

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA :
 :
 v. : Criminal No. 07-459-006 (RBK)
 :
 AGRON ABDULLAHU :
 _____ :

GOVERNMENT’S SENTENCING BRIEF

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I. PRELIMINARY STATEMENT

The Government respectfully submits this brief in anticipation of the sentencing hearing of defendant Agron Abdullahu. For the reasons set forth herein, the Government requests that the Court impose a two-level enhancement under U.S.S.G. § 3C1.1, because defendant Abdullahu threatened the Federal Bureau of Investigation (“FBI”) agents involved in this case, intending to obstruct the administration of justice. That would result in an offense level of 13 and a range of 12 to 18 months.¹

The Government also submits that an upward departure is warranted under U.S.S.G. § 5K2.14. Additionally, the Government submits that an upward departure is warranted under U.S.S.G. § 5K2.9.

Finally, the Government contends that after considering the factors under 18 U.S.C. § 3553(a), the Court should sentence defendant Abdullahu to a term of imprisonment that is substantially greater than the advisory Sentencing Guidelines calculation of 12 to 18 months. A substantially greater sentence is necessary under § 3553(a) to account for the aggravated nature of the offense, to promote just respect for the law, and to adequately deter similar criminal conduct in the future.

¹ Without the obstruction enhancement, and including a two-point reduction for acceptance of responsibility, defendant Abdullahu’s offense level would be 12, with a range of 10 to 16 months. Presentence Report ¶¶103-13. Although the obstruction enhancement under U.S.S.G. § 3C1.1 would add two points, it would increase defendant Abdullahu’s total offense level to 16, and thereby entitle him to a three-point reduction for acceptance of responsibility. *See* U.S.S.G. § 3E1.1(b). Therefore, the adjusted Guidelines level would be 13.

II. THE COURT SHOULD IMPOSE A TWO-POINT ENHANCEMENT FOR OBSTRUCTION OF JUSTICE PURSUANT TO U.S.S.G. § 3C1.1

A. Background

On or about May 25, 2007, while incarcerated at the Federal Detention Center in Philadelphia (the “FDC” or “FDC-Philadelphia”), defendant Agron Abdullahu carved a threatening message on the inside of the cell door. Specifically, defendant Abdullahu etched a depiction of a firearm firing bullets at the initials “FBI.” *See* Govt. Exh. A.

Abdullahu also etched the words “Rainca Kosova UCK” into the cell door. *See* Govt. Exh. B. “UCK” is an acronym for “Ushtria Çlirimtare E Kosevës.” PSR ¶99 n.12. In Albanian, it means the “Kosovo Liberation Army” (“KLA”). *Id.* The KLA was an ethnic Albanian paramilitary organization that fought for the independence of Kosovo from Serbia and Yugoslavia in the late 1990s. *See, e.g.,* Kosovo Liberation Army Group Profile, MIPT Terrorism Knowledge Base, at <http://www.tkb.org/Group.jsp?groupID=3517> (last visited March 19, 2008). Some prominent KLA associates have been charged with committing terrorism-related offenses. For example, David Hicks, who confessed in March 2007 to providing material support to terrorist organizations, including Al-Qaeda, trained with the KLA before joining Lashkar-e Tayyiba, which the Department of State has designated as a foreign terrorist organization. *See, e.g.,* Rory Callinan, *Aussie Taliban Goes Free*, TIME MAGAZINE (Dec. 29, 2007), at <http://205.188.238.109/time/world/article/0,8599,1698999,00.html>.

When Bureau of Prisons (“BOP”) officials further examined defendant Abdullahu’s cell, they discovered that the metal light switch plate was missing a screw, and that the plate was bent and partially detached from the wall. *See* Govt. Exhs. C-F. BOP officials found the missing screw on the top bunk of the cell. BOP officials also observed scrape marks on the floor and

noticed that the top right corner of the light switch cover had been filed down, and if removed from the wall, could be used as a weapon. *See* Govt. Exhs. D & E. There also were scrape marks on the floor of the cell that were consistent with the making of a weapon. *Id.* BOP officials promptly notified the FBI of the etchings.

