UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,	)	DOCKET NO. 3:00CR147
v.	)	**GOVERNMENT RESPONSE TO**
	)	**DEFENDANT'S REQUEST FOR**
MOHAMED YOUSSEF HAMMOUD	)	**A VARIANCE SENTENCE**
	)	

NOW COMES the United States of America, by and through Gretchen C.F. Shappert, United States Attorney for the Western District of North Carolina, and hereby responds to Defendant's Request for a variance from the sentence called for under the Sentencing Guidelines. For the reasons stated herein, the Government respectfully submits that Defendant's request for a variance from his properly calculated Guideline range should be denied and that the Court should re-impose a sentence sufficient to insure that Defendant is incarcerated for the rest of his natural life.

STATEMENT OF THE CASE

The Government adopts the Statement of the Case provided in Defendant's Objections to the Revised Pre-Sentence Report, as supplemented in the Government's response thereto.

STATEMENT OF FACTS[1]

I. Who is Mohammed Hammoud?

Defendant has been a member of Hizballah, a designated foreign terrorist organization, for virtually his entire life.[2] He was born and raised in Beirut, Lebanon, in an area known as Bourj al-Barajneh (Tr. 1779: 22) whose inhabitants have "always been involved" with armed militias of one stripe or another. (Tr. 1780: 3-4). By the time Defendant was nine or ten years old, Hizballah had become "the main militia" controlling his hometown. (Tr. 1780: 10-11). This community has been "a well-known Hizballah stronghold" (Tr. 1350: 25) since Defendant's youth in which the children receive a "very Hizballah education" and an "anti-Western, very anti-American, very pro-Iranian" indoctrination. (Tr. 1351: 3-6).

Defendant came to admire Hizballah almost from its inception, quickly abandoning his limited affection for Amal, a rival militia. (Tr. 1786: 1; 1787: 6). He especially liked Hizballah because it was "doing a good job fighting against Israel." (Tr. 1787: 21-22). Defendant joined the Hizballah youth organization, the Hizballah Al-Mahdi Scouts, or as he referred to it, the

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[1] The factual recitation is taken from the evidence introduced during the trial of this case, unless otherwise noted. References to the trial transcript are designated as "Tr." followed by the page and line numbers. References to trial exhibits are designated as "Ex." followed by the number. And, of course, the evidence following conviction by a jury is properly viewed in a light most favorable to the Government. *Cf. United States v. Harvey*, __ F.3d __, 2008 WL 2720718 (4th Cir. July 14, 2008) (when reviewing post-conviction challenges to the sufficiency of the evidence, the court is to "consider both circumstantial and direct evidence, and allow the government all reasonable inferences that could be drawn in its favor. Where there are conflicts in the testimony, it is for the jury and not the [court] to weigh the evidence and judge the credibility of the witnesses.") (citations omitted).

[2] Not surprisingly, Defendant denies being a member of Hizballah. But as he candidly admitted during his trial testimony, "If I'm Hizballah, I'm not going to tell you I'm Hizballah." (Tr. 1817: 15-16).

Hizballah boy scouts, within a few years after its creation. (Tr. 1831: 13 - 1832: 6). In fact, the Hizballah Al-Mahdi Scouts have been compared to the Hitler Youth movement and are responsible for indoctrinating children and teenagers between the ages of 8 and 16 "with the principles of radical Iranian Islam."[3]

Defendant's involvement with this group enabled him to gain access to the Hizballah Center, restricted to Hizballah party members only. (Tr. 95: 11-12). One of Defendant's cherished photographs depicts him, at age 16, standing tall with an assault rifle in his hands and explosives strapped to his waist while visiting the Hizballah Center. (Tr. 973: 3-5; Ex. 266-1, Attachment 4). Defendant proudly claims that this photograph depicts Hizballah's "good works" because the weapon *could* be used against Israel. (Tr. 1831: 24 - 1832: 2). Defendant does not contest, however, that this same weapon could also be used against others, including American citizens. (*Id.*).

Defendant's next door neighbor in Beirut was Sheik Abbas Harake (Tr. 1815: 18-19), a military commander with Hizballah. (Tr. 1334: 8-12**;** 1502: 21-22). In fact, a more appropriate title for Harake is "operational commander" of Hizballah in Beirut because that term refers to the military command structure of a terrorist organization rather than the armed forces of a legitimate government.[4]

Defendant developed a very close, personal friendship with Harake while still an adolescent (Tr. 1816: 18-19), which has remained strong throughout Defendant's life, even after

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[3] Intelligence and Terrorism Information Center at the Center for Special Studies, September 11, 2006 (Attachment 1). According to the ITIC, male scouts are recruited into the ranks of Hizballah's fighting force and the Al-Mahdi Scout calendar lists more than 120 former scouts who died as martyrs in Hizballah operations, "including suicide bombers." *Id.* at 3. *See also Hizballah's Armed Children's Militias,* Egyptian Weekly, September 1, 2006 (Attachment 2); Time, *Photo Essay: Inside Hizballah*, 2008 (Attachment 3).

[4] Testimony of Special Agent David Yu providing information from Israeli intelligence sources regarding Harake's position with Hizballah (Dock. No. 1016, p.4).

he left Lebanon and illegally entered the United States. (Tr. 1815: 22-25). Defendant has been the recipient of numerous letters from Harake and has spoken to him by telephone in Lebanon on countless occasions. (Tr. 1815: 22-25).[5]

Money donated to Hizballah at Thursday night meetings held in Defendant's home was sent by Defendant to Harake. (Tr. 1497: 21-22). Defendant also sent his "alms," or 20% of his income, to Harake. (Tr. 1497: 24 - 1498: 1; 1499: 18-19). In fact, virtually "any money that [Defendant] generated in [the United States] from anything went to Abbas." (Tr. 1497: 21-22).

On one occasion, Defendant traveled with Harake to visit a Muslim shrine in Syria. (Tr. 1500: 8-9). Because of their status within Hizballah, they were permitted to use the "military route" rather than the longer and more arduous journey required of pilgrims without significant Hizballah connections. (Tr. 1500: 11-17).

Defendant was also personal friends with "His Eminence," Grand Ayatollah Sayyid Mohamed Hussein Fadlallah, who Defendant described as not only the spiritual leader of Hizballah in Lebanon but as the spiritual leader of the entire "Shi'a world." (Tr. 1810: 21-25 -

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[5] Incredibly (and perjuriously) Harake claims in his affidavit that after Defendant entered the United States, "I did not at any time telephone or write [Defendant], nor did I ask anyone else to do so on my behalf or to communicate with him directly or otherwise for any purpose whatsoever. In this regard I did not at any time possess the telephone number of [Defendant], nor his address in that country..." (Dock. No. 995, Attachment A, p. 5). Although Harake was shown some portions of the trial transcript, he was apparently not shown any of the numerous letters he wrote to Defendant (e.g. Ex. 250), the charts reflecting the countless telephone calls between the two (e.g. Tr. 1562: 20 – 1560: 7), the transcripts of their intercepted telephone conversations (e.g. Tr. 1897 – 1899), or even the transcript of Defendant's trial testimony in which Defendant readily admits that he spoke to Harake "a lot" while in the United States. (Tr. 1815: 23) The blatant falsity of Harake's claim here casts unquestionable doubt on the veracity of any of his other exculpatory statements in the affidavit. Indeed, the submission of this affidavit cannot be viewed as anything other than an unadulterated attempt to obstruct justice in the resentencing hearing and provides an additional basis to deny Defendant's request for a variance. *See United States v. Johnson*, 261 Fed. Appx. 611, 616 (4th Cir 2008) (enhancement for obstruction of justice warranted because "a defendant's right to present witnesses in his own defense does not include the right to deliberately present false testimony.").

1811: 1). According to Defendant, Fadlallah is "like the Pope to the Catholic" faith. (Tr. 1813: 18). Fadlallah built the mosque in Defendant's community in Beirut and regularly made appearances there. (Tr. 1351: 9-13).

While Fadlallah does not hold an official position within the Hizballah organizational structure, he is Hizballah (Tr. 1912: 22-24) and he wields significant influence over the organization. Fadlallah uses his religious authority to sanction certain Hizballah actions, such as the use of various types of unorthodox military force, including the religiously unprecedented use of females for suicide bombing missions. (Tr. 1333: 20 - 1334: 5).[6] Because of his significant ties to Hizballah's terrorist activities, a Presidential Order was issued prohibiting any monetary support to Fadlallah. (Tr. 1012: 12-15). (Executive Order 12947, January 25, 1995).

In light of Fadlallah's importance and high office, it is especially noteworthy that Defendant had Fadlallah's personal cell phone number and spoke with him several times before he left Lebanon (Tr. 1867: 5-7) and a number of times while in the United States. (Tr. 1866: 19-25 - 1867: 1-4). In fact, Defendant was able to visit personally with the Grand Ayatollah Fadlallah on at least one occasion, in additional to whatever number of contacts the two had in the mosque. (Tr. 1867: 8-14).

