

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA : **NO. 3:06CR194(JCH)**

v. :

SYED TALHA AHSAN : **JUNE 16, 2014**

SYED TALHA AHSAN'S MEMORANDUM IN AID OF SENTENCING

I. Introduction

Syed Talha Ahsan has now served over eight (8) years in prisons in England and the United States, for his peripheral involvement in a case not susceptible to easy explanation or categorization. He is a highly intelligent, sensitive, inquisitive, creative man, who does not subscribe to violence as a means to solving problems. He is a threat to no one. The odds of his committing any kind of new offense are so low as to be virtually negligible. The parsimony clause of the Sentencing Reform Act would be fully satisfied by a sentence of less than the time which he has already served. Under all the circumstances here, a sentence of credit for time served is appropriate.

All of Talha Ahsan's conduct in this case occurred prior to September 11, 2001 ("9/11"). There is no allegation here that Mr. Ahsan committed or attempted to commit any act of violence. This case is not about al Qaeda. It is a case about a citizen of the United Kingdom, who before his extradition had never set foot in the United States, and the marginal assistance he provided to a website when he was twenty years old. The website reported on the plight of Muslim populations around the world. It provided information on the concept of defensive jihad, i.e., the religious obligation to protect Muslims at risk of genocide and violent persecution. In assisting this website, Mr.

Ahsan broke United States law.

The meaning, breadth, and jurisdictional reach of the terrorism laws of the U.S. are complex issues not susceptible to easy determinations even by judges and attorneys experienced in this area of the law. See, e.g., *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010). In our view, this case stands at the outside edges of the international and substantive reach of the U.S. terrorism laws, and Mr. Ahsan's minimal involvement in the violations makes his case an anomaly.

The terms in this case are complex and contested, as are the relevant historical background and policy questions. The meaning of words like "terrorism" and "jihad," the details of events in Bosnia, Chechnya, and Afghanistan in the 1990s, the morality of political violence in certain contexts: these are issues that reasonable people have and will continue to debate. America, after all, was founded upon acts of unlawful violence, acts that today we celebrate. The twin impulses to prevent genocide and come to the aid of the marginalized and oppressed are generally considered praiseworthy; the time and manner in which they manifest are nonetheless the subject of controversy.

There are certain acts, however, that deserve universal condemnation. Take, for example, the actions of Saajid Badat, the government's cooperating witness. Mr. Badat is a British citizen who chose to join al Qaeda, swear allegiance to Osama bin Laden, and define the world at a certain time of his life in the starkest and simplest of terms. Anyone who did not agree with Saajid Badat and al Qaeda was considered a legitimate target. Mr. Badat was prepared – like his friend and coconspirator Richard Reid – to use a shoe bomb to destroy a civilian aircraft and all those on board.

To say that Mr. Ahsan is very different from Mr. Badat is an understatement. Mr.

Badat himself recognized the gulf between them and their beliefs, admitting his surprise that, of all the figures whom he might be called upon for testimony – confidantes of Osama bin Laden, proselytizers of hate, those engaged in terrorist plots – it was Mr. Ahsan he faced: Mr. Ahsan, who had no relationship with al Qaeda, who rejected every part of their ideology, expressed through his every action a dislike of violence, and embraced those core human values that Badat had for a period of time abandoned - respect for human dignity and life, in all its complexity.

But even Mr. Badat is not simple. Even a man who once delighted in brainstorming ways to kill civilians is capable of change and, perhaps, of redemption. An al Qaeda member who blithely passed explosives meant for use against civilian populations to other terrorists, Mr. Badat now lives at liberty, after serving six years of incarceration in his native country.

The world is a complex place. In sentencing Mr. Ahsan, the Court is not called upon to settle these complexities, but rather to understand them and place Mr. Ahsan's actions in that context. The task is not an easy one. This case concerns actions taken a decade and a half ago, in a time before the September 11, 2001 World Trade Center attack. To evaluate the severity of conduct prior to 9/11 based on all we have learned and/or been exposed to since then would distort that conduct. The pre-9/11 world landscape, in many disparate ways, can seem as foreign from today's vantage as Kabul is from Connecticut. It was a time when information was far more limited than it is now, when google was not a verb, and when al Qaeda and Osama bin Laden had not yet come to represent the concept of "jihad" in the popular imagination.

The bedrock principle of our sentencing system is that an individual is punished

for his actions. We do not sentence for stray thoughts, fleetingly held; for words written in a diary, and shown to no one; or for beliefs entertained fifteen years ago, controversial though they might seem. And we do not sentence an individual on the basis of the actions of others, except under certain conditions, i.e., jointly undertaken activity. Where a conspiracy is involved, as it is here, the acts of others that were beyond a person's knowledge, beyond the scope of his agreement, or those that occurred before his involvement or after his involvement has ceased, are not proper bases for imposing a fair sentence.

Similarly, what Talha Ahsan knows now, at the age of 34, is not what he knew in 1999, at the age of 20. The principles that motivated him fifteen years ago were simple and compelling. He was committed to a struggle against oppression. But as importantly, he wanted to explore his commitment to Islam, to develop his understanding of the world, and to communicate that understanding to others. These are the same principles that have motivated him throughout his life; they continue to motivate him today. It is through application of those principles that he has changed. He is a scholar and an archivist of ideas – as he was in his youth – but his archive has grown, both in depth and breadth. He is a published poet – as he was when he was seventeen – but is better able now than before to express the complexities of his spirituality in a universal language. He remains committed to fundamental principles of justice and liberty, but knows that these principles must be exercised within the bounds of the law and with greater knowledge and responsibility as to the effect that his actions – no matter how well intentioned – might have on the world.

The government seeks a sentence of fifteen years incarceration for Mr. Ahsan. Mr. Ahsan has already spent eight years in prison, all in restrictive pretrial custody. Since his extradition to Connecticut in October of 2012, Mr. Ahsan has been housed in the state's supermax facility, in isolation, in the same wing containing those condemned to death. He is located more than 3,000 miles from his family, none of whom have been able to visit him. And though his conditions would be difficult for anyone, they are exacerbated for Mr. Ahsan, who – as someone who suffers from Asperger's – is even more sensitive to the deprivations of solitary confinement.

When he is released, Mr. Ahsan will have to create a life in the shadow of his conviction, under British monitoring requirements that will limit his movements and opportunities. It will not be easy, but he has a family and community committed to supporting him, and he is determined to reach for his potential. It is time to let him start creating that life.

II. Mr. Ahsan's Conduct

Throughout these proceedings, the government has insisted that Mr. Ahsan's case is about "jihad." The government refers to the website Mr. Ahsan aided, Azzam.com, as a website dedicated to "violent jihad." It has alleged that Mr. Ahsan was himself dedicated to "jihad." And it has adopted the following definition of "jihad": "an Arabic term meaning 'holy war' [that] refers to the use of violence including paramilitary action, against persons or governments that are deemed to be enemies of its proponents." Ahsan Indictment at ¶ 6. This is how al-Qaeda defines jihad. It is not, however, how most Muslims define the concept, nor is it how Mr. Ahsan ever did.

Karen Armstrong, one of the world's leading experts in the history of religion and contemporary religious affairs, has submitted a report that explains the origins of the term "jihad," and its many meanings to a practicing Muslim. The term "jihad" refers to a "core Islamic concept" and religious principle, one that requires of believers a commitment to struggle: an internal struggle to further spiritual progress, and an external struggle to create a more just society. See Report of Karen Armstrong ("Armstrong Report") at ¶¶ 54-56, BADEF15 ("hereinafter BA15"). The term is a flexible one, with as many meanings as there are believers. While all share the same commitment to the basic principles, the particular manifestation each chooses are often quite different. Armstrong Report at ¶ 83, BA22 (defining "jihad" as "struggling to achieve a noble cause", "promoting peace, harmony, or cooperation", "helping others;" or "living the principles of Islam").

Take, for instance, the concept of jihad as external struggle. The struggle to create a just society can take as many forms as there are strategies for social change. Participation in a democratic process to correct intolerant laws or prevent discrimination is jihad. Participation in legal advocacy to protect the rights of the incarcerated and detained is jihad. The simple act of speaking out against injustice is also jihad. Armstrong Report at ¶ 56, BA15.

Jihad can also take the form of armed struggle. This particular meaning of jihad, which is often described as "classical" or "defensive" jihad, has its roots in the Qur'an – in the same way that the theories of just and unjust wars have roots in Christianity, and the doctrines of self-defense and defense of others are recognized in American and

international law. The core principle is simple: when a Muslim population is threatened by the use of force by an outside aggressor, then a struggle may justifiably turn to armed resistance. Armstrong Report at ¶¶ 57-80, BA16-21. Its application, however, is complex. Over a millennium of evolving religious interpretation and doctrine crystallized this ideal of armed jihad as one that must be exercised ethically and humanely.

When Mr. Ahsan was a teenager in the 1990s and first learning about Islam, the concept of jihad as armed struggle in defense of others had taken on a very real meaning in light of the Bosnian genocide. Mr. Ahsan's family is from Bangladesh. They had left seeking the opportunities that England could afford them and their children. And they thrived. Both parents worked. His mother, who had a university degree from Bangladesh, worked for the Croydon County Council. His father developed a successful small business specializing in the shipment of goods into and out of the United Kingdom. The store was run out of the first floor of their house in Tooting; the family lived above it. They instilled in their children a commitment to education and hard work. Mr. Ahsan grew up working alongside his father in his business. Both parents were active in the Bangladeshi community in London; his father helped run community centers and was president of the Bengali Social and Cultural Association. Their own lives and attitudes instilled in their children a curiosity – an engagement with the world, a desire to understand it, and a desire to contribute to it. Mr. Ahsan's eldest sister is a successful physician; his younger brother, who is much closer to Talha in age, is an artist and committed social activist. His other sister committed herself to contributing principally at home, by assisting her parents in all aspects of their lives.