When confronted with the graffiti, defendant Abdullahu admitted that he had done it. *See* Govt. Exh. D. When an investigating BOP officer asked defendant Abdullahu what the writing meant, defendant Abdullahu told him that it referred to Kosovo, where he was born. *See* Govt. Exh. E. Although that accounted for the reference to Rainca, *see* PSR ¶118, defendant Abdullahu did not explain that “UCK” was an Albanian reference to the KLA.

B. Legal Discussion

Section 3C1.1 provides as follows:

If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant’s offense of conviction and any relevant conduct; or (ii) a closely related offense, increase the offense level by 2 levels.

U.S.S.G. § 3C1.1. The Sentencing Guidelines instruct that “[o]bstructive conduct can vary widely in nature, degree of planning, and seriousness.” U.S.S.G. § 3C1.1, Applic. Note 3. Application Note 4(a) provides a non-exhaustive list of obstructive conduct covered by § 3C1.1, including “threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so.” U.S.S.G. § 3C1.1, Applic. Note 4(a).

Defendant Abdullahu’s depiction of a firearm shooting bullets at the FBI clearly is an attempt to obstruct or impede the investigation and prosecution of the instant offense by making a threat under U.S.S.G. § 3C1.1. At the time of the depiction on May 25, 2007, defendant

Abdullahu surely knew that the FBI was the investigating agency in this case. FBI agents and other law-enforcement officers operating under the direction of the FBI had conducted the investigation, arrested defendant Abdullahu, searched his house, and conducted a post-arrest interview of him. *See, e.g.*, PSR ¶¶94-95. Under the circumstances, it is hardly a stretch to infer from the depiction that defendant Abdullahu was expressing the desire to seek revenge against the FBI agents and officers who had imprisoned him in the first place.

The threat is particularly clear considering defendant Abdullahu's prior possession of, and familiarity with, firearms. At the time of his arrest on May 7, 2007, defendant Abdullahu had at his home the following weapons and ammunition:

- * a Beretta, Model 92FS, 9-millimeter pistol;
- * Yugoslavian Model SKS, 7.62x39-millimeter semi-automatic rifle;
- * a Mossberg Model 500, 12-gauge pump action shotgun;
- * a Beretta Model CX4 Storm, 9-millimeter rifle;
- * a 22-caliber pellet gun;
- * two boxes of Wolf ammunition;
- * a leather pouch with a speed strip and ten 7.62-millimeter rounds of ammunition; and
- * a bayonet.

Prior statements by defendant Abdullahu also bolster the interpretation of the graffiti as an attempt to obstruct justice by use of a threat. For example, defendant Abdullahu stated during the 2007 Poconos trip that he had learned how to make bombs

in case ever time comes, because in the time that we live at any moment somebody can turn against you, and if they turn against me, I wanna, I want to have a fighting chance. You don't have to have a fucking military to have bombs.

You can break into a fucking house and steal stuff and make a bomb. You can break into a gun store and steal stuff and make a fucking bomb. . . .

. . . .

Yeah, I can break into Home Depot and make a fucking biggest bomb, get all the pipe they use they have there make a fucking bomb.

Govt. Exh. J at 4:34 to 4:45 (transcript of February 6, 2007, recording).² Defendant Abdullahu's familiarity with firearms, as well as his professed knowledge of bomb-making, lend credibility to the message contained in his etching on the cell door. Under the circumstances, the depiction of the gun shooting bullets at the FBI, displayed so as to guarantee that BOP officers would notice it, clearly constitutes a threat under U.S.S.G. § 3C1.1.