Defendant sent money directly to Fadlallah (Tr. 1813: 8-9) even after such support to him was prohibited. (Tr. 1011: 19 - 1013: 15). Defendant continued to send money to Fadlallah indirectly on several other occasions by sending the funds through Fadlallah's authorized surrogate, Sheik Mohamed Hussan "who has permission from Sayyid Fadlallah to take money." (Tr. 1868: 7-15).

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[6] Muslim teaching promises that males who become martyrs for the sake of Islam will be rewarded with 70 virgins when they reach paradise. (The Middle East Media Research Institute, No. 74, October 31, 2001) (Attachment 5). Whether female suicide bombers receive a similar reward is unclear. (*Id.*).

Defendant is also "acquainted with" Hassan Nasserallah, Hizballah's general secretary. *United States v. Hammoud*, 381 F.3d 316, 326 (4th Cir. 2004). He kept a personalized picture of this most important leader in the Hizballah organization in his home. (Tr. 1834:20; Ex. 267-3, Attachment 6). In fact, Defendant posed for a picture while back in Lebanon with photographs of his three favorite religious leaders: Ayatollah Khomeini, the founder of the Islamic Republic of Iran; Nasserallah; and Ayatollah Khamenei, Khomeini's successor. (Tr. 1883: 3-25; Ex. 267-1, Attachment 7). Defendant even managed to get his own picture taken with Nasserallah. (Tr. 1835: 21 - 1836: 4; Ex. 267-2, Attachment 8).[7]

Defendant was comfortable with the use of assault weapons from his youth, growing up in a household which had its own AK-47 (Tr. 1784: 1-4), and he apparently received military training before he "worked together in several locations" with his friend and mentor Harake. (Ex. 250). Indeed, before leaving Lebanon to create a Hizballah cell in the United States, Defendant had an entirely different "field of work" for the organization in Lebanon. (*Id.*). One can only speculate what that "work" might have been during the two years after Defendant graduated from the Al-Mahdi Scouts until he arrived in the United States because Defendant refused to tell. (Tr. 1889: 3 – 21).

Defendant tried three times to obtain a visa to the United States. Defendant did not make any effort to obtain a visa in Lebanon, where his affiliation with Hizballah might have posed a barrier, but instead he went to Damascus where his allegiance to Hizballah not only was commended but could be concealed. (Tr. 1790: 6 - 1792: 1). Unsuccessful after those attempts

[7] Defendant initially claimed that this photograph was of him and Sayid Mustapha Hussein, a well-known Beirut religious figure. (Tr. 1834: 24 - 1835: 9). Defendant eventually conceded, however, that while the picture was not very clear, the man with him in the photograph was "Nasserallah still. He was coming to that mosque for this occasion and everybody was shaking his hand and taking picture." (Tr. 1835: 24 - 1836: 4).

and in desperation to reach the United States, Defendant selected an alternate route of entry. (*Id.*). He traveled to Margarita Island in Venezuela, a known foreign Hizballah stronghold. (*Id.*).[8]

With the assistance of his uncle, who had already established a base there, and the modest payment of $1500, Defendant illegally procured a visa to the United States. (*Id.*). He was denied permanent entry but had gained the necessary foothold and took advantage of this country's liberal immigration policies to remain in the United States while he pursued a frivolous appeal. (Tr. 1793: 17-18).

In the meantime, Defendant connected with a corrupt Middle Eastern attorney who, understanding American immigration laws, created a paper marriage to a United States citizen Defendant had never met. (Tr. 1793: 19: 1799: 5). This fraudulent marriage allowed Defendant to remain in this country even after his appeal proved unsuccessful. (*Id.*). Apparently feeling less than sanguine about the paper marriage to an unknown person, Defendant entered into a second sham marriage with one of his employees, Jessica Wadell. (*Id.*). But, because Wadell was apparently not a person Defendant could stand to live with even under totally fraudulent conditions, Defendant entered into a third sham marriage with Angela Tsioumas, impelled by the jeopardy into which his immigration status placed his mission. (*Id.*). With his residency in the United States at last secure, Defendant began in earnest to go about the important work he had been assigned by Hizballah.

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[8] On June 18, 2008, the United States Department of Treasury designated two Venezuelan individuals as Hizballah supporters, as well as two companies used by the individuals to launder funds on behalf of the terrorist organization. (Treasury Department Press Release, June 18, 2008) (Attachment 9). The Director of the Office of Foreign Assets Control characterized the actions of the Venezuelan government in continuing to provide a safe harbor for Hizballah's terrorist support network as "extremely troubling" and noted that the United States continues to take steps to "disrupt and dismantle this activity" by Hizballah. *Id.*

Defendant has extended family still living in Lebanon (Tr. 1780: 14 - 1781: 23), including his mother who is also well-acquainted with Harake. (Tr. 1503: 4-8). On one occasion, Defendant's mother delivered one of Defendant's contributions to Hizballah to Harake. (TR. 1349: 18-21). In fact, despite Defendant's perjurious claim at trial that he never sent any money to Harake (Tr. 1913: 7), Harake says otherwise:

> "Although I have no independent knowledge of how much money [Defendant] contributed . . . while he resided in the United States, if my recollection is correct I believe it amounted to several thousand dollars... I believe **on two or three occasions** one of his family members would visit me at the Mesjid and give me the money indicating that **[Defendant] wanted me to use it as I chose**...."

(Dock. No. 995, Attachment A, pp. 5-6) (emphasis added)[9]

Two of Defendant's four brothers, as well as his sisters, also remained in Lebanon. (Tr. 1789: 17-20).[10] One brother, Moussa, was selected as the family representative to Hizballah in Lebanon. (Tr. 1897: 5-10). His younger brother, Hasan, became a full-fledged member of the Hizballah military wing (Tr. 1497: 1-4; 1193: 11-12) and made plans to go to Iran for additional training. (Tr. 1334: 16 -1345: 1). Hasan also participated along with Harake in the final push to expel Israel from Southern Lebanon. (Ex. 356). In fact, gunfire can be heard in the background during a telephone conversation between Defendant and Harake during which Harake states that he has just been with Hasan. (*Id.*)

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[9] This may be the only partially truthful statement in Harake's entire affidavit, although it grossly understates the amount of money Defendant said he provided. During a pretrial interview, Defendant admitted collecting money from the Charlotte Muslim community and sending as much as $800 or $900 dollars at a time through couriers back to his friend Harake. (Tr. 75: 5 – 77:1; 88: 24 – 89:14). In fact, as Defendant acknowledged, "[a]pparently everyone was donating" at his Thursday night meetings. (Tr. 1808: 6). In any event, Harake unequivocally refutes Defendant's specious claim that, at worst, Defendant's guilt to providing material support to Hizballah was limited to one $3500 payment.

[10] Two other brothers, Bassam and Chawki, also came to the United States and were convicted of racketeering activity in support of the Charlotte Hizballah cell.

While each member of his immediate family had some role in Hizballah,[11] Defendant was the one selected to organize and lead a Hizballah cell in the United States. Because of his significant ties to, and special relationship with, senior Hizballah leaders, Defendant is the member of the family that everyone wanted to impress.

During a telephone call with Defendant, his sister exhorts her children to "tell Uncle Hammouda [Defendant] who you are." (Tr. 1836: 14-20). "Who are you?" she asks the youngsters and, after several prompts, gets the response she is begging for: "Hizballah!" they reply with clenched fists raised. "Who are you?" she asks again. "Hizballah! Who are you? Hizballah!" (Ex. 218; Tr. 960: 15 - 961: 8). The family excitement and pride is palpable. The youngest members of the family are, just like the young men chanting their willingness to die for Hizballah in the Martyrs video (Ex. 233), members of a terrorist organization. Uncle Hammouda is pleased.

II. What is Hizballah?

Hizballah was founded in July 1982 by the Lebanese Shi'a Muslim sect in response to the Israeli invasion of Lebanon, less than nine years after Defendant was born. (Tr. 1779: 24; Tr. 1326: 12-13). *See also Hammoud*, 381 F.3d at 325. Hizballah, which literally means Party of God (Tr. 1017: 12-13), is also known as "The Resistance." (Tr. 1327: 9-10). Hizballah is sometimes simply referred to as "Hizb" or "The Party," and it has been referred to as the "IJO,"

[11] Defendant and "the guys" in his group, including his brothers Chawki and Bassam, are unquestionably members of Hizballah. (Tr. 1286: 20-22; 1288: 18 - 1289: 3). And like Defendant's brother Hasan, one of his sister's husbands was also an acknowledged member of Hizballah. (Ex. 339).

the Islamic Jihad[12] Organization, or "ESO," which stands for the External Security Organization. (Tr. 1327: 1-3).

