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December 7, 2010

BY HAND

The Honorable Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Abdul Kadir
Criminal Docket No. 07-543 (DLI)

Dear Judge Irizarry:

The Government respectfully submits this letter in connection with the defendant's sentencing, currently scheduled for December 15, 2010. For the reasons set forth below, the Court should sentence the defendant to a term of imprisonment within or close to the range specified by the United States Sentencing Guidelines (hereinafter, "USSG" and the "Guidelines"). Such a sentence will constitute just punishment and reflect the extraordinarily serious nature of the defendant's terrorist offenses.

I. The Applicable Range under the Sentencing Guidelines Is Life in Prison

By statute, in sentencing a defendant, the Court "must consider the Guidelines," along with the other factors listed in 18 U.S.C. § 3553(a). United States v. Crosby, 297 F.3d 103, 113 (2d Cir. 2005). Generally, such consideration requires a determination of the applicable Guidelines range. Id. Even after the Supreme Court's decision in United States v. Booker, 125 S. Ct. 738 (2005), the Guidelines continue to play a critical role in sentencing. "The guidelines cannot be called just 'another factor' in the statutory list, 18 U.S.C. § 3553(a), because they are the only integration of the multiple factors and, with important exceptions, their calculations were based upon the actual sentences of many judges." United States v. Rattoballi, 452 F.3d 127, 133 (2d Cir. 2006) (omitting internal quotations).

In the instant case, as a result of the defendant's important role in a terrorist plot to detonate explosives at John F. Kennedy International Airport ("JFK Airport"), as well as the defendant's brazen obstruction of justice, the Guidelines offense level is 47, and the applicable criminal history category is VI. See Presentence Report ("PSR"), ¶¶ 75-97. The corresponding Guidelines range is a term of imprisonment of life. Id. at ¶ 129. Other than contesting the assessment of a two-level enhancement for obstruction of justice, the defendant does not challenge this Guidelines calculation.

A. The PSR Correctly Assesses an Enhancement for Obstruction of Justice

By letter to U.S. Probation Officer Frank Marcigliano, the defendant argued against an enhancement for obstruction of justice. However, as set forth in the PSR and the PSR Addendum, the obstruction of justice enhancement is clearly warranted.

In testifying at trial, the defendant lied wilfully and repeatedly under oath. PSR, ¶ 49. As set forth in detail in the government's November 19, 2010 letter to Officer Marcigliano, the defendant lied under oath about numerous material background matters, including inter alia: his relationship with Iranian leaders, including Mohsen Rabbani; his 5-year plan to infiltrate the Guyanese government; his relationships with Yasin Abu Bakr and Kareem Ibrahim; and the firearms photographed in Government Exhibits 132-39. See Govt. Letter, Nov. 19, 2010, at 2-3 (identifying non-exhaustive list of 13 material facts about which Kadir testified falsely). The defendant's testimony about his role and efforts in the plot to commit a terrorist attack at JFK Airport was also riddled with lies, to the point that it was false in virtually every respect. Id. The purpose of the defendant's perjury was entirely clear: to mislead the jury and avoid conviction and punishment for his terrorist activities – in short, to obstruct justice. As a result, the defendant's trial testimony clearly warrants an enhancement for obstruction of justice.

After reviewing the defendant's testimony and the parties' submissions, the Probation Department adhered to its finding that the defendant committed perjury that warranted an obstruction of justice enhancement. The Court should adopt that recommendation.

B. The Defendant's Participation in the Offense Warrants No Role Adjustment

The PSR does not assess a role enhancement or reduction for defendant Kadir, finding that his offense participation did not involve leadership or management responsibilities warranting an enhancement, but was too significant to warrant a mitigating role adjustment. PSR, ¶ 46. The defendant has not objected to the PSR's role assessment. See Letter of Kafahni Nkrumah, Esq., November 11, 2010 (submitting PSR objections with no reference to role).

