



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SDD:AAS/DMP/ICR
F. #2015R00096

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 9, 2017

By ECF and Email

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Munther Omar Saleh
Criminal Docket No. 15-393 (MKB)

Dear Judge Brodie:

The government respectfully submits this letter in anticipation of a guilty plea by defendant Munther Omar Saleh in the above-captioned case. The guilty plea is scheduled for Friday, February 10, 2017, at 2:00 p.m.

The defendant is expected to plead guilty to all four counts of the indictment, which charges that he conspired to provide and attempted to provide material support to the foreign terrorist organization the Islamic State of Iraq and the Levant ("ISIL") (Counts One and Two), conspired to assault federal officers (Count Three), and assaulted a federal officer (Count Four). To assist the Court in receiving the defendant's plea, the government sets forth the following summary of some essential facts the government would prove at trial to establish the elements of the charged crimes.

I. Background

In support of Counts One and Two, the government would prove that, in or about and between February and June 2015, the defendant worked with a group of like-minded individuals in the New York metropolitan area to attempt to provide and conspire to provide material support to ISIL. The material support consisted, in part, of coordinating the planned travel of the coconspirators to ISIL-controlled territories in Syria, as well as the attempted travel of Nader Saadeh to ISIL-controlled territories in Syria. In particular, on or about May 5, 2015, the defendant accompanied Nader Saadeh to John F. Kennedy International Airport in Queens, New York, where Nader Saadeh boarded a flight to Jordan.

Nader Saadeh was subsequently apprehended.¹ In the defendant's Mirandized post-arrest statement, the defendant admitted that he had "radicalized" Nader Saadeh and "push[ed]" him to travel to ISIL-controlled territory. The material support charges are also supported by the defendant's coordination with at least one attack facilitator based in ISIL-controlled territory (the "ISIL Facilitator"). The defendant requested instructions from the ISIL Facilitator to construct a pressure cooker bomb, discussed potential targets for an attack in New York City, and informed the ISIL Facilitator of the potential participation of the defendant's like-minded coconspirators in an attack. The defendant also discussed carrying out an attack on law enforcement with coconspirator Fareed Mumuni.

Count Three, which charges a conspiracy to attack federal officers, is supported by the defendant's communications with the ISIL Facilitator summarized above, as well as the following:² On June 1, 2015, the defendant wrote to the ISIL Facilitator requesting help for an "akh (brother) who is planning on hitting a black car cop with a pressure cooker, the black car keeps following him, and he wants to avenge our akhs who have been raided and blocked from hijrah (immigration to ISIL-controlled territory)." The defendant then asked the ISIL Facilitator, "Is it permissible for him to do the attack and die purposely in the process?" The ISIL Facilitator responded, "Yes akhi (my brother) he can do an istishadi (martyrdom) operation on the police akhi if he has no other way to fight them he can do it." The defendant responded "Alhamdulillah (praise be to God) i told him the same thing, jazak Allah kheir (may Allah reward you with Goodness)." The ISIL Facilitator then instructed the defendant to have his contact send any martyrdom video directly to The ISIL Facilitator without first making it public. After the defendant was arrested on June 13, 2015, Mumuni took action in furtherance of the conspiracy, using a knife to repeatedly stab an FBI Special Agent conducting a judicially authorized search of Mumuni's house on June 17, 2015. In his Mirandized post-arrest statement, Mumuni acknowledged that the defendant had sought and received official religious guidance from someone in ISIL—a reference to the ISIL Facilitator—authorizing Mumuni to fight and to die in the process. In the defendant's post-arrest statement, the defendant admitted that he had discussed with Mumuni the fact that Mumuni was being followed and admitted that the two had discussed carrying out a pressure-cooker-bomb attack on the law enforcement officers following Mumuni.

Count Four, which charges that the defendant assaulted a federal officer, is based on the defendant's charging at a law enforcement vehicle that was performing surveillance of the defendant on June 13, 2015, while the defendant was armed with a knife. At trial, the government would prove that the driver of the vehicle and the victim of the defendant's June 13, 2015 assault was a Task Force Officer assigned to the FBI's New York

¹ Nader Saadeh was charged in the District of New Jersey and pleaded guilty to conspiring to provide material support to ISIL, contrary to 18 U.S.C. § 2339B. He is awaiting sentencing.