His parents were practicing Muslims, attending the local mosque for Friday prayers and sending their children to religious classes on weekends. Mr. Ahsan began to grow interested in exploring his faith further while in secondary school at Dulwich College, a private school, where he excelled academically. Mr. Ahsan took a careful, scholarly approach toward his understanding of Islam. And he did so, in part, with the mentorship of older members of the Muslim community in Tooting.

Some in Tooting had experienced the struggle in Bosnia first-hand. The lessons they drew from that struggle and taught to others would shape, in part, Mr. Ahsan's understanding of what it meant to be a British Muslim. Mr. Ahmad's sentencing memo contains an extensive discussion of the Bosnian jihad, its causes, the role played by Muslim volunteers, and the lack of any link to al Qaeda. That discussion is applicable here as background. Mr. Ahsan's understanding of the horrendous events in Bosnia, as he was introduced to it as a teenager in Tooting, is outlined below.

In 1992, Serb military commanders introduced the world to the term "ethnic cleansing" as they executed a program of extermination against Bosnian Muslims. Initially, the West stood by, taking no action at all. The Serb forces designed and executed a strategy that was comprised of mass execution, the establishment of Muslim refugee camps, and the systematic and large scale rape of Muslim women. In passing judgment later on those responsible for one "rape camp," the International Criminal Tribunal for the Former Yugoslavia said:

The evidence showed that rape was used by members of the Bosnian Serb armed forces as an instrument of terror. An instrument they were given free rein to apply whenever and against whomsoever they wished. The evidence also showed that it was possible for the Serb forces to set up and maintain detention centres for scores of Muslim women, such as

Partizan Sports Hall, next to the municipal police building in Foca, from which women and young girls were taken away on a regular basis to other locations to be raped.

ICTY Case Information Sheet, "Foca" (IT-96-23 and 23/1), available at http://www.icty.org/x/cases/kunarac/cis/en/cis_kunarac_al_en.pdf.

It became known as the Muslim Holocaust, the single worst display of genocide in Europe since World War II. The images were broadcast to the world and, to Muslims in the United Kingdom, the unfolding events stoked two fears. The first: If the fair-skinned Muslims of Bosnia -- native born and fully assimilated -- could be turned so quickly from fellow citizens into victims, what then would become of less established Muslim immigrants from South Asian and the Middle East, who were marked as outsiders by skin color, language, and custom? The second: If violence broke out against Muslims elsewhere in Europe, who would come to their aid? At the time of the atrocities themselves, the world did not intervene to protect the Muslim population.

Dr. Usama Hasan explains the lesson that Muslims in England drew from the experiences of Bosnia:

Since Muslims in Western Europe were then (and still are) largely recent immigrants, they are not as integrated as the Bosnian Muslims were and these events led to widespread fear amongst British Muslims and the feeling that Western Muslims were therefore more vulnerable to attack than even the Bosnian Muslims had been.

BA123.

When Mr. Ahsan was seventeen years old, the Bosnian genocide had ended. But the obligation of jihad had a renewed meaning and immediacy, both for him and for others older than him, to whom he looked up to as a teenager. He learned that the Quran teaches Muslims to defend each other: "As for the believers, men and women,

they are protectors of one another." He learned that, in connection with later teachings, Islam requires adherents to prepare oneself for the possibility of self-defense and the defense of others. And he learned that – with Bosnia as an immediate example – only through vigilance and preparation could European Muslims forestall the recurrence of the Bosnian genocide, whether at home or abroad. These were not fringe views in the United Kingdom. Again, as explained by Dr. Hassan, a figure respected both by the Muslim community and the British government, these beliefs were widely held and openly taught. BA125-127.

Nor were these concepts uniquely Muslim. The ideal of international volunteerism – crossing borders to defend the rights and lives of others – is deeply ingrained in the moral fabric of both the United States and the United Kingdom. The role played by Europeans and Americans, including Ernest Hemingway, in the Spanish Civil War and the struggle against Franco's oppressive regime, is justly celebrated. Likewise, the ideal of humanitarian work abroad, in locations ravaged by war, as embodied in organizations like Doctors Without Borders, has resulted in such organizations being honored with the Nobel Peace Prize. Parallel currents run through British culture. In the nineteenth century, Romantic poets dedicated themselves to the Greek national struggle against the Ottoman Empire, well before the United Kingdom itself intervened. Lord Byron, John Keats, Percy Bysshe Shelley – all authors in the high school literary canon to whom Talha Ahsan was exposed – supported the Greek cause with their words, their money, and their actions. A young George Orwell took up arms to fight in the Spanish Civil War, resulting in his book of reportage, *Homage to Catalonia*, and a lifelong commitment to the struggle against tyranny. Through their

practical engagement, these writers helped develop a moral code that stays with us today – the idea of human rights and solidarity across national borders. And in the process they forged a language that carries their ideas across cultures and generations in journalism, literature, and poetry.

For a teenager in Tooting, the allure of these ideas is easy to understand. They offer a world beyond that bounded by school and family, and provide a vision of social engagement, both practical and romantic. Both sides of social engagement appealed to Mr. Ahsan.

Afghanistan

In 1999, at the age of 19, Mr. Ahsan traveled to Afghanistan to fulfill the religious obligation of receiving military training for the purposes of self-defense and the defense of others. He was not alone in making the journey for such a purpose. Through the mid to late 1990s, a few thousand British Muslims traveled to Afghanistan and elsewhere for training, pursuant to their religious beliefs. See Report of Dr. Hassan at 8, 9, BA125-126 (“Until 9/11. . . training camps abroad were largely seen as bases for the fulfilment of such training and preparation duties, with militant action being only a possibility”). The obligation of training was a widely accepted belief, with firm grounding in scripture. *Id.* at BA125. The need for such training was seen as more important in light of the recent memory of the Bosnian War. *Id.* Moreover, traveling to Afghanistan for the purposes of training was, at that time, not illegal under the law of the United Kingdom. See Report of Max Hill, Q.C., Red Lion Chambers ¶¶ 28-29, BA140. No one was ever prosecuted in England for doing so.

Mr. Ahsan did not know Arabic, or any South Asian or Afghan language, at the

time he traveled. He arrived as a stranger in a strange land, with no sense of the groups that operated there, their ideologies, or their plans. Mr. Ahsan was not alone in his lack of knowledge about the world of Afghanistan. This is reinforced by Mr. Badat himself, who testified that he had never heard of al Qaeda before traveling to Afghanistan, and did not himself even understand the ideologies or even the “players” in Afghanistan until having spent more than half a year there – despite the fact that he, in fact, spoke Arabic fluently and could communicate with others. Deposition of Saajid Badat, *United States v. Syed Talha Ahsan*, April 10, 2014 (hereinafter “Deposition, Day 2”) at 284-285, 287. It is further reinforced by the findings of leading scholars in the field. The vast majority of foreigners who traveled to Afghanistan in this time period did not travel with the intent of joining any organization; most had never even heard of al Qaeda prior to their arrival. See Report of Felix Kuehn, *et al.* at BA295-299. The primary motive for foreigners traveling to Afghanistan prior to 9/11 was to fulfill what they believed was a religious obligation of training and, then, to return home. *Id.*

The world of Afghanistan was far more complex than Mr. Ahsan could have possibly understood. Fourteen different sets of foreign groups and organizations operated under the rule of the Taliban, of which al-Qaeda was only one. See Report of Felix Kuehn, *et al.* at BA243, 264. These groups represented different interests, with different agendas. Some were from Western China; others from Central Asia; still others, from Libya and Egypt. *Id.* Others harbored no particular project or ideological plan: they served simply to help others fulfill a desire to train. *Id.* at 279-281. The story of these groups, their interactions, and their rivalries is complex, but looking back, with the distance of time and more than a decade of research, what is clear is that al

Qaeda's vision of jihad – one of terrorism directed against the United States and the "West," with no distinction between civilians and non-civilians – was an aberration. Nearly every group in Afghanistan, including the Taliban itself, disagreed with al Qaeda's ideology and its methods. See Report of Felix Kuehn, *et al.* at 243, 264. To the extent groups did have an ideology or project, most were in line with what has been described as “classical” or “defensive jihad,” as enunciated by Dr. Abdullah Azzam – a struggle for self-determination against invaders on Muslim soil, supported by the Muslim *ummah*, or worldwide community. *Id.* at 252. This classical form of jihad forbade the targeting of civilians and rejected terrorism. Such views were a direct threat to al Qaeda’s very different vision and the organization’s ability to recruit individuals and allies to its cause. *Id.* at 276.

There was a term for foreigners like Mr. Ahsan who went to Afghanistan for the limited purpose of training – “holiday jihadists.” These were people traveled for training and went back to their normal lives. See, e.g., Deposition, Day 1, at 203. For these foreigners, many of them Europeans, some Arab, a trip was similar to a religious pilgrimage – they never planned on staying, never planned on using any of the skills after the left, and returned after very short stints of a month or two. *Id.* Even among “holiday jihadists,” however, Mr. Ahsan was a category unto himself.

Mr. Ahsan simply did not fit in at the training camps. He was a scholar, not a fighter, and a sensitive individual who was out of place. Trainers and the other foreign attendees were confused as to why Mr. Ahsan had come. He was a terrible student, inattentive, unfocused, and uninterested in the offerings. Deposition, Day 2, at 306, 307. Attendees and trainers referred to Mr. Ahsan's attitude and abilities as "meskeen,"

an Arabic word meaning “poor guy,” in reference to his naivete. *Id.* at 303.

