

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CASE NO. 2:10-cr-20005

Plaintiff,

HONORABLE NANCY G. EDMUNDS

-vs-

D-1 UMAR FAROUK ABDULMUTALLAB,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

INTRODUCTION

As noted by the Court at the time of his plea, and as found by the Probation Department in its Presentence Investigation Report, Defendant Abdulmutallab faces mandatory life sentences as to Counts Four and Six, and a mandatory minimum sentence of thirty years as to Count Two.¹ Defendant also faces up to a life sentence as to Counts One and Seven. The remaining charges, which are Counts Three, Five and Eight, each carry sentences of up to twenty years imprisonment. A summary of the charges, maximum sentences, mandatory minimum sentences, requirement of consecutive sentences, and the government's recommendation as to each is contained in the Sentencing Appendix attached to this Memorandum. The government asks that the Court impose the maximum sentence as to each count.

¹Although Count 2 carries a mandatory minimum sentence of 30 years imprisonment, it carries a maximum sentence of up to life imprisonment.

SENTENCING FACTORS

As applicable to the present case, the Court is required to consider the following factors in imposing sentence:

- (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;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the sentencing guidelines applicable to the offense; and
- (5) 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).

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The “nature and circumstances of the offense” are straightforward: defendant maliciously attempted to murder 289 innocent people of all nationalities and ethnicities, and, but for a technical problem with his bomb, he would have succeeded. As detailed extensively in the Presentence Investigation Report at ¶¶ 13-24 and in the Supplemental Factual Appendix,² defendant was deeply

²Defendant, through his standby counsel, objects to those paragraphs of the presentence report. *See* Defendant’s Objections, ¶ 1. Defendant states that the objected-to paragraphs contain “information obtained during plea negotiations in this matter and can not at this stage be used against him, for sentencing purposes.” Assuming *arguendo* that the debriefings at which
(continued...)

committed to his mission, seeking out and finding Al Qaeda and Anwar Awlaki, volunteering for a martyrdom mission, and then becoming involved in planning and training for a significant amount of time. Never did defendant falter in his resolve or reconsider his decision to commit mass murder. Indeed, as of the date that he entered his guilty plea, defendant stated to this Court that he believes that the Koran obliges “every able Muslim to participate in jihad and fight in the way of Allah, those who fight you, and kill them wherever you find them, some parts of the Koran say, an eye for an eye, a tooth for a tooth.” (October 12, 2011, Tr. Vol. 5, page 26.) Defendant added that “participation in jihad against the United States is considered among the most virtuous of deeds in Islam and is highly encouraged in the Koran.” (*Id.* at 27.) In explaining his offense, defendant stated that “I attempted to use an explosive device which in the U.S. law is a weapon of mass destruction, which I call a blessed weapon . . .” (*Id.* at 28.) In short, defendant is an unrepentant would-be mass

²(...continued)

the statements were made were in fact “plea negotiations,” defendant’s argument precisely misses the point. The admissibility of plea negotiations is controlled by Federal Rule of Evidence 410, which is inapplicable at sentencing. Fed. R. Evid. 1101(d)(3); *see also* 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purposes of imposing an appropriate sentence.”).

Defendant further objects that “the statements made during plea negotiations were protected by Kastigar.” Presumably, by using the term “Kastigar” stand-by counsel is referring to a proffer agreement, sometimes referred to as a Kastigar letter, rather than *Kastigar v. United States*, 406 U.S. 441 (1972), as that case involved a grant of immunity under 18 U.S.C. §§ 6002-6003, which was never extended to Defendant Abdulmutallab. However, no proffer agreement was ever signed by Defendant Abdulmutallab, who, after consultation with his then-counsel, chose to speak to agents without signing such an agreement. There is thus no bar to the Court’s consideration at sentencing of statements defendant made during debriefings.

The Supplemental Factual Appendix is included in order to provide the Court with additional information regarding “the nature and circumstances of the offenses,” particularly Count One. It provides the Court with relevant details regarding other terrorists with whom defendant interacted overseas as part of this plot, including Anwar Awlaki.

murderer, who views his crimes as divinely inspired and blessed, and who views himself as under a continuing obligation to carry out such crimes.