² All quotations include original grammar and spelling. Translations and definitions are provided in parentheses.

Joint Terrorism Task Force. The defendant's communications with his coconspirators demonstrate that the defendant's attack was conducted with the intent to deter law enforcement surveillance of the defendant and his coconspirators, so that the defendant and his coconspirators could continue preparations to conduct an attack on behalf of ISIL and to travel to ISIL-controlled territory. On June 3, 2015, the defendant wrote to an individual he had previously referred to as a "mujahid" (referring to an ISIL fighter) that the defendant's coconspirators "are having high speed chases with soldiers of taghout (idolatry) confronting them face to face, and are being followed everywhere they go." The defendant continued, "Its not just one bro, its five akhs (brothers) all spread apart across newyork and newjersey, who are being followed by black cars, had physical confrontation with the feds and planed for hijrah (immigration to ISIL-controlled territory) in sha Allah (God willing). One of these dear akhs (brothers), was captured during hijrah, another decided he will become an istishhadi (martyr) in US in sha Allah (God willing), and the three others are low key people who are planning hijrah (immigration to ISIL-controlled territory)." Later, on June 9, 2015, the defendant wrote to the same individual that "the brothers asked me to ask the mujahedeen (referring to ISIL fighters) of our blessed khilafah (meaning "caliphate" and referring to ISIL) two questions, if they can assist some brothers financially for hijrah (immigration to ISIL-controlled territory), and if you akhs (brothers) know how to get to darul Islam (ISIL-controlled territory) while shaytan (devil) Feds on our backs."

II. Elements of the Charged Offenses

The elements of the offenses with which the defendant is charged are as follows:

A. Count One – Conspiracy To Provide Material Support To a Foreign Terrorist Organization

First, that the defendant entered into an unlawful agreement to provide material support or resources to a foreign terrorist organization, specifically, ISIL, knowing that ISIL was a designated terrorist organization or that ISIL had engaged or was engaging in terrorist activity or terrorism; and

Second, that the defendant knowingly and intentionally became a member of the conspiracy.

See 18 U.S.C. § 2339B(a)(1); United States v. Farhane, 634 F.3d 127, 144 (2d Cir. 2011) (describing elements of conspiracy to provide material support as requiring proof of the "existence of the conspiracy alleged" and "the defendant's membership in it").

B. Count Two – Attempt To Provide Material Support To a Foreign Terrorist Organization

First, that the defendant intended to commit the crime of providing material support to a foreign terrorist organization, that is, intended to provide material support or resources to ISIL, knowing that ISIL was a designated terrorist

organization or that ISIL had engaged or was engaging in terrorist activity or terrorism; and

Second, that the defendant did some act that was a substantial step in an effort to bring about or accomplish the crime.

See 18 U.S.C. § 2339B(a)(1); Farhane, 634 F.3d at 145 (describing elements of attempt to provide material support as requiring proof that the defendant “had the intent to commit the object crime” and “engaged in conduct amounting to a substantial step towards its commission”); see also Jury Charge, United States v. Pugh, No. 15-CR-116 (NGG) (ECF Doc. No. 113), at 22-26.

C. Count Three – Conspiracy To Assault Federal Officers

First, that the defendant entered into an unlawful agreement to assault federal officers while such persons were engaged in or on account of the performance of official duties and to do so with the use of a dangerous and deadly weapon;

Second, that the defendant knowingly and willfully became a member of the conspiracy;

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the indictment; and

Fourth, that the overt act was committed to further some objective of the conspiracy.

See 18 U.S.C. §§ 371, 111(a)(1), 111(b); Hon. Leonard B. Sand, et al., Modern Federal Jury Instructions (Criminal) § 19.01, Instruction 19-3 (2016).

D. Count Four – Assault on a Federal Officer³

First, that on or about June 13, 2015, the victim was a federal officer;

Second, that at that time, the defendant forcibly assaulted or resisted or opposed or impeded or intimidated or interfered with the victim, and this forcible action involved the intent to commit a subsequent felony;

³ The government respectfully notes that the lesser-included offense of Count Four to which the defendant is expected to plead guilty does not require proof that the defendant used a dangerous or deadly weapon, notwithstanding the reference to the use of a dangerous or deadly weapon in the indictment.

