



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

MOHAMMED MANSOUR JABARAH, :

a/k/a "Abu Hafs al Kuwaiti, :

a/k/a "Sammy," :

Defendant. :

02 Cr. 1560 (BSJ)

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SENTENCING MEMORANDUM
(Redacted)

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SENTENCING MEMORANDUM

The Government respectfully submits this memorandum to set forth its position with respect to the sentencing of Mohammed Mansour Jabarah, which is scheduled for Friday, June 1, 2007, at 11:00 a.m. The multiple terrorism offenses to which Jabarah pleaded guilty warrant an offense level of 44 under the United States Sentencing Guidelines (the "Guidelines"), as the Probation Office properly calculated in its initial Presentence Report. At level 44, the Guidelines require a sentence of life imprisonment. There are no conceivable grounds for a downward departure or a variance under Title 18, United States Code, Section 3553(a). On the contrary, Jabarah's offense conduct and reprehensible conduct post-dating his guilty plea amply justify the imposition of a life sentence in this case.

Jabarah, admittedly a sworn member of *al Qaeda*, pleaded guilty to participating in an unconsummated conspiracy to kill American citizens by bombing United States embassies in the Philippines and Singapore. Jabarah's offense conduct includes an association with *al Qaeda* that began when he was a teenager; terrorist training in Afghanistan and Pakistan, where Jabarah took *al Qaeda* courses in, among other terrorism techniques, "city warfare" and stealth



travel; and personal relationships with Usama Bin Laden and Khalid Sheikh Mohammed (“KSM”), the later of whom reportedly was the mastermind of the September 11, 2001 terrorist attacks. Shortly before September 11th, KSM sent Jabarah from Pakistan to Southeast Asia to meet up with members of the *al Qaeda*-affiliated terrorist group *Jemaah Islamiyah* for the purpose of planning and executing the attack on American embassies. Jabarah received \$50,000 from *al Qaeda* for the attack, which he and his co-conspirators used to purchase explosives and perform video surveillance of the American embassy in Singapore, among other overt acts. The plot came to a halt in December 2001, when co-conspirators were arrested in Singapore and Jabarah fled to Thailand, to the United Arab Emirates, and then, at KSM’s direction, to Oman, where he was arrested in the midst of another *al Qaeda* plot to assist terrorists transit out of Afghanistan in the wake of the September 11, 2001 attacks.

Jabarah initially cooperated and his guilty plea was pursuant to a cooperation agreement with the Government. Upon his arrival in the United States, Jabarah was kept in a FBI-arranged housing facility under the around-the-clock watch of an FBI security detail. Jabarah regularly met with prosecutors to provide information about *al Qaeda* and terrorists of all stripes, but the cooperation was short lived. Unbeknownst to the FBI agents and prosecutors, Jabarah was secretly planning to exploit the perception of cooperation that he created. Weapons and papers seized from Jabarah during an impromptu search of his quarters left little doubt that Jabarah was bent on carrying out a martyrdom mission to murder the “infidel” agents and prosecutors whom he considered responsible for his capture. Among other items, agents found hidden steak knives and rope; directions on making explosives; pictures of Bin Laden and Mohamed Atta; and handwritten materials bearing the initials of agents and prosecutors with



whom Jabarah met, the context of which strongly suggested that they were being targeted for murder. There were also volumes of writings, all clandestinely drafted by Jabarah while in FBI custody, in which he demonstrated his commitment to waging *jihad* against the infidels, killing his captors, and presumably himself. Jabarah lied about his reason for having the materials and the intention of his writings and was turned over to the Bureau of Prisons.

Jabarah's offense conduct and post-plea jihadist scheming justify a life sentence. Jabarah swore loyalty to terrorist, Bin Laden, who has since 1998 committed his followers to kill Americans — military and civilian — anywhere in the world they can be found. Jabarah planned to bomb American embassies on KSM's order, and may have carried out the plot had it not been disrupted by the authorities in Singapore. Jabarah's writings indicate a secret plan to murder FBI agents and prosecutors with whom he feigned cooperation. And Jabarah is a likely recidivist, as demonstrated, for example, by one of Jabarah's writings in which he contemplated his future. First, he concluded that if "they judged me with life sentence then" he would be "in the same group as" other jihadists serving life sentences in America, like Ramzi Yousef and Sheikh Omar Abdel Rahman. Next, he rationalized that "if they judge me with execution then this is what I wish and seek and with Allah's permission." Finally, Jabarah contemplated life if released from jail. "And if they release me," Jabarah wrote, "then I will kill them until I am killed."

For these reasons, set forth more fully below, the Court should sentence Jabarah to a term of life imprisonment.



BACKGROUND

A. Jabarah's Background and Offense Conduct

On July 30, 2002, Jabarah waived indictment and pleaded guilty pursuant to a five-count information (the "Information"). Count One of the Information charged conspiracy to kill nationals of the United States, in violation of Title 18, United States Code, Section 2332(b). Count Two charged conspiracy to kill officers and employees of the United States while such persons were engaged in, and on account of, their official duties, in violation of Title 18, United States Code, Sections 1111, 1114, 1116, and 1117. Count Three charged conspiracy to use weapons of mass destruction against nationals of the United States and against property of the United States, in violation of Title 18, United States Code, Sections 2332a(a)(1) and (a)(3). Count Four charged conspiracy to damage and destroy by means of fire or explosives property of the United States, in violation of Title 18, United States Code, Sections 844(n) and 844(f)(1). Count Five charged false statements to FBI agents, in violation of Title 18, United States Code, Section 1001(a). The Probation Office's initial Presentence Report calculates Jabarah's offense level to be 44, resulting in a Guidelines sentence of life imprisonment. Defense counsel's sentencing submission, filed May 1, 2007, does not take issue with the calculations in the initial Presentence Report. The Government agrees with the Probation Office's calculations in all respects.¹

¹ Jabarah's sentencing submission was filed without a request for sealing. Filings in this matter have, to this point, been made under seal, in light of the defendant's prior cooperation. This includes the Information, the plea agreement, and the plea transcript. The Government agrees that sealing is no longer necessary, and hereby moves to unseal previously sealed filings.