Mr. Ahsan's ability to make meaningful choices in Afghanistan was severely limited. Mr. Ahsan was simply moved from place to place with little to no say in where he went. *Id.* at 288. The first was a camp run by Abu Khabbab at Durunta. *Id.* at 289. The second was a camp jointly run by Nassir al-Emirati and Abu Musab al-Suri. *Id.* at 294. Neither were “al-Qaeda training camps.” Both were independent camps, without affiliation with any organization or group, that aimed to provide training for training's sake, and did not seek to recruit attendees to a particular mission or organization. *Id.* at 290, 294. The trainers of both were openly critical of al-Qaeda's agenda. Report of Felix Kuehn, *et al.*, BA279, 280, 281. The vast majority of the attendees to these camps never used the skills they had been taught but simply went home, never to engage in any violent activity. Deposition, Day 2 at 308-310.

While his choices were limited, those few that Mr. Ahsan was able to make were significant. Some individuals who traveled to Afghanistan chose to enlist in the service of a cause, with the intent of violent engagement. Of these, some were interested in supporting the Chechen mujahideen. A small number chose, as Mr. Badat did, to align themselves with Osama bin Laden and al Qaeda. Mr. Ahsan chose not to do any of these things.

Before he left Afghanistan, Mr. Ahsan saw firsthand the horrors of violence. He and other foreigners were taken to the “front line” by Abu Musab al-Suri. The “front line” was an area of recent conflict between the Taliban and the Northern Alliance. At the time, the Taliban exercised *de facto* control over the majority of the area of

Afghanistan. It was recognized as the *de jure* sovereign of Afghanistan by Pakistan, Saudi Arabia, and the United Arab Emirates. Report of Felix Kuehn, *et al.*, BA264. It was engaged in a war for territorial control with a coalition of warlords and Islamic parties known as the Northern Alliance. The Northern Alliance received financial and military support from Iran, Russia, and some neighboring states in Central and South Asia. But in 1999, the United States was not a party in the conflict between the Northern Alliance and the Taliban; moreover, the United States did not formally support the Northern Alliance, nor was it recognized as a legitimate government by any state. See Human Rights Watch, *Crisis of Impunity: The Role of Pakistan, Russian, and Iran in Fueling the Civil War* at 13, available at <http://www.hrw.org/reports/2001/afghan2/Afghan0701.pdf>.¹

Al-Suri's decision to take an untrained and naive foreigner like Mr. Ahsan to the front line was later criticized. Deposition, Day 2 at 321. There was a protocol for allowing foreigners to participate in front line activities that required training, experience, military acumen and active interest – none of which Mr. Ahsan had. *Id.*; Report of Kuehn *et al.*, BA306. His fleeting experience with war, like the rest of his journey in Afghanistan, was one that he made as a passive and reluctant observer.

¹ The Northern Alliance was itself heavily criticized for its human rights violations. As described by Human Rights Watch: “In the years before the Taliban took control of most of Afghanistan, these parties [constituting the Northern Alliance] had divided much of the country among themselves while battling for control of Kabul. There was virtually no rule of law in any of the areas under their control. In Kabul, the Jamiat, the Ittihad, and the Hizb-i Wahdat all engaged in rape, summary executions, arbitrary arrest, torture, and ‘disappearances.’ In Bamian, Hizb-i Wahdat commanders routinely tortured detainees for extortion purposes.” Human Rights Watch, *Crisis of Impunity: The Role of Pakistan, Russian, and Iran in Fueling the Civil War* at 13, available at <http://www.hrw.org/reports/2001/afghan2/Afghan0701.pdf>.

Mr. Ahsan did not himself engage in combat. Along with approximately half a dozen other foreigners, he was located at some distance from the frontline and did not observe the conflict directly, except during the unexpected retreat of his group. One morning, the Northern Alliance broke through the Taliban line, causing a chaotic retreat. Mr. Ahsan and his fellow foreigners were placed on a truck, which fled the advancing Northern Alliance forces. In the course of the retreat, one of the passengers on the truck was hit by gunfire and died.

What he saw traumatized Mr. Ahsan. Deposition, Day 2, at 320-323. It was an image that continues to haunt him today. His trip to Afghanistan convinced him that what he had observed – military training, the violence of armed conflict – was not his jihad.

Two years later, Mr. Ahsan returned to Afghanistan. It was the early summer of 2001. This time, he did not travel for training or for combat. He was, at this time, an Arabic student at the School of Oriental and African Studies. His goal was to learn more about the foreign groups from Central and East Asia he had seen in the training camps. These were people about whom little was known in the English-speaking West; certainly, Mr. Ahsan knew little about them. This trip was, however, cut short. He fell ill shortly after arriving and left as soon as his health permitted. Mr. Ahsan essentially did nothing on his second trip to Afghanistan. Deposition, Day 2, at 328 (Q: “[Mr. Ahsan] did absolutely nothing, right?”; A: “Yeah”).

Without an appreciation of context, it is easy – and erroneous – to look at trips to Afghanistan and equate those with a commitment to either “violent jihad” or to al Qaeda. To do so, however, would be to overlook the complex reality: many people

from England traveled to Afghanistan to receive training, out of a sense of religious obligation, with no awareness or consideration of al Qaeda, and left Afghanistan having never joined any organization, let alone al Qaeda itself. Al Qaeda did not define the motivations or interests of those training. And the vast majority of those who traveled to Afghanistan returned to their home countries to assimilate peacefully back into society. Indeed, of all those from the United Kingdom whom Mr. Badat claims to have seen in Afghanistan, most – unlike Mr. Badat – returned to engage in careers and continue with their lives as doctors, lawyers, engineers, and academics without any involvement in terrorism or violence whatsoever. Deposition, Day 2 at 309-310.

The Websites

Mr. Ahsan is not in the United States because of his two trips to Afghanistan. Mr. Ahsan was extradited from the United Kingdom based upon his involvement in the "Azzam.com" family of websites. Mr. Ahmad's Sentencing Memo provides an extensive background of the website, its contents, as well as the historical context in which it operated. That discussion – including the history of jihad, al Qaeda, the Taliban and the Chechen Mujahideen – is significant and applicable to Mr. Ahsan's case, but will not be repeated here. There were reasons why Muslims seeking to protect others from oppression were interested in the Chechen mujahideen at the outset of the Second Chechen War; in light of Russian brutality, feelings of sympathy to the Chechens were widespread, both among Muslims and non-Muslims. Similarly, there were reasons that the Taliban – which seen in the full glare of history was an intolerant and repressive regime – could be seen in a different light fourteen years ago. They were then portrayed as - and/or it was hoped they would become - a haven for

Muslim minority populations who, like those in Bosnia and Chechnya, were the subjects of violent repression, and also as a group attempting to end a brutal and decades long conflict between Afghan warlords. What is known now was certainly not what was known to Mr. Ahsan when he was 20 years old, at a time when Russia did not allow journalists to cover the Chechen conflict and little objective journalism existed about the Taliban regime. Against the backdrop of what Mr. Ahmad's memo provides, however, what is of importance here is Mr. Ahsan's own role and his own actions.

Mr. Ahsan played a minor role in the operation of the website. He was one of the website's "mailmen" for only six months, between March and August of 2001. That was the beginning and the end of his involvement with the website. The website offered books and videos for purchase. Some of the books – like those written by Abdullah Azzam – were widely available in libraries and bookstores, including the library of the School of Oriental and African Studies. Some of the videos provided a perspective on the Second Chechen War that was not featured in mainstream media. Those accessing the website could print out an order form and mail it to a Post Office box. Mr. Ahsan's sole job was filling the orders. He was provided with a box of Azzam Publications materials, envelopes, and postage, and provided instructions on how to proceed: send the customers what they ordered and save an electronic copy of any written correspondence sent to the mailbox.

The websites had multiple administrators. These individuals – all of whom resided in the United Kingdom – had administrative access, and were actively involved in adding and modifying content placed on the website. They also utilized an administrative email address to communicate with various readers who sought

information or otherwise sought to communicate with the website. Mr. Ahsan was never an administrator of the website. He never utilized the administrative email address. None of the website administrators other than Mr. Ahmad – though their identities are known from the voluminous seized materials – were indicted by U.S. authorities or charged in any other court system.

Content on the website was edited and proofread by a number of volunteers. Volunteers also assisted in providing server space for the websites. See Factual Stipulation, *United States v. Syed Talha Ahsan* (“Factual Stipulation”) at ¶ 8. Mr. Ahsan never edited, proofread, or in any way contributed to the content placed on the websites. Many of these volunteers lived in the United Kingdom. Some lived in the United States. *Id.* In the course of this investigation, the government questioned these U.S. based individuals, some of whom are U.S. citizens. The government seized their computers. Yet, despite evidence of their involvement, none of these U.S. citizens were ever charged in this or any other case.

What separates Mr. Ahsan from the many known individuals with far greater responsibility for the website, its contents, and its message is that he – unlike any of them – received a letter sent to the Azzam Publications post office box by a man calling himself “Hassan Abu-Jihad.” Yet, when Mr. Ahsan’s conduct with respect to this letter is examined with care, it becomes clear that the separation is not, in reality, significant.

The letter purported to describe the port of call schedule of a group of U.S. naval ships sailing from the United States to the Persian Gulf. Importantly, the parties agree on several facts about this letter. First, it was unsolicited. Fact Stipulation ¶ 26. Second, Mr. Ahsan received it in the normal course of his limited duties as a mailman

for the website. *Id.* And third, after Mr. Ahsan typed up the document and saved that file on a floppy disk, nothing was ever done with the electronic document. *Id.* It was never, in any way, disseminated. *Id.* It is undisputed that Mr. Ahsan did not in any way aid or encourage Hassan Abu-Jihaad to break the law and, moreover, that his actions were neither intended to nor led to any harm whatsoever.

