



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE GARLAND E. BURRELL, JR., CHIEF JUDGE

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR. S-05-240

HAMID HAYAT,

Defendant.

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REPORTER'S TRANSCRIPT

JUDGMENT AND SENTENCING

MONDAY, SEPTEMBER 10, 2007

TUESDAY, SEPTEMBER 11, 2007

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Reported by: KIMBERLY M. BENNETT, CSR #8953

RPR, CRR, RMR



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SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 10, 2007

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4 THE CLERK: Calling Criminal Case S-05-240; United
5 States versus Hamid Hayat.

6 THE COURT: Please state your appearances.

7 MR. TICE-RASKIN: Good morning, Your Honor. Robert
8 Tice-Raskin, Laura Ferris, and Sharon Lever, all on behalf of
9 the United States.

10 MS. MOJADDIDI: Good morning, Your Honor. Wazhma
11 Mojaddidi, Dennis Riordan, and Don Horgan, all on behalf of
12 Hamid Hayat, who is personally present in custody.

13 THE COURT: Thank you.

14 INTERPRETER: Good morning, Your Honor. Kamal Judge,
15 registered Urdu interpreter, previously sworn.

16 THE COURT: You explained at some point during the
17 trial proceeding that you're not certified but you are
18 something other than certified. Would you explain that
19 again.

20 INTERPRETER: Your Honor, this language is not
21 certified yet because there is no testing available. So what
22 we have to do is, through the Judicial Council, we have to go
23 through another testing process where they test us in English
24 language, verbal and written, and on that basis they register
25 us. So I am registered in all the languages, Urdu,



1 Punjabi --

2 THE COURT: You're registered in Urdu?

3 INTERPRETER: Yes, Your Honor.

4 THE COURT: Thank you.

5 This is the time set for sentencing. Is there any
6 reason why we shouldn't proceed?

7 MS. MOJADDIDI: No, Your Honor.

8 MR. TICE-RASKIN: No, Your Honor.

9 THE COURT: I have read and considered the presentence
10 report and the parties' respective sentencing memorandums. I
11 also read a filing made by the defense last Friday in which
12 it asked me to delay imposition of judgment.

13 Has counsel for the defense received and read a copy
14 of the presentence report, and have you discussed it with
15 Hamid Hayat in his own language in detail?

16 MR. RIORDAN: Yes, Your Honor, we have.

17 THE COURT: How did you accomplish discussing it with
18 your client in his own language?

19 MR. RIORDAN: Your Honor, we jointly discussed the
20 probation report. Ms. Mojaddidi was one of the attorneys, we
21 were all together with the client, and she discussed it with
22 him in both English and Urdu.

23 THE COURT: Is that right, Ms. Mojaddidi?

24 MS. MOJADDIDI: Yes, Your Honor, that's correct.

25 THE COURT: Mr. Hamid Hayat, has the presentence



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report been discussed with you in your own language, Urdu,
and have you discussed that report with your attorneys in
detail in your own language?

THE DEFENDANT: Yes. Absolutely I did.

THE COURT: Thank you.

There are objections to the presentence report. I
have read the objections. Do you want to argue further?

MR. RIORDAN: Briefly, Your Honor. And I would
like -- Dennis Riordan for defendant Hayat. I would like to
bring an additional matter to the Court's attention.

The Court is aware that we object to the determination
of the appropriate guideline in the presentence report. But,
Your Honor, I would also, before I address that briefly, like
to make the following point.

I would direct the Court's attention to the
presentence report at page 6. This is the amended
presentence report that was filed, I believe, on July 20th.
And on page 6, page 6 contains, among other things,
paragraphs 16, 17, 18, and 19.

THE COURT: Okay.

MR. RIORDAN: Those four paragraphs refer to
statements purportedly made by Umer Hayat, the defendant's
co-defendant. None of those statements were placed before
Mr. Hayat's jury. Mr. Hayat's jury -- Mr. Hamid Hayat's
jury. Mr. Hamid Hayat's jury, obviously, did not find any of



1 them to be true. Mr. Umer Hayat's jury did not find them to
2 be true in the sense that he was not convicted of the false
3 statements charge that he was charged with. So they did not
4 find these statements, referring to his son's activities or
5 his activities, to be true.

6 Again, they weren't before Mr. Hamid Hayat's jury,
7 they weren't found true by Mr. Umer Hayat's jury, and on that
8 ground we would ask the Court to strike paragraphs 16, 17,
9 18, and 19 as containing prejudicial language that's
10 surplusage.

11 THE COURT: Why didn't you make a timely objection
12 concerning those paragraphs?

13 MR. RIORDAN: I agree, Your Honor. We're raising this
14 for the first time, Your Honor. And, quite frankly, the
15 oversight was mine. All I can do is apologize to the Court
16 for that oversight and submit that objection for the Court's
17 consideration.

18 THE COURT: Are you done arguing?

19 MR. RIORDAN: I had one other matter similar to this,
20 Your Honor.

21 THE COURT: Okay.

22 MR. RIORDAN: And in some ways it's more -- even more
23 grave. And, again, I have to apologize for bringing it to
24 the Court's attention at this time.

25 I would direct the Court's attention to page 16, which



1 contains paragraph 69 --

2 THE COURT: Just a moment. Before I do that, let's
3 make sure we're looking at the same presentence report. You
4 called it an amended presentence report. Is it dated, on
5 page 21, July 20th, 2007?

6 MR. RIORDAN: Yes, it is, Your Honor.

7 THE COURT: Would you tell me the next thing you want
8 me to look at again.

9 MR. RIORDAN: On page 16, paragraph 69. And then I'm
10 directing the Court's attention to the third sentence from
11 the end of that paragraph which reads as follows:

12 "It appears his entire family supports jihadist ideas
13 and groomed the defendant to become a terrorist."

14 May I address that, Your Honor? Third sentence from
15 the end --

16 THE COURT: I found it. I was looking to see what
17 section of the presentence report it was in.

18 MR. RIORDAN: This is, essentially, I believe in --

19 THE COURT: It's in part F.

20 MR. RIORDAN: Part F.

21 THE COURT: Part F. It says, "Other factors to be
22 considered."

23 MR. RIORDAN: Yes, Your Honor.

24 THE COURT: And it appears to be a discussion under
25 Title 18 United States Code Section 3553(a), which is the



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statute that contains sentencing factors a federal judge is to consider.

MR. RIORDAN: Yes, Your Honor.

THE COURT: Okay.

MR. RIORDAN: And, Your Honor, I would ask the Court to strike that sentence as grossly irresponsible a sentence as I've ever seen in a presentence report.