B. The Need for the Sentence to Reflect the Seriousness of the Offense,
To Promote Respect for the Law, and to Provide Just Punishment
For the Offense

Had defendant attempted to murder a single individual, he likely would be facing a life sentence. Here, where he attempted to murder two hundred eighty nine individuals, no sentence other than life, as to all the counts which carry such a potential sentence, could possibly reflect the seriousness of defendant's conduct. Under the circumstances of this case, anything less than a life sentence would fail to provide just punishment. Indeed, a life sentence would promote respect for the law.

In order to demonstrate the destructive power of defendant's device as it was designed, the government intends to play for the Court at sentencing a video of the FBI Laboratory's demonstration of PETN explosions. These are the same videos which the Court ruled admissible for trial for the same purpose. Those videos demonstrate explosions of 76 grams of PETN, the amount which was recovered unexploded and unburned from defendant's explosive device, and 200 grams, the amount the FBI has estimated was contained in defendant's device before defendant initiated the explosion.

C. The Need to Protect the Public From Further Crimes
Of the Defendant

Defendant poses a significant, ongoing threat to the safety of American citizens everywhere. As noted previously, in pleading guilty, defendant reiterated that it is his religious belief that the Koran obliges “every able Muslim to participate in jihad and fight in the way of Allah, those who fight you, and kill them wherever you find them,” and that “participation in jihad against the United States is considered among the most virtuous of deeds in Islam and is highly encouraged in the Koran.” Thus, by his own words, defendant has shown that he continues to desire to harm the United States and its citizens, and that he views it as his religious obligation to do so.

In addition, Dr. Simon Perry, Ph.D., who was to have testified on behalf of the government at trial as an expert on the concepts of martyrdom and jihad, has prepared a report analyzing defendant’s level of danger. Dr. Perry is a criminologist and co-director of the Program in Policing and Homeland Security Studies at the Hebrew University of Jerusalem. Dr. Perry and a team conducted research into the motivation of forty failed suicide bombers, and developed a psychological profile of such individuals. *See* Exhibit A, Memorandum for the Court, by Simon Perry, Ph.D. In his memorandum, Dr. Perry analyzed the available data on the motivation of suicide bombers, or, to use his preferred term, of an individual engaged in “martyrdom.”³ Dr. Perry also

³“Martyrdom” is also the term used by defendant in describing his intended behavior. For instance, on December 25, 2009, during the hospital admissions process, defendant told University of Michigan Hospital nurse Julia Longenecker that he had no history of having attempted to harm himself or others. When Ms. Longenecker disputed that characterization, by asking him whether what he had undertaken on the airplane earlier that day was not harming himself and others, defendant replied: “That was martyrdom.”

analyzed the facts of the case, including defendant's extensive debriefing given to the FBI.⁴ Dr. Perry's entire report provides a unique analysis of martyrdom bombers in general and Defendant Abdulmutallab in particular; Dr. Perry's conclusion is chilling:

Since UFAM's [Umar Farouk Abdul Mutallab's] motivation to commit martyrdom appears to be great, I believe there is a high probability that given the opportunity, he would try once again to commit an act of martyrdom, endangering his and other innocent lives.

It is my belief that UFAM fits well the profile of the classic martyr as described above. Therefore his act of martyrdom is the result of his expectation to receive religious, personal/ personality and social benefits. As long as he is of the same state of mind and continues to hold the same set of beliefs, the outcome of this "rational choice" decision making process which evaluates the "cost" and the anticipated "benefits" is expected to lead him to martyrdom.

UFAM stated to Agents that he is committed to Jihad. He claimed that once a decision is made, one remains committed to that decision unless something comes up that requires re-examination.

It seems that even the death of Aulaji, his source of religious guidance concerning martyrdom, did not change his state of mind and did not require re-examination. If anything, it has made him more determined.

In summary, in addition to the probability that given the opportunity, UFAM will make another attempt at martyrdom, there also exists the likelihood that he will become a role model and proxy of Fundamentalist Islamic Jihadists, assisting them in the recruitment of new martyrs.