The organization's ideology was patterned after, and closely tied to, the Islamic Iranian regime and its purpose is to oppose western presence in Lebanon in particular and the Middle East in general. (Tr. 1326: 15-25). It also has an unabashed goal and fanatical desire to achieve the total destruction of the State of Israel. (*Id.*). Hizballah receives its principle financial and military support from Iran, although it also has close ties to Syria (Tr. 1332: 19-25) two recognized state sponsors of terrorism. *See* United States State Department Publication, *Country Reports on Terrorism 2007*, p. 9 (hereinafter 2007 Terrorism Report) (Attachment 10).[13]

In addition, Hizballah maintains a substantial international financial support structure, including in North America, one purpose of which is to raise funds for Hizballah through illegal activities. (Tr. 1336: 11-19).[14] According to Nasserallah, Hizballah "has groups of individuals abroad who collect money and fund" the organization's' military operations. (Tr. 1335: 2-11).[15]

Hizballah is "very anti-Western. It's very anti-American." (Tr. 1326: 21-22). And, "it advocates the use of terrorism in support of its agenda." *Hammoud* at 325. It is now, and since

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[12] "Jihad" is defined as "a holy war undertaken as a sacred duty by Muslims." *United States v. Ali*, 528 F.3d 210, 222 n.1 (4th Cir. 2008) (citations omitted).

[13] For the convenience of the Court, the Government has only attached relevant excerpts of this report, which is in excess of 300 pages in length.

[14] The other purposes of Hizballah's international network may be unknown to the public, but given the history of violent atrocities committed world-wide by this terrorist organization, the tragedy of 9/11, and Hizballah's close allegiance to Iranian Muslim fundamentalism in particular, Hizballah's ultimate goals can only be imagined with trepidation and loathing.

[15] According to the 2007 Terrorism Report, Hizballah fundraising cells have recently been uncovered and dismantled in Sweden (p. 92), the Tri-Border area of Argentina, Brazil and Paraguay (pp. 148, 189), Belize (p. 166), and Detroit, Michigan (p.193). In addition to the financial support it receives from Iran and Syria, Hizballah "receives funding from private donations, and profits from legal and illegal business." *Id.* at 282.

1996 has been, a designated as a foreign terrorist organization because "it engaged in bombings, hijackings and kidnappings, including targeting westerners, including Americans." (Tr. 1329: 22-23; Tr. 1330: 13-16).

Prior to 9/11, Hizballah "was responsible for more American deaths than any other terrorist group. [Hizballah terrorist attacks] included the 1983 suicide attack on the United States Marine barracks in Lebanon that killed 241 Americans and ushered in the modern age of suicide attacks, and it includes the 1985 attacks on TWA Flight 847[16] and the 1996 attack on Khobar Towers."[17] (Hearing on "Hezbollah's Global Reach," House Subcommittee on International Terrorism and Nonproliferation, September 28, 2006) (Attachment 11). *See also* The 9/11 Commission Report, pp. 60-61, 70, 190 (2004). Hizballah was also responsible for the bombing of the U.S. Embassy in Beirut in 1983 (Tr. 1839: 8-11); "the kidnapping of U.S. and British journalists, educators and human rights activists; [and] the torture and murder of CIA station chief William Buckley and U.S. military intelligence officer Lt. Col. William Richard Higgins," in addition to the numerous terrorist attacks on Israeli and Jewish citizens around the world. (*Hezbollah Militant Was One of the World's Most Wanted*, Robert Windrem, NBC News Producer, February 13, 2008) (Attachment 12).

But lest anyone consider these atrocities past history, experts on international terrorism provide compelling evidence to the contrary. In 2002, former Deputy Secretary of State Richard Armitage stated "Hizballah may be the A-Team of terrorists and maybe al-Qaeda is actually the

[16] The hijacking of Flight 847 resulted in the kidnapping and torture of seven American sailors and the brutal murder of one of them. *Stethem v. Islamic Republic of Iran*, 201 F. Supp. 2d. 78 (D. D.C. 2002).

[17] This attack, on military residences in Saudi Arabia, resulted in the loss of 19 American lives. *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp 2d. 229, 248 (D. D.C. 2006).

B-Team." ("Hezbollah's Global Reach," *supra*). As noted by International Terrorism Subcommittee Chairman Royce, "[t]he Hezbollah threat is grave indeed." (*Id.*).

More recently, the Secretary of Homeland Security echoed this refrain: Hezbollah is the A-Team and "they make Al Qaeda look like a minor league team. They have been more disciplined, and they've been in some senses more restrained in the kinds of attacks they carry out in recent years, but that's not something we can take for granted." (Statement of Michael Chertoff during a two-day terrorism forum, May 29, 2008 as reported by Fox News.com) (Attachment 13).

And, as confirmed by the State Department, with weapons and funding provided by the Iranian Revolutionary Guard, Hizballah is directly responsible for numerous deaths and horrific casualties to American military personnel in Iraq and the murder of untold numbers of innocent Iraqi civilians through their training and support for homicide bombings. (2007 Terrorism Report, p. 194). "Since at least 2004, Hizballah has provided training to select Iraqi Shia militants, including the construction and use of shaped charge improvised explosives devices (IEDs) that can penetrate heavily armored vehicles, which it developed in southern Lebanon in the late 1990s. A senior Hisballah operative, Ali Mussa Daqduq, was captured in Iraq in 2007 while facilitating Hizballah training of Iraqi Shia militants." (*Id*. at p. 281).

Hizballah is presently "key" to Iran's terrorism strategy, using Hizballah militiamen as a "proxy" to "perpetrate violence and cause American casualties in Iraq." (I*d*. at 9). In short, Hizballah represents a more significant present danger to American citizens than any other active terrorist organization.

III. What was Defendant's Assignment from Hizballah?

Whether because of his intelligence, his power of persuasion, his significant contacts within The Resistance, or simply his commitment to the cause, Defendant alone was selected by Hizballah to illegally enter the United States to tend the garden planted by Abu Adam, who could not return to Lebanon until his replacement arrived. (Tr. 1241: 6-7; 1489: 6-10). Upon his return home to the ranks of Hizballah in Lebanon, Adam served as Defendant's "handler" and kept in constant contact with him, encouraging him to continue the work of recruitment, and thanking him for his continued activities on behalf of The Resistance. (Tr. 1341: 1-5; 1241: 6-7).

And what was that work? "It couldn't be any clearer that this [was] a Hizballah cell headed by Mohamad Hammoud and participated [in] by Chawki Hammoud and several others engaging in criminal activity to support Hizballah, raising funds at gatherings on Thursday evenings to support Hizballah, proactively trying to raise funds for this foreign terrorist organization." (Tr. 1338: 14-20). Defendant continued the Thursday night "prayer meetings" started by Abu Adam but the primary purposes of the meetings was fund raising, indoctrination, and most importantly, recruitment of like-minded, anti-Western ideologues, committed to the cause of Hizballah.

Following their Thursday-night prayer, speeches were made extolling the virtues of radical Islam and Hizballah before the video tapes of Hizballah terrorist activities were played. (Tr. 1339: 3-5; 1491: 5-6). Many of the videos were filmed by indicted co-conspirator Mohamad Dbouk, who received his training from the Iranian Republican Guard and who served as the Charlotte cell's chief procurement officer. (Tr. 1339: 12-16). Those videos celebrated the atrocities committed by Hizballah's military wing, honored the acts of martyrs who died committing heroic acts such as blowing themselves up in suicide attacks against innocent

civilians (Ex. 233; 250; Tr. 1127 - 1128), and proclaimed inflammatory, anti-American, anti-Israeli, and pro-jihadist ideology. (Ex. 217; Tr. 1653: 17-22). “Mottos were recited throughout the tapes: Death to America. Death to Israel. References to America or the U.S. were being made that America is the big devil.” (Tr. 1653: 22-24).

As Defendant’s friend and predecessor, Abu Adam, stated: “The Resistance is always in need of support and the distinction is that The Resistance’s support is on the shoulders of the weak. So if there was an opportunity for you to work **as you did at the end of the gatherings, donate to the Resistance**. And I sent with [your brother] Haj Bassam an invitation card to the attendees of the breakfast parties that talks about the accomplishments of The Resistance, and the guys could see it and donate to The Resistance because we in Lebanon live in safety as a result of that.” (Ex. 249, emphasis added). The constant exhortation of the Hizballah leaders was, with purportedly successful Resistance military activities as the backdrop, “if you cannot participate in the operations, you should at least be donating to the cause.” (Tr. 1339: 6-11).

