IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 1:06-CR-147-WSD
SYED HARIS AHMED	:	

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, through its counsel, Sally Quillian Yates, Acting United States Attorney for the Northern District of Georgia; and Christopher C. Bly, Alexis L. Collins, and Robert C. McBurney, Assistant United States Attorneys; respectfully submits this Sentencing Memorandum for the sentencing of Defendant Syed Haris Ahmed, scheduled for December 14, 2009. For the reasons set forth below, the Government believes that Defendant Ahmed should receive a term of 15 years in custody, to be followed by a lifetime period of supervised release.

BACKGROUND

Defendant Ahmed was charged in a four-count superseding indictment with conspiring to provide material support to terrorists (Count 1); providing and attempting to provide material support to terrorists (Count 2); conspiring to provide material support to a designated foreign terrorist organization, namely, Lashkar-e-Tayyiba ("LeT"), (Count 3); and attempting to provide material support to the same designated foreign terrorist

organization, LeT (Count 4). (Doc 343). Defendant was found guilty of Count One[1] after a bench trial. (Doc 509).

After the conviction of Defendant Ahmed's co-conspirator, Ehsanul Islam Sadequee, the United States Probation Office prepared a Presentence Report ("PSR"). The PSR calculates a final adjusted offense level of 45, which includes a 12-level enhancement pursuant to U.S.S.G. § 3A1.4 (the "terrorism enhancement"), because Defendant's offense involved, or was intended to promote, a federal crime of terrorism. PSR at 13-16. The terrorism enhancement also mandates that Defendant receive a criminal history category of VI, which is accurately reflected in the PSR. See U.S.S.G. § 3A1.4(b); PSR at 18. With an offense level of 45 and a criminal history category of VI, Defendant Ahmed has a Guidelines custody range of life. PSR at 22. However, his statutory maximum sentence is 180 months or 15 years. Id.; see also 18 U.S.C. § 2339A.

The Government submitted factual and legal objections to the PSR on October 13, 2009, which are attached in full to the final, amended PSR prepared by the Probation Officer and presented to the Court. None of the Government's objections affects Defendant's Guidelines range.[2] Defendant Ahmed filed no timely objections to

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[1] Count One was the only count presented to the Court at trial; the Government expects to petition the Court for dismissal of Counts Two through Four upon the sentencing of Defendant Ahmed.

[2] The Government did object to the Probation Officer's calculation of the authorized term of supervised release. The PSR has since been amended to reflect a term of supervised release of

the PSR but has subsequently moved to adopt the Guidelines objections set forth in Defendant Sadequee's filing with the Probation Office; these objections, detailed below, would, if sustained, affect the Guidelines calculations. (Doc 608).

In the following pages, the Government will first explain why Defendant's adopted Guidelines objections should be overruled and then provide support, through an analysis of the § 3553(a) factors, for its recommendation of a 15-year custodial sentence for Defendant Ahmed.

I. DEFENDANT'S GUIDELINES OBJECTIONS[3]

A. The Court need not determine the object or objects that support the § 2339A conspiracy convictions.

Citing U.S.S.G. § 1B1.2(d) and its commentary, Defendant asserts that "when there are two underlying 'objects' of the material support" conspiracy, this Court must find beyond a reasonable doubt which object was proven. Sadequee PSR Objections at ¶ 4. It is not clear, however, that § 1B1.2(d) applies to Defendant Ahmed's lone count of conviction. Assuming without conceding that it does, there was more than enough evidence presented at trial for this Court to find beyond a reasonable doubt

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any term of years or life. See 18 U.S.C. § 3583(j); PSR at 22.

[3] Because Defendant Ahmed adopted wholesale Defendant Sadequee's objections, the arguments set forth in this section are substantively identical to the arguments in the corresponding section of the Government's sentencing memorandum for Defendant Sadequee.

that Defendant conspired to provide and actually provided material support, knowing or intending that the support would assist both a conspiracy to murder outside the United States (18 U.S.C. § 956(a)) and acts of terrorism inside the United States that transcend national boundaries (18 U.S.C. § 2332b).