The Third Circuit has held that analogous conduct warranted imposition of the two-point enhancement under U.S.S.G. § 3C1.1. In *United States v. Bush*, 94 Fed. Appx. 101, 2004 WL 817426 (3d Cir. April 14, 2004) (unpublished), the Third Circuit affirmed the district court's application of U.S.S.G. § 3C1.1 to a defendant who, in a letter to his wife, made threatening statements about the prosecutor and an FBI agent. In *Bush*, the defendant was incarcerated and awaiting sentencing. *Bush*, 2004 WL 817426, *1. In the letter to his wife, the defendant wrote: "I will get that prosecutor, Seth Weber, for doing this to me and Neeson [an FBI agent] for f***ing up our getaway trip for that weekend." *Id.* Bureau of Prisons personnel reviewed the letter, interpreted it as a threat, and notified the Assistant United States Attorney. *Id.* The Government then moved under U.S.S.G. § 3C1.1 for an obstruction enhancement, contending

² The Government has not filed as exhibits the recordings but certainly will provide them to the Court if the Court so desires. The Government produced the recordings to the defense on or around July 16, 2007, as part of its discovery production under Federal Rule of Criminal Procedure 16.

that the defendant intentionally had written the statement and that it was reasonably interpreted as a threat. *Id.*

At the sentencing hearing, the defendant testified that he did not mean the statement as a threat, but instead sought to reassure his wife that he would prevail on appeal.³ *Id.* The district court did not believe the defendant's explanation, and granted the Government's motion for a two-point enhancement. *Id.* The Third Circuit affirmed the enhancement, finding that the district court was not clearly erroneous when it discounted the defendant's explanation and instead construed the letter as a threat. *Id.* at *2.

The Government respectfully submits that the threat in this case is more flagrant than the threat communicated in *Bush*. In *Bush*, the method of communication—*i.e.*, a letter from the defendant to his wife—made discovery of the threat by BOP officials less likely than here. First, *Bush* did not address the threat directly to the Government, but included it in a letter to his wife. Second, although *Bush* had no expectation of privacy in such a letter, the volume of mail that FDC-Philadelphia must process on a daily basis, and the fact that *Bush* sandwiched the threat between reassurances that he would succeed on appeal, made discovery of the threat less likely.

³ In other parts of the letter, the defendant had sought to reassure his wife that he would prevail on appeal. *Bush* initially wrote:

I'm studying very hard on my case My issues are very, very strong and I will win the battle with the Court of Appeals. . . . The ballgame isn't over, my love

Brief of Appellee, United States of America, 2003 WL 24302860, at **17-18 (citing Supp. App. 1-2).

On the second page of the letter to his wife, *Bush* wrote the threatening statement discussed above. *Id.* Later in the letter, *Bush* returned to reassuring his wife that he would succeed on appeal. *Id.*

By contrast, defendant Abdullahu prominently engraved his threat on the cell door, and virtually guaranteed that BOP officials would discover it. *See* Govt. Exhs. A & D.

The Third Circuit's decisions in *Bush* and *United States v. Vanasse*, 48 Fed. Appx. 30, 2002 WL 31151325 (3d Cir. Sept. 27, 2002) (unpublished), *cert. denied*, 538 U.S. 915 (2003), also establish that threats made to government officials may qualify as obstructive conduct even if those officials are not witnesses. In *Vanasse*, the Third Circuit affirmed the imposition of a two-point enhancement under U.S.S.G. § 3C1.1 against a defendant who sent threatening letters to a prosecutor. For example, one of the letters stated in pertinent part:

I do not think you are a bitch and want your legs broken. I think . . . your kids' habit will pay you back better than broken legs. So stop lying and making things up. Remember, you make people swear to God to tell the truth when they are lying. May God have mercy on your kids.

