



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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April 22, 2025

By Email

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Federal Defenders of New York Inc.
52 Duane Street, 10th Floor
New York, NY 10007

Re: *United States v. Haji Najibullah, et al., S2 14 Cr. 401 (KPF)*

Dear Counsel:

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 Haji Najibullah, a/k/a “Najibullah Naim,” a/k/a “Abu Tayeb,” a/k/a “Atiqullah,” a/k/a “Nesar Ahmad Mohammad” (“the defendant”) to Counts Two and Eleven of the above-referenced Superseding Indictment (the “Superseding Indictment”).

Count Two charges the defendant with providing and attempting to provide material support and resources for acts of terrorism from in or about 2007, up to and including in or about 2009, knowing and intending that they were to be used in preparation for and in carrying out the following acts of terrorism: (i) destroying aircraft, in violation of Title 18, United States Code, Section 32(a); (ii) conspiring to destroy aircraft, in violation of Title 18, United States Code, Section 32(a); (iii) killing U.S. servicemembers, in violation of Title 18, United States Code, Section 1114; (iv) murder of nationals of the United States located outside the United States, in violation of Title 18, United States Code, Section 2332(a); (v) conspiring while outside the United States to murder nationals of the United States, in violation of Title 18, United States Code, Section 2332(b); (vi) conspiring to use weapons of mass destruction, in violation of Title 18, United States Code, Section 2332a; (vii) taking hostages, in violation of Title 18, United States Code, Section 1203(a); and (viii) conspiring to take hostages, in violation of Title 18, United States Code, Section 1203(a); resulting in the deaths of numerous people, including U.S. Army Sergeants First Class Matthew L. Hilton and Joseph A. McKay, and Sergeant Mark Palmateer, and their Afghan interpreter (“Afghan Victim-1”), in violation of Title 18, United States Code, Sections 2339A and 2. Count Two carries a maximum term of life imprisonment, a maximum term of supervised release of life, a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

Count Eleven charges the defendant with hostage taking, and aiding and abetting the same, from on or about November 10, 2008, up to and including in or about July 2009, in violation of Title 18, United States Code, Sections 1203(a) and 2. Count Two carries a maximum term of life imprisonment, a maximum term of supervised release of life, a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

In addition to the foregoing, the Court must order restitution as specified below.

The total maximum term of imprisonment on Counts Two and Eleven is life imprisonment.

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) his provision and attempted provision of material support and resources to acts of terrorism, from in or around 2007, up to and including in or around 2009, resulting in the deaths of U.S. servicemembers and Afghan Victim-1 in Afghanistan, as charged in Count Two of the Superseding Indictment and as further set forth in **Exhibit A** of this Agreement, which is incorporated by reference and expressly made part of this Agreement, and (ii) his participation, from on or about November 10, 2008, up to and including in or about July 2009, in the hostage taking of civilians, specifically, a United States national who was a journalist ("U.S. Hostage-1") and two Afghan citizens (together with U.S. Hostage-1, the "Hostages"), and aiding and abetting the same, as charged in Count Eleven of the Superseding Indictment and as further set forth in **Exhibit A** of this Agreement, it being understood 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 Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges the defendant 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 hereby admits the forfeiture allegations with respect to Counts Two and Eleven of the Superseding Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(G) and 2332b(g)(5), and Title 28, United States Code, Section 2461, any and all property used or intended to be used to facilitate the terrorism offenses described in Counts Two and Eleven of the Superseding Indictment. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant further agrees to make restitution in an amount ordered by the Court in accordance with 18 U.S.C. §§ 3663 and/or 3663A.

The defendant agrees that, for purposes of the sentencing, in addition to allocuting to the facts supporting the elements of the offenses in Count Two and Count Eleven of the Indictment,

the defendant admits that the factual statements appended as **Exhibit A** are accurate and agrees not to contest any of the factual statements set forth in **Exhibit A** in connection with sentencing.

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 Guidelines Manual in effect as of November 1, 2024 applies to the offense conduct.

Grouping Analysis

2. Pursuant to U.S.S.G. §§ 3D1.2(b), Counts Two and Eleven are grouped together into a single Group (the “Group”) because they involve the same victims and two or more acts connected by a common criminal objective or constitute part of a common scheme or plan. As a result, pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the Group is the offense level, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, for the most serious of the counts comprising the Group, *i.e.*, the highest offense level of the counts in the Group.