Mr. Hayat has a 9-year-old sister. He has a younger brother. He has a second younger sister. He has an extensive family of cousins. The probation officer has asked this Court to accept, and therefore make a judicial finding, that his entire family, all of his family, supports jihadist ideas and groomed the defendant to become a terrorist. For the rest of their lives, his younger sister, who is 9, his brothers, his cousins, are likely to be subjected to who knows what kind of government surveillance because the probation officer has made the wholly-unfounded assertion that these people supported jihadist ideas and groomed the defendant to become a terrorist.

So, I would ask the Court to strike that. It is a deep, deep disservice to any number of individuals, none of whom are the subject of any testimony before this Court at all.

Those are my objections, Your Honor, to the specific factual statements. And then, if the Court wants me to



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address the guideline determination, I'll do that at the appropriate time, if it's now or later, or...

THE COURT: It's up to you. I've read your sentencing memorandum. If you want to argue, then this is the time for that.

MR. RIORDAN: Yes. Very briefly, Your Honor.

What the presentence report does is that it submits a guideline determination that for the Count 1 offense, material support charge, would -- it urges the Court to make a finding that that offense alone would merit a level 40 guideline level; 26 points as the base level, two-point increase for provision of material support, with knowledge such support is to be used in furtherance of a violent act, and then an additional 12-level increase for committing a crime of terrorism.

So, if we take the Count 1 charge alone, the PSI submits that you should find a level 40, which carries a minimum sentence of 360 months, which is 30 years, and a maximum sentence of life. But the statutory limit for that offense is 15 years. So the probation department -- the presentence report takes the position that the proper guideline for an offense which carries an absolute statutory maximum, according to the legislature, of 15 years should be at a minimum 30 years. They then add two points to the guideline to get 42; the two points being for the false



1 statements charges.

2 One of two things are true. Either the determination
3 of a sentence twice as long as the legally-permissible
4 sentence is -- the submission that that's the correct
5 guideline range is wrong. Or, if the guideline commission
6 intended that, then the guideline commission is wrong,
7 because no matter what powers they have, the guideline
8 commission cannot propose a sentence that's twice what
9 Congress has authorized.

10 So I think we're dealing with an irrational guideline
11 proposal. We've given the Court arguments on why the 12
12 points should not be added, and we stand on those. And I'm
13 sure the Court has considered them.

14 But on this we can agree, and the government cannot
15 possibly argue with this, when this Court parses out a
16 sentence, the absolute maximum it could give for the material
17 support charge is 15 years. Absolute maximum. So we are
18 then saying, you know, we think it should be less than that,
19 but let's just for a moment assume that the Court imposed the
20 maximum of 15 years. Then the Court faces the question of
21 how much additional time the defendant should get on the
22 false statements charges. How much worse did his offense,
23 the material support offense, become by engaging in false
24 statements.

25 And the comparison we have is take someone who is



1 charged with the same Count 1 charge of material support to
2 terrorism. They arrive in this country, as Mr. Hayat did,
3 their bags are searched, and in their bags is a very detailed
4 list of steps to be taken to commit acts of violence in this
5 country, contacts to be made, phone numbers, meeting places,
6 and it shows an extremely well-developed plan, and the
7 documents that are seized are more than adequate to establish
8 a defendant's guilt of that offense. What is the absolute
9 maximum that the Court could give for that highly-developed
10 and well-proved plan? 15 years.

11 So then let's compare that to Mr. Hayat. He comes
12 into the country and is eventually interrogated on two
13 occasions, he's charged with three false statements. But
14 those are for interviews in which he eventually, according to
15 the government's view of his statements, cooperates and
16 provides them with all of the evidence necessary to convict
17 him on the material support charge, and in doing so actually
18 becomes convicted of an offense that the government has
19 agreed he could not be convicted of had he not cooperated
20 because they have agreed, and it's obviously true, that
21 without his statements to the FBI there would not have been a
22 case against him.

23 So we compare those two situations, the
24 highly-developed plans of the silent defendant who enters
25 prepared to commit a material support charge, and this case



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in which Mr. Hayat enters and cooperates with the FBI and gives them the statements that convict him. It's the government's position that it was so heinous of Mr. Hayat to participate in those interviews, in which he actually gave the government its entire case, that he should receive a 20-year increase in the sentence that he would have received if he had been the person who came in with the highly-developed plans and sat silent.

It's a wholly irrational proposition, Your Honor. It's an attempt, really, to punish the material support charge in a dramatically higher fashion than Congress would permit. And we submit that this is a -- certainly not the most egregious material support charge. If the Court factors in, to any extent, the false statement charges, it should do it to get to the statutory maximum of the Count 1 charge of 15 years. But the notion that Mr. Hayat should be punished more, and not only more but more than twice as much, for the false statements charges when those interviews helped the government, we submit is unfair and an attempt to end run congressional intent on the limit for the material support charge.

Thank you, Your Honor.

MR. TICE-RASKIN: Your Honor, may I have one moment to confer?

THE COURT: Yes.



1 (Discussion held off the record.)

2 MR. TICE-RASKIN: Good morning, Your Honor. Robert
3 Tice-Raskin.

4 Let me address the tardy factual objections made by
5 the defense first. The Court should overrule the untimely
6 objections to PSR paragraphs 16 through 19. It's irrelevant
7 that that evidence was not provided to the Hamid Hayat jury.
8 It's likewise irrelevant that the jury to whom that evidence
9 was provided, the Umer Hayat jury, ultimately ended up in a
10 mistrial.

11 This Court heard that evidence, that evidence being
12 the Umer Hayat taped confession, and the presentence report
13 accurately reflects the statements that were made by Umer
14 Hayat during the course of those interviews. Therefore,
15 there is no basis to object here. This is an accurate
16 recitation as to what was said by Umer Hayat, and it may be
17 considered by this Court in the context of Hamid Hayat's
18 sentencing.

19 The government's response to the objection on page 16,
20 paragraph 69 --

21 THE COURT: I don't want you to move on yet.

22 MR. TICE-RASKIN: Yes, Your Honor.

23 THE COURT: I want to read those paragraphs. I read
24 them before this proceeding, but not with an objection in
25 mind because none had been made.



1 (Pause in the proceedings.)

2 THE COURT: You can move on.

3 MR. TICE-RASKIN: Turning then, Your Honor, to the
4 second tardy objection to paragraph 69, found at page 16 of
5 the PSR.

6 First of all, I would make the observation that this
7 is the summary opinion of the probation officer who states,
8 "It appears his entire family supports jihadist ideas and
9 groomed the defendant to become a terrorist."

10 Your Honor, I believe that this Court has before it
11 evidence that Umer Hayat was supportive of Hamid Hayat's
12 training; you have evidence that Hamid Hayat's grandfather
13 was so supportive; and that an uncle, as well, was
14 supportive.