Third, that, at the time, the victim was engaged in the performance of his official duties or was assaulted on account of his official duties; and

Fourth, that the defendant acted willfully.

See 18 U.S.C. § 111(a)(1); Hon. Leonard B. Sand, et al., Modern Federal Jury Instructions (Criminal) § 14.01, Instruction 14-2 (2016).

* * *

As set forth above, the evidence in this case readily satisfies the elements of each charged offense. The government also encloses a plea penalty sheet to advise the Court of the penalties that the defendant faces upon pleading guilty to the charges set forth above.

Respectfully submitted,

ROBERT L. CAPERS
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By: /s/
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cc. Clerk of the Court (MKB)
Deborah Colson, Esq. (via email)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

PLEA PENALTY SHEET

- against -

No. 15-CR-393 (MKB)

MUNTHER OMAR SALEH,

Defendant.

- - - - - X

This is not a plea agreement. The government submits this plea penalty sheet to advise the Court of the penalties the defendant faces upon pleading guilty to the above-captioned indictment.

I. COUNT ONE – Conspiracy To Provide Material Support to a Foreign Terrorist Organization

A. Statutory Penalties

1. Maximum term of imprisonment: 20 years
(18 U.S.C. § 2339B(a)(1)).
2. Minimum term of imprisonment: 0 years
(18 U.S.C. § 2339B(a)(1)).
3. Maximum supervised release term: life, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 20 years without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. §§ 2339B(a)(1), 3583(e) & (j)).
4. Maximum fine: \$250,000
(18 U.S.C. § 3571(b)(3)).
5. Restitution: In an amount to be determined by the Court
(18 U.S.C. § 3663).
6. \$100 special assessment
(18 U.S.C. § 3013).

The sentence imposed on Count One may run consecutively to the sentences imposed on the other counts.

B. Guidelines Estimate¹

Base Offense Level (§§ 2M5.3(c)(2), 2A2.1(a)(1))	33
Plus: Official Victim (§§ 3A1.2(b), 1B1.5(c))	+ 6
Plus: Terrorism Enhancement (§ 3A1.4(a))	+12
Plus: Aggravating Role (§ 3B1.1(a))	+4
Less: Acceptance of Responsibility (§ 3E1.1(a) & (b))	<u>-3</u>
Total:	52

This level carries an advisory Guidelines sentence of life imprisonment, as the defendant falls within Criminal History Category Six, pursuant to U.S.S.G. § 3A1.4(b).

II. COUNT TWO - Attempt To Provide Material Support to a Foreign Terrorist Organization

A. Statutory Penalties

1. Maximum term of imprisonment: 20 years
(18 U.S.C. § 2339B(a)(1)).
2. Minimum term of imprisonment: 0 years
(18 U.S.C. § 2339B(a)(1)).
3. Maximum supervised release term: life, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 20 years without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. §§ 2339B(a)(1), 3583(e) & (j)).
4. Maximum fine: \$250,000
(18 U.S.C. § 3571(b)(3)).

¹ The Guidelines calculations set forth herein are only estimates and are not binding on the government, the Probation Department or the Court. The inclusion of a downward adjustment under § 3E1.1 in the estimates depends on the defendant demonstrating acceptance of responsibility, through allocution and subsequent conduct, prior to the imposition of sentence.

5. Restitution: In an amount to be determined by the Court (18 U.S.C. § 3663).
6. \$100 special assessment (18 U.S.C. § 3013).

The sentence imposed on Count Two may run consecutively to the sentences imposed on the other counts.

B. Guidelines Estimate²

Base Offense Level (§§ 2M5.3(c)(2), 2A2.1(a)(1))	33
Plus: Official Victim (§§ 3A1.2(b), 1B1.5(c))	+ 6
Plus: Terrorism Enhancement (§ 3A1.4(a))	+12
Plus: Aggravating Role (§ 3B1.1(a))	+4
Less: Acceptance of Responsibility (§ 3E1.1(a) & (b))	<u>-3</u>
Total:	52

This level carries an advisory Guidelines sentence of life imprisonment, as the defendant falls within Criminal History Category Six, pursuant to U.S.S.G. § 3A1.4(b).