In other words, defendant has enormous motivation to carry out another terrorist attack, but lacks the capability because of his incarceration. The Court has no ability to control defendant's motivation, which in any event appears to be unchanged. However, the Court can control

⁴See note 2, *supra*. Even if there were some prohibition on the use of defendant's debriefing statements at sentencing, which there is not, they would still be available for Dr. Perry's use, because they are the type of evidence reasonably relied upon by experts in his fields of criminology and psychology. *See* Fed. R. Evid. 703.

defendant's opportunity to act on those intentions. The Court should use the discretion it has to impose a sentence which ensures that defendant never again has the opportunity to carry out the type of mission he still is highly motivated to conduct.

D. The Need to Provide Defendant With Educational or Vocational Training and Medical Treatment

None of these factors is applicable to the present case. Defendant has a college degree from University College London,⁵ and even took post-graduate classes. Defendant has fully recovered from the injuries suffered in his attack, and his health is now excellent.

E. The Kinds of Sentences Available, the Sentencing Guidelines, and the Need To Avoid Unwarranted Sentencing Disparities

In the present case, the Sentencing Guidelines provide for life sentences. As noted above, Counts Four and Six carry statutorily-mandated life sentences. Counts One, Three, Five, Seven and Eight all are subject to the terrorism enhancement of USSG § 3A1.4,⁶ which adds twelve levels to

⁵According to the Times Higher Education World Ratings, University College London is rated the 17th best university in the world for 2011-2012. *See* <http://www.timeshighereducation.co.uk/world-university-rankings/2011-2012/top-400.html>.

⁶USSG § 3A1.4 applies “[i]f the offense is a felony that involved, or was intended to promote a federal crime of terrorism[.]” “Federal crime of terrorism” has the meaning given in 18 U.S.C. § 2332b(g)(5). *See* USSG § 3A1.4 (comment.), n.1.

A “federal crime of terrorism” is defined under 18 U.S.C. § 2332b(g)(5) as an offense that is “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct,” and which also is a violation of 18 U.S.C. § 2332b (relating to terrorism transcending national boundaries, as is Count One), 18 U.S.C. § 32 (relating to destruction of aircraft, as are Counts Five and Eight), 18 U.S.C. § 2332a (relating to weapons of mass destruction, as is Count Seven), *see* 18 U.S.C. § 2332b(g)(5)(B)(i); and which also is a violation of 18 U.S.C. § 46506 (relating to attempted murder on aircraft, as is Count Three), *see* 18 U.S.C. § 2332b(g)(5)(B)(iii).

The record is replete with defendant's statements that he acted “to retaliate against
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each of the base offenses and also places defendant in Criminal History Category VI. As a result, each of the non-mandatory counts has an adjusted offense level above Level 43, which is the highest level contained in the guidelines. *See* USSG § 5, Pt. A, comment. (n.2) (an offense level of more than 43 is to be treated as an offense level of 43). An offense level of 43 calls for a life sentence at any criminal history level. The fact that the terrorism enhancement places defendant in the most serious criminal history category merely reinforces the fact that the Sentencing Commission sought to ensure life sentences for individuals who commit the types of offenses of which defendant was convicted.⁷

⁶(...continued)

government conduct.” *See* October 12, 2011, Tr. Vol. 5, page 26 (defendant stating he acted “in retaliation for U.S. support of Israel and in retaliation of the killing of innocent and civilian Muslim populations in Palestine, especially in the blockade of Gaza, and in retaliation for the killing of innocent and civilian Muslim populations in Yemen, Iraq, Somalia, Afghanistan and beyond”); *id.* (defendant committed an “act of jihad against the United States for the U.S. killing of my Muslim brothers and sisters around the world”); *id.* at 27 (defendant acted “to avenge”); *id.* (defendant acted “in retaliation”); *id.* at 28-29 (defendant acted “for the U.S. oppression of Muslims,” “for U.S. interference in Muslim countries,” “for U.S. use of weapons of mass destruction on Muslim populations” in various countries, and “for the U.S. wreckage of Muslim lands and property”).

Thus, it is clear that the offenses for which defendant was convicted qualify for the terrorism enhancement, and that defendant acted with the requisite intent to retaliate against the United States government. For purposes of the record, the government asks that the Court make an express finding that the enhancement applies.