Jabarah is a Canadian citizen of Iraqi descent. He lived in Kuwait until the age of 12, when his family moved to Canada. Although he lived in Canada for the next seven years, Jabarah spent his summers in Kuwait. During these summers, Jabarah was introduced to *al Qaeda* through a childhood friend of his named Anas al Kandari, a student of *al Qaeda* spokesman Sulieman Abu Ghaith.² In 2000, after graduating from high school, Jabarah traveled to Afghanistan to obtain terrorist training, with the help of Abu Ghaith. Shortly after the September 11, 2001 attacks, Abu Ghaith was depicted seated next to Bin Laden in a video that aired on *Al Jazeera* television in which both men praised the attacks and claimed responsibility on behalf of *al Qaeda*.

In Afghanistan, Jabarah first trained in an *al Qaeda* camp run by Libyans, where he learned to use various weapons and to identify different explosives. Following the Libyan camp, Jabarah trained at a second *al Qaeda* camp, where he took a two-and-a-half-month course in “city warfare” tactics. Jabarah was joined at this camp by al Kandari and by Jabarah’s brother, Abdul Rahman Jabarah.³ During the following months, Jabarah remained in Afghanistan, spending time on the front lines with Taliban forces, and attending religious classes and additional terrorist training courses, including a mountain warfare course and an advanced shooting course.

² As further described below, Anas al Kandari participated in an attack on American Marines in Kuwait on October 8, 2002. A Marine was killed and another Marine was wounded. Al Kandari was killed during the attack by Marines’ return fire.

³ Abdul Rahman Jabarah, also a sworn *al Qaeda* member, is believed to have been involved in the May 12, 2003 bombings in Riyadh, Saudi Arabia, which killed numerous people, including nine Americans. He was later killed in a shootout with Saudi law enforcement officials.



In March 2001, Jabarah met Usama Bin Laden for the first time. Over the next two months, Jabarah spent time with Bin Laden and continued his training. In May 2001, Jabarah was invited to a meeting at an *al Qaeda* guest house in Kandahar where Bin Laden gave a speech about an upcoming terrorist strike against the United States. Bin Laden provided no specifics about the attack, but he promised that it would be severe. Many other *al Qaeda* leaders attended the meeting. Later that month, Jabarah decided to join *al Qaeda*, and swore an oath of allegiance, known as *bayat*, in the presence of Bin Laden. Jabarah's oath was to fight against all those who hate Islam and to stand by Bin Laden until death.

Soon after joining *al Qaeda*, Bin Laden assigned Jabarah to perform a terrorist operation. To this end, Bin Laden dispatched Jabarah to meet with KSM in Karachi, Pakistan. From mid-August to early September 2001, Jabarah stayed with KSM and received advanced terrorist training in stealth travel and surveillance techniques. After about three weeks, KSM sent Jabarah to Malaysia to meet with individuals who were planning a terrorist operation against the American and Israeli embassies in the Philippines. KSM wanted Jabarah to be *al Qaeda's* link to *Jemaah Islamiyah* ("JI"), the Southeast Asia terrorist group, which would be supplying most of the operatives for the attack.⁴ KSM also provided Jabarah with *al Qaeda* funds for the operation, giving him \$20,000 and promising at least \$30,000 more.

⁴ JI, which first was designated as a foreign terrorist organization by the United States Department of State on October 23, 2002, has conducted numerous terrorist attacks against Americans and others in Southeast Asia, including: the 2002 bombings of nightclubs in Bali, Indonesia, which killed 202 people, including seven Americans; the 2003 attack on the J.W. Marriott hotel in Jakarta, Indonesia; the 2004 car-bombing of the Australian embassy in Jakarta; and the 2005 attack on an additional nightclub in Bali.



Before leaving Pakistan, Jabarah was introduced to Riduan Isomuddin, more commonly known as Hambali, at Hambali's apartment in Karachi. Jabarah recognized Hambali as someone he had seen in Kandahar and understood Hambali to be a leader of a group in Asia.⁵ Hambali provided Jabarah with additional information about the operation in Southeast Asia, and directed Jabarah to meet with JI operatives "Mahmoud" (whose real name was Faiz Bafana), "Saad" (whose real name was Fathur al-Ghozi), and "Azzam" (an unidentified person). Jabarah then left Pakistan for Kuala Lumpur, Malaysia. KSM told him to leave Pakistan before Tuesday, September 11, 2001.

Upon arrival in Kuala Lumpur, Jabarah received an e-mail from KSM telling Jabarah that he had a "friend" in town. Jabarah surmised that KSM was referring to Ahmed Sahagi, an *al Qaeda* member with whom Jabarah had developed a close friendship in Pakistan. Jabarah tracked down Sahagi at a Kuala Lumpur hotel. Sahagi told Jabarah that he (Sahagi) was to be the suicide driver in the planned operation.