15 While it might be inaccurate to say the entire family
16 supports jihadist ideas, it would certainly be accurate to
17 indicate that certain family members, indeed, supported such
18 ideas and groomed the defendant to become a terrorist.

19 For that reason, that objection, as well, should be
20 overruled, and I do believe the Court could properly consider
21 the probation officer's opinion as to that point.

22 THE COURT: In your opinion, why is that sentence
23 pertinent to the sentencing determination?

24 MR. TICE-RASKIN: Your Honor, I do believe that
25 ultimately if the Court did not want to adjudicate that



1 particular factual statement, the Court could conclude that
2 it wants to pass on that and not consider it for the purposes
3 of sentencing. But I think that it is fair for the Court to
4 consider the entire record, to consider the statements made
5 by Umer Hayat, to consider how those interlock with the
6 statements made by Hamid Hayat, in assessing over all the
7 gravity of Hamid Hayat's conduct.

8 So, for that reason, I would suggest to the Court that
9 consideration of the other familial support for his training
10 is relevant. But as to this particular statement, I also
11 believe the Court could reasonably conclude it does not want
12 to adjudicate that issue and move on if it so desired.

13 THE COURT: Okay.

14 MR. TICE-RASKIN: Let me now turn to the sole legal
15 objection raised by the defense to application of what I
16 refer to as the terrorism enhancement, Section 3A1.4.

17 THE COURT: Before you do --

18 MR. TICE-RASKIN: Yes, Your Honor.

19 THE COURT: -- are the findings in the presentence
20 report sufficient in themselves? Should I ultimately decide
21 to adopt them in regard to the legal objection? Do the
22 findings address the legal position of Hamid Hayat?

23 You seem puzzled.

24 MR. TICE-RASKIN: I'm not quite sure I understand the
25 Court's question. Forgive me.



1 THE COURT: Would I, in your opinion, have to draft
2 findings other than what's in the presentence report
3 concerning the legal objection of Hamid Hayat?

4 MR. TICE-RASKIN: No, Your Honor. I don't think the
5 Court has to, in order to rule on the legal objection, craft
6 written findings. I think the Court can make oral findings
7 regarding the terrorism enhancement.

8 THE COURT: All right. Then you're indicating by your
9 response that what's contained in the presentence report is
10 not sufficient, because I need to add something to what's in
11 the presentence report.

12 MR. TICE-RASKIN: I think that the Court can adopt the
13 presentence report as the Court -- as the factual findings
14 within the presentence report.

15 THE COURT: There are more than factual findings in
16 the presentence report, aren't there?

17 MR. TICE-RASKIN: Yes. As well as the guideline
18 calculations and its ultimate recommendation.

19 THE COURT: Right.

20 MR. TICE-RASKIN: I believe the Court can do that, and
21 can do that orally.

22 In addition to that, however, for the purposes of the
23 record on appeal, I would ask the Court to at least enter an
24 oral finding with respect to the objection to the 3A1.4
25 enhancement.



1 THE COURT: Wasn't that objection made after the --
2 I'm going to call it informal -- draft -- draft presentence
3 report was circulated to the parties?

4 MR. TICE-RASKIN: It was made in informal objections
5 as well as in formal objections.

6 THE COURT: And the probation officer responded to all
7 of the informal objections. The government made one itself,
8 didn't it? Maybe more than one.

9 MR. TICE-RASKIN: That's correct. The probation
10 office did respond, indicating that basically it did not
11 believe it was double counting. And the government concurs
12 with that conclusion; although, for different reasoning, more
13 elaborate reasoning, but it does ultimately concur with the
14 finding of the probation office that application of the
15 enhancement is appropriate.

16 THE COURT: If you wanted the probation office to make
17 more detailed findings concerning the objection, why didn't
18 you propose them to probation? You're asking me to make
19 them. Why didn't you ask probation to make them? Because
20 you're indicating that they need to be made.

21 MR. TICE-RASKIN: Your Honor, what I'm trying to
22 indicate is that since the defense has made a formal
23 objection, the government has responded to that. And then,
24 given that a formal objection has been placed before this
25 Court, I believe the Court must enter a finding.



1 Now, the Court could just -- for example, if the Court
2 concurs with the probation office's analysis, just say that
3 the Court rejects the defense argument for double counting
4 for the reasons set forth in the probation office report. Or
5 the Court could enter other findings.

6 But I think because a formal objection was raised by
7 the defense, the Court does need to make some finding.

8 THE COURT: All right. But as I understand it, you
9 just indicated that I have two options. One option is to
10 adopt the presentence report and the findings made by the
11 probation officer concerning the objection, and I think
12 you're suggesting that is sufficient. And then you're saying
13 I have another option to make additional findings myself,
14 right?

15 MR. TICE-RASKIN: Yes, Your Honor.

16 THE COURT: Okay. But when you ask me to make
17 additional findings, you're indicating that they're needed.

18 MR. TICE-RASKIN: Yes, Your Honor. They need not be
19 elaborate, but I think it could be something as simple as for
20 the Court to make a finding that it concludes that the 3A1.4
21 enhancement does not constitute double counting and is
22 appropriate.

23 THE COURT: All right.

24 MR. TICE-RASKIN: During their oral remarks to the
25 Court, the defense, again, seems to suggest to the Court that



1 application of this enhancement would somehow produce an
2 illegal sentence that's beyond the authorized statutory
3 maximum sentence. And they seem to suggest that every time
4 there is a material support conviction that de facto that
5 will result in an illegal sentence. That's incorrect.

6 First of all, Your Honor, every material support
7 conviction does not automatically result in application of
8 the 3A1.4 enhancement. It depends on whether the crime at
9 issue was a federal crime of terrorism, and the necessary
10 motivational element is present. If a defendant were solely
11 convicted of material support, and there were no other
12 charges in the indictment, the maximum sentence would,
13 indeed, be 15 years. And that's because the guidelines
14 themselves specifically say that if the guideline range that
15 is calculated exceeds the authorized maximum sentence then
16 the authorized maximum sentence becomes the maximum sentence
17 for the purposes of the guidelines. That's Section 5G1.1A.

18 So, in theory, if this were only a material support
19 case, and if Hamid Hayat was found to have been responsible
20 for the 3A1.4 terrorism enhancement, then his maximum
21 sentence would be 15 years. But, this is not such a case.
22 This is a case where the Court must sentence Hamid Hayat
23 based on multiple counts of conviction. That being the case,
24 the Court properly looks at the aggregate statutory maximum,
25 which here, as the probation office found, is 39 years.



