



U.S. Department of Justice

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June 21, 2010

BY EMAIL

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Julia Gatto
Federal Defenders of New York
52 Duane Street, 10th Floor
New York, NY 10007

Re: United States v. Faisal Shahzad
10 Cr. 541 (MGC)

Dear Mr. Weinstein and Ms. Gatto:

This document is not a plea agreement. Rather, pursuant to the suggestion of the Court in United States v. Pimentel, 932 F.2d 1029, 1034 (2d Cir. 1991), this letter sets forth the current position of the United States Attorney's Office for the Southern District of New York (the "Office") regarding the application of the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") to defendant Faisal Shahzad (the "defendant") in this case.

The Indictment charges the defendant, in ten counts, with (1) attempted use of a weapon of mass destruction, in violation of Title 18, United States Code, Section 2332a; (2) conspiracy to use a weapon of mass destruction, in violation of Title 18, United States Code, Section 2332a; (3) possessing, using and carrying a firearm during and in relation to a conspiracy to use a weapon of mass destruction, in violation of Title 18, United States Code, Section 924(c); (4) an attempted act of terrorism transcending national boundaries, in violation of Title 18, United States Code, Section 2332b; (5) conspiracy to commit an act of terrorism transcending national boundaries, in violation of Title 18, United States Code, Section 2332b; (6) attempted use of a destructive device during and in relation to a conspiracy to commit an act of terrorism transcending national boundaries, in violation of Title 18, United States Code, Section 924(c); (7) transportation of an explosive, in violation of Title 18, United States Code, Section 844(d); (8) conspiracy to transport an explosive, in violation of Title 18, United States Code, Section 844(n); (9) attempted destruction of property by fire and explosive, in violation of Title 18, United States Code,

Philip L. Weinstein
Julia Gatto
June 21, 2010
Page 2 of 6

Section 844(i); and (10) conspiracy to destroy property by fire and explosive, in violation of Title 18, United States Code, Section 844(n). If convicted of all ten counts, the defendant will face a mandatory minimum sentence of life imprisonment.

The applicable Guidelines manual is the November 2009 United States Sentencing Commission Guidelines Manual. The Government currently believes that the Guidelines apply to the crimes charged in the Indictment as follows:

A. Offense Level

Counts One and Two

1. Counts One and Two charge the defendant with attempted use of a weapon of mass destruction and conspiracy to use a weapon of mass destruction, respectively. Pursuant to U.S.S.G. § 2K1.4(a)(1), the base offense level for these two counts is 24. In addition, pursuant to U.S.S.G. § 3A1.4(a), the offense level is increased by 12 levels because the offenses charged in Counts One and Two involved, or were intended to promote, a federal crime of terrorism. Thus, the offense level for both Count One and Count Two is 36.

Count Three

2. Count Three charges the defendant with possessing, using and carrying a firearm during and in relation to the conspiracy to use a weapon of mass destruction charged in Count Two. Pursuant to U.S.S.G. § 2K2.4(b), the base offense level for Count Three is the minimum term of imprisonment required by the statute. The minimum term of imprisonment for Count Three required by the statute charged (18 U.S.C. § 924(c)(1)(A)(i)) is 5 years' imprisonment, in addition and consecutive to any sentence imposed for the underlying conspiracy to use a weapon of mass destruction charged in Count Two. Thus, the Guideline sentence for Count Three is a mandatory consecutive sentence of 5 years' imprisonment.

Counts Four and Five

3. Counts Four and Five charge the defendant with an attempted act of terrorism transcending national boundaries and

Philip L. Weinstein
Julia Gatto
June 21, 2010
Page 3 of 6

conspiracy to engage in an act of terrorism transcending national boundaries, respectively. Pursuant to U.S.S.G. § 2A2.1, the base offense level for these two counts is 33. In addition, pursuant to U.S.S.G. § 3A1.4(a), the offense level is increased by 12 levels because the offenses charged in Counts Four and Five involved, or were intended to promote, a federal crime of terrorism. Thus, the offense level for both Count Four and Count Five is 45.

Count Six

4. Count Six charges the defendant with attempted use of a destructive device during and in relation to the conspiracy to engage in an act of terrorism transcending national boundaries charged in Count Five. Pursuant to U.S.S.G. § 2K2.4(b), the base offense level for Count Six is the minimum term of imprisonment required by the statute. The minimum term of imprisonment for Count Six is life imprisonment because the defendant's plea to Count Six constitutes a second or subsequent conviction under 18 U.S.C. § 924(c)(1)(C)(ii). Pursuant to 18 U.S.C. § 924(c)(1)(A)(i), this sentence must be in addition to any sentence imposed for the underlying conspiracy to engage in an act of terrorism transcending national boundaries charged in Count Five. Thus, the Guideline sentence for Count Six is a mandatory consecutive sentence of life imprisonment.