Soon thereafter, Jabarah and Sahagi attended a meeting with the JI operatives. One of the JI operatives was Faiz Bafana, or "Mahmoud," the alias that Hambali told Jabarah that Bafana would be using. The subject of the meeting was the planned attack on the American embassy in Manila. Jabarah and the JI operatives agreed that an explosives expert was needed to build the bombs. The JI operatives said that there was a JI explosives expert in the Philippines.

⁵ Hambali was reportedly JI's military commander and chief orchestrator of its terrorist operations before his capture in 2003. He, along with KSM, are currently in United States custody at Guantanamo Bay, Cuba. In addition to reportedly masterminding the September 11, 2001 attacks, KSM remains under indictment in the Southern District for his participation in a 1995 plot to blow up twelve airliners in Southeast Asia (the "Manila Air plot"). KSM is the uncle of Ramzi Yousef, who is serving several life sentences for his involvement in the Manila Air plot and the 1993 bombing attack on the World Trade Center.



That explosives expert was al-Ghozi, or “Saad,” the name that Hambali said al-Ghozi would be using. On Bafana’s instructions, Jabarah and Sahagi traveled to Manila to meet with al-Ghozi.

After surveilling the American embassy in Manila, the group decided that the embassy would be too difficult to attack, because of its substantial set-back from the street.

Sahagi and Jabarah returned to Kuala Lumpur and again met with Bafana and other JI leaders. During the meeting, it was decided to shift the target of the attack to Singapore. Jabarah thereafter traveled to Singapore and met up with al-Ghozi and others to conduct surveillance of various targets there, including the American embassy. Jabarah, al-Ghozi and a team of Singaporean JI members videotaped the embassy, various corporate buildings, and the British and Israeli embassies. After Jabarah and the others finished their videotape surveillance, they returned to Kuala Lumpur, where they met again with several JI members. During this meeting, the group decided to make the American embassy in Singapore their top priority.

By the time Jabarah returned to Kuala Lumpur, JI had made substantial progress on the plan to attack American interests in Singapore. For example, the operatives had obtained an additional \$20,000 from *al Qaeda*; they had prepared surveillance videos, including Jabarah’s, one of which had been taken to *al Qaeda* leadership in Afghanistan for review and comment; they had purchased many tons of explosive material, much of which was being secretly stored in the south Philippines; and they had divided up the principal responsibilities, with Bafana being responsible for transporting the explosives from the Philippines to Singapore. Al-Ghozi, the explosives expert, estimated that the Singapore attack would take about one and a half years to complete.



In late November 2001, however, the decision to attack the American embassy in Singapore was overruled by Hambali, who indicated during a meeting in Kuala Lumpur with Jabarah that *al Qaeda* leaders (including Abu Hafs, the military leader of *al Qaeda*) wanted an operation to be carried out more quickly. Hambali said that a year and a half was too long to wait. Hambali resuscitated the Philippine plan because it could be accomplished more quickly, as the group had explosives at its disposal in the Philippines. But in December 2001, before further action could be taken, Singaporean officials arrested 15 JI operatives, including Bafana and some of the others who helped Jabarah carry out the surveillance operations in October/November 2001. Among the numerous items of evidentiary value that the Singaporean officials seized incident to these arrests was the videotape of Jabarah's (and others') surveillance of the American embassy and other targets, which the JI members discreetly labeled, "Sightseeing in Singapore."

Upon learning the news of these arrests, Jabarah and Sahagi fled Malaysia and went to Thailand. In Bangkok, Jabarah and Sahagi met with Hambali, who told them that the plot was exposed and that they should flee. Jabarah then went to the United Arab Emirates, where he made contact with KSM, who by now had successfully engineered the September 11, 2001 attacks. KSM instructed Jabarah to go to Oman and establish a safehouse for *al Qaeda* members who were fleeing Afghanistan and on their way to Yemen, which Jabarah did in February 2002. However, almost simultaneous with the arrival of fleeing *al Qaeda* members, Jabarah was arrested by Omani officials. He was subsequently deported to Canada.

Jabarah was detained in Canada. In May 2002, AUSAs from this Office traveled to Canada, met with Jabarah, and entered into an agreement with him whereby Jabarah agreed to



come to the United States and cooperate with law enforcement, with the goal of entering into a cooperation agreement that would require him to plead guilty to criminal charges. At no time during these discussions did Jabarah ask to speak with a lawyer. After Jabarah executed a parole agreement, granting him entry into the United States for the limited purpose of his cooperation and establishing that he would be held in secure FBI housing, Jabarah, accompanied by FBI agents and prosecutors, was transported to the Southern District.

In the United States, Jabarah was housed in a secure environment under the protection and watch of the FBI. Jabarah's security detail included rotations of four members of the FBI's Joint Terrorism Task Force, present twenty-four hours a day.⁶ Jabarah was extensively debriefed by the FBI and prosecutors and provided a considerable amount of valuable intelligence.

B. Jabarah's Guilty Plea

As discussed above, Jabarah pleaded guilty to four terrorism charges, involving his efforts to attack the American embassies in Singapore and the Philippines, and a false statements charge, concerning lies he had initially told about Ahmed Sahagi.⁷ Jabarah was sworn and was asked a lengthy series of questions designed to determine whether he was competent to

⁶ Jabarah was unrestrained within the facility and was permitted to read, watch television and movies, make monitored telephone calls to his family, exercise, and prepare his own food. He was not permitted to leave the facility, a restriction to which he had agreed in the parole agreement.