1 Now, defendant protested this is an end run. This is
2 unfair. Well, Your Honor, the simple response to that is
3 also provided by the guidelines themselves. The guidelines
4 indicate that defendants shall receive incremental additional
5 punishment for additional criminal acts. And that is
6 precisely what is taking place here.

7 Defendant just did not attend a jihadist training
8 camp. He attended such a camp for the purpose of learning
9 how to wage violent jihad. But then he came back to the
10 United States, and then he lied about it. And he lied about
11 it repeatedly. He lied about it in Japan on May 30th when he
12 was interviewed by the FBI first. He lied about it again in
13 Lodi on June 3rd when he was interviewed by the FBI again.
14 He lied about it a third time on June 4th when he was
15 interviewed by the FBI again in Sacramento. And then,
16 finally, when he was confronted with results of a polygraph
17 exam, he came about and, at least in part, admitted to some
18 of his misconduct.

19 So, Your Honor, the government isn't standing here
20 asking the Court to impose the sentence just because of
21 defendant Hamid Hayat's attendance at the camp. The totality
22 of his criminal conduct involves much, much more.

23 Given that, the probation officer has properly looked
24 to the guidelines, which indicate that the appropriate
25 punishment range for that conduct, in its aggregate, is 360



1 to 468 months, well below the aggregate statutory maximum for
2 all of the offenses.

3 At the end of the day, Your Honor, the government does
4 urge this Court to impose the sentence that's recommended by
5 the probation office; 420 months, the midterm sentence.

6 Defendant Hamid Hayat purposely trained in Pakistan to
7 become a terrorist and he returned to the United States with
8 the intention to wage violent jihad when directed to do so.
9 He lied repeatedly about what he had done in Pakistan. A
10 420-month sentence would justly punish him for his serious
11 misconduct; would reasonably protect society from his
12 dangerous proclivities; and would deter any other would-be
13 terrorists who would consider following in his footsteps.

14 I have no further comments. I'm happy to entertain
15 the Court's questions.

16 THE COURT: Good, because I'm going to ask you one.

17 How about less than 420 months, would that be
18 sufficient but not greater than necessary to carry out the
19 purposes of sentencing as prescribed in Title 18 United
20 States Code Section 3553(a)?

21 MR. TICE-RASKIN: Your Honor, the government concurs
22 with the probation office.

23 THE COURT: Why?

24 MR. TICE-RASKIN: It believes, as I just indicated,
25 that given the totality of his misconduct, because of the



1 gravity of the offense itself, training to become a
2 terrorist, coming back here with the intent to potentially
3 wage violent jihad, that that appropriately captures the
4 magnitude of the crime.

5 It's hard -- I have to tell the Court candidly, it's
6 hard to discern whether 35 years necessarily perfectly
7 captures that, or 30 years would better capture that.
8 Ultimately, the government believes, as the probation officer
9 has indicated, that a midterm sentence appropriately reflects
10 that. That all of the factors in mitigation, as well as
11 factors in aggravation, have been accounted for by the
12 guidelines, and given that, a sentence in midstream, so to
13 speak, of the guidelines appropriately captures the gravity
14 of the offense at issue and serves as appropriate punishment.

15 THE COURT: Okay.

16 Mr. Riordan, I had asked a question earlier about
17 whether your client had the presentence report read to him in
18 his own language, and whether he discussed it with you and
19 co-counsel in his own language in detail. You said yes, but
20 you didn't use the court interpreter. So, how do I know how
21 efficient your co-counsel is in communicating in Urdu?

22 MR. RIORDAN: Well, Your Honor, let me represent two
23 things.

24 There were multiple discussions of the presentence
25 report. Some of those involved both Ms. Mojaddidi and I,



1 some with Ms. Mojaddidi with Mr. Hamid Hayat directly,
2 obviously, I was not in attendance of those, and wouldn't
3 have understood the Urdu if I was. In our discussions, the
4 joint discussions, I discussed the report -- aspects of the
5 report with Mr. Hamid Hayat in English. I can say that, you
6 know, he's been in custody for a couple of years now here,
7 and I felt that he understood each of the things that I said
8 to him in English, and his responses indicate his
9 understanding.

10 Obviously, Your Honor, I can't speak to the accuracy
11 of the discussions that took place in my presence in Urdu.
12 All that I can say is that at the end of them Mr. Hayat
13 expressed, in English, to me, an understanding of the
14 sentence that the government had proposed, the nature of the
15 sentence in terms of what it proposed for the Count 1 charge,
16 and what it proposed for the other charges, and we reviewed
17 the factual underpinnings.

18 I certainly felt that based on our exchange in English
19 he had an understanding of the proceedings and the
20 presentence report equal to that of certainly most of the
21 clients that I have represented in federal court.

22 THE COURT: Okay.

23 MR. RIORDAN: And, Your Honor, I am in appellate
24 proceedings here, the public defender intends to appoint me
25 as counsel. I am prepared to say, and to represent in good



1 faith to this Court, that I do not think that there is any
2 issue that could arise out of the question of whether
3 Mr. Hamid Hayat understood the presentence report, and that
4 no such issue will be raised on appeal. I just don't think
5 there would be any factual basis for doing that, Your Honor.

6 THE COURT: Thank you. I'm satisfied with your
7 response.

8 MR. RIORDAN: Just the briefest reply to
9 Mr. Tice-Raskin's argument is simply this --

10 THE COURT: Before you do, as far as the objection, I
11 think it's to paragraph 16 -- strike that -- paragraph 69 on
12 page 16, I plan on saying that that objection is noted, but
13 no finding concerning it is necessary because the matters
14 controverted would not change the guideline computation, and
15 what I usually say is would not be taken into account in
16 sentencing, but I'm not sure about that totally, because if I
17 overrule your objection to paragraphs 16, 17, 18, and 19, I
18 feel that some of the findings in those paragraphs are
19 subsumed in an aspect of paragraph 69 on page 16.

20 MR. RIORDAN: I understand the Court's position. And
21 let me just say this: Let's say that the Court is going to
22 overrule the objection to 16, 17, 18, and 19, and the Court
23 is therefore going to find that there could be -- there is or
24 there could be a factual basis for one implication of that
25 statement on page 16, which is that the Court could have a



1 basis for finding that some members of Mr. Hamid Hayat's
2 family, quote, support jihadist ideas and groomed the
3 defendant to become a terrorist, I would ask the Court, if
4 the Court is going to make that finding, overrule the
5 objection, that it specify those individuals.

6 THE COURT: Excuse me. I wouldn't have to do that.
7 Maybe I shouldn't have said it so categorically. I should
8 say I don't think I would have to do that because I wouldn't
9 be considering this sentence in paragraph 69, but I would be
10 considering paragraphs 16, 17, 18, and 19, and I wouldn't
11 have to spell out the names of the individuals involved in
12 those paragraphs because those paragraphs speak for
13 themselves.