Defendant placed an envelope in the apartment he shared with his fellow Hizballah brothers, Bassam and Chawki, for contributions to Hizballah. (Tr. 1492:9-14; 1188: 21-22; 1189: 7-10). And once he opened his restaurant as a gathering place for Hizballah sympathizers, he set up another donation box for Hizballah. (Tr. 1231: 20 - 1233: 15; 1235: 3-7). And, Defendant was quite successful in his endeavors. “Members of this cell were sending money back to a military commander of Hizballah. People who are members of the cell were procuring arms for a senior Hizballah procurement officer. They were clearly sending money back to people who are involved with terrorist operations.” (Tr. 1353: 5-9).

Additionally, Defendant recruited ten to fifteen regular members who attended his Thursday night gatherings where he preached that it was the duty of all Muslims to support

Hizballah. (Tr. 1235: 3-7). As a result of his persuasion, Defendant managed to send at least $800 to $900 at a time back to his Hizballah friends in Lebanon. (Tr. 75: 5 - 77: 1; 88: 24 - 89: 14). Using his illegal cigarette smuggling operation as the base for his Hizballah fund raising activities, Defendant was able to generate about $2,500 per load and on one occasion, accumulated as much as $70,000 to send back to Harake. (Tr. 1283: 5 - 1284: 13).

Defendant also recruited Said Harb, who had a close friendship with Dbouk, Hizballah's procurement officer in North America. And, while Defendant makes much of the fact that he declined an invitation to assist co-conspirator Harb in purchasing military equipment for The Resistance, it is patently clear that his decision to do so was based on his desire not to jeopardize his much more important Hizballah mission. As Defendant pointedly told Harb, "I'm doing it my own way." (Tr. 1488: 16). And to prove his point, in September 1999, Defendant had Harb carry a sum of money, which he claimed was only $3,500, back to Lebanon to give to Harake. (Tr. 1503: 4-13).

Within a week of Harb's arrival in Lebanon, however, Defendant made eighty-four calls to Harake including thirty-six on the day Harb returned and twenty-nine on the day after. (Tr. 1562: 20 - 1563: 7). 84 phone calls within a one-week period of Harb's arrival, 65 of which occurred within two days of Harb's arrival, provide compelling evidence that whatever Harb was carrying was much more significant than a mere $3,500 in cashier's checks. In short, Defendant was unwilling to jeopardize his much more important assignment to risk getting caught purchasing some relatively innocuous military equipment.[18]

IV. How Important was Defendant to Hizballah?

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[18] Defendant was willing to risk discovery, however, to smuggle fully automatic and semi-automatic weapons into Lebanon with his brother Hasan. (Tr. 1344: 9-15).

Almost immediately after his deportation back to Lebanon, Samir Debk, the brother-in-law of Said Harb, was ordered to appear at Hizballah headquarters for questioning. (Tr. 1608: 5-8). He was held for more than seven hours during which he was questioned about his family members and where they lived. (Tr. 1609: 18-22). Debk was also interrogated about others who were arrested with him and where they were being housed, and how the jail looked. (Tr. 1609: 25 – 1610: 4). In particular, the Hizballah security officers wanted to know: "[H]ow jail look. In big building? One floor, two floor? Exactly how many room? How my room looking? How you serve food in this jail? What kind of clothes you use? Police security or regular security?... You lock down like in one room or you go out? How big the park? All this stuff. Like information about everything." (Tr. 1610: 4-14).

Two days later, Debk was ordered to return for additional questioning. (Tr. 1611: 18-20). During the second interrogation, which lasted for five hours, the focus was on the specifics of this case, including the nature of the charges, who was arrested with him, and who might be cooperating with authorities. (Tr. 1612: 2-23). Like the first interrogation, the identities of the Hizballah operatives were concealed. (Tr. 1609: 3-5; 1612: 19-21).

Two weeks later, Debk was contacted a third time and ordered to appear at Hizballah security offices, but this time he met his interrogator face to face. (Tr. 1613: 12-21). When Debk protested that he had already been subjected to more than 12 hours of interrogation, he was told: "Listen, man, you here in security Hizballah office. You can't tell me what you want to do. I tell you what you do." (Tr. 1614: 22-24). When he was released, Debk was told he could not leave Lebanon without the permission of Hizballah. (Tr. 1616: 6-12).

Of more import, Debk was directly contacted by Defendant's brother Hasan (Tr. 1618: 17-19) who instructed him to report to Harake. (Tr. 1619: 9-11). Once Debk learned that his

brother-in-law Harb was a cooperating witness in this case, he and his family fled Lebanon. (Tr. 1616: 20-23). And with good reason, as they would undoubtedly have faced reprisals.

Debk overheard a conversation between Defendant and co-defendant Ali Fayez in which Defendant stated that if anyone said he was associated with Hizballah, he would "deal with him in Lebanon." (Tr. 1606: 17-20). Fayez told Defendant not to worry about it because he would "take care of them if this is here or in Lebanon." (Tr. 1606: 22-23). After the contact from Hasan, Debk explained that he and his family no longer wanted "to take any risk for stay there, you know. Because if Said cooperate with American government, for sure we get trouble there for - -Hizballah for that." (Tr. 1617: 9-11).

Harb's brother, Haissam Mohamed Harb, also overheard the jail conversation between Defendant and Fayez. (Tr. 1628: 18 – 1629: 3). According to Haissam Harb, Defendant said if "somebody aggressed upon me that I'm Hizballah, I will deal with him. I will deal with him - - I will deal with his family in Lebanon." (Tr. 1629: 6-11). And like Debk, Harb was also contacted by Hizballah following his deportation to Lebanon. (Tr. 1629: 17-24).

The first interrogation lasted four hours, during which he was questioned by an unseen Hizballah security officer about this case. (Tr. 1631: 16 – 1632: 6). Harb was specifically questioned about Defendant, Defendant's brother Chawki, and his own brother, Said. (Tr. 1632: 24). And, like Debk, his inquisitor wanted to know about the jail where Defendant was being housed. (Tr. 1633: 14 - 18).

The next day, Harb was ordered to report to Hizballah security offices again, where he was interrogated for an additional eight hours. (Tr. 1634: 24 – 1625: 11). This time he was asked about who might be cooperating in this case. (Tr. 1637: 11-16). His questioners also wanted specific information about the jail and the courthouse where the trial would occur,

including how long it would take to drive between the two locations. (Tr. 1639: 4-9). And like Debk, he was also warned not to leave Lebanon without getting permission from Hizballah. (Tr. 1638: 1-4). Harb fled the country two days later. (Tr. 1638: 14-22).

ARGUMENT

I. Introduction

The Supreme Court rendered the Sentencing Guidelines "effectively advisory" in *United States v. Booker*, 543 U.S. 220, 245 (2005). Far from a return to the pre-guidelines sentencing regime, district courts in the post-*Booker* landscape must follow three specific steps to arrive at an appropriate sentence. First, the district court must properly calculate the appropriate guideline range. Second, the court must consider the factors of 18 U.S.C. § 3553(a) in light of any arguments made by the parties and determine the proper sentence. Finally, the court must justify its chosen sentence and explain it in a way that allows for meaningful appellate review. *United States v. Ali*, 528 F.3d 210, 260 (4th Cir. 2008) (citing *Gall v. United States*, 128 S. Ct 586, 597 (2007); *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007)).

The facts surrounding Defendant's convictions, the procedural history of this case, and the current law regarding sentencing compel the imposition of the original sentence of life imprisonment. Nothing in any of the Supreme Court's recent decisions interpreting the application of the advisory Sentencing Guideline regime mandated in *Booker* justify anything less.

This Court properly calculated the guidelines during the original sentencing hearing, and the resulting sentence was affirmed by the Court of Appeals. Accordingly, the benchmark for determining the appropriate sentence at the re-sentencing hearing has already been established and the law of the case doctrine and the mandate rule prohibit revisiting the question of the applicable Sentencing Guidelines range.

Additionally, Defendant's recommended guideline sentence does not produce unwarranted disparity. Sentences in the guideline range are, by design, not disparate. The purpose of the guidelines is to prevent disparity. Thus, it is the sentence imposed outside a properly calculated guideline range, without explanation or justification, which results in a disparate sentence, not the sentence like that imposed on Defendant which falls within the appropriate sentencing range.

Moreover, Defendant bears the burden of persuading this Court that a variance from a sentence of life imprisonment is required with reference to 18 U.S.C. § 3553(a). Given the degree of variance sought by Defendant, his burden in this case is heavy indeed. While no rigid mathematical formula is required, the Supreme Court has quite clearly held that major departures require more justification than minor ones.

Defendant has fallen far short of the mark, despite the length of his pleading and the plethora of cases he attaches, in meeting this burden to establish a legitimate basis for a variance pursuant to 18 U.S.C. § 3553(a)(6). Most of the cases Defendant cites are simply not comparable to his case in the least and, in fact, Defendant's sentence is not disparate even when compared to those few cases which are arguably similar to his own.

