Babylon, please provide them. Also write back to me with any comments suggestions or plans possibly. I have acquired a recruit from here

²Translation of Arabic words and phrases by Rovinski in these letters have been provided in the brackets above to assist in the review of these materials by the Court. These translations were not contained in the original letters.

with full bayah [allegiance] we thought to scope out highway interstate crossing from east coast. We will try get ammo & more personnel to co-ordinate our attack, leave no stone unturned. Thinking about alternative communications such as runners or carrier [sic] birds for emp usage, we need to leave them blind. This is going to be big worse than Ghengis Khan [*sic* – correct spelling is Genghis Khan][.] [C]an't wait for them juicy necks[.] We will need people from southern states as well we can get a foothold there lest it goes sour. Indeed we will remain in contact through the aforementioned persons.

II. ADVISORY SENTENCING GUIDELINES

The government agrees with the Probation Office's Guideline calculations, which are consistent with the parties' agreed upon guideline calculations contained in the Plea Agreement. Below are the guideline calculations for each count and a description of applicable enhancements.

A. Count One – Conspiracy to Provide Material Support to ISIS in violation of 18 U.S.C. § 2339B

As the Probation office properly determined, pursuant to USSG §2M5.3, the base offense level for providing material support to a foreign terrorist organization is 26. This level is increased by two levels here because the material support or resources were provided by the defendant and his conspirators "with the intent, knowledge, or reason to believe they were to be used to commit or assist in the commission of a violent act." U.S.S.G. §2M5.3(b)(1). Thus, the adjusted offense level for violation of §2339B under U.S.S.G. §2M5.3 would be 28. The terrorism enhancement, USSG § 3A1.4, would then increase the offense level to level 40 and the defendant's criminal history category to Category VI.

B. Count Four – Conspiracy to Commit Acts of Terrorism Transcending National Boundaries in violation of 18 U.S.C. § 2332b

In accordance with USSG § 2A1.5 (Conspiracy or Solicitation to Commit Murder), the base offense level is 33. There are no specific enhancements in Section 2A1.5 but the terrorism enhancement would then increase the offense level to 45 and defendant's criminal history

category to Category VI. Because the counts are grouped pursuant to USSG § 3D1.2(b), the Court should use Level 45 as the adjusted offense level for both counts.

C. Adjustment for Acceptance of Responsibility

The adjusted offense level is then reduced by three levels for the defendant's prompt acceptance of responsibility.

Total Offense Level: Accordingly, the defendant's adjusted offense level is 42 (BOL of 33 + 12 under § 3A1.4 – 3 for acceptance of responsibility) and criminal history category is VI.

III. SECTION 3553(a) FACTORS

After calculating the appropriate Guidelines range and determining whether to apply any departures, the court must consider the factors set forth in Section 3553(a) so as to impose a sentence that is "sufficient, but not greater than necessary." *United States v. Dixon*, 449 F.3d 194, 203-04 (1st Cir. 2006); *see United States v. Villanueva Lorenzo*, 802 F.3d 182, 184-85 (1st Cir. 2015). The most salient Section 3553(a) factors here are: "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). These factors present a combination of aggravating and mitigating factors and, in the aggregate, call for a serious sentence.

A. Seriousness of offense

At the time of the defendant's offenses, ISIS posed a grave threat to the United States. Indeed, at the time of the defendant's arrest the FBI had thwarted "attacks tied to the July Fourth holiday," including that of Rahim and "arrested more than 10 people inspired by online recruiting by the Islamic State of Iraq and Syria (ISIS)." *See* July 9, 2015 testimony of FBI Director James Comey testimony before Senate Judiciary Committee summarized in www.cbsnews.com/news/fbi-director-we-disrupted-efforts-to-kill-people-around-july-4-

holiday/. As FBI Director Christopher Wray testified on September 27, 2017, ISIS and homegrown violent extremists (like the defendant) continue to be the main terrorism threats to the Homeland. Statement of FBI Director Christopher Wray before the Senate Homeland Security and Government Affairs Committee on Sept. 27, 2017, available at www.fbi.gov/news/testimony/current-threats-to-the-homeland/. “ISIS is relentless and ruthless in its campaign of violence and has aggressively promoted its hateful message, attracting like-minded extremists.” *Id.* As a result, ISIS and homegrown violent extremists remain “the highest priority and creates the most serious challenges for the FBI, the U.S. Intelligence Community, and our foreign, state, and local partners.” *Id.*

Prior to his arrest, Rovinski was assisting Wright in his plans to conduct violent attacks in the United States. Rovinski had agreed to participate in the beheading of Pamela Geller and conducted research for this plan. While his actions have tormented Ms. Geller and her family, as detailed in the report of Dr. Julia Reade, M.D., and demonstrated at trial, Rovinski was a follower and unlikely to have formulated his own attack plan. Rather, Wright manipulated Rovinski as he had Rahim. Wright directed and motivated Rovinski to assist in Wright’s plan to kill Geller and engage in terrorist attacks in the United States.

