



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

January 5, 2016

Bobbi C. Sternheim, Esq.
Law Offices of Bobbi C. Sternheim
33 West 19th Street - 4th Floor
New York, NY 10011

Re: *United States v. Minh Quang Pham,*
12 Cr. 423 (AJN)

Dear Ms. Sternheim:

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 Minh Quang Pham, a/k/a "Amin" ("the defendant"), to Counts Two, Three and Five of the above-referenced Indictment. Count Two charges the defendant with, from at least in or about December 2010 up to and including in or about December 2011, providing and attempting to provide material support and resources to al Qa'ida in the Arabian Peninsula ("AQAP"), which was designated by the United States Secretary of State as a foreign terrorist organization on January 19, 2010, and which remains so designated, in violation of Title 18, United States Code, Section 2339B. Count Two carries a maximum term of imprisonment of 15 years, a maximum term of supervised release of life, 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, from at least in or about December 2010 up to and including in or about July 2011, conspiring to receive military-type training from, and on behalf of, AQAP, a foreign terrorist organization, in violation of Title 18, United States Code Sections 371 and 2339D. Count Three carries a maximum term of imprisonment of 5 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 Five charges the defendant with, from at least in or about February 2011 up to and including in or about July 2011, knowingly carrying and using a Kalashnikov assault rifle that was capable of automatically firing more than one shot without reloading by a single function of the trigger, in furtherance of crimes of violence, specifically those crimes alleged in Counts One

through Four of the Indictment, in violation of Title 18, United States Code, Section 924(c). Count Five carries a maximum term of imprisonment of life, a mandatory minimum term of imprisonment of 30 years, a maximum term of supervised release of 5 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, the term of imprisonment imposed on Count Five must be imposed consecutively to any term of imprisonment imposed on Counts Two and Three. In addition to the foregoing, the Court must order restitution as specified below.

The total maximum term of imprisonment on Counts Two, Three, and Five is life, with a mandatory minimum term of 30 years.

In consideration of the defendant's pleas 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) providing and attempting to provide, from at least in or about December 2010 up to and including in or about December 2011, material support and resources to the foreign terrorist organization AQAP, as alleged in Count Two of the Indictment; (ii) conspiring, from at least in or about December 2010, up to and including in or about July 2011, to receive military-type training from and on behalf of AQAP, as alleged in Count Three of the Indictment; and (iii) knowingly carrying and using, from at least in or about February 2011 up to and including in or about July 2011, a Kalashnikov assault rifle that was capable of automatically firing more than one shot without reloading by a single function of the trigger, in furtherance of the crimes of violence alleged in Counts One through Four of the Indictment, as alleged in Count Five of the Indictment, 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 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 hereby admits the forfeiture allegations with respect to Counts Two and Three of the 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, (i) a sum of money equal to \$10,000 in United States currency, representing property used or intended to be used to facilitate the terrorism offenses described in Counts Two and Three of the Indictment; and (ii) any and all other property used or intended to be used to facilitate the terrorism offenses described in Counts Two and Three of the 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 him in addition to forfeiture. The defendant consents to the entry of the Consent Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court.

The defendant further agrees to make restitution in an amount ordered by the Court, 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

Counts Two and Three

1. The Guidelines manual, and all applicable amendments, effective November 1, 2015, is the appropriate Guidelines manual used to calculate the defendant’s recommended Guidelines sentencing range.
2. The Guideline applicable to Count Two is Section 2M5.3.
3. Pursuant to U.S.S.G. § 2M5.3(a), the base offense level for Count Two is 26.
4. Pursuant to U.S.S.G. § 3A1.4(a), because Count Two is a felony that involved a federal crime of terrorism, 12 levels are added.
5. Accordingly, the adjusted offense level (prior to acceptance of responsibility) for Count Two is 38.
6. The Guideline applicable to Count Three is Section 2X1.1.
7. Pursuant to U.S.S.G. § 2X5.1, because the object of Count Two (*i.e.*, 18 U.S.C. § 2339D) is an offense for which no guideline expressly has been promulgated, the most analogous offense guideline is applied here. The most analogous offense Guideline for Count Three is U.S.S.G. § 2M5.3. Accordingly, pursuant to U.S.S.G. § 2M5.3(a), the base offense level for Count Three is 26.
8. Pursuant to U.S.S.G. § 3A1.4(a), because Count Three is a felony that involved a federal crime of terrorism, 12 levels are added.
9. Accordingly, the adjusted offense level (prior to acceptance of responsibility) for Count Three is 38.
10. Pursuant to U.S.S.G. § 3D1.2(b), because Counts Two and Three 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, they are grouped together into a single Group.