Recent decisions from the Fourth Circuit Court of Appeals establish that there are generally four classifications of cases which may be properly used for comparison when considering the question of sentencing disparity: those who pled guilty; those who were convicted following a trial; those who obstructed justice in connection with the investigation, prosecution, or sentencing of their case; and those who assisted the government. Based on the facts of this case, the only relevant defendants for sentence comparison purposes are those who went to trial, obstructed justice, and did not assist the government. The burden is on Defendant to establish that the cases he relies on to prove sentencing disparity exactly parallel his own but the vast array of sentences presented by Defendant do meet these criteria and provide no legitimate basis for granting his request for a variance.

Finally, Defendant's sentence of life imprisonment is justified under both the guidelines and the 18 U.S.C. § 3553(a) factors. Given the nature of his crimes, the Court should consider the actual offense level of 50, rather than the theoretical maximum of 43, to properly reflect the gravity of his conduct. And, a criminal history category of VI is appropriate in this case because Defendant was motivated by fanatical terrorist ideology and, thus, represents a serious future danger to society. Any sentence less than life imprisonment will provide Defendant the opportunity and the motivation to carry out acts of violence in support of Hizballah.

II. DEFENDANT'S REQUEST FOR A VARIANCE IS NOT SUPPORTED BY THE LAW, THE FACTS, OR THE PROCEDURAL HISTORY OF THIS CASE

A. A properly calculated guideline range calls for a sentence of life imprisonment

The first task during the resentencing hearing in this case is to correctly calculate a defendant's sentence under the now-advisory guidelines. *Ali*, 528 F.3d at 260. This task has been made easy in this case because the Court of Appeals, sitting *en banc*, has already upheld this Court's previous calculation of the offense level and criminal history category. *United States v. Hammoud*, 381 F.3d 316, 357 (4th Cir. 2004), *rev'd on other grounds*, 125 S. Ct. 1051 (2005).

Although the case was remanded for the limited purpose of considering an appropriate sentence under an advisory guideline regime in light of *Booker*, the calculation of the guideline range was reaffirmed: "Because the order of the Supreme Court does not affect our resolution of Hammoud's challenges to his convictions and the calculation of his guideline range, we reinstate those portions of our prior opinion." *United States v. Hammoud*, 405 F.3d 1034, 1034 (4th Cir. 2005). Any recalculation of the sentencing range which differs from the original guidelines calculations would violate the mandate

rule and the law of the case doctrine. *Doe v. Chao,* 511 F.3d 461, 464 (4th Cir. 2007); *United States v. Aramony,* 166 F.3d 655, 661 (4th Cir. 1999) *United States v. Bell,* 5 F.3d 64, 66 (4th Cir. 1993).

The Government will not reargue its position, as set forth in its response to Defendant's Objections to the Revised Presentence Report, here. Rather, the Government simply incorporates that response in rejoinder to any of Defendant's challenges to the original Sentencing Guideline calculations repackaged in his request of a variance.

B. Any deviation from a properly calculated Guidelines range must be supported by the factors set forth in 18 U.S.C. § 3553(a)

In the second step under *Gall*, a district court must allow "both parties an opportunity to argue for whatever sentence they deem appropriate." *Gall*, 128 S. Ct. at 596. In light of these arguments, the district court must then "consider all of the § 3553(a) factors," *id*., keeping in mind the statute's "overarching provision instructing district courts to 'impose a sentence sufficient, but not greater than necessary' to accomplish the goals of sentencing." *Kimbrough v. United States*, 128 S. Ct. 558, 570 (2007) (quoting 18 U.S.C. § 3553(a)); *see also Gall*, 128 S. Ct. at 596 & n.6 ("In so doing, the court "must make an individualized assessment based on the facts presented."). If the sentencing court believes an "outside-Guidelines sentence is warranted, [it] must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Gall*, 128 S. Ct. at 597; *Ali*, 528 F.3d at 260.

As an initial matter, the Government submits that Defendant bears the burden of persuading this Court that a variance is warranted.[19] *See United States v. Harris*, 882 F.2d 902, 906-07 (4th Cir. 1989) (holding that "Harris, as the party seeking application of Guideline § 3E1.1, had the burden of persuading the court that he was entitled to it."). Although in this case Defendant is not requesting the affirmative application of a Guidelines provision, he still must justify why his motion for a variance should be granted. *See United States v. Urrego Linares*, 879 F.2d 1234, 1239 (4th Cir. 1989) ("[T]he defendant has the burden of establishing by a preponderance of the evidence the applicability of the mitigating factor in question.").[20]

Nothing in the Supreme Court's recent sentencing jurisprudence alters this black letter law, exemplified by the above-cited cases, that the moving party must carry the burden of persuasion. Indeed, the Supreme Court has confirmed this principle, requiring the district court to "allow both parties to argue for whatever sentence they deem appropriate." *Gall*, 128 S. Ct. at 596. After considering the arguments of the parties, which as a matter of mere common sense will be intended to convince the court of the correctness of their respective positions, the district court is directed to determine the sentence in light of the factors enumerated in § 3553(a).

If the court chooses to deviate from the guidelines range, it "must adequately explain the chosen sentence." *Gall*, 128 S. Ct. at 597. Such explanations "allow[s] for meaningful appellate review" and "promote[s] the perception of fair sentencing." *Id*. A district court "must explain [its] conclusion

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[19] Defendant argues that "[i]t is not the burden of the Defense to prove its right to a 'variance;' it is the burden of the Government to prove no sentence less than the one it seeks is sufficient under 18 U.S.C. § 3553." (Br. at 1.) Notably missing from this bald-faced pronunciemento is any citation to supporting authority.

[20] The Fourth Circuit has already signaled its intent to rely on relevant pre-*Gall* case law to determine the validity of sentences imposed post-*Gall*. *See United States v. Ali*, 528 F.3d 210, 264 (4th Cir. 2008 (citing a pre-*Gall* decision considering the meaning of sentencing disparity under 18 U.S.C. § 3553(a)(6). *See also United States v. Evans*, 526 F.3d 155, 170 (4th Cir. 2008) (Judge Gregory, concurring).

that an unusually lenient or an unusually harsh sentence is appropriate to a particular case with sufficient justifications." *Id*. at 594. This requirement is reinforced by the uncontroversial proposition that "a major departure should be supported by more justification than a minor one." *Id*. at 597. *See also United States v. Evans*, 526 F.3d at 167 (4th Cir. 2008) ("While I recognize that *Gall* provides the district court with a tremendous amount of discretion, it is not limitless; our decision that a district court's sentence is procedurally reasonable should not mean that a subsequent finding of substantive reasonableness is a fait accompli. Indeed, though deference to a district court's sentencing decision is required, the words 'abuse of discretion' cannot be a legal incantation invoked by appellate courts to dispel *meaningful* substantive review of a district court's sentence.") (Judge Gregory, concurring).

The Fourth Circuit Court of Appeals has explained the parameters of this admonition and shed light on the type and degree of justification which will survive appellate scrutiny. Generally, the Court has held that "any variance from the Guideline range must be based on the § 3553(a) factors" and "for sentences falling outside of the Guidelines range, a district court must provide an adequate statement of reasons for the variance." *United States v. Khan*, 461 F.3d 477, 499 (4th Cir. 2006).

Additionally, the Court has noted that, without relying on any mathematical ratio or test for proportionality, "the farther the court diverges from the advisory guideline range, the more compelling the reasons for the divergence must be." *Id*. The district court in *Khan* sentenced the defendant to 52 months in prison, approximately half that of the 97-121 month guideline range. *Id*. The appellate court reversed and remanded for sentencing, finding that because of the degree of variance, the district court was required to provide a greater justification for the sentence chosen. *Id*. at 500. This statement of the law complies with both *Gall* and *Rita* because it recognizes that "a major departure should be supported by more justification than a minor one," while it avoids a "rigid mathematical formula that uses the percentage of departure." *See Gall*, 128 S. Ct. at 595-97.

More recently, the Court of Appeals specifically addressed the question of what criteria an appellate court should use, in light of *Gall*, in reviewing the appropriateness of any variance granted. *United States v. Ali*, 528 F.3d 210 (4th Cir. 2008). That case, in which the defendant was convicted of providing material support, is highly instructive to the re-sentencing hearing in this case because of the similarity of the arguments made in support of the variance.

In *Ali*, the district court properly found an adjusted offense level of 49 and a criminal history category of VI, with a resulting Guideline sentence of life imprisonment. The district court considered the § 3553(a) factors and focused on the question of alleged sentencing disparity. Believing that the John Walker Lindh and Timothy McVeigh cases established the appropriate sentencing parameters, the district court ultimately imposed a sentence of thirty years imprisonment.