Mr. Abu-Jihaad was a United States citizen and naval officer who sent classified materials motivated by what, at his trial, was revealed to be a desire to harm the security of the nation he lived in and had a sworn duty to protect. Mr. Ahsan knew nothing about Mr. Abu-Jihaad. He was the unwitting recipient of these unsolicited materials, solely as a result of his voluntary work as a mailman. He had no reason to believe that the letter he received – scrawled and nearly illegible, fraught with misspellings of basic English, and written by a man who declared himself the "father of jihad" – was to be taken in any way other than as the ramblings of a lunatic or a prank.

Mr. Abu-Jihaad is currently serving a ten year sentence for his actions. The Government seeks to send Mr. Ahsan to prison for fifteen. Acceptance of this government request would create the very kind of unwarranted sentencing disparity that the Sentencing Reform Act seeks to eliminate.

III. All Of The 3553(a) Sentencing Factors Support A Sentence of Time Served.

All of the sentencing factors set forth in 18 U.S.C. § 3553(a) would be satisfied by a sentence of credit for time served. Very significant punishment has already been imposed, under harsh pretrial conditions. To the degree applicable, the goal of general deterrence has certainly been met. While reasonable people can and will disagree as to whether it is a good or bad thing, the period of incarceration for Talha Ahsan, whose

incarceration at all was and has been the subject of controversy and political protest in the U.K., has created a general climate of fear among Muslims and others in the U.K. That is, given that the peripheral actions of Mr. Ahsan have resulted in such an extended period of incarceration, many are now concerned about what actions they might take that will incur the ire of U.S. or English authorities. The long jurisdictional arm of the U.S. court system has now reached across the Atlantic Ocean and grabbed a minor participant in a website perceived by many as the “go-to” website to learn about the genocide of Muslims in Bosnia and elsewhere. The logical questions many are asking is whether there is any limit to U.S. jurisdiction, and what acts not prosecuted in the U.K. might lead to extradition of others down the road.

Any needed rehabilitation can best be achieved by reintegration into his family and support network in England. Not only does he have the full support of his family and many others, his sister and brother-in-law are both doctors, and have the knowledge, contacts, and resources to get him any needed therapeutic assistance. Further warehousing Mr. Ahsan in a foreign jail will only serve to delay the rehabilitation process.

Finally, there is no risk of recidivism with Mr. Ahsan. He has demonstrated as much in his almost eight years of incarceration. He petitioned to take and completed an anti-extremism course run in the U.K. prison system to reflect his commitment to a form of engaged Islam that operates fully within the law. He has dedicated his time in prison to writing, studying and translating. The consensus of all who have known him is that he is, above all else, peaceful, sensitive, and earnestly curious about all aspects of the world. Moreover, the nature and circumstance of Mr. Ahsan’s offense as well as history

and character support a sentence of time served.

First, a fair assessment of Mr. Ahsan's conduct prior to the end of his criminal conduct in late August of 2001 reflect that many of his acts were legal under U.K. law at the time he acted. Much of the content of the website which he assisted was itself legal under both U.K. and U.S. law. The First Amendment, which necessarily limits our nation's expansive criminal jurisdiction, protects independent advocacy for organizations or groups where the advocacy is not performed in coordination with those groups. *See Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2726 (2010). Mr. Ahsan's role was marginal, and his understanding of the background administration of the website, minimal to nonexistent. His own personal involvement certainly was not done in coordination with any group, even if members of the conspiracy might have had connections beyond his knowledge. Ignorance or a misunderstanding of the law is not a defense for illegal actions, but it is certainly relevant to understanding how an otherwise law-abiding individual came to break the law, and is a factor to consider in assessing intent and blameworthiness.²

The reality is that the material support statute is extraordinarily broad, sweeping within its reach actions like posting materials on a website just as it does the provision of weapons to terrorists or engaging in terrorist acts. Its scope has drawn concern from academics, researchers and journalists, who fear that their work – interviewing individuals who may be proscribed terrorists, translating their ideas into English, or

² It is one thing to say ignorance of the laws of one's own country is no excuse. But application of that principle to the laws of all other countries in the world is far more problematic. Do any of us act with any awareness of whether our actions, committed in the United States, might nevertheless violate the laws of another nation?

placing them on a website – could be considered criminal.³ Mr. Ahsan’s actions were on the far reaches of the statute’s reach – in terms of both geography and conduct. But the law *did* reach him, he has admitted the illegality of his own conduct under all applicable laws, and he is now very aware of his errors. Importantly, Mr. Ahsan not only recognizes that he broke the laws of the United States, he himself – looking back at his actions – can say that contributing to violence, no matter how minimal the contribution or how justified a contribution may have seemed at the time, is inconsistent with his vision of himself and how he can contribute to a more just society.

Second, Mr. Ahsan’s conduct in this case was not motivated by a personal attraction to violence or to benefit himself in any way. He was certainly never motivated by any intent to aid al Qaeda, whose ideology and actions he has always abhorred and rejected. He was motivated out of the twin desires to help others he perceived as suffering unjustly and out of a sincere intellectual curiosity. As those who knew him before his arrest and those who have come to know him since attest, these are among his defining features. These led him to travel to Afghanistan in a time when little was known about the region and those who were in it. It also led him to aid a website that,

³ See, e.g., Andrew F. March, “A Dangerous Mind,” *New York Times*, April 21, 2012, accessible at: http://www.nytimes.com/2012/04/22/opinion/sunday/a-dangerous-mind.html?pagewanted=all&_r=0 (Expressing concern at the reach of material support prosecutions on the basis of arguably First Amendment protected conduct and explaining that “[a]s a [Yale] political scientist specializing in Islamic law and war, I frequently read, store, share and translate texts and videos by jihadi groups. As a political philosopher, I debate the ethics of killing. As a citizen, I express views, thoughts and emotions about killing to other citizens.” His own actions, the author explains, could easily fall within the scope of the statute.)

for the most part, provided news and stories about Muslim victims of violent state repression.

Third, Mr. Ahsan is a far different individual than the government's indictment portrays. Indeed, if there is one thing that is simple about Mr. Ahsan and his case it is that his views, which were and remain pluralistic, tolerant, and peaceful, have always been contrary to those of the Taliban, al Qaeda, or any militant group. This consistent theme throughout his life is reflected by his friends, by his writings, and by his thoughts as preserved in the discovery material.

Mr. Ahsan's criminal conduct occurred prior to September 11, 2001, and between that time and his arrest, five years later, on July 19, 2006 he neither committed any illegal acts nor was he involved in a conspiracy to provide material support of any sort. He was a serious student of Arabic at the School of Oriental and African Studies ("SOAS"), where he graduated with first-class honors in 2004. He spent two years of his undergraduate education studying Arabic intensively in Damascus; the first year enrolled in the formal study abroad program and the second through private Arabic tuition. Upon his return, he became active with an organization dedicated to protecting the due process and human rights of detainees at Guantánamo Bay. After graduation, he briefly enrolled in a masters program in linguistics, also at SOAS, which he left in early 2005. He spent the next year and a half before his arrest working at his father's store. He was planning a life engaged in intellectual and academic pursuits, whether as a librarian, or as a philosophy student, or as a teacher. Like many people of his age and educational background, he had a sense of his passions – primarily writing, both literary and scholarly, as well as teaching – and was attempting to find a career in which

he could pursue these interests.

During these years, Mr. Ahsan had moved away from his involvement in the conspiracy charged here. He developed relationships with university classmates, who expanded his understanding of Islam and political engagement, just as he informed theirs. He worked on his own writing. What Mr. Ahsan was doing between the end of his conduct in this case – before September 11, 2001 - and the time of his arrest five years later, was to continue to explore the world of ideas around him, those of the Muslim world and the secular ideals of the United Kingdom. In some ways, he was a translator by inclination, finding commonalities in and exploring the differences between the two worlds in which he found himself.

On February 8, 2006, Mr. Ahsan's house in Tooting was searched. The contents of two computers were seized, along with hundreds of CDs, DVDs, and countless documents. It was a chaotic and troubling moment for Mr. Ahsan and his family. The documents seized by the government, however, provide a window into Mr. Ahsan's state of mind that reflects the reality of his life and his interests in the years after his involvement in this case ended. Many of these documents and writings have been presented to the Probation Office. Only a few are discussed here.

The government will likely point to a single piece of writing located in a journal of personal and creative writings to present Mr. Ahsan as someone committed to a loose concept of "violent jihad." The government may well also point to it as describing anti-U.S. animus. The writing is located in a journal containing a wide range of Mr. Ahsan's creative writings. It was written in late 2005, and takes the form of a letter to his father, stating an intention to engage in "jihad" abroad. It criticizes the United States for killing

innocent civilians around the world. It also criticizes the perpetrators of terrorism and condemns the 7/7/05 London Underground bombings.⁴

The manner in which the government has consistently interpreted this document to present a simplistic image of a complicated individual is akin to its definition of jihad – selective, contextless, and misleading: akin to defining the Library of Congress as an “institution dedicated to violent jihad” on the basis of its ownership of thousands of documents written by Abdullah Azzam and Osama bin Ladin, or perhaps a federal judge as a “conservative” on the basis of citations to an opinion by Justice Scalia.

The document was never removed from the journal – a point that the government neglected to explain in the materials it submitted in support of Mr. Ahsan’s extradition. Nor was the document ever shown to anyone. It was, quite simply, an entry in a private journal.

The document is preceded in the journal by dozens of pages of creative writing exercises, notes, and private diary entries which – along with the literally thousands of physical documents and many gigabytes of electronic storage seized from Mr. Ahsan in February of 2006 – make perfectly clear what Mr. Ahsan’s state of mind was.

