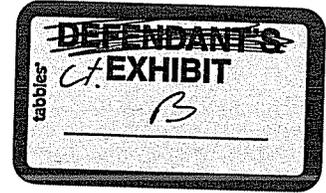




U.S. Department of Justice

United States Attorney  
Southern District of New York

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



September 18, 2014

Andrew G. Patel, Esq.  
Lauren Kessler, Esq.  
111 Broadway  
Suite 1305  
New York, NY 10006

Linda Moreno, Esq.  
P.O. Box 10985  
Tampa, FL 33679

Re: United States v. Adel Abdel Bary,  
S15 98 Cr. 1023 (LAK)

Dear Mr. Patel, Ms. Kessler, and Ms. Moreno:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Adel Abdel Bary, a/k/a "Adel Mohammed Abdul Almagid Abdel Bary," a/k/a "Abbas," a/k/a "Abu Dia" ("the defendant") to Counts One through Three of the above-referenced Superseding Information (the "Information"). Count One charges the defendant with conspiring, from at least in or about February 1998 up to and including at least in or about July 1999, to make a threat concerning an attempt to be made to kill, injure, and intimidate an individual and unlawfully to damage and destroy any building, vehicle and other real or personal property by means of an explosive through the use of the mail, telephone, telegraph, or other instrument of foreign commerce, in violation of Title 18, United States Code, Sections 844(n) & (e). Count One carries a maximum term of imprisonment of 10 years, a maximum term of supervised release of 3 years, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment. In addition to the foregoing, the Court must order restitution as specified below.

Count Two charges that the defendant, in August 1998, made a threat concerning an attempt to be made to kill, injure, and intimidate an individual and unlawfully to damage or destroy any building, vehicle and other real or personal property by means of an explosive through the use of the mail, telephone, telegraph, or other instrument of foreign commerce, in violation of Title 18, United States Code, Sections 844(e). Count Two carries a maximum term of imprisonment of 10 years, a maximum term of supervised release of 3 years, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment. In addition to the foregoing, the Court must order restitution as specified below.

Count Three charges the defendant with conspiring, from at least in or about 1996 up to and including at least in or about July 1999, to commit a crime against the United States, to wit, murdering nationals of the United States while such nationals were outside the United States, in violation of Title 18, United States Code, Sections 371 and 2332(a)(1).

The total maximum term of imprisonment on Counts One through Three is 25 years.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for: (i) conspiring in August 1998 to distribute the claims of responsibility for the bombing of the U.S. Embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, and further terrorist threats, as described in Count One of the Information; (ii) making telephone calls in August 1998 conveying the claims of responsibility for the bombings of the U.S. Embassies in Nairobi, Kenya, and in Dar es Salaam, Tanzania, and further terrorist threats, as described in Count Two of the Information; and/or (iii) conspiring, from at least in or about 1996 up to and including in or about July 1999, to murder nationals of the United States while such nationals were outside the United States, as described in Count Three of the Information. The defendant understands that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant further agrees to make restitution in an amount ordered by the Court in accordance 18 U.S.C. §§ 3663A and 3664, which shall be no less than \$33,816,561.75 and that the obligation to make such restitution shall be made a condition of probation, *see* 18 USC §3563(b)(2), or of supervised release, *see* 18 USC §3583(d), as the case may be.

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

#### **A. Offense Level**

1. The November 1, 1998 Guidelines manual, as amended, applies to the instant offenses.
2. Pursuant to U.S.S.G. § 3D1.2(b), Counts One through Three are grouped together because they involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan.

3. Pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the group is determined pursuant to U.S.S.G. § 2A1.1, which provides for a base offense level of 43.
4. Because the offenses involved the intentional selection of both victims and property based on national origin, a three-level increase is appropriate pursuant to U.S.S.G. § 3A1.1(a).
5. Because the offenses were felonies that involved and were intended to promote a federal crime of terrorism, a further 12-level increase is appropriate pursuant to U.S.S.G. § 3A1.4(a).
6. Because the victims of the conspiracies included Government officials and employees, and the offenses of conviction were motivated by this status, a further three-level increase is warranted pursuant to U.S.S.G. § 3A1.2(a).
7. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 58.

#### **B. Criminal History Category**

Pursuant to U.S.S.G. § 3A1.4(b), the defendant's Criminal History Category is VI.

#### **C. Sentencing Range**

Based upon the calculations set forth above, the defendant's Guidelines range is life imprisonment. Because the sentence imposed on the count carrying the highest statutory maximum (*i.e.*, ten years) is less than the total recommended punishment (*i.e.*, life imprisonment), the sentence imposed on each count is to run consecutively pursuant to U.S.S.G. § 5G1.2(d). Because the total statutory maximum on Counts One, Two, and Three is 25 years, which is less than the total punishment of life recommended, the stipulated Guidelines range is 25 years (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 58, the applicable fine range is \$25,000 to \$250,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree not to seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range, or suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range.

The defendant further agrees to waive any defense relating to the statute of limitations that might otherwise apply to Counts One, Two, and Three of the Information.

Except as provided in any written Proffer Agreements that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine), the defendant should be sentenced; (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

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

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence.

This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence at or below the Stipulated Guidelines Range of 25 years, and (ii) that the Government will not appeal any sentence at or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any restitution amount that is less than or equal to \$33,816,561.75, and the Government agrees not to appeal any restitution amount that is greater than or equal to \$33,816,561.75.

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

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

If the defendant is eligible and applies to transfer his sentence pursuant to the international prisoner transfer program, this Office agrees that it will take no position with respect to any such application. The defendant understands and acknowledges, however, that this Office may provide to any relevant agencies any and all information regarding the defendant, his conduct, and the offenses of conviction in connection with any such application. The defendant further understands that the transfer decision rests in the sole discretion of the Office of Enforcement Operations ("OEO") of the Criminal Division of the United States Department of Justice. The fact that this Office takes no position is neither binding on nor determinative of the position of any federal agency other than this Office, or on the final transfer decision of OEO. The defendant further understands that, in addition to OEO, federal law and the underlying transfer treaties require that the foreign government must also approve the transfer. The defendant agrees that he will not challenge his conviction or sentence, either on direct appeal or collateral challenge, if any such application is ultimately denied.

The parties understand this Agreement reflects the unique facts of this case and circumstances of this defendant, and is not intended as precedent for other cases.

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

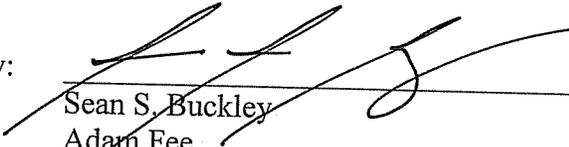
It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

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

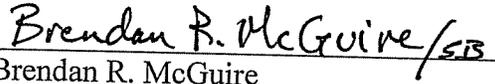
Very truly yours,

PREET BHARARA  
United States Attorney

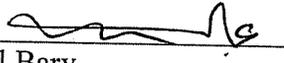
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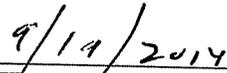
  
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Chief, Terrorism & International Narcotics

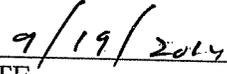
AGREED AND CONSENTED TO:

  
Adel Abdel Bary

  
DATE

APPROVED:

  
Andrew G. Patel, Esq.  
Attorney for Adel Abdel Bary

  
DATE