United States Sentencing Guideline § 1B1.2(d) provides that a conviction for a conspiracy to commit more than one offense should be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit. The commentary to this provision notes that

> [p]articular care must be taken in applying subsection (d) because there are cases in which the verdict or plea does not establish which offense(s) was the object of the conspiracy. In such cases, subsection (d) should only be applied with respect to an object offense alleged in the conspiracy count if the court, were it sitting as a trier of fact, would convict the defendant of conspiring to commit that object offense,

subject to an exception not applicable here. U.S.S.G. § 1B1.2(d), cmt. n.4.

The Eleventh Circuit has interpreted this provision to require district courts, when faced with a general jury verdict that a defendant conspired to commit multiple offenses, to find beyond a reasonable doubt which objects the defendant conspired to commit. United States v. McKinley, 995 F.2d 1020, 1026 (11th Cir. 1993). Judicial fact-finding in aid of sentencing is otherwise conducted using a preponderance of the evidence standard. United States v. Smith, 480 F.3d 1277, 1281 (11th Cir. 2007).

Unlike the general conspiracy statute in 18 U.S.C. § 371, 18 U.S.C. § 2339A does not merely criminalize a conspiracy to commit some other offense. Instead, it prohibits the act of providing or conspiring to provide material support with a specific knowledge or intent. This is consistent with the Sentencing Guidelines' general treatment of § 2339A substantive violations under the aiding and abetting provisions in U.S.S.G. § 2X2.1 and not as a conspiracy under U.S.S.G. § 2X1.1.

When § 2339A is charged as a conspiracy, as it is in Count 1, U.S.S.G. § 1B1.2(d) arguably does not apply because the predicate offense relates to the mens rea element rather than forming an independent course of action to be undertaken by the conspiracy. The Government could locate no case in which U.S.S.G. § 1B1.2(d) and application note 4 were applied to § 2339A, whether charged as a conspiracy or substantive crime. The sole case cited by Defendant Sadequee, United States v. Awan, No. CR-06-154 (CPS), 2007 WL 2071748 (E.D.N.Y. July 17, 2007), which involved a § 2339A conspiracy with a § 956(a) predicate offense, does not discuss U.S.S.G. § 1B1.2(d) at all.[4]

[4] To the extent that the Awan court addressed the applicable standard of proof on sentencing, it did so in the context of the standard that should be used to determine the applicability of the terrorism enhancement in § 3A1.4. Ultimately, the court held that a preponderance of the evidence standard applied, although it acknowledged in dicta that it had the discretion to apply a higher standard of proof in cases involving multiple sentencing adjustments that would result in a significant upward departure. Id. at *3 & n.12.

If the Court accepts Defendant's theory, it should find that both predicate offenses were proven beyond a reasonable doubt. Of course, given the guilty verdicts in both trials and the unanimity instruction on the predicate offenses, there can be no doubt that the Court and the jury both found beyond a reasonable doubt that each Defendant conspired to provide material support for at least one of the predicate offenses. This is enough for purposes of sentencing.[5] The Government's evidence, however, was strong enough to support a jury and a judicial finding beyond a reasonable doubt for both prongs of the charged conspiracy.

With respect to § 956(a), the Government produced overwhelming evidence establishing that in 2005, both Defendant Ahmed and Defendant Sadequee, along with co-conspirators James, Azdi, Aabid Khan and others, agreed -- that is, conspired -- to provide themselves to a conspiracy to murder outside the United States by traveling to Pakistan or Afghanistan to obtain paramilitary training from a jihadist camp and then eventually engage in violent attacks that could cause death and serious injury to others. For example, the trier of fact was presented with e-mails and instant messages written by Defendant Ahmed and Defendant Sadequee and

[5] The Government notes that there is no practical effect on Defendant's sentence regardless of whether one or both predicate offenses are found to have been proven. There is only a one-level difference between the two predicate offenses, and Defendant's final adjusted offense level under either scenario exceeds the statutory maximum he could receive.

their co-conspirators developing their plan to get into Pakistan to join LeT or "the Students" (Taliban) and encouraging each other to take steps to implement it. (See, e.g. Gov. Exs. 41 ("Mother's Day" e-mail), 73-76). Moreover, co-defendant Ahmed testified, with prompting from his written admissions, about their plan and intent to obtain training for violent jihad. (See Aug. 5, 2009, Tr. at 480-482; Ahmed Trial, Gov. Ex. 7).[6]

The evidence at both trials also clearly showed that the Defendants conspired to provide the D.C. casing videos to Younis Tsouli in order to aid in their plot to gain credibility with the "jihadist brothers." For Defendant Sadequee, there was the additional evidence that the casing videos would aid in establishing the credentials of "al Qaeda in Northern Europe," the group Sadequee founded with Tsouli and Mirsad Bektasevic. (See Sadequee Trial, Gov. Exs. 226; 233 at 20-26, 29-33, and 39-48; 242; 242A).