Mr. Ahsan sometimes used the journal to keep track of events in his life. One such event was on June 7, 2005, when Mr. Ahsan met with Leila Aboulela, an author whom he particularly admired.⁵ The entry reads:

⁴ His condemnation of the London subway bombings and terrorist acts is also demonstrated in his communications with friends and in other items seized from his house.

⁵ Ms. Aboulela won the Caine African Prize in 2000 for her short story “The Museum,” about the relationship between two students at a university in Aberdeen,

7/6/05

Saw [novelist Leila] Aboulela at event. Spoke to her + got b[oo]ks signed. Was very happy. Am still v. happy. Jubilant. Gave me her email.

They engaged in a brief email exchange.⁶ Mr. Ahsan saved a copy of this email exchange on one of the seized computers. In this brief exchange, we see a slice of Mr. Ahsan's worldview. He wrote her initially to complement her work. She suggested further books for him to read, offered to critique his poetry, and asked for his further thoughts on her novels.

One book Ms. Aboulela recommended was the autobiography of Ziauddin Sardar. It is entitled *Desperately Searching Paradise: Journeys of a Skeptical Muslim*. The aim of the book was "to find a modern model for the peaceful coexistence of faiths."⁷ The author travels from the United Kingdom, where he was brought up, and spent the 1960s as a Muslim student activist. He explores the works of Sayyid Qutb,

Scotland, one a female Muslim from Sudan and the other a Scot named Bryan. Her next two novels, both published before Mr. Ahsan's arrest, were the *Minaret* and *The Translator*, the former of which was nominated for the Orange Prize; both explore similar themes – the path of Muslims, particularly female Muslims, to develop identities in the western world. She is also known for her BBC radio play *The Lion of Chechnya*, about the nineteenth century Chechen Imam Shamil and his war with Russia, sometimes described as the nineteenth century Chechen jihad. See generally <http://www.nytimes.com/2014/03/22/world/africa/one-foot-in-each-of-two-worlds-and-a-pen-at-home-in-both.html>.

⁶ It is not without significance that one month after Mr. Ahsan was pursuing his literary passion through this meeting, the London subway bombings occurred. The juxtaposition of these two events symbolizes the chasm between Mr. Ahsan and violent jihad, and the choices Mr. Ahsan made, in contrast to the tragic choices made by Saajid Badat and the London subway bombers.

⁷ <http://www.independent.co.uk/arts-entertainment/books/reviews/desperately-seeking-paradise-by-ziauddin-sardar-6167246.html>

travels to Iran to be disappointed by the ideals of the Iranian revolution, then to Pakistan, where among others he meets Osama bin Laden, who is described as charismatic but inhumane and utterly condemnable, and so on. He finds each location to represent a “failed paradise . . . founded on . . . a set of unquestioning certainties.” It was a controversial book for many Muslims, critical as it was of all purported Islamic utopias. In his email response, Mr. Ahsan notes that he had read it once already and planned to purchase a second copy to highlight the passages that impressed him.

Mr. Ahsan’s response to Ms. Aboulela muses on the unfortunate divisions that exist between Muslims and non-Muslims in the U.K., and between women and men in the Muslim community, and praises her for having helped bridge those gulfs. He explained his desire to distribute the story to Muslim school children in the hopes that “they will see the importance of fiction and investigate the means and tools of articulation of one’s feelings and views.” He then closed his email by providing nine specific criticisms of “pedantic grammar points” in her latest novel. Full text of email attached to 6/16/14 letter to U.S.P.O. Ray Lopez.

Mr. Ahsan’s interest in writing – both prose and poetry – had begun when he was a teenager; when he was 16 and 17 years old, he submitted poems for publication in journals for young poets. He had continued writing poetry through his time at SOAS and after graduation.

The seized 2005 journal includes some of Mr. Ahsan’s creative work in progress. The stories he was working on are surprising – if one were expecting the work of a “violent jihadi.” It contains sketches of a story entitled “The Gay Imam,” about the hypocrisies of a congregation that turns on an otherwise cherished and respected Imam

because of his open statement of his belief. The story is critical of the “tidal wave of ferocity” that meets his confession. Drafts of another story in progress, which at times is entitled “An Adultery Story,” and at other times “The Impossible Bride,” described the tensions between faith and passion that second generation Muslim immigrants navigated in modern London.

The same 2005 journal includes notes he kept regarding his work with Cage Prisoners, an organization dedicated to legal advocacy on behalf of individuals detained at Guantánamo Bay. Mr. Ahsan had worked with the group since his return from Syria in 2003. Not only his journal, but also his computer, is filled with notes and documents relating to his work with the organization. During that time, the organization assisted in assembling a list of detainees in Guantánamo and other detention centers around the world that was featured in the Washington Post. It also provided support to the families of those detained, assisted lawyers representing detainees, raised awareness around the issues, lobbied government officials, and sent letters to those incarcerated to show them that the world had not forgotten them. Mr. Ahsan envisioned his involvement in such advocacy as a bridge between the legal and spiritual ideals of Islam and those of the West; the common ground, as he understood it, was a commitment to justice and due process of law. The manner in which he understood these values and communicated them to friends reflects an individual who was deeply engaged with thinking about how Muslims committed to Islamic principles could best interface with the societies in which they lived to create a more just society. This sort of legal advocacy could, he believed – consistent with the conclusions of Karen Armstrong – constitute a form of jihad.

Mr. Ahsan did not relinquish the idea of jihad in the years between his offense conduct and the time of his arrest. It was a core belief of his, as it is for all Muslims. He did not define it as armed combat, however, nor was that his interest. This is made clear in his communications with others. Mr. Ahsan saved copies of his private chat logs. In one such private chat, on May 19, 2006, Mr. Ahsan described his understanding of jihad as having a broader meaning than merely fighting, noting that the term had wider connotations, as understood by the “e. Muslims,” namely “striving in all senses of the word” (full text of chat contained in May 7, 2014 Letter to U.S.P.O. Lopez, at ¶¶ 106-107).

The mention of the term “e. Muslims” has import. It is short for “early Muslims,” reflecting Mr. Ahsan’s personal and scholarly interest in the early history of Islam, an interest reflected in the hundreds of PDF documents on his computer seized by the government that were downloaded from the academic journal repository, JSTOR, during his time at SOAS. These documents related to the history, politics, and culture of the Middle East and the Arab World, as well as linguistic studies of the Arabic language. See 5/17/14 Probation Letter at ¶ 65. These were works of serious scholarship, relevant to Mr. Ahsan’s studies, and represented a wide array of views and perspectives. Indeed, Mr. Ahsan was spending his time not only reading these works but also working, on his own, to contribute to scholarship. Beginning in 2005 through the time of his arrest, he was working on a commissioned translation of a book by a medieval Islamic philosopher entitled *The Hamawite Creed*. He had completed an initial 124 page draft at the time of his arrest; that draft on the computer is dated in late April of 2006.

Complementing his historical interests, Mr. Ahsan collected a plethora of documents – in English and Arabic – from the internet and elsewhere condemning acts of terrorism performed in the name of jihad. A selection of these documents have already been provided to the Probation Office (see 5/17/14 Probation Letter at ¶ 67) and only one need be mentioned here to stand in for the rest. The following is an excerpt from *Defending the Transgressed by Censuring the Reckless against the Killing of Civilians*, by Shaykh Muhammad Afifi al-Akiti:

To put it plainly, there is simply no legal precedent in the history of Sunni Islam for the tactic of attacking civilians and overtly non-military targets. Yet the awful reality today is that a minority of Sunni Muslims, whether in Iraq or Beslan or elsewhere, have perpetrated such acts in the name of jihad and on behalf of the Umma.

.....

If you still insist that your authority should declare war with the non-Muslim state upon which you wish war to be declared, then the most you could do in this capacity is to lobby your authority for it. However, if your anger is so unrestrained that its fire brings out the worst in you to the point that your disagreement with your Muslim authority leads you to declare war on those you want your authority to declare war on, and you end up resorting to violence, then know with certainty that you have violated our own religious Laws.

.....

“The best jihad is a true (i.e., brave) word in the face of a tyrannical ruler.” (From a Hadīth of Abū Sa’īd al-Khudrī (may Allah be well pleased with him!)) . . . For it is possible still, and especially today, to fight injustice or zulm and taghūt in this dunyâ through your tongue and your words and through the pen and the courts, which still amounts in the Prophetic idiom to jihād, even if not through war.

This definition of “jihad” – fighting injustice “through the pen and the courts” – was the definition Mr. Ahsan had himself embraced, as reflected in both his actions and his words. As outlined in at ¶ 99-103 of the 5/17/14 Probation Letter, it was the works of scholars and writers who publically condemned terrorist acts undertaken in the name of

Islam that Mr. Ahsan publicized on various internet forums.

Mr. Ahsan's religious leanings had also shifted over the years. While his journey may have begun in Tooting when he was 17 years old, he had continued to develop his understanding of Islam, through his conversations with friends at SOAS as well as his own studies. He had become more interested in Sufism – a branch of Islam that can be described, in a somewhat oversimplified manner, as the inner, mystical dimension of the religion that is opposed to violent forms of modern Islam. Again, the materials seized by the government reflect this interest. He had in his possession American Sufi Sheikh Nuh Ha Mim Keller's book *Reliance of the Traveler*, a compendium of traditional Islamic law, as well as over fifty audio lectures by the Sheikh. One series titled "This is Jihad?" was delivered to an audience at the Quakers-owned Friends House in London on August 29, 2005, in which Sheikh Keller condemned religious extremism, suicide bombings and the killing of innocent people, specifically stating that there is no justification in Islam for either killing of civilians or intolerance. In 2006, in the months before his arrest, Mr. Ahsan expressed the desire to study more intensively the ideas and work of Sheikh Keller directly with him.