⁷The statutory factors also require the Court to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. A life sentence in the present case would not create any such disparity. To the contrary, Courts routinely impose very stiff sentences on defendants who are convicted of participating in terror plots. For example, in a case involving similar facts, Richard Reid received three non-mandatory life sentences for attempting to explode a bomb aboard an aircraft in flight in 2001 on behalf of al Qaeda, and the maximum sentence on several other non-mandatory counts. *See United States v. Reid*, 02-10013-WGY (D. Mass. 2003); *also e.g., United States v. Faisal Shahzad*, 10 Cr. 541 (MGC) (S.D.N.Y. 2010) (life imprisonment for attempted bombing in

(continued...)

CONCLUSION

For the reasons stated, the government asks that the Court impose life sentences as to Counts One, Two,⁸ Four, Six, and Seven, and twenty year sentences as to Counts Three, Five and Eight.

By

⁷(...continued)

Times Square, New York); *United States v. Wadih el-Hage, et al.*, S10 98 Cr. 1023 (LBS/LAK) (S.D.N.Y. 2001 and 2010) (life imprisonment for all convicted participants in al Qaeda bombing of U.S. embassies in East Africa); *United States v. Kassir*, S2 04 Cr. 356 (JFK) (S.D.N.Y. 2009) (multiple terms of life imprisonment for operative who set up jihad training camp in the U.S.); *United States v. Mohammed Mansour Jabarah*, 02 Cr. 1560 (BSJ) (S.D.N.Y. 2008) (life imprisonment upon a guilty plea to conspiring to bomb U.S. Embassies in Singapore and the Phillippines); *United States v. Zacarias Moussaoui*, 01 Cr. 455 (LMB) (E.D. Va. 2006) (life sentence for conspiring in the attacks of September 11, 2001); *United States v. Mohammed Salameh, et al.*, 93 Cr. 180 (KTD) (S.D.N.Y. 1999) (1993 bombing of the World Trade Center, resulting in six deaths — sentences of 240 years, 240 years, 180 years, 117 years, 116 years, 108 years); *United States v. Terry Nichols*, 96 Cr. 68-m (D. Colo. 1998) (life imprisonment for conspiracy to bomb the Oklahoma City federal building — defendant acquitted of murder but convicted of manslaughter); *United States v. Abdul Hakim Murad, et al.*, 93 Cr. 180 (KTD) (S.D.N.Y. 1998) (life imprisonment plus 60 years imposed on each of two defendants for a conspiracy to bomb United States airliners in Southeast Asia); *United States v. Omar Abdel-Rahman*, 93 Cr. 181 (MBM) (S.D.N.Y. 1996) (life sentence for seditious conspiracy); *see also United States v. Timothy McVeigh*, 96 Cr. 68-m (D. Colo. 1997) (death sentence for the bombing of the Oklahoma City federal building, resulting in 168 deaths).

⁸Count Two carries a minimum sentence of 30 years imprisonment, but the maximum sentence can be up to life imprisonment.

statute, the sentences on each of Counts One, Two, Four and Six must run consecutively to any other sentence.

Respectfully submitted,

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SENTENCING APPENDIX

Count	Charge	Maximum Sentence	Mandatory Minimum?	Mandatory Consecutive?	Government Request
1.	Terrorism Trans. Nt'l Boundaries	Life	No	Yes	Life/ consecutive to other counts
2.	Possession Firearm/Dest. Device	Life	360 months	Yes	Life/ consecutive to other counts
3.	Attempted Murder	20 years	No	No	240 months*
4.	Use/Carrying of Dest. Device	Life	Life	Yes	Life, consecutive to other counts
5.	Placing Destructive Device in Aircraft	20 years	No	No	240 months*
6.	Possession Destructive Device	Life	Life	Yes	Life, consecutive to other counts
7.	Attempted Use Weapon of Mass Destruction	Life	No	No	Life*
8.	Attempt to Destroy and Wreck Aircraft	20 years	No	No	240 months*

*The government has no objection to these counts being made concurrent to each other.