⁷ During early debriefings, Jabarah claimed that the last time he had seen Ahmed Sahagi was in Thailand. When later confronted with information obtained by the FBI that Sahagi had been arrested with Jabarah in Oman, Jabarah admitted that in fact they had been arrested together in Oman, and that he had said otherwise to try to protect Sahagi. This false statement formed the basis of Count Five of the Information.



plead guilty and whether he understood and knowingly and voluntarily waived certain of his rights. (July 30, 2002 Plea Transcript (“Tr.”), at 5-12). After affirming that he entered into his agreement with the Government freely and voluntarily (Tr. 20-21), Jabarah gave a long recitation of his criminal conduct, including admissions that he received training at an *al Qaeda* camp in Afghanistan, that he swore allegiance to Bin Laden, and that bin Laden tasked him with carrying out an operation. (Tr. 25-26).

Jabarah further admitted, using a great level of detail, that he spent the next few months traveling around Southeast Asia meeting with various individuals; that he obtained approximately \$50,000 of *al Qaeda*’s money to fund the operation; and that he conducted surveillance on potential targets of the operation, finally determining through meetings with co-conspirators that *al Qaeda* leaders wished the operation to be a bombing of the American embassy in Manila. (Tr. 26-27). Jabarah admitted that following the arrest of some of the individuals involved in the plot, he fled Southeast Asia and traveled to Oman. Jabarah stated that he had been tasked with setting up a safehouse in Oman for *al Qaeda* members transiting from Afghanistan to Yemen, and was doing so when he was arrested by Omani authorities. (Tr. 28). Jabarah also admitted to lying to the FBI concerning the date and location where he last saw the individual tasked to be the suicide bomber for the embassy bombing plot. (Tr. 29). At the end of the allocution, the Court found Jabarah to be competent, found that Jabarah understood his rights and the consequences of pleading guilty, and accepted Jabarah’s guilty plea. (Tr. 31).



Post-Plea Events

On October 8, 2002, subsequent to Jabarah's guilty plea and while his cooperation with the FBI continued, two gunmen attacked an outpost of U.S. Marines on Failaka Island, Kuwait. One of the attackers was Jabarah's very close childhood friend, Anas al-Kandari — the terrorist operative who first introduced Jabarah to *al Qaeda*. After Jabarah learned of the attack and resulting death of his friend, the agents began to notice changes in Jabarah's behavior and mood. When asked about the incident and his reaction to it, Jabarah indicated that he was troubled by the death of his friend but had no intention of hurting himself or others. Nonetheless, the agents and prosecutors continued to notice subtle changes in Jabarah over the next few weeks.

Due to the perceived changes in Jabarah's behavior, agents conducted a search of Jabarah's room on November 8, 2002, while he was out for a walk. Agents found a steak knife inside of Jabarah's suitcase, along with a piece of nylon rope approximately three-and-a-half feet in length and various writings in Arabic. Upon Jabarah's return from the walk, he was asked whether he was in possession of any items that could be used as weapons or could otherwise be considered dangerous. Jabarah denied having any such items. After being given numerous chances to admit his possession of the items found by the FBI, Jabarah was confronted with them. Jabarah first stated he had the knife for cooking, then claimed it was for his protection. Jabarah claimed he had the piece of rope to tie up his belongings. These explanations were deemed not credible by the FBI, who transferred Jabarah that night to the Metropolitan Correctional Center ("MCC").



Following Jabarah's removal to the MCC, a more thorough search of his room and belongings was conducted. A second steak knife was found hidden behind a bag of rice on a top shelf in the kitchen area. Additional writings, many of which were contained in notebooks that Jabarah had been given to use, as well as newspaper clippings, some of which had been marked by Jabarah, were collected. Most of the writings were in Arabic and were subsequently translated by the FBI.

Some of the materials seized are excerpted and summarized below. Copies and, where necessary, translations, of these items are attached hereto as exhibits corresponding with the letters indicated:

- Ex. A. A newspaper article about the Failaka Island attack involving Anas al-Kandari, at the top of which Jabarah wrote: "By Allah I will Revenge Your death."
- Ex. B. A picture of Usama bin Laden, at the top of which Jabarah wrote: "God keep you, Abu Abdullah [a Bin Laden alias], and may He grant you the highest, most lavish, and sweetest honors of Heaven. Please don't deny us Your sight and presence in Heaven".
- Ex. C. A two-page document Jabarah describes as his "will." Jabarah states "No enmity except against the oppressors," and asks "for perseverance even until death and to grant us the highest honors of martyrdom." Jabarah appears in this document to be saying goodbye to his family, asking that certain delineated debts of his be repaid, and states "In God's care we ask God to bring us together with our brother(s) Hamza [al-Kandari] and Khallad and Omar and all of the dear ones."
- Ex. D. A writing by Jabarah stating that the Prophet said "The most honored martyrs are those who fight in the front line and do not look behind them until they are killed. Those (are the ones who) reside in the highest levels of Paradise and God smiles upon them."
- Ex. E. A note by Jabarah stating "I swore to live in Dignity or to die."
- Ex. F. A letter by Jabarah to his parents, stating "I have a mission that I can't ignore. In God's name, I miss you very much, but when I remembered that there is a permanent meeting in heaven, then I chose the most important of the two."



Again, Jabarah appears to be saying goodbye to his family in this document, telling his brothers, for example, that he hopes to see them in heaven.