In his sentencing submission to the Court, defendant Kadir does not object to the PSR's role assessment, but does claim that his role was "minimal." Letter of Toni Messina, Esq., November 30, 2010 ("Messina Letter"), at 8. This claim is directly contradicted by the evidence admitted at trial. That evidence demonstrated that, when presented with co-defendant Russell Defreitas's plot to commit a terrorist attack at JFK Airport, defendant Kadir immediately joined and played a key role in the conspiracy, including: agreeing to pitch the plot to his radical contacts, directing his coconspirators to obtain blueprints and Google Earth images of JFK Airport, agreeing to set up meetings with notorious Caribbean terrorist Yasin Abu Bakr, advising his coconspirators on how to pitch the plot to Abu Bakr, arranging for lodging in Trinidad for his coconspirators at the home of his associate and coconspirator Kareem Ibrahim, assisting his coconspirators in attempting to evade law enforcement, providing engineering advice on how to explode JFK Airport's double-walled fuel tanks, providing the plotters with a bank account through which to finance the terrorist attack and ultimately attempting to travel to Iran. As the PSR indicates, such conduct is far too extensive and important to warrant a mitigating role adjustment.

C. The PSR Correctly Assesses the Sentencing Range under the Guidelines

Because the defendant's objections lack merit, the Court should adopt the Guidelines calculation set forth in the PSR. The Guidelines range "should serve as 'a benchmark or a point of reference or departure'" in determining the sentence. United States v. Fernandez, 443 F.3d 19, 28 (2d Cir. 2006) (quoting United States v. Rubenstein, 403 F.3d 93, 98-99 (2d Cir. 2005)). For the reasons set forth below, a sentence within or close to the Guidelines range will constitute just punishment for the defendant's extraordinarily serious criminal conduct.

II. Application of Factors under 18 U.S.C. § 3553

A. The Nature and Circumstances of the Offense Weigh in Favor of a Sentence within the Guidelines Range

As the evidence demonstrated at trial, had defendant Abdul Kadir and his coconspirators succeeded in their efforts to bomb JFK Airport and its fuel tanks and pipelines, they would have caused massive harm - personal and economic - to the United States, the City of New York and its residents and visitors. It goes without saying that exploding bombs at one of the busiest airports in the world would have injured and killed scores of people. Indeed, that was one of the goals of the plot. Trial Transcript, 2496, 2514 (discussing the inevitable loss of lives). In addition to the injuries and loss of life, such an attack would have caused severe harm to the economy of the United States and New York City by incapacitating one of the world's most important international transportation hubs. *Id.* at 2399-2401 (indicating that JFK Airport handled 440,000 flights, 48 million passengers and 1.7 million tons of cargo in 2007). It is hard to imagine a conspiracy offense of a more serious nature than the offense of which the defendant stands convicted.

Moreover, the defendant played an important role in the terrorist offense. As set forth in more detail above, the defendant took important steps to transform the plot from a plan to a reality, including efforts to connect the conspirators to individuals with terrorist experience and know-how, help the conspirators evade law enforcement detection, provide the conspirators with engineering expertise on exploding fuel tanks and use his mosque bank account to hide terrorist financing.

In sum, based on the extraordinarily serious nature of the offense and the defendant's role therein, a sentence within or close to the Guidelines range is warranted.

B. The Court Should Reject the Defendant's Argument that His Role in the Plot Somehow Mitigated His Culpability

In his sentencing memorandum, the defendant attempts to minimize his role in the plot, blaming the offense on the efforts of Steven Francis, the cooperating witness, and claiming that he was never interested in furthering the plot, but rather saw Defreitas and Francis as potential business partners and mosque fundraisers. As the Court is well aware, the defense presented these same arguments to the jury, which reviewed the evidence and rejected them.

The reason that the jury rejected these claims is simple: the evidence definitively proved otherwise. First, as demonstrated unequivocally by the trial testimony and the recordings admitted into evidence, Abdul Kadir has no basis to blame Steven Francis for his involvement in this terrorist conspiracy. It was his co-defendant Russell Defreitas who was primarily responsible for presenting the plan to attack JFK Airport to Kadir, and Kadir immediately agreed to join the plot and further its aims. Facing a dearth of inducement evidence and a wealth of predisposition evidence, defendant Kadir did not even attempt to raise an entrapment defense at trial.