There was also sufficient evidence presented at both trials for the jury and the Court to find beyond a reasonable doubt that the Defendants agreed to provide material support with the intent to aid a § 2332b violation. First, Defendant Ahmed, in his statements to the FBI, acknowledged that he would have participated

[6] While nothing Defendant Ahmed said while testifying at Defendant Sadequee's trial can be used to enhance Ahmed's sentence, pursuant to the terms of his immunity agreement, Ahmed's written statements, admitted in his own trial as well, contain this same information.

in an attack on U.S. soil if directed to do so. (Gov. Exs. 5, 7). Moreover, he, Defendant Sadequee, and the Toronto-based co-conspirators all discussed potential targets in the United States and how they might take action there. (Gov. Ex. 7). For Defendant Sadequee, the case is even stronger, as he and Tsouli intended to use the videos in order to prepare for a future attack within the United States. In an instant message communication with Azdi Omani, the user of sbualy@gmail.com, Sadequee admits that he and "Bond" (Younis Tsouli) were planning to release the videos he shot in Washington, D.C., in order to terrify Americans during the holidays and make them waste their resources since "nothing . . . is going to happen there for at least another good year." (Sadequee Trial, Gov. Ex. 234 at 27-30).

For these reasons, regardless of whether the Court applies a preponderance or a beyond-a-reasonable-doubt standard, the Court should find that both predicate offenses of Counts 1 and 2 were proven.

B. Application of the Guidelines' terrorism enhancement (§ 3A1.4) does not result in impermissible "double counting."

Defendant next argues that "applying § 3A1.4 amounts to double-counting in a terrorism case under 18 U.S.C. § 2339A or § 2339B in conjunction with § 956 and § 2332b." Sadequee PSR Objections at ¶ 6. This Circuit's case law does not support Defendant's claim.

"Impermissible double counting occurs only when one part of the Guidelines is applied to increase a defendant's punishment on account of a kind of harm that has already been fully accounted for by application of another part of the Guidelines." United States v. Dudley, 463 F.3d 1221, 1226-27 (11th Cir. 2006) (internal quotation marks omitted). Indeed, double counting a factor during sentencing "is permitted if the Sentencing Commission . . . intended that result and each guideline section in question concerns conceptually separate notions relating to sentencing." United States v. Stevenson, 68 F.3d 1292, 1294 (11th Cir. 1995). Courts are thus to presume that "the Commission intended to apply separate guideline sections cumulatively unless specifically directed otherwise." Id.; accord United States v. Perez, 366 F.3d 1178, 1183 n.6 (11th Cir. 2004) (citing United States v. Box, 50 F.3d 345, 359 (5th Cir. 1995) ("Double counting is prohibited only if the particular guidelines at issue forbid it.")).

Applying the terrorism enhancement in conjunction with the various Guidelines provisions that provide the base offense levels for the crimes at issue in this case does not result in impermissible double counting. For example, applying § 3A1.4 in conjunction with § 2A1.5 (the base offense level for a § 2339A conviction with an underlying offense of 18 U.S.C. § 956(a)) does not result in improper double counting because § 2A1.5 applies to any crime involving a conspiracy or solicitation to commit murder,

regardless of whether that crime involves terrorism. Thus, the terrorism enhancement and the conduct it targets are not "fully accounted for" by application of § 2A1.5, the generic Guidelines provision applicable to all conspiracies to commit murder. See, e.g., United States v. Phillips, 363 F.3d 1167, 1169 (11th Cir. 2004) (enhancement for violation of a court order not impermissible double counting after conviction for failure to pay court-ordered child support because base offense level applied to a variety of crimes, not all of which involved violation of a court order); United States v. Naves, 252 F.3d 1166, 1168-69 (11th Cir. 2001) (enhancement for carjacking not double counting after conviction for carjacking because base offense level applied to all robbery crimes). Moreover, there is no language in either § 2A1.5 or § 3A1.4 directing that the sections not be applied cumulatively; the Court must therefore presume the Commission intended for them to apply together. See Stevenson, 68 F.3d at 1294.