11. Pursuant to U.S.S.G. § 3D1.3(a), the offense level for the Group is the highest offense level of the counts in the Group. Accordingly, the offense level for the Group is 38.
12. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocation 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 for Counts Two and Three is 35.

Count Five

13. Pursuant to U.S.S.G. § 2K2.4(b), the Guideline sentence for Count Five is 30 years, which is the minimum term of imprisonment required by Title 18, United States Code, Section 924(c)(1)(B)(ii).
14. Pursuant to U.S.S.G. § 5G1.2(a), the thirty-year term of imprisonment required for Count Five shall be imposed independently of, and consecutive to, the terms of imprisonment imposed on Counts Two and Three.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no prior criminal history. However, because Counts Two and Three are felonies that involved federal crimes of terrorism, 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 stipulated Guidelines range for Counts Two and Three is 292 to 365 months' imprisonment. With respect to Counts Two and Three only, and pursuant to U.S.S.G. § 5G1.2(d), because the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment prescribed by the Guidelines, the sentence imposed on Counts Two and Three shall run consecutively. Pursuant to U.S.S.G. § 5G1.1(a), because the statutorily authorized maximum sentence for Counts Two and Three is 240 months' imprisonment, which is less than the recommended Guidelines range, the statutorily authorized maximum sentence for Counts Two and Three is the applicable guideline

sentence. Accordingly, the recommended Guidelines sentence for Counts Two and Three is 240 months' imprisonment.

Pursuant to U.S.S.G. 5G1.2(a), the sentence for Count Five is to be imposed independently of, and consecutive to, the sentence imposed on Counts Two and Three. Accordingly, the stipulated Guidelines sentence for Counts Two, Three and Five is 50 years' (*i.e.*, 600 months) imprisonment, with a mandatory minimum term of 360 months' 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 35, the applicable fine range is \$40,000 to \$400,000.

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 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 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 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 Sentence, 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 within or below the Stipulated Guidelines Sentence of 50 years' (*i.e.*, 600 months) imprisonment, and (ii) that the Government will not appeal any sentence within 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 any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$400,000, and the Government agrees not to appeal any fine that is greater than or equal to \$40,000. 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 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 pleas and convictions make it very likely that his deportation, properly called removal, from the United States is presumptively mandatory and that, at a minimum, he is at risk of being removed or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including removal) of his guilty pleas and convictions with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty pleas and convictions, even if those consequences include removal from the United States. It is agreed that the defendant will have no right to withdraw his guilty pleas based on any actual or perceived adverse immigration consequences (including removal) resulting from the guilty pleas and convictions. It is further agreed that the defendant will not challenge his convictions 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) resulting from his guilty pleas and convictions.

Further, the defendant agrees to the entry of a stipulated judicial order of removal pursuant to Title 8, United States Code, Sections 1228(c)(5). Specifically, the defendant admits that he is a citizen of the United Kingdom and that he is removable from the United States pursuant to Title 8, United States Code, Sections 1182(a)(7)(A)(i)(I) (an immigrant who is not in possession of a valid visa or entry documents), 1182(a)(7)(B)(i)(II) (a nonimmigrant who is not in possession of a valid visa or entry documents), and 1182(a)(2)(A)(i)(I) (an alien who has been convicted of a crime involving moral turpitude (other than a purely political offense)). After consultation with counsel and understanding the legal consequences of doing so, the defendant knowingly and voluntarily waives the right to the notice and hearing provided for in Title 8, United States Code, Section 1228(c)(2) and further waives any and all rights to appeal, reopen, reconsider, or otherwise challenge this stipulated removal order. The defendant understands and knowingly waives his right to a hearing before an immigration judge or any other authority under the Immigration and Nationality Act ("INA"), on the question of the defendant's removability from the United States. The defendant further understands the rights the defendant would possess in a contested administrative proceeding and waives these rights, including the defendant's right to examine the evidence against him, to present evidence on his behalf, and to cross-examine the witnesses presented by the government.