Determining the Offense Level for Each Count

3. Count Two of the Superseding Indictment charges the defendant with providing and attempting to provide material support for acts of terrorism resulting in death, in violation of 18 U.S.C. §§ 2339A and 2. The applicable Sentencing Guideline for Count Two is U.S.S.G. § 2X2.1, which provides that the offense level is the same as that for the underlying offenses of Count Two, *see* U.S.S.G. § 2X2.1 cmt. n. 1, which are set forth below.

a. **Destroying Aircraft.** The applicable Sentencing Guideline for the underlying offense of destroying aircraft, in violation of Title 18, United States Code, Section 32(a), is U.S.S.G. § 2K1.4. Pursuant to U.S.S.G. § 2K1.4(a)(1), because the underlying offense created a substantial risk of death or serious bodily injury and involved destruction and attempted destruction of an aircraft, the base offense level is 24. However, pursuant to U.S.S.G. § 2K1.4(c)(1), because this underlying offense was intended to cause death or serious bodily injury, and because the resulting offense level is higher than 24, as calculated below, the applicable Sentencing Guideline for this underlying offense is U.S.S.G. § 2A2.1. Pursuant to U.S.S.G. § 2A2.1(a)(1), because the object of the underlying offense would have constituted first degree murder, the base offense level is 33. Pursuant to U.S.S.G. § 3A1.2(b), because the intended victims were government officers or employees and the underlying offense was motivated by such status, and because the applicable Chapter Two Guideline is from Chapter Two, Part A, six levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 51.

b. **Conspiracy to Destroy Aircraft.** The applicable Sentencing Guideline for the underlying offense of conspiring to destroy aircraft, in violation of Title 18, United States Code,

Section 32(a), is U.S.S.G. §2X1.1, which provides that the base offense level is the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. As described above, the applicable Sentencing Guideline for the substantive offense of destroying aircraft is U.S.S.G. § 2K1.4. Pursuant to U.S.S.G. § 2K1.4(a)(1), because the underlying offense created a substantial risk of death or serious bodily injury and involved destruction and attempted destruction of an aircraft, the base offense level is 24. However, pursuant to U.S.S.G. § 2K1.4(c)(1), because this underlying offense was intended to cause death or serious bodily injury, and because the resulting offense level is higher than 24, as calculated below, the applicable Sentencing Guideline for this underlying offense is U.S.S.G. § 2A2.1. Pursuant to U.S.S.G. § 2A2.1(a)(1), because the object of the underlying offense would have constituted first degree murder, the base offense level is 33. Pursuant to U.S.S.G. § 3A1.2(b), because the intended victims were government officers or employees and the underlying offense was motivated by such status, and because the applicable Chapter Two Guideline is from Chapter Two, Part A, six levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 51.

c. Killing U.S. Servicemembers. The applicable Sentencing Guideline for the underlying offense of killing U.S. servicemembers, in violation of Title 18, United States Code, Section 1114, is U.S.S.G. § 2A1.1. Pursuant to U.S.S.G. § 2A1.1(a), the base offense level for this underlying offense is 43. Pursuant to U.S.S.G. § 3A1.2(b), because the victims were government officers or employees and the underlying offense was motivated by such status, and because the applicable Chapter Two Guideline is from Chapter Two, Part A, six levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 61.

d. Murdering U.S. Nationals. The applicable Sentencing Guideline for the underlying offense of murdering nationals of the United States located outside the United States, in violation of Title 18, United States Code, Section 2332(a), is U.S.S.G. § 2A1.1. Pursuant to U.S.S.G. § 2A1.1(a), the base offense level for this underlying offense is 43. Pursuant to U.S.S.G. § 3A1.2(b), because the victims were government officers or employees and the underlying offense was motivated by such status, and because the applicable Chapter Two Guideline is from Chapter Two, Part A, six levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 61.