Similarly, there is no impermissible double counting when the terrorism enhancement is applied in conjunction with §§ 2A2.1 or 2A4.1 (the possible base offense levels for a § 2339A conviction with an underlying offense of 18 U.S.C. § 2332b). Section 2A2.1 applies to all crimes of assault with intent to commit murder and attempted murders, and Section 2A4.1 applies to all kidnappings, regardless of whether those crimes involve terrorism. Thus, as with § 2A1.5, the terrorism enhancement is not "fully accounted

for" in either §§ 2A2.1 or 2A4.1. And again, nothing in §§ 3A1.4, 2A2.1, or 2A4.1 specifically directs that those sections should not be applied cumulatively; therefore, the Commission intended for them to apply together.

Finally, there is no impermissible double counting when the terrorism enhancement is applied in conjunction with § 2M5.3, the guideline section applicable to violations of § 2339B (providing material support to designated foreign terrorist organizations). The Fourth Circuit considered and rejected this same argument, holding that "[n]othing in either § 2M5.3 or in § 3A1.4 prohibits the application of both provisions." United States v. Hammoud, 381 F.3d 316, 356 (4th Cir. 2004) (en banc), vacated on other grounds, 543 U.S. 1097 (2005). Applying the terrorism enhancement does not result in impermissible double counting, and Defendant's arguments should fail.[7]

[7] Defendant cites to two cases, United States v. Bourne, 130 F.3d 1444 (11th Cir. 1997), and United States v. Garrison, 133 F.3d 831 (11th Cir. 1998), in support of his argument. Neither proves his point. The Bourne Court merely held that the district court impermissibly double-counted the impact of a firearm in a bank robbery -- it could be used to support a brandishing enhancement or a threat of death enhancement, but not both. Bourne, 130 F.3d at 1447. No such duality exists here. The Garrison Court held that a defendant cannot receive an abuse of trust enhancement when the underlying criminal conduct is itself the abuse of trust and that fact is reflected in the specific offense Guideline. Garrison, 133 F.3d at 842-43. Here, as is discussed above, the terroristic nature of the defendant's conduct is in no way reflected in the specific offense guidelines.

C. The Sentencing Commission had the authority to impose a specific criminal history category for all defendants subject to the terrorism enhancement.

Defendant's final Guidelines objection challenges the terrorism enhancement in another way: Defendant, offering no case or statutory citations in support, argues that the enhancement wrongly establishes his criminal history category at VI. Specifically, Defendant argues that the Sentencing Commission had no authority to mandate a specific criminal history category based on factors other than those related to prior convictions. Sadequee PSR Objections at ¶7. However, because the Sentencing Commission acted within its authority when it set a uniform criminal history category of VI for all defendants subject to the § 3A1.4 terrorism enhancement, Defendant's argument fails and his objection should be overruled.

The Second Circuit considered and rejected the argument Defendant makes here, holding that the uniform criminal history category found in § 3A1.4 does not violate due process because of both the dangerousness of terrorism crimes and the difficulty of deterring and rehabilitating those who support terrorists. United States v. Meskini, 319 F.3d 88, 91-92 (2d Cir. 2003) (holding that "the terrorism guideline legitimately considers a single act of terrorism for both the offense level and the criminal history category"). Simply put, "Congress and the Sentencing Commission had a rational basis for creating a uniform criminal history

category for all terrorists under § 3A1.4(b), because even terrorists with no prior criminal behavior are unique among criminals in the likelihood of recidivism, the difficulty of rehabilitation, and the need for incapacitation." Id. at 92. "Implicit in [the Second Circuit's] decision is a finding that the Sentencing Commission did not exceed its congressional mandate in instituting this double enhancement." Awan, 2007 WL 2071748, at *3 n.14.[8] Defendant's supposition that the Sentencing Commission had no authority to increase a defendant's criminal history category based on facts related to the crime of conviction is unsupported by any case or statute, and it should be rejected.