- Ex. G. A list of initials made by Jabarah, corresponding to the FBI agents and the AUSAs assigned to Jabarah's case, along with some of the JTTF detectives working on Jabarah's security detail. For example, Jabarah listed ' ' whom he described as "supervisor (' " whom Jabarah had met, was the supervisory special agent at the FBI in charge of Jabarah's case, supervising, among others, case agent . The list also included initials for the other individuals responsible for Jabarah's case — namely, the other two case agents, and , and the AUSAs who were then prosecuting the case, and . Following the list of initials was what appeared to be a list of Jabarah's tasks, which noted, among other things: "The Blessed operation, if God is willing"; "Complete coverage of the location (entrances, Exits ...)"; "Holidays, Guarding procedures"; and "Sheik Omar's case, Azmarai, Abu Hajir, Ramzi, Al 'Aohali ...
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- Ex. H. A poem in which Jabarah expresses sorrow for the loss of two friends, and ends by stating "And may God join me with the dead ones."
- Ex. I. A poem in which Jabarah expresses his sadness, discusses martyrdom, and asks God to reward him and his loved ones with success.
- Ex. J. Directions for how to make an explosive device.
- Ex. K. An exercise regimen.

⁸ This document appears to be a list of persons whom Jabarah held responsible for his conviction and confinement and on whom he intended to exact revenge. Jabarah also seems to have intended to target some of these individuals because of their involvement in the convictions and confinements of the other listed terrorists, including who prosecuted the and an FBI agent who had worked on numerous of the terrorism prosecutions brought by the FBI in this District, including the case). "Sheik Omar's case" is a reference to the case against Sheik Omar Abdel Rahman, prosecuted in this District for the plot by Rahman and his followers to bomb numerous New York City landmarks. "Azmarai" is the *nom de guerre* of Wali Khan Amin Shah, convicted for his participation in the 1995 Manila Air bombing plot; "Abu Hajir" refers to Mamdouh Maumud Salim, who was charged with the 1998 East African U.S. embassy bombings (which charges remain pending) and was convicted of stabbing an MCC prison guard in the eye; "Ramzi" refers to Ramzi Yousef, ringleader of the 1993 World Trade Center bombing plot, for which he was convicted; and "Al 'Aohali" refers to Mohamed al-'Owhali, convicted in the East African embassy bombings case.



A note asking repeatedly for God's blessing and forgiveness, and stating: "O God don't make part of the wrong doers and save us from the Infidels" and "O God don't make me part of the non-believers." Jabarah then wrote: "To Abdulhakeem ... I ask God, the great, to join me with you in heaven sooner than later, and hope we join Abu Hamza [al-Kandari], Hammam, Sakhir, Dabab, and all the loved ones."

- Ex. M. A drawing of a calendar, on which October 8 is marked with a square and the notation: "The blessed Failaka operation," and under which Jabarah wrote: "Brother Abu Hamza Al Muhajir and his brother Abu Mohammed Al Hoot were killed during the execution of Failaka operation on the Arab Island (Kuwait), after they killed one American and injured another."
- Ex. N. A listing of military troops present in various Middle Eastern locations, including Saudi Arabia, Palestine, Egypt, Kuwait, Oman, Bahrain, Turkey, the Arabian Gulf, Gulf of Oman, Gulf of Aden and the Red Sea.
- Ex. O. Prayers in which Jabarah states: "Oh God, make my aim accurate, Balance my feet on the ground, Protect my heart" and "Oh God, accept my brothers, Hamza Al Muhajir and Abu Mohammed Al Hoot, in your Highest Heavens."
- Ex. P. A poem in which Jabarah writes: "Wake up the hearts of the non-believer, My love to Jihad is a strong love, Those who sold their soles [sic] to their masters, The Martyr is dead ... Don't say the Martyr is dead, he killed an American and wounded another, with his own hands, May God forgive him."
- Ex. Q. A writing describing a dream in which Jabarah speaks with al-Kandari, and states that he "woke up that day and heard about their blessed operation at Failaka Island, they were killed, may God bless their soles [sic], after they killed two American dogs from the Marines." Jabarah also describes speaking with his mother in the dream, in which he tells her: "I ask God if he want to take anything from me, to take everything except my chance to become a Martyr. My dear mother, may God protect her, said: Don't be scared, God will not deprive you from becoming one."
- Ex. R. A newspaper article about the September 11 hijackers including a photograph of Mohamed Atta, on whose forehead Jabarah wrote: "Commander of 11 September units, May God bless his sole [sic]."
- Ex. S. A letter to Jabarah's friend al-Kandari apparently following al-Kandari's death, in which Jabarah lamented the loss of al-Kandari, and reviews their "[m]emories of childhood ... [m]emories of separation ... [m]emories of Jihad, migration and preparation ... Thanks to Allah at any rate and the continuation of this condition is without a choice ..." Jabarah wrote: "Whatever passed whatever happened the



blood of our brothers will no[t] go to naught, yes by God the blood of Abdul Hakeem and Hammam and Khabbab and Sakhr and any Muslim will remain to feed the soul of the martyrs .. And I tell my brothers the heroes that passed away we by Allah Oh brothers will not fail your blood and will not forget your murder, and if Allah aids us we will kill their women as they killed your women and will orphan their children as they orphaned your children ... You have won my brothers and were taken martyrs by Allah ... My dear friend Hamza ... I write these last lines and I [am] in between the American infidels and behind locks but whatever they did and however they schemed my spirit Allah willing will remain aloof and my intention strong, and to him, no Allah but him the more he increased the travails ... The more increased the steadfastness (and that is from Allah's generosity to me — we ask Allah from his generosity). If they judged me with life sentence then I am in the same group as Sheikh Omar Abdul Rahman and Ramzi Yousef and the hero Izmarai and Abu Hajir, and if they judge me with execution then this is what I wish and seek and with Allah's permission we will be of the group of Sayyed Qutb, and Omar Mukhtar ... And if they release me then I will kill them until I am killed ... My generous friend ... I wish that Allah gather me with you and my brother Khallad in high paradise with the brothers that preceded us ... And I ask Allah to write the reward of our parents and release our detained brothers everywhere and Allah is behind every intention 'Allah will not allow the Infidels a way over the believers.'"