The seized materials also make clear that throughout this time period, Mr. Ahsan was actively applying for jobs and seeking to further his education. Through 2005 and 2006, he was applying for jobs at libraries – many were academic libraries, some were public libraries, and others libraries at law firms. In fact, he had a job interview set for July 19, 2006 – the week of his arrest - and further interviews were set for early August. He was also applying for graduate school at the time. He had begun the application process for a Masters in Philosophy at Birbeck College, to enroll in September of 2006.

He had received a recommendation letter from the headmaster of a school at which he was a trainee teacher in early 2006. It described Mr. Ahsan as a “natural born academic . . . [who] obtained a 1st class honours degree from one of the most prestigious universities in London. . . He seeks to further his understanding by often pouring over vast amounts of literature and sharing it with the students he taught. We both share an interest in the semantics of the 14th century Muslim theologian Ibn Taymiyya and medieval philological controversies, and he has often surprised me with his insights.”

Letters attached to this memorandum further reinforce his continued pursuit of his academic interests, as well as his poetry work and general interest in literature. See (1) 5/28/14 letter of Bruce Kent (Exh. A); (2) Letter of Pietro Deandrea (Exh. B); (3) 5/26/14 letter of Pat Winslow (Exh. C); (4) 5/27/14 letter of Jeanne Theoharis (Exh. D); (5) Letter of Mike Marqusee (Exh. E); (6) 3/3/14 letter of Alison Kennedy (Exh. F); (7) 6/1/14 letter of Caroline Lucas (Exh. G); (8) 6/2/14 letter of John Goss (Exh. H); (9) 5/4/14 letter of Victoria Brittain (Exh. I); (10) 6/1/14 letter of Selina Pishori (Exh. J); (11) 5/31/14 letter of Damon Kowarsky (Exh. K); (12) 5/19/14 letter of Dr. Nisha Kapoor (Exh. L); and (13) 5/21/14 letter of Ann Alexander (Exh. M).

Lest there be any doubt about Mr. Ahsan’s state of mind in 2006, a journal he kept in the months between the search of his house on February 8, 2006 and his arrest on July 19, 2006 makes his intent clear.⁸ The journal begins on April 15, 2006. The last entry is dated June 13, 2006. Throughout, he sketches scenes for the story he

⁸ This journal was provided to counsel by the family of Mr. Ahsan.

began in his 2005 journal, "The Impossible Bride," jots down observations of customers he helps while working at his father's store, and keeps track of his job search, rejoicing at openings for English teachers at times and goading himself to finish his applications at others. Some of those diary entries are summarized below:

On April 15, 2006, Mr. Ahsan finalizes his plans to apply for a masters in philosophy and emails faculty asking what their courses entail.

On April 16, 2006, he reminds himself to work on his application to the Philosophy M.A. program at Birbeck College and creates a list of the attributes he seeks in a wife (as he was engaged in the time on a matrimonial search with the aid of friends) which – reflecting his own personality – includes: "good listener, intense and articulate, good at arguing," "must be a practicing Muslim . . . [but] if you weren't a practicing Muslim you would probably be a bohemian writer, peace activist or goth."

On April 21, 2006, he adds in a detail to his story "The Impossible Bride" based on a recent trip he made to St. Paul's Cathedral in London with a friend, when he pressed his ear against the door to hear the sound of the organ inside. He describes the sound of the Thames running under the Millenium Bridge at night – the only time in the crowded city when the running water could be heard.

On May 28, 2006, he makes a trip to the British Museum with a friend.

On June 13, 2006, he attends a reading by the author Monica Ali, asks her a question about submitting short stories for publication, and has her sign his hardback copy of *Brick Lane*.⁹

⁹ The choice of Monica Ali's *Brick Lane* is illustrative of Mr. Ahsan's character. A novel about the Bangladeshi community in an East London neighborhood and later

A month later, he was arrested.

In prison, Mr. Ahsan has continued to develop and deepen the interests he had prior to his arrest. He has continued to read omnivorously and to write and publish his poetry. While at the Detainee Unit in HMP Long Lartin, where he was held between 2008 and 2012, he developed a course for himself with the writer-in-residence, with whom he has remained in close correspondence. The course focused on the history of British poetry. With his fellow poet's assistance, he worked to complete a collection of work. In 2012, shortly before his extradition, one of the poems in the collection, entitled "Grieving," was awarded the Koestler Trust's Leopold de Rothschild Charitable Trust Platinum Award. He also received an additional award for the collection. Several of the poems have been translated into Italian, German, and Arabic, and republished. In 2010, the prison awarded him a special prize in recognition of his achievements in creative writing. Mr. Ahsan has also continued to translate. Over the past years, he has translated a lengthy tenth-century Arabic poem written by Abu Firas Al-Hamadani.

Those who have read his poetry tend to find two things notable about it. First, the lack of bitterness or anger – an aspect which reflects Mr. Ahsan's character. Throughout his time in prison, he has been a model prisoner. He has been able to develop friendly and positive relationships with prison officials, on both sides of the

turned into a feature film, *Brick Lane* drew accolades for its depiction, from a feminist perspective, of the social and psychological pressures of living in a predominantly poor, working-class Islamic community in the years spanning September 11th. It ends, quite famously, with the daughter of the protagonist - who has grown over the novel to assert her independence - telling her "This is England . . . You can do whatever you like." Sensitive and often lyrical, widely acclaimed too (it was shortlisted for the National Book Critics Circle Award for Fiction), its gently satirical depiction of unthinking religious fundamentalism led some in England to criticize the book as racist or Islamophobic.

Atlantic – despite the fact that the nature of his charges, and now conviction, can inspire, on first blush, prejudice. Also notable is the manner in which the poems discuss Mr. Ahsan’s religion in universal terms – he is a person who has sought to communicate between belief systems and has found a language in which to do so.

He has taken every opportunity to develop his other interests in prison as well – in England, he participated in a mentoring program, Learning Champions, through which he taught English to other inmates. But he is also not above hard manual labor. He obtained certificates in cleaning and food handling while in prison in the United Kingdom.

No such opportunities have been available here in the United States. He has been held for the past two years in the state’s supermax facility, Northern Correctional Institution. This has not been easy time to do, but – again – Mr. Ahsan has persevered. He has created relationships through his letters with individuals from other religions and backgrounds, seeking all the while to learn from others, and at the same time establishing positive relationships with prison staff.

Mr. Ahsan’s life in prison has demonstrated his commitment to consistent ideals and interests that he will continue to pursue after his release. His father has kept working, despite ill health, well past when he had planned to retire, so as to ensure that Talha Ahsan can continue the family business upon his release. Mr. Ahsan plans on working with his father, as he was prior to his arrest, while also continuing his formal education. He will undoubtedly continue his writing. He has the committed support of a loving family, friends, and community who have stood by him for eight years now, and who will work to ensure that he has the structure to adjust and progress in life.

IV. Comparison to Other Related Sentencings

Mr. Ahsan's role in the charged conspiracy was minor. He had no responsibility for the content of the website. He was, for a period of months, essentially a mailman. Moreover, Mr. Ahsan never himself joined or was affiliated with al Qaeda, or any other terrorist organization. He never directly provided any material support to any organizations. He never chose to participate in terrorist activities. He never knew of or joined in any terrorist plots. No harm ever resulted from his actions. Rather, his non-violent conduct had the effect of indirectly aiding, through materials posted on the website, the Taliban and the Chechen Mujahideen.

The sentencing memo of Mr. Ahmad provides an extensive discussion of material support cases. For the purposes of Mr. Ahsan, a single conclusion should be drawn from these cases: his case is, quite simply, an outlier. His conduct was minor, even when compared across terrorism prosecutions more generally. In the world of material support cases, Mr. Ahsan is a minnow among whales, pulled from entirely foreign waters.

A few specific cases reinforce the manner in which a sentence of time served is an appropriate and proportional sentence for Mr. Ahsan. The reasoning of the courts in these cases centers on issues directly relevant here: the need to focus on role, to focus on intent, and to focus on the personal characteristics of the defendant.

The first set of cases are those recently decided in the Eastern District of New York involving a set of defendants who provided substantial support to the Tamil Tigers. *United States v. Thavaraja et al.*, 1:06-cr-616 (RJD) (E.D.N.Y.) and *United States v. Sriskandarajah et al.*, 1:06-cr-616 (RJD) (E.D.N.Y.). In these cases, the defendants

provided support to the Tamil Tigers, or the LTTE, a proscribed terrorist organization. The support was substantial – millions of dollars, oftentimes illegally laundered, was directly provided, and was provided with specific intent that they be used for violent terrorism. The cases involved bribery of public officials and the movement of large amounts of arms. In each, the defendants received sentences between 12 and 108 months. Similar conduct was involved in *United States v. Osman et al.*, 1:06-cr-0416 (CCB) (D. Md.), and there the sentences imposed ranged from 12 to 57 months for conduct far more serious than that of Mr. Ahsan's.

In a thoughtful opinion, the Second Circuit affirmed a substantially below guidelines sentence imposed in *United States v. Thavaraja*, 740 F.3d 253 (2d Cir. 2014), over the objection of the government. That defendant was the “principal procurement officer” for the Liberation Tigers of Tamil Eelam (LTTE) for four years. 740 F. 3d at 256. The LTTE was a militant separatist group in Sri Lanka. *Id.* at 255. The United States' State Department designated the LTTE a “foreign terrorist organization long before the defendant became its procurement officer.” 740 F.3d 255-56. At the direction of the LTTE, the defendant purchased at least \$20 million worth of military-grade weapons (including anti-aircraft guns, rocket launchers, and explosives) and materials used to make suicide bombs. 740 F.3d at 256.