II. DEFENDANT'S SENTENCE

As stated above, the Government believes that a term of 15 years in custody is appropriate for Defendant Ahmed. The relevant factors set forth in 18 U.S.C. § 3553(a) support this recommendation. Those factors include:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed --
>
> > (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

[8] The Career Offender provision of the Guidelines, § 4B1.1(b), which similarly creates a uniform criminal history category of VI, has also been upheld. See, e.g., United States v. Gibson, 135 F.3d 257, 260-61 (2d Cir. 1998); United States v. Lawrence, 889 F.2d 1187, 1190-91 (1st Cir. 1989)(Breyer, J.).

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; ...

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

18 U.S.C. § 3553(a).

Nature and circumstances of the offense. Defendant Ahmed conspired with others to support and engage in an armed struggle against the United States and its Western allies. He aligned himself with people and organizations that have proven themselves willing and able to use any means, to include the mass murder of innocent civilians, to achieve their avowed goal of successful armed jihad against their perceived enemies. In short, Defendant Ahmed pledged himself as a foot soldier in the war against Western civilization that certain violent jihadist organizations believe they are fighting.

The sincerity of Ahmed's intent is demonstrated by the fate of his many co-conspirators. Several of the violent jihadists he collaborated with in Canada have since been successfully prosecuted for planning to bring violent jihad to Canada by blowing up buildings and killing prominent officials. His training camp contact in Pakistan, Aabid Hussein Khan, is now serving many years in prison in the United Kingdom for terrorism-related offenses. And, of course, his closest partner in this criminal enterprise,

Defendant Sadequee, has had two of his direct overseas co-conspirators, Younis Tsouli and Mirsad Bektasevic, imprisoned for crimes of terrorism. Ahmed and his fellow radicals were not simply talking about doing harm to abstract Western interests; they actively pursued their terroristic goals and were stopped sometimes literally with gun or bomb in hand.

Defendant Ahmed's crime is of the most serious sort. He was not targeting a single individual or business. His motivation was not to make a profit by selling drugs or defrauding investors. Rather, he was at war with the fundamental concepts of democracy and liberty that are at the core of what is the United States of America. Given the nature of this crime, and Defendant Ahmed's oft-expressed willingness to support his cause with his life, if necessary, a term of 15 years in prison is appropriate.

History and characteristics of defendant. Defendant paints himself as an erstwhile supporter of violent jihad who never carried through with his plans and was nothing more than a "relatively youthful and immature individual, easily influenced by others." (Doc 609 at 2). The facts adduced at trial tell a different story. Defendant did make good on his planning; he traveled to Pakistan, he met with a terrorist recruiter, and he encouraged his co-conspirators to join him in the "curry place restaurant." The fact that Defendant was ultimately unsuccessful in entering a training camp and carrying out terrorist attacks does

nothing to lessen the danger associated with his endeavors. Indeed, there was ample evidence that Defendant was chagrined by his failure in Pakistan and that he continued to seek to engage in violent jihad after his return to the United States in the late summer of 2005. (Doc 510 at 11-14). Moreover, the fact that his co-conspirators viewed him as their leader, (Id. at 6), significantly undercuts his argument that he was an impressionable youth merely following the dictates of others. Defendant was one of the primary participants in a conspiracy to engage in violent jihad against innocent civilians around the world and should be punished accordingly.

Defendant also argues that the Court should fashion a lower sentence than it might otherwise because Defendant spent several years under more-restrictive-than-usual jail conditions while awaiting trial. (Doc 609 at 5). The Government acknowledges that Defendant was housed in a more controlled environment than the typical pre-trial detainee, as dictated by the Bureau of Prisons' policy for terrorism defendants. The Government further agrees that conditions of pretrial confinement may serve as the basis for a downward departure, see United States v. Pressley, 345 F.3d 1205, 1218 (11th Cir. 2003). Indeed, this is precisely the type of factor that might warrant a sentence towards the low end of a particular Guidelines range. However, as previously noted, the Government's recommended sentence is far below the low-end of the

Guidelines range that would have applied in this case but for the statutory maximum of 15 years. The Government does not believe that Defendant should receive additional consideration beyond the 15-year sentencing cap created by the Government's willingness to proceed with a single count at the bench trial.