e. Conspiring to Murder U.S. Nationals. The applicable Sentencing Guideline for the underlying offense of conspiring while outside the United States to murder nationals of the United States, in violation of Title 18, United States Code, Section 2332(b), is U.S.S.G. § 2A1.5. Pursuant to U.S.S.G. § 2A1.5(c)(1), because the offense resulted in the death of victims, the applicable Sentencing Guideline is U.S.S.G. § 2A1.1. Pursuant to U.S.S.G. § 2A1.1(a), the base offense level for this underlying offense is 43. Pursuant to U.S.S.G. § 3A1.2(b), because the victims were government officers or employees and the underlying offense was motivated by such status, and because the applicable Chapter Two Guideline is from Chapter Two, Part A, six levels

are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 61.

f. Conspiracy to Use Weapons of Mass Destruction. The applicable Sentencing Guideline for the underlying offense of conspiring to use weapons of mass destruction, in violation of Title 18, United States Code, Section 2332a, is U.S.S.G. § 2M6.1. Pursuant to U.S.S.G. § 2M6.1(a)(1), because the underlying offense was committed with intent to injure the United States, the base offense level is 42. However, pursuant to U.S.S.G. § 2M6.1(c)(1), because this underlying offense resulted in death that was caused intentionally and knowingly, and because the resulting offense level is higher than 42, as calculated below, the applicable Sentencing Guideline for this offense is U.S.S.G. § 2A1.1. Pursuant to U.S.S.G. § 2A1.1(a), the base offense level for this underlying offense is thus 43. Pursuant to U.S.S.G. § 3A1.2(b), because the victims were government officers or employees and the underlying offense was motivated by such status, and because the applicable Chapter Two Guideline is from Chapter Two, Part A, six levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 61.

g. Hostage Taking. The applicable Sentencing Guideline for the underlying offense of hostage taking, in violation of Title 18, United States Code, Section 1203(a), is U.S.S.G. § 2A4.1. Pursuant to U.S.S.G. § 2A4.1(a), the base offense level for this underlying offense is 32. Pursuant to U.S.S.G. § 2A4.1(b)(1), because a ransom demand or a demand upon government was made, six levels are added. Pursuant to U.S.S.G. § 2A4.1(b)(3), because a dangerous weapon was used, two levels are added. Pursuant to U.S.S.G. § 2A4.1(b)(4)(A), because the victims were not released before thirty days had elapsed, two levels are added. Pursuant to U.S.S.G. § 3A1.3, because the victims were physically restrained in the course of the offense, two levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 56.

h. Hostage Taking Conspiracy. The applicable Sentencing Guideline for the underlying offense of conspiracy to commit hostage taking, in violation of Title 18, United States Code, Section 1203(a), is U.S.S.G. § 2X1.1, which provides that the base offense level is the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. As described above, the applicable Sentencing Guideline for the substantive offense of hostage taking is U.S.S.G. § 2A4.1. Pursuant to U.S.S.G. § 2A4.1(a), the base offense level for this underlying offense is 32. Pursuant to U.S.S.G. § 2A4.1(b)(1), because a ransom demand or a demand upon government was made, six levels are added. Pursuant to U.S.S.G. § 2A4.1(b)(3), because a dangerous weapon was used, two levels are added. Pursuant to U.S.S.G. § 2A4.1(b)(4)(A), because the victims were not released before thirty days had elapsed, two levels are added. Pursuant to U.S.S.G. § 3A1.3, because the victims were physically restrained in the course of the offense, two levels are added. Pursuant to U.S.S.G. § 3A1.4(a), because this underlying offense was a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added. Accordingly, the offense level for this underlying offense is 56.

i. Pursuant to U.S.S.G. §§ 1B1.1 cmt. 5 and 1B1.5 cmt. 3, because the offense level for the most serious of the underlying offenses in Count Two described above is 61, the offense level applicable to Count Two is 61.