The appellate court found the sentences chosen for comparison to be inapposite and remanded the case. *See Ali*, 528 F.3d at 258-59. In doing so, the Court of Appeals noted that the 30 year sentence "significantly deviated from the applicable guidelines range." *Id.* at 261. The Court calculated the deviation from mandatory life imprisonment to a term of thirty years to be forty percent, based on the defendant's life expectancy. *Id*. In light of *Gall*, the Fourth Circuit recognized that "relying on a particular percentage 'suffers from infirmities of application,'" and thus "simply note[d] that the variance was 'major' and, as a result, 'should be supported by a more significant justification than a minor one.'" *Id.* (quoting *Gall*, 128 S. Ct. at 595-97).

Further demonstrating its recognition of post-*Booker* law, the Fourth Circuit noted that it did not require the justification to be "extraordinary" and would still review the sentence for abuse of discretion. *Id*. The Court then held that the justification for the unquestionably large variance from a life sentence down to thirty years was not sufficiently compelling and was therefore unreasonable.

While measuring the justification for a variance based strictly on the percent of the deviation from the Guideline range is not appropriate, it should be noted that the "major" variance in *Ali* was only forty percent while Defendant's requested variance here is over ninety-four percent of the appropriate guidelines sentence. Of course, because the Guidelines in this case call for a sentence of mandatory life imprisonment, the actual percentage of any variance is known only to God.[21]

III. Defendant has failed to demonstrate that a variance is warranted based on alleged sentencing disparity

Despite a great deal of protestation accompanied by a vast array of irrelevant facts and statistics, Defendant has failed to show that the need to avoid unwarranted sentence disparity would occur as a result of the imposition of the sentence recommended by the Guidelines. This Court benefits from the guidance of *Ali* and *Khan* in attempting to separate the wheat from the chaff in Defendant's arguments to determine which, if any, sentences of those cited in Defendant's voluminous appendix are actually comparable to his own. Because Defendant makes virtually no effort to identify similarly situated defendants, the statistics provided are irrelevant and should be ignored. In arguing that his sentence inside the guideline range is disparate when compared to sentences outside the guideline range, Defendant puts the cart before the horse and ignores the cause versus the effect of disparity.

The Fourth Circuit dealt with sentencing disparity arguments in *Khan* and *Ali*. These cases define four different categories of defendants who are materially different from each other and thus incomparable: defendants who plead guilty, defendants who go to trial, defendants who assist the Government, and defendants who obstruct justice. Defendants who plead guilty are in a materially

[21] The sentence previously imposed, as the closest approximation to the guideline range of life, was 1,860 months. Defendant argues for a maximum sentence of 97 months, a variance of approximately 94.78%. Based on the average life expectancy of 78 years, the Defendant's sentence would represent a variance of 79%, substantially greater than either variance sentence rejected in *Kahn* or *Ali*.

different situation than those who go to trial, and comparing such defendants, even co-defendants, is akin to "comparing apples and oranges." *Ali*, 528 F.3d at 264 (citing *United States v. Perez-Pena*, 453 F.3d 236, 243(4th Cir. 2006)). *See also United States v. Mead*, 2008 WL 2415455 (4th Cir. June 16, 2008) ("court is not required to consider sentences of co-defendants when imposing sentence."). And, a material difference exists between defendants who "never accept[]responsibility and obstruct[] justice both before and during trial" and those who "accept[] responsibility and provide[] valuable assistance to the government." *Khan*, 461 F.3d at 485, 499-501.

Because Defendant pled not guilty and elected to go to trial, his sentence cannot legally be compared to those defendants who accepted responsibility for their actions and pled guilty. Also, as Defendant was found to have obstructed justice, he is differently situated from those defendants who exercised their right to a jury trial without attempting to pervert the justice system. Nor has Defendant provided any comparative analysis to explain his reliance on certain cases. In short, Defendant's sentencing disparity argument is fatally flawed because he fails to recognize or acknowledge these distinctions. After *Ali*, the only legally comparable defendants are those convicted of material support, after a trial, in which they obstructed justice, and did not aid the Government.

Defendant bears the burden "to demonstrate similarity by showing that other defendants' 'circumstances exactly paralleled' his." *United States v. Vargas*, 477 F.3d 94, 100 (3d. Cir. 2007) (citing *United States v. Charles*, 467 F.3d 828, 833 n.7 (3d. Cir. 2006)); *cf. Ali*, 528 F.3d 210 (4th Cir. 2006); *Khan*, 461 F.3d 477 (4th Cir. 2006). This Circuit, in *Ali*, made clear "that a downward deviation based primarily on the comparison of a defendant who went to trial with those who entered plea agreements is a misapplication of § 3553(a)(6) that require[s] the sentence to be vacated." *Ali*, 528 F.3d at 264 (citations omitted).

Defendant claims that his analysis "confirms the disparity of the proposed Guidelines sentence," (Br. at 26.) and that his sentence inside the guideline range is disparate when compared to sentences of other defendants outside the guideline range. But Defendant misperceives the relationship between a properly calculated Guidelines sentence and sentence disparity. As noted by the Seventh Circuit, logically, disparity only arises with sentences outside the guideline range. *See United States v. Shrake*, 515 F.3d 743 (7th Cir. 2008) ("More generally, it is pointless for a defendant whose own sentence is within the Guidelines to raise [sentencing disparity]. As we observed in *United States v. Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006): "Sentencing disparities are at their ebb when the Guidelines are followed, for the ranges are themselves designed to treat similar offenders similarly. That was the main goal of the Sentencing Reform Act. The more out-of-range sentences that judges impose…, the more disparity there will be. A sentence within a properly ascertained range therefore cannot be treated as unreasonable by reference to § 3553(a)(6).").

Thus, Defendant's reliance on sentencing disparity in arguing for a variance is ironic because he ignores the fact that his guideline sentence is not an effect of an existing disparity; rather, it is his requested variance that would result in disparity. In order to avoid disparity as Defendant desires, only a sentence within the Guideline range will suffice. In any event, because Defendant has provided this Court with no legitimate basis for granting a variance his request should be denied.

IV. DEFENDANT HAS FAILED TO IDENTIFY ANY OTHER FACTOR UNDER 18 U.S.C. § 3553(a) WHICH WOULD JUSTIFY A VARIANCE

A. A variance sentence is not justified by the nature and circumstances of Defendant's offenses or his history and characteristics

In addition to seeking a re-calculation of the guidelines explicitly forbidden by the mandate rule, Defendant attempts to re-litigate issues of fact and credibility already determined by the jury and this Court and upheld by the Fourth Circuit. Apparently his purpose is to persuade this Court that neither the nature and circumstances of his offenses nor his history and characteristics warrant a sentence of life imprisonment. *See* 18 U.S.C. § 3553(a)(1). Defendant's best efforts at revisionist history, however, are insufficient to change the true facts of this case.

Defendant claims that "there was no direct evidence or unambiguous circumstantial evidence upon which this Court can satisfy itself to any legal standard of proof that Mr. Hammoud's intention was not to support social services." (Br. at 6.) This argument was flatly rejected by the Fourth Circuit when it stated "evidence - including Hammoud's own testimony - indicated that Hammoud was well aware of Hizballah's terrorist activities and goals and that he personally supported this aspect of Hizballah." *Hammoud*, 381 F.3d at 356. To state the obvious, Defendant's argument simply demonstrates a complete lack of respect for the findings already made by the jury at trial, this Court at the original sentencing hearing, and the appellate court during his direct appeal.

And Defendant's claim that because he was not associated with the Galiban or Al-Qaeda he is somehow a less-dangerous terrorist than others is specious. The present dangerousness of Hizballah has been well-documented above and that evidence need not be repeated in detail here except to note that knowledgeable American security officials, such as Homeland Security Secretary Michael Chertoff, directly repudiates Defendant's argument: Hizballah is the A Team which makes Al-Qaeda look like a minor league team. The regular infliction of deaths and horrendous casualties on American service men and women, as well as innocent civilians by Hizballah-trained and supported insurgents in Iraq, casualties which are occurring **now**, is a sufficient answer to Defendant's pathetic attempt to paint a picture of Hizballah as some pacifist organization with only social and legitimate political goals.

B. A sentence within the applicable Guideline range is justified by the factors listed in 18 U.S.C. § 3553(a)

As will be discussed in further detail below, the guideline range sentence applicable to Defendant, given the nature and circumstances of his offenses, reflects the seriousness of those offenses and provides essential protection to the public from further crimes by Defendant. Thus, a sentence of life imprisonment satisfies several of the factors identified in 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3553(a)(2) (A), (C). Indeed, imposing a sentence within the established Guideline range, which was in large measure directed by Congress in the Antiterrorism and Effective Death Penalty Act of 1996, and implemented by the Sentencing Commission pursuant to that directive (*See* Guideline § 3A1.4, Application Note 4), satisfies two additional factors under Section 3553(a). *See* 18 U.S.C. § 3553(a)(4), (5).

