



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 11, 2011

BY FACSIMILE AND E-MAIL

Julia Gatto, Esq.
Sabrina Shroff Esq.
Federal Defenders
52 Duane Street
New York, New York 10007
(212) 571-0392 (fax)

Re: **United States v. Oumar Issa,**
09 Cr. 1244 (RJH)

Dear Ms. Gatto and Ms. Shroff:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Oumar Issa ("the defendant") to Count Two of the above-referenced Indictment. Count Two charges the defendant with conspiracy to provide material support to the designated Foreign Terrorist Organizations the FARC, AQIM, and Al Qaeda, in violation of Title 18, United States Code, Section 2339B. Count Two carries a maximum sentence of fifteen years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a maximum term of three years' supervised release; and a mandatory \$100 special assessment.

The total maximum term of imprisonment on Count Two is fifteen years.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for 1) conspiring to provide material support to the FARC, AQIM and Al Qaeda from September 2009 to December 2009, as charged in Count Two of the Indictment, and 2) his participation in a Narco-Terrorism conspiracy, from September 2009 to December 2009, as charged in Count One of the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the

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meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegation with respect to Count Two of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(G) and 2332b(g)(5), and Title 28, United States Code, Section 2461, a sum of money equal to \$50,000 in United States currency, representing the amount of funds involved in the offense charged in Count Two (the "Money Judgment"). The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Money Judgment and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Money Judgment to the United States, including, but not limited to, the execution of all necessary documentation. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture. The defendant consents to the entry of the Consent Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The Guidelines provisions in effect as of November 1, 2010 apply in this case.
2. Pursuant to U.S.S.G. § 2M5.3(a), the base offense level for Count Two is 26.
3. Pursuant to U.S.S.G. § 3A1.4(a) (the "Terrorism Enhancement"), because the offense in Count Two is an offense that involved, or was intended to promote, federal crimes of terrorism, the offense level is increased by 12 levels.
4. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional 1-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter

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a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the foregoing calculations, the applicable offense level is 35.

B. Criminal History Category

Pursuant to U.S.S.G. § 3A1.4(b), because the Terrorism Enhancement applies, the defendant's criminal history category is VI.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's sentencing range is 292 - 365 months' imprisonment. The statutory maximum term of imprisonment for Count Two, however, is fifteen years' imprisonment. Accordingly, the defendant's applicable Guidelines sentence is 180 months' imprisonment (the "Stipulated Guidelines Sentence").

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Sentence set forth above is warranted, with the limited exception that the Defendant reserves the right to argue that the Guidelines terrorism enhancement set forth above in subparagraph A(3) does not apply to him, and that accordingly his offense level is 23 and his Criminal History Category is I, resulting in a Guidelines range of 46 to 57 months' imprisonment. The Government reserves the right to oppose that application. With the exception of the foregoing, neither party will seek any departure or adjustment pursuant to the Guidelines not set forth herein, nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence above or below the Stipulated Guidelines Sentence of 180 months, suggest that the Probation Office consider a sentence that is above or below the Stipulated Guidelines Sentence, and suggest that the Court *sua sponte* consider a sentence above or below the Stipulated Guidelines Sentence, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an

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appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation of 180 months, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence above or below the stipulated Guidelines Sentence, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence at or below 57 months' imprisonment, and (ii) that the Government will not appeal any sentence at or above the Stipulated Guidelines Sentence. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether

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the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum term.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

D. Immigration Consequences

The defendant recognizes that because he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

Further, the defendant agrees to the entry of a stipulated judicial order of removal pursuant to Title 8, United States Code, Sections 1228(c)(5) and 1182. Specifically, the defendant admits that he is a native and citizen of Mali, and that he is removable from the United States pursuant to Title 8, United States Code, Sections 1182(a)(7)(A)(i)(I), 1182(a)(2)(A)(i)(I), and 1182(a)(2)(C).