4. Count Eleven of the Superseding Indictment charges the defendant with hostage taking, in violation of Title 18, United States Code, Section 1203(a). The applicable Sentencing Guideline for Count Eleven is U.S.S.G. § 2A4.1.

a. Pursuant to U.S.S.G. § 2A4.1(a), the base offense level for Count Eleven is 32.

b. Pursuant to U.S.S.G. § 2A4.1(b)(1), because a ransom demand or a demand upon government was made, six levels are added.

c. Pursuant to U.S.S.G. § 2A4.1(b)(3), because a dangerous weapon was used, two levels are added.

d. Pursuant to U.S.S.G. § 2A4.1(b)(4)(A), because the victims were not released before thirty days had elapsed, two levels are added.

e. Pursuant to U.S.S.G. § 3A1.3, because the victims were physically restrained in the course of the offenses, two levels are added.

f. Pursuant to U.S.S.G. § 3A1.4(a), because Count Eleven is a felony that involved and was intended to promote a federal crime of terrorism, 12 levels are added.

g. Accordingly, the offense level applicable to Count Eleven is 56.

Determining the Combined Offense Level

5. Pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the Group is the offense level for the most serious of the counts in the Group, which is Count Two, with an offense level of 61.

6. Pursuant to U.S.S.G. § 3B1.1(a), because the defendant was an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive, to wit, the criminal activity charged in Counts Two and Eleven of the Superseding Indictment and set forth further in **Exhibit A**, four levels are added.

7. Pursuant to U.S.S.G. § 3C1.1, because the defendant willfully attempted to obstruct justice with respect to the prosecution of the instant offenses of conviction, to wit, by making false statements in his affidavit and providing false testimony in connection with a motion to suppress his post-arrest statements, *see* U.S.S.G. § 3C1.1, cmt. n. 4(B) and (F), two levels are added.

8. Pursuant to U.S.S.G. § 3E1.1, cmt. n.4, because the defendant engaged in conduct resulting in an enhancement under U.S.S.G. § 3C1.1, the defendant is not entitled to a decrease in his offense level for acceptance of responsibility under U.S.S.G. §§ 3E1.1(a) and (b).

9. Accordingly, the total offense level for the Group is 67. However, because the maximum offense level authorized by the Guidelines is 43, *see* U.S.S.G. § 5A cmt. n.2, the combined offense level for the Group is 43.

In accordance with the above, the applicable Guidelines offense level is 43.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history. Pursuant to U.S.S.G. § 3A1.4(b), however, because the offenses charged in Counts Two and Eleven involved or were intended to promote federal crimes of terrorism, the defendant's Criminal History Category is VI.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is life imprisonment (the "Stipulated Guidelines Sentence"). 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 43, the applicable fine range is \$50,000 to \$500,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Sentence 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 in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Sentence based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) 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 Sentence (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon information not contained in this Agreement 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 the defendant's 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 the defendant's 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 the defendant's plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed that the defendant will not file a direct appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, the defendant's conviction. In addition to any other claims the defendant might raise, the defendant waives the right to challenge the convictions based on (1) any non-jurisdictional defects in the proceedings before entry of this plea, (2) a claim that the statute(s) to which the defendant is pleading guilty is unconstitutional, (3) a claim that the admitted conduct does not fall within the scope of the statute, and (4) any claim that the defendant was a lawful enemy combatant and any argument or claim that in any way relies on a claim that the defendant was a lawful enemy combatant, including any claim that the defendant is immune from prosecution for the conduct underlying the defendant's conviction or that the district court lacks jurisdiction to determine the defendant's lawful enemy combatant status. It is further agreed that (i) the defendant will not file a direct appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, any sentence at or below the Stipulated Guidelines Sentence of life imprisonment, and (ii) that the Government will not appeal any sentence at or above the Stipulated Guidelines Sentence. 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 or bring a collateral challenge of any term of supervised release that is less than or equal to the statutory maximum or any condition of supervised release imposed by the Court for which he had notice, including from a recommendation by the Probation Office in the presentence investigation report, and an opportunity to object. The defendant also agrees not to appeal or bring a collateral challenge of any fine that is less than or equal to \$500,000, and the Government agrees not to appeal any fine that is greater than or equal to \$50,000. The defendant also agrees not to appeal or bring a collateral challenge to any special assessment that is less than or equal to \$200. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that the defendant has accepted this Agreement and decided to plead guilty because the defendant is in fact guilty.