Vanasse, 2002 WL 31151325, *4. The Third Circuit held that the district court was not clearly erroneous in construing this and other letters as threats against the prosecutor and her family, and warranted a two-level enhancement under U.S.S.G. § 3C1.1. *Id.*

Although the threat in *Vanasse* was made to a specific individual,⁴ *i.e.* the prosecutor, the threat made by defendant Abdullahu is more direct. The threat in *Vanasse* regarding the prosecutors' children, while reprehensible, did not contain any vow of future conduct by the defendant or another acting on the defendant's behalf. By contrast, the threat by defendant Abdullahu strongly suggests that someone, whether defendant Abdullahu himself or a

⁴ The Presentence Report contends that because Abdullahu's etching references the FBI rather than a specific individual, it is not a threat under U.S.S.G. § 3C1.1. PSR at page 50. However, given that defendant Abdullahu made the threat less than three weeks after his arrest in this case, he clearly was not speaking to or about the entire FBI. Rather, it is reasonable to conclude from the circumstances that defendant Abdullahu was speaking to and about the small number of agents who were responsible for the investigation and his incarceration.

sympathizer, would exact violent retribution by use of a firearm on the agents who conducted the investigation and arrest.

For those reasons, the Government respectfully submits that the Court should find that defendant Abdullahu attempted to obstruct justice, and impose a two-point enhancement under U.S.S.G. § 3C1.1. Therefore, the adjusted Guidelines offense level would be 13, with a sentence of 12 to 18 months.

III. AN UPWARD DEPARTURE IS WARRANTED UNDER U.S.S.G. § 5K2.14

This Court should grant an upward departure from the otherwise applicable Guideline range based on U.S.S.G. § 5K2.14, pertaining to crimes that endanger “national security, public health, and safety.”

Section 5K2.14 provides:

If national security, public health, or safety was significantly endangered, the court may depart upward to reflect the nature and circumstances of the offense.

U.S.S.G. § 5K2.14. Although use of the word “or” in § 5K.14 establishes that a departure may be warranted if either “national security,” “public health,” or “public safety” is “significantly endangered,” here, Abdullahu’s offense threatened both “national security” and “public safety.” In particular, Abdullahu’s crime of placing lethal weapons in the hands of self-proclaimed admirers of jihad “significantly endangered . . . national security,” because the Dukas spoke openly of attacking American soldiers fighting in Iraq and Afghanistan. *See, e.g., infra* pages 25-29 & Govt. Exh. I at 28:17 to 32:25, 33:40 to 35:15 (transcript of February 1, 2007, recording). Additionally, any armed attack on Americans, at home or abroad, would significantly endanger “public safety.”

This case presents more egregious circumstances than those which justified a § 5K2.14 upward departure in *United States v. Hertzog*, 186 Fed. Appx. 314, 2006 WL 2034457 (3d Cir. July 19, 2006) (not precedential). There, the defendant was convicted of illegal possession of firearms. The Court of Appeals affirmed an upward departure under, *inter alia*, § 5K2.14, based on the defendant’s possession of multiple machine guns and armor-piercing ammunition. In addition, the defendant created a “substantial risk to others [because he] permitted a five-year-old to be present while his parents fired a Sten gun” and also “possessed a loaded gun on his

person and another in his minivan, and maintained ten pounds of black powder in his trailer that could have been ignited by his frequent smoking.” The Court of Appeals held that the district properly considered those factors under § 5K2.14 and, and found the ensuing sentence “reasonable in light of the § 3553(a) factors.” *Id.* at *3-4.

Hertzog illustrates that a § 5K2.14 departure is warranted where the circumstances of a firearm possession offense increase the likelihood of harm to others beyond that risk of harm that always accrues when a firearm is unlawfully possessed. In *Hertzog*, an increased sentence was warranted based on the highly lethal nature of the firearms (machine guns and armor-piercing ammunition) and the manner in which the weapons were used (in close proximity to a child) or stored (black powder kept in a place where it could be negligently ignited).