- Ex. T. Another lengthy letter about jihad and martyrdom, lamenting the fall of the Taliban and railing against the evil of America, and promising to stay on the path: "if I could have an answered prayer then I pray to Allah to grant me death in his cause ... and by Allah the mind will not relax and final decision will not be made until victory or martyrdom."
- Ex. U. Another lengthy letter about jihad and martyrdom, in which Jabarah asked to be joined to his fellow martyrs sooner rather than later.
- Ex. V. A letter to Jabarah's youngest brother in which Jabarah exhorts his brother to jihad and martyrdom, and asks him to pray for Jabarah's martyrdom.
- Ex. W. A "Fort Dix Installation Map," providing a sketch of roads and buildings at Fort Dix, where Jabarah was held by the FBI for part of his time in secured custody.
- Ex. X. A memorandum from the Army about New York City's drinking water system, including information and a map of the City's water supply, and testing results.



These writings make clear that Jabarah had secretly disavowed cooperation and was affirmatively planning further jihad operations, including in all likelihood the murder of government officials in some sort of suicide operation.

Following Jabarah's removal to the MCC, he spoke with agents and prosecutors on two occasions. During these conversations, Jabarah maintained that he was merely working through his anger by writing and had no intention of hurting anyone. Jabarah also admitted having made two unauthorized telephone calls while in the United States, and admitted that at one point he tried to dispose of some of his writings because he was concerned about their "tone." After one of the meetings at the MCC, Jabarah wrote a letter in which he apologized for some of his actions. (Exhibit Y). When he was not released from the MCC, however, Jabarah refused further meeting with the FBI and/or the AUSAs. Refusal to meet with the Government was, of course, a violation of Jabarah's cooperation agreement, as was his commission of crimes while cooperating.⁹

In 2006, upon Jabarah's retention of new counsel, the parties discussed revisiting the possibility of Jabarah's being a cooperating witness, which would, of course, have required Jabarah to plead guilty to new charges. After several meetings, Jabarah refused.

⁹ At a minimum, Jabarah (1) gave false statements, in violation of Title 18, United States Code, Section 1001, in that he told FBI agents that he did not possess any weapons while in FBI secured housing; and (2) possessed a dangerous weapon at a Federal facility while intending to use such weapon to commit a crime, in violation of Title 18, United States Code, Section 930(b).



DISCUSSION

A. Procedure for Determining Jabarah's Sentence

While the Guidelines no longer play a mandatory role at sentencing, they nevertheless continue to play a critical role in trying to achieve the “basic aim” that Congress tried to meet in enacting the Sentencing Reform Act, namely, “ensuring similar sentences for those who have committed similar crimes in similar ways.” *United States v. Booker*, 453 U.S. 220, 252 (2005). In furtherance of that goal, judges are required to “consider the Guidelines ‘sentencing range established for . . . the applicable category of offense committed by the applicable category of defendant,’ § 3553(a)(4), the pertinent Sentencing Commission policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims, §§ 3553(a)(1), (3), (5)-(7) (main ed. and Supp. 2004).” *Id.* at 260.

In sentencing defendants, district courts should consider the factors set forth in 18 U.S.C. § 3553(a). This provision provides that the sentencing “court shall impose a sentence sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection,” and then sets forth seven specific considerations:

- (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;



- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effect manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established [in the Sentencing Guidelines];
- (5) any pertinent policy statement [issued by the Sentencing Commission];
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

In *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005), the Second Circuit explained that district courts should now engage in a three-step sentencing procedure in light of *Booker*. First, the court must determine the applicable Guidelines range, and in so doing, “the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence.” *United States v. Crosby*, 397 F.3d at 112.¹⁰ Second, the court should consider whether a departure from that Guidelines range is appropriate. *Crosby*, 397 F.3d at 112. Third, the court must consider the Guidelines range, “along with all of the factors listed in

¹⁰ Moreover, these findings are to be made based on a preponderance of the evidence. See *United States v. Gonzalez*, 407 F.3d 118, 125 (2d Cir. 2005) (holding that a district court is to “resolve disputed facts by a preponderance of the evidence when arriving at a Guidelines sentence”); see also *McReynolds v. United States*, 397 F.3d 479, 481 (7th Cir. 2005) (explaining that following *Booker*, “decisions about sentencing factors will continue to be made by judges, on the preponderance of the evidence, an approach that comports with the Sixth Amendment so long as the guideline system has some flexibility in application”).



section 3553(a)” and determine the sentence to impose. *Id.* at 113. A failure to consider the Guidelines range and to instead simply select a sentence without such consideration is error. *Id.* at 115.

B. Jabarah Is Not Entitled to a Departure From the Properly Computed Guidelines Sentence of Life Imprisonment

As indicated above, the Probation Office in its initial Presentence Report calculated Jabarah’s Guidelines offense level to be 44, which requires a Guidelines sentence of life imprisonment. The Government agrees with these calculations.