After consultation with counsel and understanding the legal consequences of doing so, the defendant knowingly and voluntarily waives the right to the notice and hearing provided for in Title 8, United States Code, Section 1228(c)(2) and further waives any and all rights to appeal, reopen, reconsider, or otherwise challenge this stipulated removal order. The defendant understands and

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knowingly waives his right to a hearing before an immigration judge or any other authority under the Immigration and Nationality Act of 1952 ("INA"), as amended, on the question of the defendant's removability from the United States. The defendant further understands the rights the defendant would possess in a contested immigration hearing and waives these rights, including the defendant's right to examine the evidence against him, to present evidence on his behalf, and to cross-examine the witnesses presented by the government.

The defendant agrees to waive his rights to any and all forms of relief or protection from removal, deportation, or exclusion under the INA, as amended, and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: asylum; withholding of removal under Title 8, United States Code, Section 1231(b)(3); any protection from removal pursuant to Article 3 of the United Nations Convention Against Torture, including withholding or deferral of removal under 8 C.F.R. § 208; cancellation of removal; adjustment of status; registry; de novo review of a denial or revocation of temporary protected status (current or future); waivers under Title 8, United States Code, Sections 1182(h) or 1182(i); visa petitions; consular processing; voluntary departure or any other possible relief or protection from removal available under the Constitution, laws or treaty obligations of the United States. As part of this agreement, the defendant waives any right to claim that he was persecuted in, or has a present fear of persecution in Mali or Ghana on account of his race, religion, nationality, membership in a particular social group, or political opinion. Similarly, the defendant further waives any right to claim that he was tortured in, or has a present fear of torture in Mali or Ghana.

The defendant hereby requests that an order be issued by this Court for his removal from the United States. The defendant agrees to accept a written order of removal as a final disposition of these proceedings and waives any and all rights to challenge any provision of this agreement in any United States or foreign court or tribunal.

The defendant hereby agrees to make the judicial order of removal a public document, waiving his privacy rights, including his privacy rights under 8 C.F.R. § 208.6. At the request of the U.S. Attorney's Office, U.S. Immigration and Customs Enforcement ("ICE") concurs with the government's request for a judicial order of removal. As a result of the above-referenced order, upon the completion of the defendant's criminal proceedings, including any sentence of incarceration, the defendant shall be removed from the United States.

The defendant agrees to assist ICE in the execution of his removal. Specifically, the defendant agrees to assist ICE in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of any country to which the defendant's removal is directed, including the above-listed countries; and, to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant

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further understands that his failure or refusal to assist ICE in the execution of his removal shall breach this plea agreement and may subject the defendant to criminal penalties under Title 8, United States Code, Section 1253.

The defendant concedes that the entry of this judicial order of removal renders him immediately excludable and permanently inadmissible to the United States. He agrees that he will not enter, attempt to enter, or transit through the United States without first seeking and obtaining permission to do so from the Secretary of the Department of Homeland Security or other designated representative of the U.S. government.

It is understood that the defendant will have no right to withdraw his plea of guilty should the Court fail, for any reason, to enter the judicial order of removal. Moreover, the Court's failure, for any reason, to enter the judicial order of removal shall only void the portion of this Agreement pertaining to the defendant's stipulation to a judicial order of removal, and shall have no impact on the remaining terms of this Agreement.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

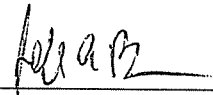
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Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,


PREET BHARARA
United States Attorney

By:



Jeffrey A. Brown
Christian R. Everdell
Edward Y. Kim
Assistant United States Attorneys
(212) 637-1110 / -2556/ -2401

APPROVED:

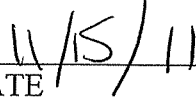


MICHAEL FARBIARZ
Chief, Terrorism and International Narcotics Unit

AGREED AND CONSENTED TO:

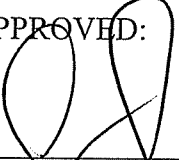


Oumar Issa

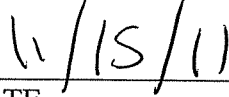


DATE

APPROVED:



Julia Gatto, Esq.
Sabrina Shroff, Esq.
Attorneys for Oumar Issa



DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA
:
-v.-
:
OUMAR ISSA,
:
Defendant.
:
:
- - - - - x

CONSENT ORDER
OF FORFEITURE
09 Cr. 1244 (RJH)