Thus, except for his reliance on purported sentencing disparity, Defendant is left with only one other factor to support his position that a variance is appropriate. Accordingly, he argues that the mandatory Criminal History Category VI is unnecessary to provide adequate deterrence. This argument, however, is easily refuted.

First, Congress and the Sentencing Commission have determined that a convicted terrorist is more likely to recidivate than most other criminals. In fact, given the very nature of a terrorist's ideological motivations for his crimes, like Defendant's here, it is clearly appropriate to treat them similarly to career offenders. *See* Guideline § 4B1.1, which also calls for a mandatory Criminal History Category of VI. As noted by the Court of Appeals for the Second Circuit, "even terrorists with no prior criminal behavior are unique among criminals in the likelihood of recidivism, the difficulty of rehabilitation, and the need for incapacitation." *United States v. Meskini*, 319 F.3d 88, 92 (2d Cir. 2003).

Moreover, Defendant's request for a variance on the basis that his Criminal History Category is overstated must be viewed from the perspective of Defendant's actual offense level rather than the adjusted level of 43. As noted in the Government's "protective objection" to the Supplemental Pre-Sentence Report, the accurate offense level, calculated under the Guidelines most favorable to the Defendant, is 50, rather than 46, demonstrating that his criminal conduct goes far and away above that of the typical criminal.

Thus, the argument offered by Defendant is simply insufficient to overcome the policy considerations of Congress and the Sentencing Commission, and *Gall*'s requirement that this Court consider those policies under 18 U.S.C. § 3553(a). This is especially so when Defendant's real conduct, as established by the evidence at trial is compared to his bare reliance on the absence of prior convictions for his terrorist activities.[22]

Finally, Defendant continues to argue that he intended to give money to social services even though the trial evidence directly contradicts this claim. But, even if believed, the argument is simply irrelevant. As the Court of Appeals has already noted in this case, money is fungible and providing funds, even to a purportedly social wing of a terrorist organization frees up other funds for the more common, and horrific activities of the terrorists. *United States v. Hammoud*, 381 F.3d 316, 329 (4th Cir. 2004) (adopting the reasoning of the Ninth Circuit that "all material support given to [foreign terrorist]

[22] Defendant relies almost exclusively on a single district court opinion which held that the absence of any prior criminal history warranted a variance from Criminal History Category VI to Category I. *See United States v. Aref*, 2007 WL 804814 (N.D. N.Y. Mar. 14, 2007). Of course, as noted by the Court in Meskini, it was not prior crimes but the probability of future crimes which motivated the Sentencing Commission to mandate the highest criminal history category for convicted terrorists. Therefore, the basis for the *Aref* decision is suspect. In any event, even if this Court is persuaded by the rationale of *Aref*, despite the judgment of the Sentencing Commission to the contrary, a reduction of the criminal history category will have no effect on Defendant's sentence. The recommended sentence for an offense level of 43 with a criminal history category of I is still mandatory life and *Aref* provides no basis for reducing Defendant's Offense Level.

organizations aids their unlawful goals. Indeed . . . terrorist organizations do not maintain open books. Therefore, when someone makes a donation to them, there is no way to tell how the donation is used. Further … even contributions earmarked for peaceful purposes can be used to give aid to the families of those killed while carrying out terrorist acts, thus making the decision to engage in terrorism more attractive. More fundamentally, money is fungible; giving support intended to aid an organization's peaceful activities frees up resources that can be used for terrorist acts." (citing *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1136 (9th Cir. 2000)).

In any event, the evidence adduced at trial in this case proves that Defendant directly and substantially supported the military wing of Hizballah, despite his protestations to the contrary. This was not, as Defendant would read the trial evidence, merely a one-time, $3,500 payment which was intended to go to the widows and orphans of the martyrs. Even his friend Harake refutes this unsupported claim.

Rather, Defendant regularly solicited and collected funds which he forwarded to Hizballah's operational commander for Beirut, often more than $800 at a time. As will be explained in more detail below, Defendant's attempt to rely on alleged facts other than those established beyond a reasonable doubt at trial is both disingenuous and self-defeating.

V. DEFENDANT'S DANGEROUSNESS AND THE SUBSTANTIAL RISK THAT HE WILL RECIDIVATE REQUIRES A SENTENCE OF LIFE IMPRISONMENT

The Government has answered Defendant's arguments that a variance sentence is appropriate. It is now time for the Government to set out the record which justifies the sentence originally imposed by this Court. In doing so, the Government submits that rather than providing any basis for a variance, the totality of the circumstances surrounding Defendant's

conduct demonstrates that the only condign sentence for Defendant is complete incapacitation and permanent incarceration.

Some members of terrorist organizations become front-line fighters in the organization's military operations, like Defendant's brother, Hasan, and the husband of his sister. Others become the operational commanders of para-military units, like Harake and the recently-assassinated Imad Mugniyeh. Still others serve as the public face of the terrorist organization, like Nasserallah and Fadlallah. But the most dangerous individuals are those who burrow into a peaceful society, raising funds for the cause, building up a network of fanatical believers, and waiting for the time and opportunity to strike at the "infidels," as did the Al Qaeda cell members on September 11, 2001. Creating a clandestine Hizballah cell in Charlotte was ultimately the most significant material support Defendant provided to Hizballah.

Defendant replaced Abu Adam, a terrorist operative who was originally sent to the United States to create a Hizballah cell. In a short time, Defendant was able to accomplish what Adam could only dream of doing. Defendant assumed the leadership of the fledgling terrorist cell in Charlotte; increased the membership of "the guys" here; created a criminal enterprise which accumulated millions of dollars in profits in just a few short years; purchased businesses such as a convenience store and a gas station, which enhanced his image and prestige in the Shi'a community, and a restaurant, which provided him a forum for spreading the gospel of radical Muslim fundamentalism. And with power, money, encouragement from senior Hizballah leaders, and human resources at his beck and call, he was perfectly placed to carry out any mission he was given. *Any mission!*

Exaggeration? One need only look at the facts adduced during the trial to be convinced otherwise. From his youth, Defendant was a full-fledged believer in the terrorist Hizballah

philosophy. He was recruited by his friend and next-door neighbor, Harake, into the Hizballah youth movement where he was indoctrinated in the radical teachings of Iranian terrorist leader Ayatollah Khomeini.

Defendant was well aware of the fact that Hizballah committed terrorist acts: they blew up buildings, kidnapped people (including the CIA station chief in Beirut who they eventually killed), and skyjacked TWA Flight 847 and brutally killed an American Navy diver. (Tr. 1830: 3-16). Despite his knowledge of the large number of American deaths and casualties caused by Hizballah, Defendant supports the organization "100%." (Tr. 1816: 24-25).

Defendant was indoctrinated into radical, Islamic fundamentalism while still a youth and honors Ayatollah Khomeini, Imad Mugniyeh, Ayatollah Fadlallah, and Nasserallah, some of the most notorious terrorists in modern history. His entire family is associated with a terrorist organization and Defendant has no qualms about indoctrinating the children of his siblings into his martyr-squad theology.

Defendant has no objections to the use of suicide bombings, whether by militarily trained men or amateur women, as an appropriate military strategy. He adheres to an anti-American philosophy which fanatically supports the total destruction of Israel and those believed to be aligned with her. He belongs to a world-wide network of like-minded individuals and he has already demonstrated his ability to enter the United States illegally at will.

Defendant is single, or at least unable to continue his fraudulent relationship with Angela Tsioumas. And, except for his brief stint at a pizza shop, Defendant has never held a job with a legal source of income. In short, Defendant has all of the means, the resources, and the motivation to carry out future terrorist acts with no moral compunction or personal relationships to restrain him.

Does he pose a continuing threat to the United States as long as he lives? His spiritual and military leaders answers that question with a resounding yes. Harake, Defendant's best friend and mentor: "As I greeted the virtuous ones, I must damn the evil ones. Damn America the criminal, and the arrogant Israel that commits injustice and hostility." (Ex. 264; Tr. 1016: 11-13). And Nasserallah, Defendant's military and spiritual leader: (Ex. 217; Tr. 962: 1-5). "Let Christopher, Clinton and the State Department and the American Congress record that we the sons of Hizballah - - we're the sons of Hizballah, are terrorists until we return our nation to our dignity." (Ex. 208; Tr. 987: 6-11). "We are the people whose slogan was, is and will remain to be Death to America. (Ex. 208; Tr. 965: 1-10). *See also* Ex. 217, Tr. 962: 1-5 (Nasserallah exhorting the crowd: "Death to America. Death to Israel," in response to which, the crowd screams back: "Death to America. Death to Israel."). For further anti-American rhetoric, see Tr. 1342: 22-25.