By entering this plea of guilty, the defendant waives any and all right to withdraw the defendant's plea or to attack the defendant's conviction or sentence, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material (other than information establishing the factual innocence of the defendant), including *Jencks* Act material, material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), 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, if the defendant is not a citizen of the United States, the defendant's guilty plea and conviction make it very likely that the defendant's removal from the United States is presumptively mandatory and that, at a minimum, the defendant is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, the defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. Under federal law, an individual may be subject to denaturalization and removal if the defendant's naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that the defendant has discussed the possible immigration consequences (including removal or denaturalization) of the defendant's guilty plea and conviction with defense counsel. The defendant affirms that the defendant wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including the defendant's attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. It is agreed that the defendant will have no right to withdraw the defendant's guilty plea based on any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge the defendant's 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 removal or denaturalization) resulting from the defendant's guilty plea and conviction.

It is further agreed that should the convictions following the defendant's plea 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.

[REMAINDER INTENTIONALLY LEFT BLANK]

Apart from any written Proffer Agreement(s) 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,

JAY CLAYTON
United States Attorney

By:


Samuel Adelsberg
Jacob H. Gutwillig
David J. Robles
Assistant United States Attorneys
(212) 637-2494 / -2215 / -2550

APPROVED:


Jason A. Richman / Negar Tekeei
Co-Chiefs, National Security and
International Narcotics Unit

AGREED AND CONSENTED TO:


Haji Najibullah

4/23/25
DATE

APPROVED:


Andrew J. Natack, Esq.
Ariel C. Werner, Esq.
Mark Gombiner, Esq.
Samuel Jacobson, Esq.
Attorneys for Haji Najibullah

4/23/25
DATE

Interpreted by:



Exhibit A

In connection with his guilty plea to Counts Two and Eleven of the Superseding Indictment, defendant Haji Najibullah, a/k/a "Najibullah Naim," a/k/a "Abu Tayeb," a/k/a "Atiqullah," a/k/a "Nesar Ahmad Mohammad" (hereinafter, the "defendant"), admits the following facts:

1. With respect to Count Two of the Superseding Indictment, the defendant admits that, between in or around 2007 and 2009, he provided material support to acts of terrorism in Afghanistan and Pakistan by providing property, services, weapons, explosives, and/or personnel to Taliban members knowing and intending that they would be used in furtherance of (i) killing U.S. servicemembers, (ii) the use of explosives against U.S. nationals, (iii) destroying U.S. aircraft, and (iv) the hostage taking of a United States national who was a journalist ("U.S. Hostage-1") and two Afghan citizens (together with U.S. Hostage-1, the "Hostages"). The defendant further admits that U.S. servicemembers were killed as a result of the material support that he knowingly and intentionally provided.

2. With respect to Count Two of the Superseding Indictment, the defendant further admits that, between in or around 2007 and 2009, he served as a Taliban commander in Afghanistan's Wardak Province. During that period, Taliban fighters under the defendant's command were prepared to, and in some cases did, carry out attacks against U.S. servicemembers, NATO troops, and/or their Afghan allies using, among other things, (i) suicide bombers, (ii) automatic weapons, (iii) improvised explosive devices ("IEDs"), and (iv) rocket-propelled grenades ("RPGs") and other anti-tank weapons and explosives, including against U.S. military helicopters.

3. With respect to Count Eleven of the Superseding Indictment, the defendant admits that, from on or about November 10, 2008, up to and including in or about July 2009, he knowingly and intentionally seized and detained, and threatened to kill or injure, the Hostages in Afghanistan and Pakistan, in order to compel ransom payments and the release of Taliban prisoners by the United States Government. The defendant further admits that, during this period, he forced the Hostages to, among other things, convey the Taliban's demands in proof of life videos.

In addition, in connection with his guilty plea to Count Two of the Superseding Indictment, the defendant agrees not to contest the following facts at sentencing:

1. On or about June 26, 2008, as a result of the material support provided by the defendant, Taliban fighters under the defendant's command attacked a U.S. military convoy in the vicinity of Sayed Abad, Wardak Province, Afghanistan, with IEDs, RPGs, and automatic weapons, killing three U.S. servicemembers: Sergeants First Class Matthew L. Hilton and Joseph A. McKay, Sergeant Mark Palmateer, and their Afghan interpreter.

AGREED AND CONSENTED TO:


Haji Najibullah

4/23/25

DATE

Translated by:



4/23/25

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