In his eleventh-hour effort to blame Francis for his own criminal acts, defendant Kadir relies on inaccurate factual claims disproved by the evidence. For example, Kadir claims that he was uninterested in the terrorist plot - despite the fact that he agreed to present it to his contacts - and that Francis had to remind him about the plot over the telephone after Defreitas and Francis returned to the United States. See Messina Letter, at 6. The evidence flatly contradicts this claim. In the first telephone call among Defreitas, Francis and Kadir after Defreitas and Francis returned to the United States from Guyana, it is defendant Kadir who brings up the terrorist plot to attack JFK Airport first, using the code that he himself created. See Government Exhibit ("GE") 214T, at 5. And far from distancing himself from the plot, Kadir informed Defreitas that he would be hearing from his contacts about the plot shortly. Id. at 5-6.¹

Similarly, defendant Kadir claims that he did not take the terrorist plot to attack JFK Airport seriously. See Messina Letter, at 5-7. Yet, to use just one example of the absurdity of this claim, Kadir took numerous steps to assist his

¹ The relevant portion of the telephone conversation reads as follows:

DEFREITAS: ... I just would like to know like how we are, you know what we got to do next, and what we supposed to be doing now.

KADIR: Okay, okay. I should be hearing something from those folks about those chickens early next week.

DEFREITAS: Yes, okay.

KADIR: They have Monday this week.

DEFREITAS: Yes, Yes

KADIR: This week I should be hearing from them.

coconspirators in presenting the plot to Yasin Abu Bakr,² whom Kadir conceded he knew to be a notorious radical Muslim leader who had personally engaged in terrorist acts, including a suicide bombing and the shooting of a head of state. Trial Transcript, at 4456-57. Indeed, Kadir admitted that he knew of no other person or group who had committed such terrorist attacks in the Caribbean region. Id. at 4458. The proposition that Kadir attempted to arrange a meeting between his terrorist coconspirators and the Caribbean's most notorious terrorist leader not to further the plot, but to advance a possible business relationship with Francis and Defreitas not only strains credulity but borders on the absurd.

In his sentencing submission, Kadir claims that he told his coconspirators "in no uncertain terms" that his terrorist contacts did not want to be involved in the plot, and then cites brief excerpts of recordings admitted into evidence. Messina Letter, at 6. However, as Steven Francis testified, and the recordings in their entirety make clear, Kadir did no such thing. Rather, he stated that his contacts were interested but that it was too sensitive right now, and that they would keep the plot in mind for a later time. Trial Transcript, 3188; GE 216T, at 2-3.³

² In his sentencing submission, defendant Kadir reiterates the clear falsehood that he does not know Yasin Abu Bakr personally and has only met him once. However, on the recordings admitted into evidence at trial, Kadir not only admitted knowing Abu Bakr, but stated that he was "a Muslim brother ... who we lived with for three years," GE 223T, at 28-29, with whom he exchanges visits in Trinidad and Guyana. Id. at 29-30.

³ The complete relevant portion of the telephone conversation reads as follows:
KADIR: Yeah, with respect to the other thing with respect to the chicken and eggs.
FRANCIS: Aha.
KADIR: With respect to the chicken and the eggs.
FRANCIS: Okay.
KADIR: They, the folks are not - they don't want to deal with that hatchery.
FRANCIS: They don't want to deal with that?
KADIR: No, they don't want to deal with it. They say right now, right now, it's too sensitive.
FRANCIS: Okay.
KADIR: It's too sensitive right now.
FRANCIS: Okay.
KADIR: So, they don't want to touch that right now at all.

In sum, Kadir's arguments regarding his role and involvement in the plot are not based on facts, but rather on mischaracterizations of the evidence presented at trial. As set forth above, Kadir played an important role in the terrorist conspiracy. The Court should not reward Kadir's efforts at rationalizing his involvement in a deadly terrorist plot and shifting the blame for his conduct onto the government's investigation with a non-Guidelines sentence.