Jabarah argues that his detention conditions at the MCC justify a downward departure from the Guidelines sentence, and that he should have been provided with counsel in Canada before being brought to the United States. (Jabarah Sentencing Memorandum (“Mem.”) at 1-4). Jabarah’s arguments should be rejected. First, the conditions under which Jabarah was held by the MCC, while restrictive, in no way rise to the level necessary for a downward departure, and were entirely justified given the circumstances. Second, Jabarah offers neither evidence nor legal support for his claim that he should have been provided with a lawyer in Canada. Moreover, the claim is not relevant here, as it is not a basis for departure and is not relevant to the Section 3553(a) factors.

Jabarah’s first argument is based on his conditions of confinement at the Special Housing Unit (“SHU”) in the Ten-South Wing of the MCC.¹¹ Jabarah alleges that he was “locked in a cell 24 hours a day under constant visual camera inspection,” and that this constituted “the highest security in the MCC.” (Mem. 1). Jabarah also asserts, without further

¹¹ Jabarah was housed at the MCC from November 8, 2002 to September 6, 2006. Jabarah was then moved at his request to different federal prison facility.



explanation, that these restrictions “further contributed to his unaddressed medical condition regarding his health” and therefore justify a departure. (Mem. 2).

Under the Guidelines, a sentencing court may depart if it finds “that there exists an aggravating or mitigating circumstance of a kind or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.” U.S.S.G. § 5K2.0. In *United States v. Carty*, the Second Circuit held that “pre-sentence confinement conditions may in appropriate cases be a permissible basis for downward departures.” 264 F.3d 191, 196 (2d Cir. 2001); *see also United States v. Teyer*, 322 F. Supp. 2d 359, 377 (S.D.N.Y. 2004); *United States v. Mateo*, 299 F. Supp. 2d 201, 207-12 (S.D.N.Y. 2004). However, a departure is warranted only if the circumstances are “so severe as to take [the] particular case ‘outside the heartland of the applicable Guideline.’” *United States v. Carty*, 264 F.3d at 196 (quoting *Koon v. United States*, 518 U.S. 81, 109 (1996)). Indeed, departures under Section 5K2.0 of the Guidelines are permitted only “where the conditions in question are extreme to an exceptional degree and their severity falls upon the defendant in some highly unique or disproportionate manner.” *United States v. Teyer*, 322 F. Supp. 2d at 377 (quoting *United States v. Mateo*, 299 F. Supp. 2d at 208); *see Rickenbacker v. United States*, 365 F. Supp. 2d 347, 351 (E.D.N.Y. 2005) (departures are justified only in “extraordinary” cases); *see, e.g., United States v. Mateo*, 299 F. Supp. 2d at 207-12 (granting downward departure where pretrial detainee experienced sexual abuse by prison guard and birth of child without medical attention); *United States v. Francis*, 129 F. Supp. 2d 612, 619 (S.D.N.Y. 2001) (granting downward departure where pretrial detainee suffered “extraordinary stress and fear for his safety” as a result of being subjected for extended



period to “qualitatively different, substandard conditions” prevailing at overcrowded, unsanitary and unsafe state correctional facility).¹²

In this case, Jabarah’s alleged confinement conditions do not rise to the level that would warrant a downward departure. He relies primarily on the fact that he was confined in a particularly high-security part of the MCC. However, housing Jabarah in an area reserved for high-security risk prisoners was certainly justified based on the nature of the charges against Jabarah, and his status as an admitted member of *al Qaeda* who had received training in combat techniques. Moreover, of course, the very reason Jabarah was transferred by the FBI to the MCC was the discovery of the weapons he was hiding, and the extensive evidence indicating that he had been planning to attack members of the FBI security detail and prosecutors.

Jabarah does not assert that prison officials abused him or intentionally subjected him to unnecessary pain or punishment, such as the extraordinary conditions detailed in *Mateo* or *Francis*, or even *Carty*, where the court declined to grant a downward departure. Additionally, to the extent that Jabarah argues that his “unaddressed medical condition” is an extraordinary condition, he has not provided any details regarding the nature of the supposed medical condition or how his confinement contributed to it. Thus, there is an insufficient basis for a departure on this ground.

¹² Indeed, in *Carty*, the defendant was allegedly held in a four-foot by eight-foot cell with three or four other inmates without light or running water. He received ten to fifteen minutes per day outside of his cell to bathe and was allowed to make only one phone call per week. The only toilet available was a hole in the ground. He was denied access to paper, pens, newspaper, and radio. In addition, while he was incarcerated, he lost forty pounds. 264 F.3d at 193. After holding that those conditions could justify a downward departure, the Second Circuit remanded the case to the district court to reconsider whether a downward departure was warranted. *Id.* at 197. On remand, the district court declined to depart. See *Teyer*, 322 F. Supp. 2d at 378 n.9.



Next, Jabarah argues that he should have been provided with a lawyer in Canada before he was brought to the United States, and that if he had been given counsel, he may have chosen to fight extradition or may have negotiated a more favorable plea agreement. Jabarah has provided no evidence, in affidavit form or otherwise, concerning his alleged deprivation of counsel. Even so, this contention would not be a proper basis for departure, does not fit within the Section 3553(a) factors, and otherwise has no bearing on the determination of a reasonable sentence for Jabarah.

Accordingly, Jabarah has failed to advance any basis for a downward departure from the applicable Guidelines sentence.