B. Characteristics of the Defendant

The defendant suffers from both physical and cognitive problems. The defendant deeply regrets his decision to support ISIS and appears to have been deceived by their promises of fame and glory in the afterlife. He has publicly rejected ISIS and testified against his co-defendant about their plans to commit violent attacks in the United States and behead Ms. Geller. After pleading guilty in September 2016, he fully cooperated with the government and provided testimony against Wright, which the government believes was critical in his conviction. Based

upon his communications with Wright, it is clear that Rovinski was a mere follower and Wright was the mastermind of their ISIS-inspired and directed terrorist plot. *See, e.g.*, Exs. 55 (Facebook conversations between Wright and Rovinski), 58A (recorded telephone conversation between Wright and Rovinski), 59A (recorded telephone conversation between Wright and Rovinski), 64-66 (text messages exchanged between Wright and Rovinski).

By virtue of cooperating and testifying against an ISIS plotter and disavowing his pledges of allegiance to Abu Bakr al-Baghdadi, Rovinski has risked his own public safety and exposed himself to retribution from ISIS. ISIS has repeatedly issued fatwas or religious orders to kill those who cooperate with the United States and its allies (viewed as “kafir,” that is, non-believers) or testify against supporters or members of ISIS like Wright. For example, in March 2015, ISIS released the names, photos, and purported addresses of 100 U.S. service members on Twitter and called upon sympathizers to kill them. Indeed, a copy of this kill list were found on Wright’s computer. *See* Ex. 343 from Wright’s Trial. On August 11, 2015, ISIS released a second list containing personal details of more than 1,350 U.S. military and government personnel and urged lone wolves to assassinate the named individuals. Included on this list were the names of two FBI employees. More recently, on April 6, 2017, a group of hackers supporting ISIS known as the United Cyber Caliphate (“UCC”) released a kill list with the names of 8,786 people, primarily from the United States and the United Kingdom, and ordered ISIS supporters to murder the people on the list. This chilling message was delivered using a video posted on Telegram, a private messaging application. In June 2016, UCC issued a similar kill list of 8,318 individuals from around the world and a message urging ISIS supporters to kill those on the list in order to avenge “Muslims” on Telegram.

Additionally, three months before Rovinski testified, a prison detainee who was housed in the same detention area as Wright reported to the government that Wright had sought his assistance in “neutralizing” Rovinski by killing Rovinski, his family members, and beheading Rovinski’s cat. The government informed Rovinski of these threats. Despite his concerns for his family, Rovinski never expressed any reluctance to testify.

C. Need for Specific and General Deterrence

Homegrown violent extremists represent one of the most serious threats to America. Indeed, ISIS inspired attacks against the United States are increasing. Therefore, a lengthy sentence of imprisonment should be imposed to ensure that the defendant understands the wrongfulness of his actions and deter him from committing any similar illegal activity upon his release from prison. While the sentences for ISIS defendants are longer than other terrorism defendants, the “overall average prison sentence” for those convicted of providing material support to ISIS is 14.5 years.³ See Center on National Security at Fordham University School of Law, *The American Exception: Terrorism Prosecutions in the United States: The ISIS Cases March 2014-August 2017 (“The American Exception”)* at 4, *available at* <http://news.law.fordham.edu/wp-content/uploads/2017/09/TheAmericanException9-17.pdf>.

Incarceration for 15 years will reflect the seriousness of the offense and promote respect for the law, while recognizing the mitigating factors, including the defendant’s acceptance of responsibility for his crimes, physical disability and cognitive deficits, and cooperation with the

³The average sentence imposed against ISIS defendants who went to trial is 32.2 years. See *The American Exception* at 4 and 35 (table). Several of those defendants were also facing more serious charges such as conspiring to use weapons of mass destruction in violation of 18 U.S.C. § 2332a. Similar to Section 2332b (conspiring to commit acts of terrorism transcending national boundaries), terrorism defendants who violate Section 2332a face the possibility of life imprisonment upon conviction.

government. Thus, notwithstanding the seriousness of the defendant's crimes and the need for a sentence that provides general deterrence and promotes respect for the law, a sentence of 15 years' imprisonment is reasonable.

Conclusion

For the foregoing reasons, the Court should sentence the defendant to term of imprisonment for a period of 15 years (10 years' imprisonment on Count 4 to run consecutively to 5 years' imprisonment on Count One) and, upon his release from prison, supervised release for the remainder of his life.

Respectfully submitted,

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By: /s/ B. Stephanie Siegmann
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Certificate of Service

I do hereby certify that a copy of foregoing was served upon the counsel of record for the defendant by electronic notice on this 15th day of December 2017.

/s/ B. Stephanie Siegmann
B. Stephanie Siegmann