B. History and Characteristics of the Defendant

1. The Defendant's History and Characteristics Weigh in Favor of a Sentence in the Guidelines Range

As set forth in the PSR and as proved by the evidence presented at trial, the defendant has engaged in a history of clandestine activities on behalf of the Iranian worldwide revolution and has long embraced the principles of violent jihad. First, as demonstrated at trial, defendant Kadir served as an Iranian operative in his native country of Guyana, gathering and forwarding information to the Iranian government on sensitive topics including, inter alia, the strength and morale of the Guyanese military, the economic situation in Guyana, the political and diplomatic positions of the Guyanese government and opposition parties and the activities of the operatives of rival foreign countries. See, e.g., GEs 303, 303-A-F. Particularly with respect to the information provided regarding the Guyanese military, the defendant's espionage bordered on treason.

That Abdul Kadir was engaged in clandestine and nefarious activities on behalf of Iran was made abundantly clear by the Five-Year Development Plan seized from his home. GE 307. In that plan, which he conceded on cross examination was prepared for the Iranian government, Trial Transcript, at 4419-20,⁴ Kadir formulated a multi-step program to, inter alia, (1) infiltrate the Guyanese government, including the Guyanese military, police force and Ministries of Foreign Affairs, Education and

FRANCIS: Okay.

KADIR: But, um, they're just gonna keep it in mind - that in case anything comes up, you know -

FRANCIS: Okay.

KADIR: - they know where, where to look and watch that.

⁴ Notably, on direct examination, Kadir breezily and falsely dismissed the Five-Year Plan as just "a five year development plan that I had considered here." Trial Transcript, 4279.

Information; (2) provide military training in Guyana to recruits; (3) infiltrate the Guyanese media; and (4) use forged documents to increase regional mobility. Trial Transcript at 4419-29; GE 307. During the search of Kadir's home, Guyanese law enforcement and JTTF personnel seized classified Guyanese government information which he was clearly not entitled to possess. See GE 337 (identified but not admitted at trial). Apparently realizing that his mere possession of that document might be considered criminal in Guyana, the defendant denied knowledge of it during his testimony.

The defendant's animosity towards the United States and his longstanding commitment to violent jihad was also demonstrated by the evidence seized from his home. See, e.g., Trial Transcript, 3911-45; GEs 301 (describing Iranian commitment to a violent struggle against "criminal America"), 304 (referencing the Muslim Brotherhood, a "victory in the move to crush Kufur," that is, non-believers, "the victory of Islam over Kufur" and "marg bar Amrika" (death to America)), 309 (referring to "the criminal America" and an Iranian martyr sipping death), 310 (image of Iranian fist crushing Israeli and American flags), 314 (letter to Kadir from Hizballah leader in Suriname), 317 (discussing Iranian military capabilities and praying for "final victory"), 321 ("the day of resurrection shall not approach until the Muslims engage the Yahud [Jews] in a war"), 326 (containing chants including "Marg bar Amricka - Death to America"), 328 (notes on writings of Hassan Al Banna, radical Islamic thinker and Al Qaeda guru, including: "Islam will not be content with less than freedom and independence with national sovereignty and declaration of Jihad, even though it costs blood, for death is better than a life of slavery and humiliation"), 330 ("Manual for the Soldier of Allah," containing various precepts including: "You are to always occupy a portion of your brain capacity with the intention of JIHAD (Holy War), with the love of Martyrdom and the preparation necessary to remain in constant readiness to participate in the fulfillment of both.")

Evidence seized from the defendant's home indicated that he maintained a personal relationship with Mohsen Rabbani, an Iranian operative charged with masterminding the 1994 bombing of the Amia Jewish cultural center in Buenos Aires, Argentina. See, e.g., GEs 319, 323-25, 333, 340-42. While Kadir initially represented that he had never met or spoken with Rabbani, Trial Transcript, 4268, his testimony on cross-examination and the documents demonstrate that Kadir had sent his son and others to study with Rabbani, Trial Transcript, 4454, GEs 323-24, obtained an Iranian-sponsored missionary from Rabbani, Trial Transcript, 4443-44, GE 342, discussed going to study himself with Rabbani,

Trial Transcript, 4455-56, GE 325, and engaged in a "mission" gathering information for Rabbani, Trial Transcript, 4453-55, GE 341.