C. The Factors Set Forth in Section 3553(a) Warrant a Sentence of Life Imprisonment

1. The Nature and Circumstances of the Offense and Jabarah's History

The nature and circumstances of the offense and Jabarah's history weigh decidedly in favor of a sentence of life imprisonment. As described in greater detail above, Jabarah, a sworn member of *al Qaeda* who swore his allegiance and his life to Usama bin Laden, set out in 2001 to kill Americans. Jabarah and his co-conspirators failed, not because they thought better of their murderous goals, but because many of them were arrested and the plot was disrupted before it could be executed.

Jabarah acted as a crucial participant in this conspiracy to kill innocent civilians by bombing the United States embassies in Manila and Singapore. Jabarah acted as the liaison between *al Qaeda* and the JI operatives who would be carrying out various aspects of the plot. Jabarah was given \$50,000 in *al Qaeda* funds for the plot, conducted operational surveillance of



the targets, and participated in numerous meetings with the operatives assigned to carry out the attacks, including the expert bombmaker.

After the embassies plot was thwarted by Singaporean law enforcement in the fall of 2001, Jabarah readily took up another mission for *al Qaeda*, traveling to Oman to assist *al Qaeda* members escaping from the United States-led bombings in Afghanistan. After Jabarah was arrested by law enforcement authorities in Oman and was deported to Canada, Jabarah cooperated with the United States for a period of time. Even then, however, while ostensibly cooperating, Jabarah lied to the FBI about his friend Ahmed Sahagi, in an effort to help Sahagi escape scrutiny of the authorities.

Finally, after Jabarah's guilty plea and his execution of a written agreement to cooperate with the Government, Jabarah planned a martyrdom mission against the FBI agents and prosecutors with whom he was meeting. This can hardly be dismissed as idle thought bound up in his anxiety over his childhood friend's death in Kuwait. Jabarah took steak knives and hid them in his belongings. Nor can there be any doubt about his intentions, as his written plans included repeated discussions of his desire for martyrdom, his plan to join his friend the martyr in paradise, and his list of targeted victims, including the FBI agents and AUSAs, to whom he assigned responsibility for his then-current circumstances. Nor has Jabarah left much doubt about his intentions upon his release from prison, if that should occur. "And if they release me," Jabarah wrote, "then I will kill them until I am killed." (Exhibit S). Jabarah's offense and his subsequent actions amply justify a life sentence in this case.



2. **The Need for the Sentence Imposed to:**

a. **Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment for the Offense**

As explained above, the seriousness of the offense is such that a sentence of life imprisonment is warranted in this case. As far as just punishment is concerned, the United States Sentencing Commission dictated that the crimes to which Jabarah pled guilty should result in a life sentence. Jabarah, at only 25 years of age, will likely survive to be released if he is sentenced to less than life.

b. **Afford Adequate Deterrence**

In the Government's view, a life sentence is necessary to ensure deterrence, particularly in a case like this one where the defendant has not demonstrated any remorse for his crimes. In fact, Jabarah's writings bear witness to the fact that his views remain unchanged, and that his allegiance remained to Bin Laden and *al Qaeda*, even after he was supposedly cooperating with United States authorities.

c. **Protect the Public from Further Crimes of the Defendant**

This factor strongly supports a life sentence. Jabarah was indoctrinated from a very young age, before he was even a teenager, in the hate-filled rhetoric of Usama bin Laden and *al Qaeda*. At 19 years old, Jabarah was in Afghanistan training to be a terrorist. By 20, Jabarah was involved in his first mission to kill Americans for *al Qaeda*. When that failed, Jabarah took on a new mission in Oman, which ended only with his arrest there. After signing a cooperation agreement and pleading guilty to the crimes he had committed to that date, Jabarah was caught planning an attack on the FBI agents and AUSAs with whom he had daily contact.



Jabarah made clear in his writings that he wanted to die as a martyr during a martyrdom mission, and that this was to be revenge for the death of his closest friend, who had been killed by Americans during an *al Qaeda*-supported attack on U.S. Marines. He promised to kill Americans when and if released from prison.

Evidence supports the conclusion that if Jabarah receives less than a life sentence, he will leave prison and return to what he has tried, and thus far failed, to accomplish — kill Americans, as Bin Laden, KSM and others repeatedly commanded him to do. Jabarah should not be given this opportunity.

d. Provide Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner

This factor should be irrelevant to the Court's analysis. While Jabarah mentions an unspecified medical condition, there is no reason to believe that this condition, if it exists, is not being adequately treated by the Bureau of Prisons.

3. The Kinds of Sentences Available

This factor is not at issue because Jabarah is facing mandatory imprisonment.

4. The Kinds of Sentence and the Sentencing Range Established [in the Sentencing Guidelines]

As explained above, Jabarah's Guidelines sentence is life imprisonment, a sentence which is justified here.

5. Pertinent Policy Statements [Issued by the Sentencing Commission]

The policy statements issued by the Sentencing Commission present no basis to reduce Jabarah's sentence.



6. **The Need to Avoid Unwarranted Sentence Disparities among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct**

Jabarah does not address this factor, and the Government has not attempted to conduct a survey of non-cooperating defendants who have been convicted of participating in conspiracies to kill Americans by bombing locations like United States embassies. In this case, however, even defendants found guilty of similar conduct would not be similarly situated, given Jabarah's extraordinary post-plea conduct.

7. **The Need to Provide Restitution to Any Victims of the Offense**

This factor is not at issue in this case.

CONCLUSION

The factors set forth in Section 3553(a) overwhelmingly establish that Jabarah should receive a sentence of life imprisonment and none of Jabarah's arguments for leniency warrant sentencing him to less than a life sentence.



For all of the foregoing reasons, the Court should sentence Jabarah to a term of
life imprisonment.

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Respectfully submitted,

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