Similarly here, defendant Abdullahu committed a firearms offense under circumstances creating a significant risk that the Dukas and Schnewer would use the “training” facilitated by Abdullahu to commit deadly assaults against others. Even if defendant Abdullahu did not intend to facilitate an assault, the fact that his conduct substantially increased the risk of harm to national security and public safety justifies the enhancement.

The fact that defendant Abdullahu personally provided firearms “training” to the Dukas, persons whom Abdullahu knew harbored extreme ill-will to Americans who were fighting against Muslims in the Middle East, was an additional aggravating circumstance which increased the risk of harm that might result from the offense. The Dukas’ and Shnewer’s antipathy towards American soldiers substantially increased the risk of harm to national security and public safety. *Cf. United States v. Brown*, 9 F.3d 907, 913 (11th Cir. 1993) (affirming § 5K2.14 enhancement because the defendant, who was convicted of unlawful possession of a firearm, had

an “extensive criminal history,” and the district court could “reasonably conclude that the illegal possession of a handgun by a career criminal such as Brown posed a threat to public safety substantially in excess of that ordinarily involved in the offense”), *cert. denied*, 531 U.S. 852 (1994); *accord United States v. Briggman*, 931 F.2d 705, 710 (11th Cir.) (affirming § 5K2.14 departure where the sentencing court concluded that the Guidelines range “failed to reflect the egregious nature of Briggman's criminal record,” including violent felonies), *cert. denied*, 502 U.S. 938 (1991).⁵

⁵ In *United States v. Uca*, 867 F.2d 783 (3d Cir. 1989), the Third Circuit reversed the application of an upward departure under § 5K2.14, based on the fact that the defendants had unlawfully purchased fifty-six firearms which they had intended to ship overseas. The Third Circuit held that, because firearms offenses always involve potential threats to public safety, a departure under § 5K2.14 is not available in a firearms case unless the offense increases the risk of harm “to a degree substantially in excess of that which ordinarily is involved in the offense of conviction.” *Id.* at 790. Here, Abdullahu’s training of the Dukas and Shnewer, potential jihadists, to use the firearms readily fulfills that requirement.

IV. AN UPWARD DEPARTURE IS WARRANTED UNDER U.S.S.G. § 5K2.9.

This Court should impose a sentence above the applicable Guideline range, in light of the factors set forth in 18 U.S.C. § 3553(a), discussed below, and the considerations identified in U.S.S.G. § 5K2.9. That provision states:

If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

U.S.S.G. § 5K2.9. The enhancement applies notwithstanding the fact that the "other offense" is uncharged. *United States v. Figaro*, 935 F.2d 4, 7 (1st Cir. 1991).

Regardless of whether the Court applies the obstruction enhancement for defendant Abdullahu's threat under U.S.S.G. § 3C1.1, the resultant Guidelines range will not take into account the fact that Abdullahu was providing firearms to persons who expressed their devotion to jihad. Defendant Abdullahu knew or should have known that the Dukas and Shnewer were using Abdullahu's firearms to prepare themselves to commit violent crimes against Americans or American interests. *See, e.g., infra* pages 19-20, 22-25; Govt. Exh. H at 14:40 to 16:21; Govt. Exh. I at 12:24 to 16:16. Unless this Court grants an upward variance, the sentence will fail to take into account that very aggravating aspect of Abdullahu's offense. Stated differently, this Court should impose a sentence that is significantly higher than a sentence that would apply to a person who supplied firearms to an illegal alien with the understanding or belief that the alien would use the firearms for nothing more nefarious than squirrel hunting or target practice. *See United States v. Lopez*, 875 F.2d 1124, 1127-28 (5th Cir. 1989) (remanding for resentencing where the district court departed upward because it "did not agree" with the Guideline range for possession of an unregistered firearm, but explaining that, on remand, the district court should

consider whether to grant an upward departure under § 5K2.9 due to the nature of the firearm, a machine gun, where the Guideline range did not take into account the kind of firearm and unlawful possession of an unregistered machine gun was a more serious crime than unlawful possession of a less lethal gun).