In imposing sentence, Judge Dearie pointed out that the defendant was not motivated by power or self-aggrandizement but by a desire to help the Tamil people. *Id.* “It's beyond me to make sense of the situation in Sri Lanka,” he said. *Id.* at 257. He did not attempt to sort out the righteousness of the combatants. He did note that the defendant's “function [in procuring the weapons for the LTTE] was critical and

involved . . . procurement of deadly merchandise, almost inevitably used to injure, murder, maim, not only military but civilians.” *Id.* at 258.

The Court imposed a sentence of 108 months (along with 60 months concurrent for a bribery conspiracy). To support his sentencing decision, the district court said:

[T]he Court is called upon to make a difficult judgment in fashioning an appropriate and reasonable sentence. The defendant is a 37 year old, educated Tamil who has never been to the United States, but was extradited to this country following his January 2007 arrest in Indonesia. He has no criminal record and has been in custody ever since.

The defendant admits to serving as a principal procurement officer for the LTTE arranging for the purchase of weaponry and technical equipment by and through others, many of whom are co-defendants. Unlike most co-defendants he remained in Sri Lanka where he lived with his parents and sister whom he has not seen since the day of his arrest.

Despite his serious criminal conduct, all indications are that this defendant, like most of his co-defendants, is a person of substance and decency who was motivated solely to assist the Tamil minority in Sri Lanka who were engaged in an ongoing civil war that it now appears involved serious human rights violations on both sides of the conflict.

740 F.3d at 258. In affirming the reasonableness of this sentence, the Second Circuit underscored the propriety of Judge Dearie’s emphasis on the motivations for the illegal actions. It is appropriate for this Court to utilize a similar focus here.

The second set of cases involve individuals who joined or sought to join al Qaeda and many of whom were active members who were part of ongoing terrorist plots against civilians, with direct links to the United States. In *United States v. Mohamed Abdullah Warsame*, 0:04-cr-29 (JRT) (FLN) (D. Minn. 2009), the defendant – who swore allegiance to al Qaeda, spent over a year in al Qaeda camps in Afghanistan, sought to bring his family to live with him in Afghanistan, and then traveled to the United States after September 11, 2001, where he remained in contact with senior al Qaeda

members and provided them with financial assistance – was sentenced to 92 months, instead of the 150 months which the government sought. The court’s opinion, which acknowledged Warsame’s membership in al Qaeda and access to its leadership, explained why:

[T]his Court’s role at sentencing is not to construct the darkest possible interpretation of a defendant’s conduct and potential and then sentence the defendant as if that interpretation is truth. While this Court has given its utmost consideration to all of the public and non-public information in this case - including all of the information that in any way implicates the national security of the United States - it simply finds nothing that adequately demonstrates that Warsame was a part of a specific plot against the United States, and very little that suggests he was especially useful to al Qaeda, either during his training in the Middle East or upon his return to North America.

651 F.Supp.2d 978, 981 (D. Minn. 2009).

The Court further “carefully considered the sentences imposed in dozens of other terror-related cases” and found many to be “unhelpful measuring sticks” as they involved “unique, violent circumstances.” The Court did find “some guidance” in the cases of Salim Hamdan, often described as the personal driver for Osama bin Laden, and the “Lackawanna Six:”

Hamdan was accused of acting as bin Laden’s driver; arranging for the transportation of, and then actually transporting, weapons used by al Qaeda; attending al Qaeda training camps; and receiving weapons training. See *Hamdan v. Rumsfeld*, 548 U.S. 557, 570 (2006). Despite these relatively weighty responsibilities within al Qaeda and Hamdan’s close nexus with al Qaeda’s leadership, a military jury sentenced him to 66 months of imprisonment, or less than the time that Warsame had already served.¹⁰

¹⁰ Salim Hamdan’s conviction was later vacated on other grounds, see *Hamdan v. United States*, 696 F.3d 1238 (Oct. 16, 2012), but the lesson drawn by the *Warsame* court remains applicable.

Even more similar are the circumstances of the "Lackawanna Six." In that case, six defendants were accused of traveling from the United States to Pakistan, and then to an al Qaeda training camp in Afghanistan. See *United States v. Goba*, 240 F. Supp. 2d 242, 244-45 (W.D.N.Y. 2003). The defendants allegedly received firearms and tactical training, heard lectures justifying martyrdom, and attended a speech delivered by bin Laden looking ahead to a fight against Americans. *Id.* The defendants then returned to the United States, and in searches of their apartments following their arrest, authorities discovered a gun, a document justifying suicide as a form of martyrdom, and an email allegedly cryptically referring to a future terror operation. *Id.* at 256. Those defendants ultimately received sentences ranging from 84 to 120 months. While comparing the conduct of terror defendants is not an easy task in light of the secrecy surrounding many of the underlying investigations, this Court believes that these cases provide a framework for determining the appropriate sentence here, and supply considerable support for a reduction below the sentence argued for by the prosecution.

Id. at 982.

The district court's reasoning in *Warsame* is relevant here, and counsels for a sentence of time served. Courts have distinguished between the role and intent of individuals who joined al Qaeda, as contrasted with those who did not. The same clearly applies to an individual who never joined al Qaeda, rejected their ideology, but nevertheless stands convicted of having aided others whose actions provided assistance to the Taliban and the Chechen Mujahideen.

This Court is in a unique position. In most of the material support cases in which defendants pled guilty – including those in the Lackawanna 6 – courts did not have access to the information that has been provided in this case. In some cases it was because of the timing; cases prosecuted shortly after September 11, 2001 did not have the benefit of a decade of research on terrorism, al Qaeda, and Afghanistan. In other cases it was because of the nature of the evidence. In this case, the Court has been presented with extensive reports by academicians, journalists, and former counter-

terrorism specialists who have spent their careers not only writing about these issues but – more importantly – spending decades in the regions they are writing about.

These experts rely upon expertise, not the internet, to reach their conclusions.

Moreover, in this case, the Court has an unparalleled view into the life and mind of Mr. Ahsan. A writer, an inveterate journaler, and chronicler of his observations, Mr. Ahsan preserved thousands of documents to explain what he was thinking and doing. These documents were not created in 2005 and 2006 for the purpose of convincing an American judge thousands of miles away and eight years in the future that he was a moderate, peaceful, and thoughtful person whose intellectual, political, and religious curiosity and exploration were the major drivers for his trips to Afghanistan, and his assistance to the website.

V. Sentencing Guidelines Factors

For many reasons, this is not a case where the rote application of the Sentencing Guidelines is deserving of much weight. Yet, beyond the mathematical calculations that apply here, the reality is that the very factors that support a sentence of credit for time served without any reliance on the guidelines also lead to such a result when the Court considers the propriety of downward departures and/or variances based on the unique facts and circumstances of Mr. Ahsan's case. In other words, a full consideration of the guidelines, including the propriety of downward departures and variances, fully supports a sentence of credit for time served.

A. A Departure or Variance From The Terrorism Enhancement Is Appropriate.

1. The 12-Level Enhancement Should Not Be Applied to Mr. Ahsan.

The scope of the terrorism enhancement in U.S.S.G. § 3A1.4, as interpreted by the Second Circuit, is so broad that it invariably applies in every prosecution for the provision of material support. *See, e.g., United States v. Stewart*, 590 F.3d 93 (2d Cir. 2009); *United States v. Awan*, 607 F.3d 306 (2d Cir. 2010). The enhancement applies alike in cases involving violent actions resulting in death and in cases where there were utterly non-violent actions. It applies to every member of a conspiracy, regardless of their role, their intent, or their actions. It applies, no matter whether the material support is the direct provision of arms or money into the hands of a terrorist leader, or assistance to a website that might tangentially further an organization's purpose.

The terrorism enhancement is a blunt instrument, and it has draconian effects. It increases the offense level by 12 and converts every offender's criminal history category to a VI, even where – as here – the defendant has never been previously arrested. It is akin to the automatic and severe child pornography guidelines criticized in *United States v. Dorvee*, 616 F.3d 174 (2d Cir. 2010) (declaring child pornography Guidelines presumptively unreasonable), or the categorical, one size fits all approach exemplified by the career offender guidelines. *See, e.g., United States v. Sanchez*, 517 F.3d 651 (2d Cir. 2008). Like the guideline analyzed in *Dorvee*, the terrorism enhancement can, “unless applied with great care . . . lead to unreasonable sentences that are inconsistent with what §3553 requires.” 616 F.3d at 184. For this reason, the

Second Circuit has underscored the need for individualized determinations in the context of certain sex offender cases and in applying the career offender guidelines. Like U.S.S.G. § 2G2.2, the terrorism enhancement is not based on empirical data – it is arbitrarily chosen without the use of data or analysis by the Sentencing Commission, further diminishing any deference owed to this mechanistic guidelines enhancement.

Recognizing the manner in which the “terrorism” enhancement exaggerates the nature, motives, and effect of a defendant’s criminal actions, courts regularly depart or impose non-guidelines sentences and eschew reliance upon this arbitrary enhancement. *See, e.g., United States v. Stewart*, 590 F.3d 93, 135-137 (2d Cir. 2009) (affirming variance from terrorism guideline on the basis of: the distinction between conspiracy conviction and the completed act, where “no injury actually occurred” and “the extremely restrictive conditions of confinement”; further noting that it is appropriate for courts to rely on the fact that criminal acts ended before the September 11 attacks, which brought a “heightened awareness of . . . the possible scope of the deadly capabilities” of actors).