14 MR. RIORDAN: Your Honor, I understand. And what the
15 Court is saying is that from your client's point of view, if
16 I don't specifically rely on that sentence at sentencing,
17 then clearly he, Mr. Hamid Hayat, has not been prejudiced by
18 the presence of the sentence in that report. And I accept
19 that, Your Honor. And, actually, the comment I'm actually
20 going to make is on behalf of someone else.

21 20 years from now, his brother and his sister are
22 going to apply for a government job, or perhaps run for
23 office, and given the internet, if there is a government
24 document that contains the sentence that the entire family
25 supported jihadist ideas, someone is going to be saying,



1 Ms. Hayat, or Mr. Hayat, his brother and sister, were found
2 in a government document to have been supporters of jihadist
3 ideas and terrorism --

4 THE COURT: You made it public, sir. This document is
5 not public, and I doubt that it will be on the internet.
6 There would have to be some kind of request for it. The
7 local rule does not make these documents public. What has
8 been said during this proceeding is public. We can't stop
9 that from going on the internet. Whether or not I strike it,
10 it still could end up on the internet because it's been said.

11 MR. RIORDAN: Well, Your Honor, I'll submit it.

12 THE COURT: Otherwise it's some kind of prior
13 restraint.

14 MR. RIORDAN: I submit it, Your Honor. I appreciate
15 the Court's attention to the matter.

16 THE COURT: Okay.

17 MR. RIORDAN: The final comment I was just going to
18 make is that Mr. Tice-Raskin has stated that the maximum
19 penalty for the material support charge is 15 years. And
20 what we are looking at, therefore, because that's -- we cabin
21 that out, everything that happened in Pakistan, or every
22 intention of Mr. Hayat, is encompassed in a maximum sentence
23 of 15 years, 180 months, and I simply say to the Court that
24 the PSI recommends 8 years for the polite interview at
25 Mr. Hamid Hayat's house on the 4th, I believe, in which he



1 agreed to come to FBI headquarters the next day, and 12
2 years, 12 years, of punishment for what he said in a room
3 with the FBI where he couldn't possibly leave, and after
4 making these statements, which are alleged to be crimes, he
5 then made what the government considers admissions.

6 So is it really, really, really -- can anyone really
7 believe what the government says, that talking to those FBI
8 agents represented a 12-year sentence when he eventually
9 gives these statements? I submit, Your Honor, that the
10 government is attempting to punish the Count 1 charge in
11 excess of what Congress would feel appropriate. And that on
12 the facts of this case a sentence should much more closely
13 approximate 15 years than 35.

14 Thank you, Your Honor.

15 THE COURT: Mr. Hamid Hayat, under the law I am
16 required to personally address you, as I'm now doing, to
17 provide you with the opportunity to address me before I
18 impose sentence. You're not required to say anything to me,
19 but I am absolutely required to give you this opportunity.

20 Do you want to say anything before I sentence you?

21 THE DEFENDANT: No.

22 THE COURT: Okay.

23 MS. MOJADDIDI: Your Honor, may I make a statement at
24 this time?

25 THE COURT: Okay.



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MS. MOJADDIDI: Thank you.

Wazhma Mojaddidi on behalf of Hamid Hayat.

Your Honor, I have represented Hamid Hayat since the day of his arrest on June 5, 2005 until today. During this time period I have never once doubted the innocence of my client. I didn't doubt it when the government produced Hamid's FBI interview or the thousands of hours of recorded conversations with the informant. I didn't doubt it when the government produced an image of the camp that they believed Hamid attended. And I did not doubt Hamid's innocence when the government produced the ta'wiz that Hamid carried and the literature --

THE COURT: What's the goal of your statement? I'm trying to figure out how it fits in with the sentencing proceeding. What is the goal of your statement?

MS. MOJADDIDI: Your Honor, under Rule 32 it is my understanding that defense counsel may also make a statement on behalf of the client if the client chooses not to speak. And I'm getting there. I'm getting there.

THE COURT: I'm trying to figure out what you're doing. That's why I asked you the question. Okay.

MS. MOJADDIDI: I spoke with Hamid Hayat at length about the evidence and the facts and concluded that he was innocent. I never once imagined that I would personally witness the horror that unfolds in the conviction of an



1 innocent man.

2 Hamid Hayat said things that he shouldn't have said
3 and he knows that. He knows he shouldn't have let the FBI
4 agents play psychological games with him and lead him to say
5 things that were untrue. And he admits that he was wrong for
6 making up stories about attending a camp in Pakistan. But he
7 will never admit that he actually attended a camp because it
8 is simply not true.

9 Hamid sits here today facing 39 years of prison, and
10 he maintains his innocence stronger than ever. And I stand
11 by his side because I'm equally convinced of his innocence.

12 Your Honor, only an innocent man can be so stubborn as
13 to take his case to trial in the wake of post-September 11th
14 politics, and the general public fears of terrorism, knowing
15 that his jury could be tainted by such a climate.

16 Only an innocent man can be so stubborn as to turn
17 down a plea offer made to him by the government on the eve of
18 trial to plead guilty and accept an offer of 15 years in
19 prison, which was two and a half times less than the 39 years
20 he is facing today.

21 And only an innocent man can be so stubborn as to turn
22 down an offer made to him repeatedly by the government on the
23 eve of sentencing, just days ago, to cooperate with the
24 government and share intelligence information, information
25 that he does not have, and give up his right to appeal the



1 conviction in exchange for leniency in his sentencing. Only
2 an innocent man can be so stubborn, Your Honor, and Hamid
3 Hayat is that innocent man.

4 On behalf of my client, I respectfully respect that
5 the Court impose a sentence at the lowest end of the
6 guideline range.

7 Thank you.

8 THE COURT: Is there anything further?

9 MR. RIORDAN: No, Your Honor.

10 MR. TICE-RASKIN: No, Your Honor.

11 THE COURT: I want to ruminate on the issues a bit.
12 I'm going to consider the objections to paragraphs 16, 17,
13 18, and 19 in the quiet of my chambers. So, I'm going to
14 adjourn. I will see if I can resolve things that have been
15 presented by 11:45.

16 Court is in recess until 11:45.

17 (Thereupon a recess was taken.)

18 THE COURT: Let the record reflect the same
19 participants are present.

20 The objection to the sixth sentence in paragraph 69 is
21 noted but no finding concerning it is necessary because it
22 will not be taken into account in sentencing.

23 I adopt the remainder of the findings in the
24 presentence report and find them to be true and correct.

25 Which means, in part, that the objections to paragraphs 16 to



1 and including 19 are overruled.