III. COUNT THREE – Conspiracy To Assault Federal Officers

A. Statutory Penalties

1. Maximum term of imprisonment: 5 years (18 U.S.C. § 371).
2. Minimum term of imprisonment: 0 years (18 U.S.C. § 371).
3. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 1 year without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. §§ 3583(b), (e)).
4. Maximum fine: \$250,000 (18 U.S.C. § 3571).

² See Footnote 1.

5. Restitution: To be determined by the Court (18 U.S.C. § 3663).
6. \$100 special assessment (18 U.S.C. § 3013).

The sentence imposed on Count Three may run consecutively to the sentences imposed on the other counts.

B. Guidelines Estimate³

Base Offense Level (§§ 2X1.1(a), 2A2.2(a))	14
Plus: More Than Minimal Planning (§§ 2X1.1(a), 2A2.2(b)(1))	+ 2
Plus: Dangerous Weapon Otherwise Used (§§ 2X1.1(a), 2A2.2(b)(2)(B))	+ 4
Plus: Official Victim (§§ 3A1.2(b))	+ 6
Plus: Terrorism Enhancement (§ 3A1.4(a))	+12
Plus: Aggravating Role (§ 3B1.1(c))	+ 2
Less: Acceptance of Responsibility (§ 3E1.1(a) & (b))	<u>- 3</u>
Total:	37

This level carries an advisory Guidelines sentencing range of 360 months to life imprisonment, as the defendant falls within Criminal History Category Six, pursuant to U.S.S.G. § 3A1.4(b).

IV. **COUNT FOUR** – Assault of a Federal Officer

A. Statutory Penalties

1. Maximum term of imprisonment: 8 years (18 U.S.C. § 111(a)(1)).
2. Minimum term of imprisonment: 0 years (18 U.S.C. § 111(a)(1)).
3. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be

³ See Footnote 1.

sentenced to up to 1 year without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. §§ 3583(b), (e)).

4. Maximum fine: \$250,000 (18 U.S.C. § 3571).
5. Restitution: To be determined by the Court (18 U.S.C. § 3663).
6. \$100 special assessment (18 U.S.C. § 3013).

The sentence imposed on Count Four may run consecutively to the sentences imposed on the other counts.

B. Guidelines Estimate⁴

Base Offense Level (§ 2A2.2(a))	14
Plus: More Than Minimal Planning (§ 2A2.2(b)(1))	+ 2
Plus: Official Victim (§§ 3A1.2(b))	+ 6
Plus: Terrorism Enhancement (§ 3A1.4(a))	+12
Plus: Aggravating Role (§ 3B1.1(c))	+ 2
Less: Acceptance of Responsibility (§ 3E1.1(a) & (b))	<u>- 3</u>
Total:	33

This level carries an advisory Guidelines sentencing range of 235 – 293 months' imprisonment, as the defendant falls within Criminal History Category Six, pursuant to U.S.S.G. § 3A1.4(b).

⁴

See Footnote 1.

V. Grouped Guidelines Estimate⁶

Counts One, Two and Three are grouped together as the offenses involve acts and transactions connected by a common criminal objective and constitute part of a common scheme or plan. See U.S.S.G. § 3D1.2(b). Count Four is not grouped with the other counts, pursuant to U.S.S.G. § 3D1.2.

The Multiple Count Analysis, pursuant to U.S.S.G. § 3D1.4, is as follows:

	<u>Level</u>	<u>Units</u>
Counts One, Two and Three	52	1
Count Four	33	<u>0</u>
Total Units		1

The highest offense level of 52 is used, and no additional levels are added for 1 unit, yielding a combined offense level of 52. This level carries a range of imprisonment of life, as the defendant falls within Criminal History Category Six, pursuant to U.S.S.G. § 3A1.4(b). Because the statutory maximum sentence on all counts set forth above is 53 years, the effective Guidelines range of imprisonment is 53 years.

Dated: Brooklyn, New York
February 8, 2017

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⁶ See Footnote 1.