Numerous factors counsel in favor of such an approach in Mr. Ahsan’s case, which is on the far margins of “terrorism” prosecutions. It is entirely appropriate here for the Court to make a discretionary decision not to apply the terrorism enhancement of 12 levels. His conduct is about as far from the “heartland” of terrorism cases as one can find.

2. Increasing Mr. Ahsan's Criminal History Category From Category I to Category VI Grossly Overstates His Criminal History.

Mr. Ahsan has never before been arrested or involved in the criminal justice system, either here or in the United Kingdom. Placing him in Category VI misrepresents his criminal history and also misjudges entirely the likelihood that he will reoffend. The Court should correct the inequity created by § 3A1.4(b) with a substantial "horizontal" downward departure with respect to Mr. Ahsan's Criminal History Category, from VI to I. As the Guidelines instruct, the Court may depart downward if:

reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes[.]

U.S.S.G. § 4A1.3(b)(1).

In addition, the distortion created by § 3A1.4(b) also provides compelling justification for a non-Guidelines sentence, based on the factors set forth in 18 U.S.C. §3553(a). As one District Court has recognized, "[a]fter applying § 3A1.4, Defendant's criminal history is maximized at category VI. For an individual with no criminal record and no evidence of ever having committed an illegal act in his life outside of the conduct for which he is convicted, this clearly over-represents the seriousness of his criminal history." *United States v. Benkahla*, 501 F.Supp.2d 748, 759 (E.D.Va. 2007) (granting a departure pursuant to USSG § 4A1.3, and reducing the defendant's criminal history category from VI to I), *affirmed*, 530 F.3d 300 (4th Cir. 2008).

Encouraging flexibility in addressing the impact of § 3A1.4 on a defendant's criminal history, the Second Circuit has instructed that "[a] judge determining that §

3A1.4(b) over-represents ‘the seriousness of the defendant’s past criminal conduct or the likelihood that the defendant will commit other crimes’ always has the discretion under § 4A1.3 to depart downward in sentencing.” *United States v. Meskini*, 319 F. 3d 88, 92 (2d Cir. 2003). That power is even greater in the post-*Booker* world.

Moreover, as the Introductory Commentary to Chapter Four of the Sentencing Guidelines (entitled “Criminal History and Criminal Livelihood”) states:

The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. § 3553(a)(2).) A defendant’s record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment.

The imbalance created by artificially assigning Mr. Ahsan to Criminal History Category VI can be rectified only by a substantial “horizontal” downward departure. See, e.g., *Czernicki v. United States*, 270 F.Supp.2d 391, 393 (S.D.N.Y. 2003) (downward departure granted upon a finding that the Criminal History Category had overstated the defendant's criminal history).

In the alternative, the automatic placement of Mr. Ahsan in Category VI should be remedied by a non-Guidelines sentence that accounts for the other § 3553(a) factors that greatly outweigh the arbitrary application of the absolute and extreme horizontal Guidelines enhancement applied via § 3A1.4(b). See also, United States Sentencing Commission March 2006 Final Report on the Impact of *United States v. Booker* on Federal Sentencing, at 78 (excessive Criminal History Category constitutes one of the four most common reasons post-*Booker* for non-Guidelines sentences imposed below the calculated range). A departure or variance to Category I is entirely appropriate

here, given the limited role Mr. Ahsan played here, his entire history, and his crime-free life.

B. The Sentences Should be Run Concurrently.

Mr. Ahsan stands convicted of two counts of violating a single material support statute. The two counts differ only in the theory of liability – in the first, he **conspired** to provide material support, and in the second, he **abetted** the same provision of material support. Both counts cover the same time frame and the same actions, namely his assistance to the Azzam.com website, as described above. The first count carries a maximum sentence of five years; the second, ten.

The Sentencing Guidelines call for consecutive sentences on multiple counts where necessary to reach the Guideline range, but prohibit consecutive sentences in the context of convictions for an attempt and the completed act. See § 5G1.2(d). At the very least here, the Court has ample discretion to depart downward by sentencing concurrently rather than consecutively. Title 18 U.S.C. § 3584 provides:

Imposition of Concurrent or Consecutive Terms.--If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole object of the attempt.

(emphases added). Indeed, where the two offenses are conspiracy and aiding and abetting that same conspiracy, the policies underlying the prohibition on consecutive sentences for attempt and the completed act are at least as strong. Moreover, § 3584 further instructs courts to consider the factors set forth in § 3553(a). See 18 U.S.C. § 3584(a). Section 3553(a)'s "parsimony clause," in turn, makes clear that a court's duty

is to “impose a sentence sufficient, but not greater than necessary to comply with the specific purposes set forth” at 18 U.S.C. § 3553(a)(2).

It is indisputable that sentencing courts may choose to impose concurrent sentences by departing downward. *United States v. Rahman*, 189 F.3d 88, 156-57 (2d Cir. 1999) (“Just as there is discretion to depart upward to impose consecutive sentences where the guidelines call for concurrency, we believe there is discretion to depart downward to sentence concurrently where the guidelines call for consecutive sentencing”). Moreover, the authority to impose a non-guidelines sentence to achieve those goals is even broader. Given the nature of Mr. Ahsan’s conduct and the statutes involved, a concurrent sentence is appropriate.

Judge Robert Sweet’s recent sentencing opinion in a terrorism prosecution, *United States v. Nayyar*, 2013 U.S. Dist. LEXIS 79002 (S.D.N.Y. June 4, 2013), is instructive. Nayyar “agreed to provide Hizballah with guns, ammunition, vehicles, bulletproof vests and night vision goggles and did provide Hizballah with a handgun, ammunition and a pick-up truck, knowing that Hizballah has engaged in terrorist activity, in violation of 18 U.S.C. § 2339B.” *Id.* at *3 (S.D.N.Y. June 4, 2013). A federal jury convicted Nayyar of five counts, including two separate § 2339B counts, one for conspiracy and the other for the substantive offense. Judge Sweet ultimately imposed a 180 month sentence.

In doing so, Judge Sweet explicitly declined to impose consecutive terms of imprisonment in light of his sentencing discretion. He explained his reasoning as follows:

Where, as here, the counts to run consecutively describe essentially the same criminal conduct, a downward departure has been held to be appropriate. See *Rahman*, 189 F.3d at 157. As noted by the Second Circuit, “the prosecutor’s ability to lengthen sentences in these circumstances by simply adding essentially duplicative counts, each describing the same criminal conduct, is a circumstance that was not adequately considered by the Sentencing Commission when it devised the formula for consecutive sentencing under §5G1.2(d).” *Id.*

Judge Sweet’s analysis is consistent with the governing practice in material support cases. A review of material support cases since September 11, 2001, reveals that concurrent sentences are the rule rather than the exception in such cases. Sentencing courts have imposed concurrent sentences in the cases of 29 of 34 defendants (85%) who pled guilty to multiple counts or offenses.

C. Mr. Ahsan’s Minor Role in the Offense

Section 3B1.2 provides for varying levels of downward adjustments for a defendant’s role in the offense, where the defendant is a minimal or minor participant, and is less culpable than most other participants. *United States v. Carpenter*, 252 F.3d 230, 235 (2d Cir. 2001). A role adjustment is similarly grounds for a non-guidelines sentence in Mr. Ahsan’s case.

Mr. Ahsan’s role vis a vis the charged conspiracy in this case is minimal, or at the worst, minor. Of all those who assisted in participation in the website, he occupied the most marginal position – he was simply the mail man for a limited period of time. When compared with defendants in “material support” cases more generally, his support is minimal or minor.

There is a wide range of disparate activities, some more nefarious than others, that qualify as material support under the statute. Within this spectrum, which ranges from individuals who pledged allegiance to al-Qaeda, to those who were actively engaged in terrorist plots, and to those who provided arms and funds directly to organizations or individuals engaged in terrorist projects, Mr. Ahsan's own conduct is minimal or minor.

An evaluation of the applicable guidelines when the above factors are considered is instructive. For example, if the Court declined to apply the 12-level terrorism enhancement to Mr. Ahsan, treated him as the Category I offender he is, and reduced his guidelines for a minor role, the calculations would be as follows:

Base Offense Level =		28
Minor Role = -2	=	26
Acceptance = -3	=	23
Total Offense Level/CH I =	46-57 months	

Moreover, even if the Court did not depart and/or vary from the guidelines to the degree above, a "partial" departure/variance would lead to the following possible result:

BOL =		28
Terror Enhancement (+ 6) =	34	
Minor Role = -2 =		32
Acceptance = -3 =		29
TOL 29/CH III =	108-135 months	

Even under this second approach, Mr. Ahsan has already served more time than the bottom end of the range, once good time is calculated. In addition, this does not even consider all the other personal characteristics of Mr. Ahsan and other factors that support additional departures and/or variances from the guidelines.

CONCLUSION

It is time for Syed Talha Ahsan to be released from prison, and move forward with the journey that will be the rest of his life. The Court has a wealth of information about the overall nature of this case, Mr. Ahsan's role in it, and Mr. Ahsan's life and personal history. He has not only entered a plea and made numerous factual stipulations, but has volunteered additional information to the Court related to his own conduct. He has treated the Court, the Probation Office, and counsel with the utmost respect throughout this process. As noted at the start of this memorandum, he is a danger to no one. It is time for him to begin the next chapters of his life. Under all the circumstances, we respectfully urge the Court to impose a sentence of credit for time served.

Respectfully submitted,

THE DEFENDANT,
SYED TALHA AHSAN

June 16, 2014

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this MEMORANDUM IN AID OF SENTENCING was filed electronically and sent by first-class mail, postage prepaid, to anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system, or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system. A copy will also be sent by email to government counsel of record, and to counsel for Babar Ahmad.

/s/

Richard A. Reeve