2 The sentencing guideline range is accurately
3 calculated in the presentence report, and the application of
4 Sentencing Guideline 3A1.4 in the presentence report was not
5 erroneous and does not constitute impermissible double
6 counting.

7 Is the probation officer present?

8 PROBATION OFFICER: Yes, Your Honor.

9 THE COURT: I want to talk to you.

10 PROBATION OFFICER: Yes, Your Honor.

11 (Discussion held off the record.)

12 THE COURT: Counsel, typically when I impose sentence
13 I impose judgment. There has been a request that I not
14 impose judgment.

15 What's the government's position? The defendant's
16 motion asked that I stay entry of judgment.

17 MR. TICE-RASKIN: Your Honor, the United States
18 opposes that request.

19 We did some quick research over the weekend. I would
20 invite the Court to consider the case of United States versus
21 LaFromboise, 427 F.3d 680, it's a Ninth Circuit case for
22 2005. The jump site would be page 686.

23 Your Honor, it's the government's position that until
24 the district court enters a final judgment of conviction, any
25 2255 motion by the defense would be considered premature.



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Under Ninth Circuit law, federal prisoners have to exhaust their appellate review before they file for habeas relief in the district court. Now, once defendant's judgment is entered, he may choose to prosecute an appeal, he may choose to waive his appeal, I do not know. But either way, until his direct appellate review is exhausted, this Court should not entertain a motion for habeas relief. And I believe that the LaFromboise decision makes that clear.

THE COURT: Do you have a quote from the target page?

MR. TICE-RASKIN: Your Honor, the statements I just made are essentially statements that I extracted from the target page.

THE COURT: Okay. Is that issue submitted?

MR. RIORDAN: Your Honor, my suggestion would be this: This Court could decide whether to stay judgment, very quickly the government could provide a letter on its citation, we could reply to that, the Court could impose sentence at this time, and, you know, frequently with other judges, it may not be the Court's practice, judgment isn't filed for a week, sometimes longer than that, so it could consider the government's cite and our reply to it.

We think the question that we're raising is a significant one, that if you stayed judgment, the defendant was under sentence, you could then consider what we believe are very, very substantial challenges to the judgment. If



1 the Court agrees with them, then it dispenses with the
2 necessity of an appeal. If it disagrees with them, then the
3 record will be there for the Ninth Circuit to consider. Both
4 these challenges on ineffective assistance of counsel and a
5 conflict of interest on counsel's part will have been decided
6 and the case -- the Ninth Circuit can have the full panoply
7 of issues.

8 So the immediate request, Your Honor, is simply that
9 the government provide its citation, we reply to that, and I
10 don't think we need a hearing. Sometime within the next few
11 days this Court could decide to stay the judgment. The 2255,
12 in any case, is going to be filed within an hour of the
13 Court's ruling here. So it would also mean both the
14 government and the Court can see the substance of the claims
15 before the Court decides whether to stay judgment.

16 So our suggestion would be that the government give
17 the written -- in writing the citation it gave the Court, we
18 reply very quickly to it, and then the Court would be in a
19 position to decide whether to grant or deny the motion.

20 Thank you, Your Honor.

21 THE COURT: All right. I'm not inclined to allow
22 further briefing on it. It seems to me that if this was an
23 issue the defense wanted to brief you should have filed your
24 motion much earlier than Friday the eve before the sentencing
25 hearing. And I don't think your client suffers any prejudice



1 whatsoever if I deny the motion. You've indicated that it
2 should be considered because of what you've characterized as
3 judicial economy. The motion is denied.

4 Sentencing is under the advisory sentencing guidelines
5 and the sentencing factors in Title 18 United States Code
6 Section 3553(a). What I will say reflects my consideration
7 of those sentencing factors.

8 Hamid Hayat attended a terrorist training camp,
9 returned to the United States ready and willing to wage
10 violent jihad when directed to do so, regardless of the havoc
11 such jihad could wreak on persons and property within the
12 United States, and then lied to the FBI, the Federal Bureau
13 of Investigation, about his illegal conduct on three separate
14 occasions. The record and the nature of Mr. Hayat's
15 terrorism offense suggests a likelihood of recidivism and an
16 unlikelihood of rehabilitation.

17 These sentencing factors, in addition to the
18 sentencing factors concerning the seriousness of the offense,
19 promoting respect for the law, protecting the public from
20 further crimes of the defendant, and deterring criminal
21 conduct by others, favor a significant prison sentence.

22 However, considering the totality of the
23 circumstances, and the nature of all of Mr. Hayat's
24 convictions, a variance from the calculated sentencing
25 guideline range of 378 months to 468 months is warranted.



1 It is stated in the presentence report that the
2 applicable offense level is 42 and the criminal history
3 category is VI, the advisory guideline range is 360 to 460
4 months imprisonment. Because Mr. Hayat has no prior criminal
5 history, and because the statutory maximum sentence for
6 Mr. Hayat's conviction on Count 1 for providing material
7 support to terrorism is 15 years, I find that the statutory
8 maximum sentence of 15 years for Count 1, and a sentence of 3
9 years each for Counts 2, 3, and 4, which leads to a total
10 sentence of 24 years, or 288 months, is sufficient but not
11 greater than necessary to comply with the purposes set forth
12 in Section 3553(a)(2) of Title 18.

13 I think what I'm about to say reflects that sentence.
14 It is my intent that that is the sentence he receives;
15 however, I didn't give the probation officer a lot of time to
16 consider this matter because I just pondered it after hearing
17 argument today.

18 Pursuant to the Sentencing Reform Act of 1984, it is
19 the judgment of the Court that the defendant, Hamid Hayat, is
20 hereby committed to the custody of the Bureau of Prisons for
21 a term of 180 months on Count 1, a term of 96 months on each
22 of Counts 2 and 3 to be served consecutively with one another
23 and consecutively to the term imposed in Count 1, and a term
24 of 96 months as to Count 3, with three months to be served
25 consecutively to Counts 1 through 2 --



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(Discussion held off the record.)

THE COURT: A courtroom deputy is of considerable value to a Court. She just helped me. And the probation officer has had time to provide further assistance, so I'm going to pronounce the judgment again.

You can strike what I said previously because it may be slightly different.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Hamid Hayat, is hereby committed to the custody of the Bureau of Prisons for a term of 180 months on Count 1, a term of 96 months on Count 2, to be served consecutively with one another, and consecutively to the term imposed in Count 1, and a term of 96 months on Count 3, with 12 months to be served consecutively to Counts 1 -- do you mean and 2?

PROBATION OFFICER: And 2, yes, sir.

THE COURT: -- and 2, and 84 months to be served concurrently to the terms imposed in Counts 1 and 2, to the extent necessary to produce a total term of 288 months.

I forgot something.