Adequate deterrence and protection of the public. This factor overlaps significantly with the first factor, which addresses the nature and circumstances of Defendant's offense. Given the gravity of Defendant's crime and the threat that he and his co-conspirators posed, deterrence and protection are obviously paramount. Whatever sentence the Court decides upon must be designed to afford maximum protection to the public that Defendant Ahmed will not once again pursue the path of violent jihad. While there is no way to guarantee this, short of lifetime incarceration, which is not an option here, the Government firmly believes that the maximum allowable term -- 15 years -- is the sentence that will be most likely to succeed.

First, and most obviously, it guarantees deterrence and protection (absent an escape from custody) for the longest possible period. Second, it has the highest likelihood of convincing Defendant of the futility of his earlier mission, of showing him that there will be drastic consequences should he ever again seek to rally others to the banner of violent jihad. Finally, it provides the most effective means of monitoring Defendant Ahmed's

conduct for the longest possible time: upon his release, even though he will be subject to supervised release for many years -- if not for the rest of his life -- Defendant's freedoms will expand exponentially, and with them his ability to reconnect with fellow violent jihadists. No matter how vigilant law enforcement may be, Defendant out of jail is a greater risk to the public than Defendant in jail.

Unwarranted sentencing disparities. The final factor that Defendant asks the Court to weigh is one that the Government believes is not implicated in Defendant's situation: sentencing disparities. Defendant points specifically to several co-conspirators convicted in foreign courts (Younis Tsouli, Aabid Hussein Khan, and Mirsad Bektasevic), as well as one yet-to-be sentenced co-conspirator in the Northern District of Ohio (Zubair Ahmed). (Doc 609 at 4-5). Because none of these co-conspirators is similarly situated to Defendant, a 180-month sentence will not create any unwarranted disparities.

While Defendant is correct that the sentencing court must consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), the Eleventh Circuit has limited that consideration to those unwarranted disparities in sentences among federal defendants. United States v. Docampo, 573 F.3d 1091, 1102 (11th Cir. 2009) ("Section 3553(a)(6) is concerned

with unwarranted disparities in sentences among federal defendants."). Simply put, Defendant is not similarly situated to those co-conspirators prosecuted in other countries, just as the defendant in Docampo was not similarly situated to his co-conspirators sentenced in state court. See id. (holding that defendant Docampo, who received a 270-month sentence after trial in federal court, was not similarly situated to co-conspirators who received probated sentences after pleading guilty in state court). There is no reason to expect (or even desire) uniformity among sentences imposed by different national sovereigns; the co-conspirators' sentences in the United Kingdom and Bosnia do not serve as proper reference points for determining a sentence for Defendant. Presumably had any of the foreign defendants received the death penalty for their involvement in Defendant's conspiracy -- a very real possibility in certain countries -- he would not be asking the Court to consider their sentences as relevant benchmarks.

Likewise, there are several reasons why Zubair Ahmed is not similarly situated for purposes of Section 3553(a)(6). First, Zubair Ahmed has not been sentenced. Although Defendant represents that the Government will recommend a sentence of 8-10 years for Zubair Ahmed, the District Court in that case has not yet imposed sentence. The actual sentence Zubair Ahmed receives may be higher or lower than the Government's recommendation. Second, Zubair

Ahmed is not similarly situated to Defendant in at least one critical respect: he cooperated with the Government. See Docampo, 573 F.3d at 1101 ("We have held that defendants who cooperate with the government and enter a written plea agreement are not similarly situated to a defendant who provides no assistance to the government and proceeds to trial."); United States v. Williams, 526 F.3d 1312, 1323 (11th Cir. 2008) (disparity between defendant's sentence and that of co-defendant who cooperated and testified not "unwarranted"). In marked contrast to Defendant Ahmed, who risked going into contempt of court, Zubair Ahmed cooperated extensively with the Government and testified in both terrorism trials in this District. It is thus unsurprising that Zubair Ahmed may yet receive a shorter sentence as a result of his substantial assistance.

CONCLUSION

For the reasons stated above, Defendant Ahmed's Guidelines objections should be overruled and he should be sentenced to a term of 15 years (180 months) in prison, to be followed by a lifetime term of supervised release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the following attorney of record:

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This 9th day of December, 2009.

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