And, if more needs be said to establish Defendant's long-term threat to American citizens and the likelihood that he will, if released from prison, once again engage in terrorist activities of perhaps a more violent and heinous nature, the Court needs only look to Defendant's threats: threats to kill witnesses who cooperated with the Government in this case; threats to kill the families of those who cooperated; his threat to escape from custody and, presumably kill whoever attempted to thwart his flight; threats to kill the Assistant United States Attorney assigned to investigate and prosecute this case; and his threat to blow up the federal courthouse, regardless of the casualties to innocent people who might be in the building, to destroy the evidence of his guilt. And this was no mere idle chatter or bluster and the evidence proving the validity of these threats is both credible and compelling.

The evidence of the threats against cooperating witnesses and their families was introduced during the trial of this case. Samir Debk, the brother-in-law of Said Harb, and Haissam Mohamed Harb, Said Harb's brother, testified that they overheard Defendant make threats to retaliate against any witness who cooperated with the Government. In addition, Defendant threatened that the families of the cooperating witnesses would be dealt with by Hizballah in Lebanon.

Those threats proved to be anything but idle. Within a short time after both Debk and Haissam Harb returned to Lebanon following their deportation, they were contacted by Hizballah and ordered to appear at Hizballah security offices for questioning. Harb was even contacted by Defendant's brother, Hasan. Both Debk and Harb were interrogated on multiple occasions for as much as eight hours at a time. The men were questioned about this case and were specifically asked about who might be cooperating with the Government. When they learned that Said Harb was, in fact, a cooperating witness against Defendant, they were compelled to take their families and flee their homes, seeking asylum elsewhere.

The primary evidence establishing Defendant's threats to commit acts of violence in this District consists of a letter in Defendant's own hand using English words but Arabic letters. (Verbatim Translation of Letter, Attachment 14). Even a casual reading of the letter establishes beyond any legitimate argument that this document was written by Defendant. It reads, in pertinent part, as follows:

> Brother, please excuse that approach of addressing such an extremely important matter. The content of [the] code not have been discussed after the noon nor could I have take the risk of sending it in the mail from my location. The messenger of that letter is A.G.…[23] From my observation [and] conversation with him he's very trustworthy,

[23] The cooperating witness's first and middle name was **A**ndy **G**len.

> professional and ___know his word. [I am] threatened with the possibility that justice would be blind towards us ___my fear of being convicted and sentenced to a very lengthy prison term.. . **I have no intentions to sit back and allow the system to do as they please with us without annihilation of violent display**... **With AG's admitted ability [to] indiscriminately commit horrific crime of murder and destruction to barbarity . . . made him the most trusty candidate suitable to carry out my order**… I retained A.G. service for a substantial fee, **his assignment is to put bullets into the skull of the arrogant, bastard prosecutor, or to annihilate with massive explosive the evidence against us it its address heavily both. The two represent a dark future for us.** Part of my reason for ordering that attack is . . . for all taken away from us, humiliation and destroying my life. Brother as second in command it's your political responsibility to address this whole news to the community. As appointed leader of L.F.F.an apology is in order for involving an outsider with [such] a sensitive issue in the movement without first addressing the ___, which were impossible due to my situation. I can however assure you that there is no need to be concerned with worry of betrayal, or linking A.G. or his cost ___ organization together with us. Furthermore, A.G. is the only person outside the L.F.F. that would be ever involved with that assignment to which he has sworn ____. I am confident that he has the means to work out every ___ detail require to ___ out the potential target, nevertheless I assured him L.F.F. ___ and weaponry in order for the operation to work quickly and effectively. **Have ___ brought from Toronto, his skill and experience with explosive will be required to arm the device**... Two week from the day you receive that letter arrange meeting between you and A.G. ___ in this meeting the advance payment . . . is to be paid and you will be fairly brief on which of the actual target the attack will be delivered upon, and the day.

Id. (emphasis added).

When the letter is read in context, it makes unmistakably plain that Defendant intended to employ A.G., with the able assistance of his Hizballah comrades, to kill a federal prosecutor and to destroy the building where the evidence against him was located.

The content of the letter, and the plan to kill the lead prosecutor, is corroborated by a recorded conversation between Defendant and the cooperating witness, A.G., which occurred on February 20, 2001. (Attachment 15). In that conversation Defendant expresses gratitude for A.G.'s visit to the jail, noting concern that A.G. had simply been "lying" and "playing games with him. (pp. 2, 3). After some further discussion about making a delivery of the letter to Defendant's brother-in-law, (p.3), A.G. asks for the name of the person he is to kill. The dialogue between the two continues as follows:

A.G.: I've got to get that information form the hitvic.

Defendant: Huh, from the hitvic.

A.G.: But, us, I put it in a bag of stuff like that when I have it, I send it home. So like the name and stuff like that, **I still, I need the hitvic name**.

Defendant: Bill

A.G.: Bill?

Defendant: Uh huh

A.G.: Ok.

Defendant: Ken, Kenneth, Ken

A.G.: Kenneth

Defendant: Uh huh

A.G.: and

Defendant: You know when they call somebody Ken?

A.G.: Ok

Defendant: What his full name would be Ken.

A.G.: Kenneth

Defendant: Yeah.

A.G.: Ok. What's his title?

Defendant: Uh, chief assistant.

A.G.: Chief

Defendant: U.S. Attorney

(Attachment 15, pp. 7-8) (emphasis added).

Similarly, Defendant' threat to effect an escape is corroborated by another consensually recorded conversation between Defendant and the cooperating witness, which occurred on

February 8, 2001). (Attachment 16, pp. 60-62, excerpts only). In that conversation, Defendant refers to an earlier conversation in which he suggests that he could make his escape during a fake medical emergency because on a previous visit, only one guard accompanied him. (FBI Form 302, dated 1/16/2001, Attachment 17, p. 4). Defendant tells A.G. that he cannot do it on his next hospital visit because he will be in too much pain following kidney surgery. (Attachment 16, pp. 60-61). Defendant suggests that a better time for his escape will be when he goes back to the hospital for a follow up visit. (*Id*. at 61). [24]

And, lest there be any question as to the validity of the escape plan, the Court needs only recall the trial testimony of Samir Debk and Haissam Harb, who were questioned for hours on end by Hizballah security officers in detail about the jail where Defendant was being housed, the layout of the courthouse, and the distance between the two buildings. The fact that none of Defendant's murderous plans came to fruition is more a credit to good law enforcement efforts than any lack of desire by Defendant or capability by his terrorist colleagues.

Indeed, the lengths to which Defendant and his cohorts will go to extract retribution on the United States and its citizenry for the time he has been properly held in custody are simply unknown. What we do know is that the short term goal of this terrorist group on American soil was limited to fundraising and the procurement of military equipment, thanks to the excellent efforts of dedicated law enforcement agents and intelligence experts. September 11, 2001, however, stands as a constant reminder that the long term goals of organized groups such as this, which preach random acts of violence against civilians as a means to a misguided end and who are willing to sacrifice their lives for some perceived greater good without the least concern for

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[24] Defendant also suggests that perhaps the escape could be made directly from the jail where he was being housed and explains that he has read about other prisoners who had escaped in Texas and Oklahoma. (Attachment 15, p. 62).

the costs to other innocent people, represent the greatest threat to American citizens. As Justice Scalia wrote recently:

"America is at war with radical Islamists. The enemy began by killing Americans and American allies abroad: 241 at the Marine barracks in Lebanon, 19 at the Khobar Towers in Dhahran, 224 at our embassies in Dar es Salaam and Nairobi, and 17 on the USS Cole in Yemen. On September 11, 2001, the enemy brought the battle to American soil, killing 2,749 at the Twin Towers in New York City, 184 at the Pentagon in Washington, D. C., and 40 in Pennsylvania. It has threatened further attacks against our homeland; one need only walk about buttressed and barricaded Washington, or board a plane anywhere in the country, to know that the threat is a serious one. Our Armed Forces are now in the field against the enemy, in Afghanistan and Iraq. Last week, 13 of our countrymen in arms were killed." *Boumediene v. Bush*, 128 S.Ct. 2229 (2008) (Justice Scalia, dissenting) (citations omitted).

Justice Scalia has succinctly summarized the status of the conflict the United States wages with terrorists like Hizballah. And this battle continues daily, on the streets and highways in Iraq. Having chosen to participate in the battle, Defendant must face the consequences of his conduct.

As an enemy combatant successfully removed from the front lines, Defendant has earned a sentence of life imprisonment. And, more importantly, the American people deserve to be free of fear of any retaliatory efforts by this fanatic. Unfortunately, this Court may only impose a specific term of years and we can only hope that this term is long enough to prevent any future efforts by Defendant to bring "Death to America."

CONCLUSION

For the reasons stated herein, Defendant's request for a variance from a properly calculated sentence under the Sentencing Guidelines should be denied.

Respectfully submitted, this 25th day of July, 2008.

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