PROBATION OFFICER: It's a 96-month term as to Count 4 to be served concurrently to Counts 1 through 3.

THE COURT: And 96 months as to Count 4 to be served concurrently.

The defendant shall pay a special assessment of \$400,



1 payment to begin immediately. No fine is imposed because he
2 lacks the ability to pay a fine.

3 Upon release from imprisonment, the defendant shall be
4 placed on supervised release for a term of 120 months on
5 Count 1, and terms of 36 months on each of Counts 2 through
6 4, all to be served concurrently, for a total term of 120
7 months.

8 Within 72 hours of release from the custody of the
9 Bureau of Prisons, the defendant shall report, in person, to
10 the probation office in the district to which he is released.

11 While on supervised release, the defendant shall not
12 commit another federal, state, or local crime, shall not
13 possess a firearm as defined in federal law, shall not
14 illegally possess controlled substances, the defendant shall
15 submit to the collection of DNA, and shall comply with the
16 standard conditions which have been recommended by the United
17 States Sentencing Commission and which I adopt.

18 The mandatory drug testing condition is suspended
19 based on the Court's determination that the defendant poses a
20 low risk of future substance abuse.

21 I adopt the special conditions recommended by the
22 probation officer on pages 19 and 20 of the presentence
23 report, and impose all of those listed as special conditions.

24 Mr. Hamid Hayat, you have a right to appeal from this
25 judgment. If you wish to appeal, you must file a written



1 notice of appeal with the clerk of this court within 10 days
2 from the entry of this judgment. If you cannot afford the
3 cost of an appeal, you will be permitted to proceed in forma
4 pauperis; that simply means another governmental agency would
5 pay the cost of appeal for you. If you cannot afford
6 counsel, one will be appointed to represent you.

7 If the government wishes to appeal, it must file a
8 notice of appeal within 30 days from the entry of this
9 judgment.

10 Anything further to cover?

11 MR. TICE-RASKIN: One small housekeeping matter, Your
12 Honor.

13 I believe when the Court was indicating what the
14 guideline range was the Court might have misspoken. It's my
15 understanding that the Court has made a finding that the
16 guideline range is 360 to 468 months. Is that correct, Your
17 Honor?

18 THE COURT: I did not say that. Is that what's in the
19 presentence report?

20 MR. TICE-RASKIN: It is, Your Honor.

21 THE COURT: That's what I intended to say. I was
22 adopting the guideline range specified in the presentence
23 report, and I intended to say just what you say, that it was
24 468 months, not 460.

25 MR. TICE-RASKIN: Very good.



1 THE COURT: Okay.

2 MR. RIORDAN: Your Honor, one final matter.

3 We did intend -- do intend to request what we
4 recognize is a non-binding recommendation by the Court on
5 Mr. Hayat's placement. What we wanted to do was, based on
6 the sentence, research and find out what an appropriate
7 institution for that sentence level might be. And it was our
8 intention simply to present the request for a recommendation
9 in writing to the Court subsequently. I don't think that the
10 entry of judgment, or anything else, would in any way deter
11 the Court, if it chose to make a recommendation, from doing
12 so.

13 THE COURT: Government.

14 MR. TICE-RASKIN: Nothing further, Your Honor. And I
15 would not at this point oppose a request for designation
16 pending whatever is presented.

17 THE COURT: The government doesn't take a position on
18 whatever recommendation is made? I'm trying to figure out if
19 that matter is submitted other than getting input from the
20 defense. Are you going to be taking a position?

21 MR. TICE-RASKIN: Your Honor, I have no idea what
22 designation they're going to request. Ordinarily the
23 government does not oppose a non-binding recommendation by
24 the Court, but we're acting in a vacuum at this point.
25 Ordinarily it's the government's position that this is a



1 matter that really is left to the discretion of the Bureau of
2 Prisons based on availability and security concerns.

3 THE COURT: Is this an ordinary case? What's the
4 government's position? I'm trying to figure out what to tell
5 the defense. That's why I asked you the question.

6 MR. TICE-RASKIN: For now, Your Honor, until the
7 defense makes -- puts on the table what designation they're
8 requesting, the government would oppose just a blanket
9 granting of whatever request the defense makes.

10 MR. RIORDAN: It will not be the camp at Lompoc, Your
11 Honor, but we will look for an appropriate recommendation and
12 submit it. And of course, you know, we -- the government
13 would be free to --

14 THE COURT: That's too long. Why not a day? Why
15 can't you give me something within 24 hours?

16 MR. RIORDAN: Fair enough, Your Honor. 24 hours it
17 will be.

18 THE COURT: Then if the government has a response by
19 when should I expect a response?

20 MR. TICE-RASKIN: Within 24 hours thereafter the
21 government will affirmatively indicate whether it has no
22 objection, an objection, or takes no position.

23 THE COURT: Can you, Mr. Riordan, make the
24 recommendation by noon tomorrow? That's less than 24 hours.
25 Is that all right?



1 MR. RIORDAN: It certainly is, Your Honor. We'll just
2 file it electronically by noon tomorrow.

3 THE COURT: Okay. I want to talk to the government.
4 Do you really need a full 24 hours to consider what
5 response to make?

6 MR. TICE-RASKIN: Your Honor, if they make a filing by
7 noon, we could file something by 9:00 o'clock a.m. the next
8 day.

9 THE COURT: Then that's the order.

10 Thank you. It's adjourned.

11 (Proceedings adjourned.)

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1 SACRAMENTO, CALIFORNIA

2 MONDAY, SEPTEMBER 11, 2007

3 ---oOo---

4 THE CLERK: Calling 05-240; United States versus Hamid
5 Hayat.

6 THE COURT: Please state your appearances for the
7 record.

8 MR. TICE-RASKIN: Good morning, Your Honor. Robert
9 Tice-Raskin for the United States.

10 THE COURT: Thank you.

11 MS. MOJADDIDI: Good morning, Your Honor. Wazhma
12 Mojaddidi on behalf of Hamid Hayat, who is personally present
13 in custody.

14 THE COURT: Thank you.

15 INTERPRETER: Good morning, Your Honor. Kamal Judge,
16 registered Urdu interpreter, previously sworn.

17 THE COURT: Thank you.

18 I convened this hearing under Federal Rule of Criminal
19 Procedure 35(a) so I could correct a portion of the sentence
20 I imposed yesterday that does not reflect part of the
21 sentence I intended to impose. Rule 35(a) allows the
22 district court to correct errors in a sentence that resulted
23 from technical or other clear error within 7 days after
24 sentencing.