The AK-47 bullet seized from the defendant's home, see Trial Transcript, 3917, and the photographs he was carrying at the time of his arrest, GEs 132-39, demonstrate the defendant's possession of numerous firearms, including an assault rifle. Moreover, the photographs depict the defendant with his shirt off brandishing the firearms in poses associated with militancy and violence. Id. This evidence regarding the defendant's association with high-powered weaponry is consistent with the defendant's history as an Iranian operative and supporter of violent jihad, not with the defendant's claim that he was a non-violent religious figure simply attempting to raise money for his mosque.

Finally, in considering the defendant's history and characteristics, the Court should also take into account that the defendant repeatedly committed perjury in an effort to obstruct justice. See supra.

The defendant's history and characteristics thus clearly support a sentence within or close to the Guidelines range.

2. Kadir's Philosophy

The defense argues that the Court should take into account Kadir's "philosophy" in sentencing him. First, Kadir claims in his sentencing submission that he has never harbored ill will toward the United States. Messina Letter, at 4. The above-identified documents and writings seized from the home of Kadir fatally undermine this claim.

Next, Kadir relies on discussions among Kadir, Francis and a third individual, Hussain, to demonstrate his "philosophy." However, the fact that Kadir did not discuss his support for terrorist activity in front of a third party who was not involved in the plot to attack JFK Airport proves nothing. Nor do the statements of the third party, Hussain. Terrorist activity, much like other criminal activity, is a surreptitious business. The fact that Kadir did not broadcast his involvement in, and support for, terrorist activity carries little, if any, probative weight regarding his "philosophy," particularly when compared with his concrete actions in furtherance of the plot to commit terrorist bombings at JFK Airport.

Nothing in Kadir's "philosophy" suggests that a sentence substantially below the Guidelines range would be appropriate.

C. A Sentence within the Guidelines Range Would Reflect the Seriousness of the Offense, Promote Respect for the Law and Provide Just Punishment

There are few more serious offenses in the federal criminal code than plotting to commit a terrorist bombing against a public transportation system like JFK Airport. As set forth above, had the conspiracy achieved its objective, the consequences would have been extraordinarily severe: the death of numerous innocent victims, extensive injuries to other innocent people and a significant economic injury to New York City and the United States. Only a sentence within or close to the Guidelines range would reflect the seriousness of the offense.

Any sentence substantially below the Guidelines range would severely undermine respect for the law by suggesting that a terrorist can evade punishment by engaging in perjury and rationalizing pernicious criminal conduct. The evidence at trial demonstrated beyond a reasonable doubt the defendant's guilt. Yet, in his sentencing submission, the defendant still attempts to shift blame to everyone other than himself - Steven Francis, Russell Defreitas and even Abdel Nur. Just as the jury rejected the defendant's false claims at trial, the Court should reject them at sentencing. A sentence within or close to the Guidelines range would constitute the only just punishment for the offense.

D. The Deterrence Factor Weighs in Favor of a Sentence within the Guidelines Range

The investigation and prosecution of this case represent a sterling example of how a proactive law enforcement strategy should work to fight terror within the federal criminal justice system: the identification of terrorist conspirators, an effective investigation yielding a wealth of evidence and a successful federal criminal prosecution. To allow any defendant - but particularly a proven terrorist conspirator found guilty of plotting to explode bombs, fuel tanks and pipelines at a crowded airport - to escape just punishment through perjury and blame shifting would send a terrible message to all parties involved in the criminal justice system. As a result, the deterrence factor also supports a sentence within the Guidelines range.