WHEREAS, on or about December 30, 2009, OUMAR ISSA, (the "defendant"), was charged in a two-count Indictment, 09 Cr. 1244 (RJH) (the "Indictment"), with conspiracy to provide material support to the designated Foreign Terrorist Organizations the FARC, AQIM, and Al Qaeda, in violation of 18 U.S.C. § 2339B, (Count Two);

WHEREAS, the Indictment included a forfeiture allegation as to Count Two, seeking forfeiture to the United States, pursuant to 18 U.S.C. § 981(a)(1)(G) and 2332b(g)(5), and 28 U.S.C. § 2461, of (i) all right, title and interest in all assets, foreign and domestic, (ii) all right, title and interest in all assets, affording a source of influence over the FARC, Al Qaeda, and AQIM, (iii) all right, title and interest in all assets, foreign and domestic, acquired and maintained with the intent and for the purpose of supporting, planning, conducting, and concealing a Federal crime of terrorism against the United States, citizens and residents of the United States, and their property, and (iv) all right, title and interest in all assets,

foreign and domestic, derived from, involved in, and used and intended to be used to commit a Federal crime of terrorism against the United States, citizens and residents of the United States, and their property, including, but not limited to, a sum of money representing the value of the property described above as being subject to forfeiture;

WHEREAS, on or about November 15, 2011, the defendant pleaded guilty to Count Two of the Indictment pursuant to a plea agreement with the Government, wherein the defendant admitted the forfeiture allegation for Count Two in the Indictment and agreed to forfeit to the United States a sum of money equal to \$50,000 in United States currency, representing the amount of funds involved in the offense charged in Count Two of the Indictment;

WHEREAS, the defendant consents to a Money Judgment in the amount of \$50,000.00 in United States currency, representing the amount of funds involved in the offense charged in Count Two of the Indictment;

IT IS HEREBY STIPULATED AND AGREED, by and between the plaintiff, United States of America, by its attorney Preet Bharara, United States Attorney, Assistant United States Attorneys Jeffrey Brown, of counsel, and the defendant, and his counsel, Julia Gatto, Esq. that:

1. As a result of the offense charged in Count Two of the Indictment, to which the defendant pled guilty, a money

judgment in the amount of \$50,000.00 in United States currency shall be entered against the defendant (the "Money Judgment").

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Consent Order of Forfeiture is final as to the defendant, OUMAR ISSA, upon entry of this Order, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

3. Upon execution of this Consent Order of Forfeiture, and pursuant to 21 U.S.C. § 981(a)(1)(G) and 2332b(g)(5) and 18 U.S.C. § 2461, the United States Marshals Service shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

4. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Order, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

5. All payments on the outstanding money judgment shall be made by postal money order, bank or certified check, made payable, in this instance to the United States Marshals Service, and delivered by mail to the United States Attorney's

Office, Southern District of New York, Attn: Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007 and shall indicate the defendant's name and case number.


6. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Rule 32.2 (e) of the Federal Rule of Criminal Procedure.

7. The Clerk of the Court shall forward three certified copies of this Order to Assistant United States Attorney Sharon Cohen Levin of the Asset Forfeiture Unit, United States Attorney's Office, One St. Andrew's Plaza, New York, New York 10007.

8. The signature pages of this Order may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. A facsimile or electronic image of the original signature of any party executing this Consent Order shall be deemed an original signature and shall constitute an original as against the party whose signature appears in the facsimile or electronic image.

AGREED AND CONSENTED TO:
PREET BHARARA
United States Attorney for the
Southern District of New York

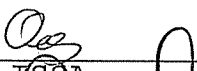
Attorney for Plaintiff

By: 

JEFFREY BROWN
Assistant United States Attorney
One St. Andrew's Plaza
New York, NY 10007
212) 637-1110

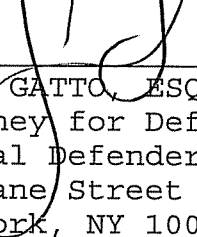
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DATE

Defendant

By: 

OUMAR ISSA

11/15/11
DATE

By: 

JULIA GATTO, ESQ.
Attorney for Defendant
Federal Defender
52 Duane Street
New York, NY 10007

11/15/11
DATE

SO ORDERED:

HONORABLE RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE

DATE