25 A Rule 35 correction does not change the date of the



1 finality of the judgment. See 18 USC Section 3582, United
2 States versus Schwartz, 274 F.3d 1220, 1224, Ninth Circuit,
3 2001. Therefore, it does not affect the timeliness of
4 defendant's 28 USC Section 2255 motion to vacate his sentence
5 which defendant filed yesterday. See United States versus
6 LaFromboise, 427 F.3d 680, 685, Note 7, Ninth Circuit, 2005.

7 The analysis I stated on the record yesterday reveals
8 that I intended to impose a sentence of 15 years, or 180
9 months, for Count 1, and a sentence of three years, or 36
10 months, each for Counts 2, 3 and 4, to be served
11 consecutively, for a total sentence of 24 years, or 288
12 months.

13 It is my understanding that probation has given
14 counsel the corrected sentence. Did you receive a copy of
15 the corrected sentence I intend to impose, counsel?

16 MS. MOJADDIDI: Yes, Your Honor, I did.

17 MR. TICE-RASKIN: Yes, Your Honor.

18 THE COURT: Does either counsel or Mr. Hamid Hayat
19 desire to say anything before I issue the corrected sentence?

20 MS. MOJADDIDI: No, Your Honor. Thank you.

21 MR. TICE-RASKIN: No, Your Honor. Thank you.

22 THE COURT: Does that mean that Mr. Hamid Hayat
23 doesn't desire to say anything either?

24 THE DEFENDANT: No.

25 THE COURT: I will issue sentence.



1 Pursuant to the Sentencing Reform Act of 1984, it is
2 the judgment of the Court that the defendant, Hamid Hayat, is
3 hereby committed to the custody of the Bureau of Prisons for
4 a term of 180 months on Count 1, a term of 36 months on
5 Count 2, to be served consecutively to Count 1, a term of 36
6 months on Count 3, to be served consecutively to Counts 1 and
7 2, and a term of 36 months on Count 4, to be served
8 consecutively to Counts 1, 2, and 3, to the extent necessary
9 to produce a total term of 288 months.

10 The defendant shall pay a special assessment of \$400,
11 payment to begin immediately. Since the defendant lacks the
12 ability to pay a fine, imposition of a fine is waived.

13 Upon release from imprisonment, the defendant shall be
14 placed on supervised release for a term of 120 months on
15 Count 1, and terms of 36 months on each of Counts 2 through
16 4, all to be served concurrently for a total term of 120
17 months.

18 Within 72 hours of release from the custody of the
19 Bureau of Prisons, the defendant shall report, in person, to
20 the probation office in the district to which the defendant
21 is released.

22 While on supervised release, the defendant shall not
23 commit another federal, state, or local crime, shall not
24 possess a firearm as defined in federal law, and shall not
25 illegally possess controlled substances, the defendant shall



1 submit to the collection of DNA, and shall comply with the
2 standard conditions which have been recommended by the United
3 States Sentencing Commission and which I adopt.

4 The mandatory drug testing condition is suspended
5 based on the Court's determination that the defendant poses a
6 low risk of future substance abuse.

7 I adopt the special conditions recommended by the
8 probation officer on pages 19 and 20 of the presentence
9 report, and impose all of those listed as special conditions.

10 To ensure that the defendant Hamid Hayat has been made
11 aware of those conditions through a registered Urdu
12 interpreter, I am now reading each of those special
13 conditions to him.

14 The defendant, Hamid Hayat, shall submit to the search
15 of his person, property, home, and vehicle by a United States
16 probation officer, or any other authorized person under the
17 immediate and personal supervision of the probation officer,
18 based upon reasonable suspicion without a search warrant.

19 Failure to submit to a search may be grounds for revocation.

20 The defendant shall warn any other residents that the
21 premises may be subject to search pursuant to this condition.

22 The defendant, Hamid Hayat, shall provide the
23 probation officer with access to any requested financial
24 information.

25 The defendant, Hamid Hayat, shall not incur new credit



1 charges, or open additional lines of credit, without the
2 approval of the probation officer.

3 The defendant, Hamid Hayat, shall not possess, or have
4 access to, any paging device or cellular phone without the
5 advanced permission of the probation officer. The defendant
6 shall provide all billing records for such devices, whether
7 used for business or personal, to the probation officer upon
8 request.

9 The defendant, Hamid Hayat, shall consent to the
10 probation officer, and/or probation service representative,
11 conducting periodic, unannounced examinations of any computer
12 equipment or device that has an internal or external modem,
13 which may include retrieval and copying of all data from the
14 computer or device, and any internal or external peripherals,
15 to ensure compliance with conditions, and/or removal of such
16 equipment for purposes of conducting a more thorough
17 inspection, and consent, at the direction of the probation
18 officer, to having installed on the computer or device at
19 defendant's expense any hardware or software systems to
20 monitor the computer or devices used.

21 The defendant, Hamid Hayat, shall provide all
22 requested business/personal phone records to the probation
23 officer. The defendant shall disclose to the probation
24 officer any existing contracts with telephone line/cable
25 service providers. The defendant shall provide the probation



1 officer with written authorization to request a record of all
2 outgoing or incoming phone calls from any service provider.

3 Are there any objections to the corrected judgment?

4 MS. MOJADDIDI: No, Your Honor. Thank you.

5 MR. TICE-RASKIN: No, Your Honor. Thank you.

6 THE COURT: I did provide the defendant with his
7 appeal rights yesterday, and they may not be something that I
8 have to give again, but I will just in case.

9 Mr. Hamid Hayat, you have a right to appeal from this
10 judgment. If you wish to file a written notice of appeal,
11 you must do so by filing a written notice of appeal with the
12 clerk of this court within 10 days from the entry of this
13 judgment. If you cannot afford the cost of an appeal, you
14 will be permitted to proceed in forma pauperis. If you
15 cannot afford counsel, one will be appointed to represent
16 you. In forma pauperis simply means another governmental
17 would pay the cost of appeal for you.

18 Anything further to cover?

19 MS. MOJADDIDI: No, Your Honor. Thank you.

20 MR. TICE-RASKIN: No, Your Honor. Thank you.

21 THE COURT: He's remanded to the custody of the United
22 States Marshal to serve the sentence here imposed.

23 (Proceedings adjourned.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

I, KIMBERLY M. BENNETT, certify that I was the Official Court Reporter, and that I reported verbatim in shorthand writing the foregoing proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting, and the foregoing pages constitute a complete, true, and correct record of said proceedings:

COURT: U.S. District Court
 Eastern District of California
JUDGE: Honorable GARLAND E. BURRELL, JR., Judge
CASE: UNITED STATES OF AMERICA vs. HAMID HAYAT
DATE: SEPTEMBER 10, 2007, SEPTEMBER 11, 2007

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California.

KIMBERLY M. BENNETT
CSR No. 8953, RPR, CRR, RMR