E. Need to Avoid Unwarranted Sentence Disparities

In support of his claim for leniency, the defendant provides a brief list of several examples of "hard-core terrorists" who received sentences of less than life in prison. Messina Letter, at 10-12. The defendant concludes from this list that "these averages are far below what probation is suggesting as an appropriate sentence." Id. at 12. While the average sentence of the cases the defendant chose to list may be less than Probation's recommendation, Kadir's analysis is incomplete and ultimately useless in determining the appropriate sentence in this case.

Kadir's cherry-picked summary of several recent terrorism cases is remarkable for the cases that it omits - cases in which federal courts imposed life sentences in terrorism cases. A more candid list would certainly include, for example, Zacharias Moussoui, Abdel Rahman, Richard Reid, Aafia Siddiqui and Ramzi Yousef, all of whom are serving life sentences.

Disparities in sentencing are not proscribed by 18 U.S.C. § 3553(a), nor are they uncommon. Indeed, disparities in sentences are the inevitable result of disparate defendants whose cases involve disparate fact patterns facing sentencing before disparate judges on disparate charges. It is only "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" which have any relevance to these proceedings. 18 U.S.C. § 3553(a)(6) (emphasis added).

Because Kadir's incomplete and vague list of cases demonstrates no disparities, much less unwarranted disparities, his request for a lesser sentence on those grounds should be denied.

F. Other Factors

None of the other factors identified in § 3553(a) are applicable to the case at hand. See 18 U.S.C. § 3553(a)(3) ("the kinds of sentences available"); § 3553(a)(5) ("any pertinent policy statement"); § 3553(a)(7) ("need to provide restitution").

The defense contends that the Court should take into account the parties' pretrial plea negotiations in fashioning an appropriate sentence. As an initial matter, the Second Circuit has squarely rejected such a claim. See United States v. Negron, 524 F.3d 358, 360 (2d Cir. 2008) ("[N]othing in 18 U.S.C. §

3553(a) or controlling precedent requires a sentencing court to consider a rejected plea offer.”).

Moreover, the facts proffered by the defense in support of this argument are inaccurate. The government never submitted a plea offer of any kind to Abdul Kadir. While the government and the attorneys for the defendants negotiated over whether or not the parties could arrive at a global plea resolution, during which negotiation various resolutions were discussed, at no point did the government offer Kadir a plea to a lesser offense or withdraw any such plea offer, as alleged. The defendant’s plea negotiation argument is thus factually inaccurate and legally irrelevant and should be rejected out of hand by the Court.

The defense also contends that the conditions of Kadir’s pretrial incarceration in Trinidad and the United States should be used to reduce his sentence. The government disagrees. First, while the defendant had the right to contest his extradition from Trinidad to the United States, his decision to prolong his detention in Trinidad while his meritless claims were being considered and ultimately rejected by the Trinidadian courts should not now redound to his benefit at sentencing. Since arriving in the United States, Kadir has been held at the Metropolitan Detention Center (“MDC”), as are most of the pre-trial detainees in the Eastern District of New York. During that time, the Court has expressed its willingness to entertain motions or petitions relating to the conditions of Kadir’s confinement. See, e.g., Transcript of Status Conference, June 18, 2009, 17-21 (discussing housing of Kadir at MDC, including possibility of habeas petition). No such motions or petitions were submitted. The Court took steps to ensure that Kadir and his codefendants were able to review discovery and prepare for trial, and offered to intervene as needed. See, e.g., Transcript of Status Conference, March 25, 2010, at 24-31 (discussing access of codefendants’ counsel at MDC and Court’s willingness to intervene, without a word from counsel for Kadir). For the defendant to now claim, after trial, that his Sixth Amendment rights were somehow compromised in an effort to garner leniency at sentencing is, in a word, outrageous.

III. Conclusion

By playing a key role in a dangerous plot to explode bombs, fuel tanks and pipelines at JFK Airport, the defendant committed one of the most serious crimes in the United States Code. A reasonable and just sentence for that crime would be a sentence within or close to the Guidelines range of life in prison.

Respectfully submitted,

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Encl.

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