Counts Seven and Eight

5. Counts Seven and Eight charge the defendant with transportation of an explosive and conspiracy to transport an explosive, respectively. Pursuant to U.S.S.G. § 2K1.3(a)(5), the base offense level for these two counts is 12. In addition, pursuant to U.S.S.G. § 2K1.3(b)(1)(C), the offense level is increased by 3 levels because the offense involved at least 250 pounds but less than 500 pounds of explosive materials. Finally, pursuant to U.S.S.G. § 3A1.4(a), the offense level is increased to level 32 because the offenses charged in Counts Seven and Eight involved, or were intended to promote, a federal crime of terrorism. Thus, the offense level for both Count Seven and Count Eight is 32.

Philip L. Weinstein
Julia Gatto
June 21, 2010
Page 4 of 6

Counts Nine and Ten

6. Counts Nine and Ten charge the defendant with attempted destruction of property by fire and explosive and conspiracy to destroy property by fire and explosive, respectively. These offenses each carry a mandatory minimum sentence of 5 years' imprisonment. Pursuant to U.S.S.G. § 2K1.4(a)(1), the base offense level for these two counts is 24. In addition, pursuant to U.S.S.G. § 3A1.4(a), the offense level is increased by 12 levels because the offenses charged in Counts Nine and Ten involved, or were intended to promote, a federal crime of terrorism. Thus, the offense level for both Count Nine and Count Ten is 36.

Determination of Combined Offense Level

7. Pursuant to U.S.S.G. §§ 3D1.1(a) and 3D1.2(b), all ten counts except for Count Three and Count Six are grouped together into a single group. Pursuant to U.S.S.G. § 3D1.1(b)(1), Count Three and Count Six are excluded from the group. The combined offense level for the group containing Counts One, Two, Four, Five, Seven, Eight, Nine and Ten is 45 pursuant to U.S.S.G. § 3D1.3(a). Because Counts Nine and Ten each carry a mandatory minimum sentence of 5 years' imprisonment, the minimum sentence for the group is 5 years' imprisonment.

8. Pursuant to U.S.S.G. § 5G1.2(a), the sentences for the two excluded counts are as follows: the sentence for Count Three is 5 years' imprisonment, in addition to any sentence imposed for the underlying conspiracy to use a weapon of mass destruction charged in Count Two. The sentence for Count Six is life imprisonment, in addition to any sentence imposed for the underlying conspiracy to engage in an act of terrorism transcending national boundaries charged in Count Five.

9. 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

Philip L. Weinstein
Julia Gatto
June 21, 2010
Page 5 of 6

gave timely notice of his intention to enter 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 42, in addition to a mandatory consecutive term of life imprisonment.

B. Criminal History Category

Because the U.S.S.G. § 3A1.4(a) terrorism enhancement applies, the defendant's criminal history category is VI pursuant to U.S.S.G. § 3A1.4(b).

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Sentencing Guidelines range is life imprisonment. In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At offense level 42, the applicable fine range is \$25,000 to \$250,000.

The foregoing Guidelines calculation is based on facts and information currently known to the Office. Nothing in this letter limits the right of this Office (1) to change its position at any time as to the appropriate Guidelines calculation in this case, even if that change is based, in whole or in part, on information that was in the Government's possession as of the date of this letter; and/or (2) to present to the Court or the United States Probation Office, either orally or in writing, any and all facts and arguments relevant to sentencing that are available to the Office at the time of sentencing. Nor does anything in this letter limit the right of this Office to seek a departure under or variance from the Guidelines, or to take a position on any departure or variance that may be suggested by the Court, the United States Probation Office, or the defendant.

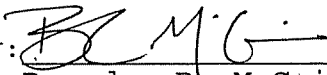
This letter does not and cannot bind either the Court or the United States Probation Office, either as to questions of fact or as to determinations of the correct application of the Guidelines in this case. Instead, the sentence to be imposed upon the defendant will be determined solely by the Court. This Office cannot and does not make any promise or representation as

Philip L. Weinstein
Julia Gatto
June 21, 2010
Page 6 of 6

to what sentence the defendant will receive.

Very truly yours,

PREET BHARARA
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