The defendant agrees to waive his rights to any and all forms of relief or protection from removal, deportation, or exclusion under the INA, as amended, and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: asylum; withholding of removal under Title 8, United States Code, Section 1231(b)(3); any protection from removal pursuant to Article 3 of the United Nations Convention Against Torture, including withholding or deferral of removal under 8 C.F.R. § 208; cancellation of removal; adjustment of status; registry; de novo review of a denial or revocation of temporary protected status (current or future); waivers under Title 8, United States Code, Sections 1182(h) or 1182(i); visa petitions; consular processing; voluntary departure or any other possible relief or protection from removal available under the Constitution, laws or treaty obligations of the United States. As part of this agreement, the defendant specifically acknowledges and states that the defendant has not been persecuted in, and has no present fear of

persecution in the United Kingdom on account of his race, religion, nationality, membership in a particular social group, or political opinion. Similarly, the defendant further acknowledges and states that the defendant has not been tortured in, and has no present fear of torture in the United Kingdom.

The defendant hereby requests that an order be issued by this Court for his removal to the United Kingdom. The defendant agrees to accept a written order of removal as a final disposition of these proceedings and waives any and all rights to challenge any provision of this agreement in any United States or foreign court or tribunal.

The defendant hereby agrees to make the judicial order of removal a public document, waiving his privacy rights, including his privacy rights under 8 C.F.R. § 208.6. At the request of the U.S. Attorney's Office, U.S. Immigration and Customs Enforcement ("ICE") concurs with the government's request for a judicial order of removal. As a result of the above-referenced order, upon the completion of the defendant's criminal proceedings, including any sentence of incarceration, the defendant shall be removed to the United Kingdom.

The defendant agrees to assist ICE in the execution of his removal. Specifically, the defendant agrees to assist ICE in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of the country or countries to which the defendant's removal is directed; and, to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant further understands that his failure or refusal to assist ICE in the execution of his removal shall breach this plea agreement and may subject the defendant to criminal penalties under Title 8, United States Code, Section 1253.

The defendant concedes that the entry of this judicial order of removal renders him permanently inadmissible to the United States. He agrees that he will not enter, attempt to enter, or transit through the United States without first seeking and obtaining permission to do so from the Secretary of the Department of Homeland Security or other designated representative of the United States Government.

It is understood that the defendant will have no right to withdraw his plea of guilty should the Court fail, for any reason, to enter a judicial order of removal. Moreover, the Court's failure, for any reason, to enter a judicial order of removal shall only void the portion of this Agreement pertaining to the defendant's stipulation to a judicial order of removal, and shall have no impact on the remaining terms of this Agreement.

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

Bobbi C. Sternheim, Esq.
January 5, 2016
Page 9

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.

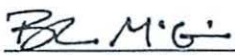
Very truly yours,

PREET BHARARA
United States Attorney

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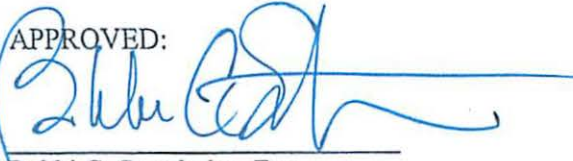
APPROVED:


Brendan R. McGuire
Chief, Terrorism and International Narcotics

AGREED AND CONSENTED TO:


Minh Quang Pham

1/6/16
DATE

APPROVED:

Bobbi C. Sternheim, Esq.
Attorney for Minh Quang Pham

1/6/16
DATE