SUPPLEMENTAL FACTUAL APPENDIX

This Supplemental Factual Appendix is intended to provide additional information regarding “the nature and circumstances of the offenses,” particularly Count One of the First Superseding Indictment - Conspiracy to Commit an Act of Terrorism Transcending National Boundaries. Specifically, this Supplemental Factual Appendix is intended to provide the Court with details about Defendant Abdulmutallab’s interactions with Al Qaeda in the Arabian Peninsula (AQAP) terrorists in the months leading up to his attack on Northwest Flight 253. As with the Presentence Investigation Report, the bulk of the material provided comes from debriefing statements defendant made to FBI agents from January to April 2010, which may be considered for sentencing. *See Note 2, supra.*

In August 2009, defendant left Dubai, where he had been taking graduate classes, and traveled to Yemen. For several years, defendant had been following the online teachings of Anwar Awlaki, and he went to Yemen to try to meet him in order to discuss the possibility of becoming involved in jihad. Defendant by that time had become committed in his own mind to carrying out an act of jihad, and was contemplating “martyrdom;” *i.e.*, a suicide operation in which he and others would be killed.

Once in Yemen, defendant visited mosques and asked people he met if they knew how he could meet Awlaki. Eventually, defendant made contact with an individual who in turn made Awlaki aware of defendant’s desire to meet him. Defendant provided this individual with the

number for his Yemeni cellular telephone. Thereafter, defendant received a text message from Awlaki telling defendant to call him, which defendant did. During their brief telephone conversation, it was agreed that defendant would send Awlaki a written message explaining why he wanted to become involved in jihad. Defendant took several days to write his message to Awlaki, telling him of his desire to become involved in jihad, and seeking Awlaki's guidance. After receiving defendant's message, Awlaki sent defendant a response, telling him that Awlaki would find a way for defendant to become involved in jihad.

Thereafter, defendant was picked up and driven through the Yemeni desert. He eventually arrived at Awlaki's house, and stayed there for three days. During that time, defendant met with Awlaki and the two men discussed martyrdom and jihad. Awlaki told defendant that jihad requires patience but comes with many rewards. Defendant understood that Awlaki used these discussions to evaluate defendant's commitment to and suitability for jihad. Throughout, defendant expressed his willingness to become involved in any mission chosen for him, including martyrdom - and by the end of his stay, Awlaki had accepted defendant for a martyrdom mission.

Defendant left Awlaki's house, and was taken to another house, where he met AQAP bomb-maker Ibrahim Al Asiri. Defendant and Al Asiri discussed defendant's desire to commit an act of jihad. Thereafter, Al Asiri discussed a plan for a martyrdom mission with Awlaki, who gave it final approval, and instructed Defendant Abdulmutallab on it. For the following two weeks, defendant trained in an AQAP camp, and received instruction in weapons and indoctrination in jihad. During his time in the training camp, defendant met many individuals, including Samir Khan.⁹

⁹ Khan later came to be involved with AQAP's *Inspire* magazine. Both Khan and Awlaki were killed in September 2011.

Ibrahim Al Asiri constructed a bomb for defendant's suicide mission and personally delivered it to Defendant Abdulmutallab. This was the bomb that defendant carried in his underwear on December 25, 2009. Al Asiri trained defendant in the use of the bomb, including by having defendant practice the manner in which the bomb would be detonated; that is, by pushing the plunger of a syringe, causing two chemicals to mix, and initiating a fire (which would then detonate the explosive).

Awlaki told defendant that he would create a martyrdom video that would be used after the defendant's attack. Awlaki arranged for a professional film crew to film the video. Awlaki assisted defendant in writing his martyrdom statement, and it was filmed over a period of two to three days. The full video was approximately five minutes in length.¹⁰

Although Awlaki gave defendant operational flexibility, Awlaki instructed defendant that the only requirements were that the attack be on a U.S. airliner, and that the attack take place over U.S. soil. Beyond that, Awlaki gave defendant discretion to choose the flight and date. Awlaki instructed defendant not to fly directly from Yemen to Europe, as that could attract suspicion. As a result, defendant took a circuitous route, traveling from Yemen to Ethiopia to Ghana to Nigeria to Amsterdam to Detroit. Prior to defendant's departure from Yemen, Awlaki's last instructions to him were to wait until the airplane was over the United States and then to take the plane down.

¹⁰ The Court has seen the thirty-four-second excerpt of the video that was subsequently released by AQAP as part of its video *America and the Final Trap*.

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to Anthony Chambers. I further certify that I have caused a copy of this filing to be delivered and mailed to the defendant, Umar Farouk Abdulmutallab, Register No. 44107-039, Federal Detention Center, East Arkona Road Milan, Michigan.

s/ Darlene Secord
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