The case of *United States v. Sweeting*, 933 F.2d 962 (11th Cir. 1991), provides an instructive analogy. Sweeting was convicted of possession of a firearm by a previously convicted felon. His guideline range was ten to sixteen months, but the district court granted an upward departure under § 5K2.9, and imposed a sentence of four years. The departure was based on the court's finding that Sweeting was a member of a violent street gang responsible for "drive-by" shootings connected to their business of trafficking in illegal narcotics. The district court concluded that the departure was warranted because the defendant possessed the firearms to carry out the activities of his narcotics trafficking gang, and the firearms, including semi-automatic rifles, other rifles, pistols, and ammunition, were particularly dangerous. The Eleventh Circuit affirmed, finding the evidence sufficient to support the departure. *Id.* at 966.

In this case, the Government has not charged, and does not claim, that defendant Abdullahu was a member of the conspiracy to murder United States military personnel. Thus, the Government does not here argue that defendant Abdullahu made the firearms available to the Dukas and Shnewer with the intent to facilitate that conspiracy. For that reason, the United States does not here argue that it has satisfied all of the requirements for an upward departure under § 5K2.9. Nevertheless, defendant Abdullahu's recorded statements, his actions during the 2006 and 2007 Poconos trips, and his preparations for the 2007 Poconos trip, including the transportation of numerous firearms from New Jersey to Gouldsboro, Pennsylvania, readily

support the conclusion that Abdullahu provided the firearms to the Dukas and Shnewer with Abdullah's understanding they could very well be using those guns to train for lethal, jihadist-inspired assaults. One of the weapons provided by Abdullahu was a semi-automatic rifle; he also supplied another rifle, a shotgun and a semi-automatic pistol, and offered to buy a high-powered rifle scope suitable for "sniper" activity, *i.e.*, killing other persons at long range. For that reason, Abdullahu's conduct was sufficiently more heinous than the heartland of § 922(g)(5) cases. An upward departure is warranted.

V. UNDER 18 U.S.C. § 3553(a), THE COURT SHOULD SENTENCE DEFENDANT ABDULLAHU TO A TERM OF IMPRISONMENT SUBSTANTIALLY GREATER THAN THE SENTENCING GUIDELINES RANGE

A. Overview

The advisory Guidelines range for defendant Abdullahu is 10 to 16 months, PSR ¶¶103-13, not including the enhancement under U.S.S.G. § 3C1.1 that the Government seeks above, which would increase the level to 13 and the range to 12 to 18 months,⁶ or the applications under § 5K2.14 or § 5K2.9. As explained herein, the Government contends that application of the § 3553(a) factors to this case warrants a substantial upward variance from the current Guidelines range. As the only participant in the 2007 Poconos trip with a firearms license, defendant Abdullahu was singlehandedly responsible for putting firearms in the hands of men whom he knew to be extremely dangerous. Although the Government does not contend that defendant Abdullahu knew of the other defendants' plot to attack a military installation and murder United States military personnel, defendant Abdullahu was well aware that the other defendants were violent and harbored strong anti-American sentiments. Defendant Abdullahu knew the danger posed by his companions both from his experience during the 2006 Poconos trip, and from various statements by other defendants early into the 2007 Poconos trip, before they went to the shooting range on February 2nd, 3rd, and 5th. Indeed, several times during the 2007 Poconos trip, various defendants, including Dritan Duka and Eljvir Duka, made plain, in defendant Abdullahu's presence, their specific desire to target United States military personnel, and their view that their time at the shooting range was practice to become snipers. However, defendant

⁶ The Plea Agreement contained stipulations to certain facts but not to any Guidelines provisions.

Abdullahu did not leave or even protest. Instead, he continued to make the firearms available to the Dukas, as well as to Mohamad Shnewer. Therefore, only a sentence substantially greater than 12 to 18 months will adequately satisfy the 18 U.S.C. § 3553(a) factors.

B. Background

1. Defendant Abdullahu's Conduct in Supplying Firearms

Defendant Abdullahu made two trips to the Poconos with defendants Mohamad Shnewer, Dritan Duka, Eljvir Duka, Shain Duka, and others. On both trips, the participants went to a firing range in Gouldsboro, Pennsylvania, and shot weapons provided by defendant Abdullahu.

The first trip was in January 2006. PSR ¶¶17-18, 88-89. On that trip, defendant Abdullahu provided two weapons that he owned for the others, including the Dukas, to shoot. Specifically, defendant Abdullahu provided: (1) a Beretta, Model 92FS, 9-millimeter pistol (the "Beretta pistol"); and (2) a Yugoslavian Model SKS, 7.62x39-millimeter semi-automatic rifle (the "Yugoslavian Model SKS"). *Id.* ¶¶88-89. Defendant Tatar provided two weapons as well, specifically: (1) a Mossberg Model 500, 12-gauge pump-action shotgun (the "Mossberg shotgun"); and (2) a Beretta Model CX4 Storm, 9-millimeter rifle (the "Beretta rifle"). *Id.* ¶88. Defendants Abdullahu and Tatar also provided ammunition for the defendants to shoot on the January 2006 Poconos trip. *Id.* ¶¶88-89.

The second trip was from approximately February 1, 2007 to February 8, 2007.⁷ On that

⁷ Defendant Abdullahu had his own automobile on the 2007 trip, a green Jeep bearing New Jersey license plate number UME-46X, which he used to transport himself, his two brothers, and the firearms and ammunition, to the Poconos on February 1, 2007. PSR ¶60; Surveillance Log excerpt, Govt. Exh. G, at 8:21 a.m. At any time that defendant Abdullahu found the other defendants' conduct or statements objectionable, he could have collected his brothers and departed. However, defendant Abdullahu did not leave the Poconos until February
(continued...)

trip, defendant Abdullahu was singlehandedly responsible for putting all four of the above firearms into the hands of the other defendants who attended the 2007 Poconos training, including the Dukas and Mohamad Shnewer. Serdar Tatar did not attend the 2007 Poconos trip and, in any event, had transferred ownership of the Mossberg shotgun and Beretta rifle to a third party ("Individual No. 1"). *Id.* ¶90. Because defendant Abdullahu alone had a firearms license, defendant Shain Duka asked defendant Abdullahu to accompany him to retrieve the Mossberg shotgun and Beretta rifle from Individual No. 1. On January 31, 2007, defendant Abdullahu and Shain Duka retrieved the Mossberg shotgun and Beretta rifle from Individual No. 1, after defendant Abdullahu presented his firearms license to Individual No. 1, so Abdullahu, the Dukas, Shnewer, and others could use the guns on the 2007 Poconos trip. PSR ¶¶88, 90-92, 102.

The participants in the 2007 Poconos training trip used each of those firearms at the firing range. *Id.* ¶92. Those persons shot at the range on or about February 2, 2007, February 3, 2007, and February 5, 2007. They also used ammunition that defendant Abdullahu had procured, including 1000 rifle rounds, 1000 handgun rounds, and 500 shotgun shells, for which the other participants reimbursed defendant Abdullahu. *Id.* ¶¶92, 95. At the conclusion of the 2007 Poconos trip, defendant Abdullahu resumed possession of those firearms at his residence. *Id.* ¶93. As defendant Abdullahu later admitted, he possessed the firearms so that Dritan Duka, Eljvir Duka, and Shain Duka, whom defendant Abdullahu knew at the time to be illegal aliens

⁷(...continued)

6, 2007, with his youngest brother. Defendant Abdullahu allowed his other brother to remain in the Poconos and return on or around February 8, 2007, with the others. PSR ¶¶102, at page 33.

Defendant Mohamad Shnewer's trip to the Poconos in 2007 was shorter than most of the other participants. Defendant Shnewer arrived on or around February 4, 2007, and departed on or around February 5, 2007.

who could not possess firearms, would not get in trouble with law enforcement officials for possessing them. *Id.* ¶¶93, 95. Defendant Abdullahu was singlehandedly responsible for making these weapons available to the other participants on the 2007 Poconos trip, including defendants Mohamad Shnewer, Dritan Duka, Eljvir Duka, and Shain Duka, despite his knowledge that these individuals were violent and harbored strong anti-American feelings.

Even before the 2007 Poconos trip, defendant Abdullahu must have known that at least several participants glorified jihad and therefore should not be allowed to possess firearms. Defendant Abdullahu participated in the 2006 Poconos trip, along with defendants Mohamad Shnewer, Dritan Duka, Eljvir Duka, Shain Duka, Serdar Tatar, and others. *Id.* ¶¶17-18. During the 2006 Poconos trip, the group practiced shooting various firearms at the firing range. *Id.* As the group practiced, they made repeated references to “jihad” and yelled “Allah Akbar,” while one member also showed the others how to shoot “mujahideen style.” *Id.* Surely, this conduct must have given defendant Abdullahu at least some indication that certain of his companions viewed their time at the shooting range as not merely amusement, but training for a specific purpose. Indeed, the group’s conduct at the shooting range sufficiently alarmed a store clerk, who viewed a recording the group had made of their shooting while copying it to DVD, that he notified law-enforcement officials. *Id.* ¶17.

**2. Conversations Involving Defendant Abdullahu
During the 2007 Poconos Trip**

Whatever uncertainty that defendant Abdullahu harbored about the dangers posed by his companions after the 2006 Poconos trip, he must have realized during the 2007 Poconos trip that the Dukas and Shnewer were extremely dangerous. On February 1, 2007, defendant Abdullahu, his brothers, Dritan Duka, Elvir Duka, Shain Duka, Cooperating Witness No. 2 ("CW-2"), and others, traveled from New Jersey to the Poconos. *Id.* ¶60. Once in the Poconos, defendant Abdullahu, Eljvir Duka, Dritan Duka, Shain Duka, and CW-2 drove to a gun store to examine and possibly purchase other weapons and ammunition, when the following exchange ensued:

Abdullahu: Yo let's buy a high power rifle, with a fucking nice scope.

Eljvir Duka: I would like something like that.

Abdullahu: We will go half and half.

Eljvir Duka: I wanna train sniper.

Abdullahu: We'll go half and half for that.

Eljvir Duka: Yeah, I want to really train sniper mission, actually.

Abdullahu: It's gonna cost us like fourteen hundred [\$1400.00].

Eljvir Duka: Oh yeah?

CW-2: I'm not on it, I am not on it with you. I can walk from here to the house, man. [Laughing] Just pull over. Just pull over. Pullover I can walk from here to the house.

Eljvir Duka: Don't get scared, man. Aren't you from, aren't you from Albania or not?

CW-2: I can walk from here to the house.

Dritan Duka: Touch it. Are you getting scared? Do you think we are anything?

CW-2: Nothing why, I am joking with you...Do you think really... Did you ever kill somebody Dritan, fuck you then.

Abdullahu: How do you know, how do you know he killed nobody?

CW-2: Come on man, why I joking with you like this.

Eljvir Duka: We are brothers.

CW-2: Normal.

Eljvir Duka: She told me I was like, she's like True Value, I was like True Value hardware store? I was like "they have rifle"? She's like yeah.

Abdullahu: Yeah, but they probably would have nothing big.

Eljvir Duka: I was like, but then I asked if they have handguns too, she's like they probably do. Cause if they got hand guns [UI] Sport's Authority I mean, I mean Dick's in Jersey has rifles. If they got handguns then it might be...

Abdullahu: The fucking problem is I keep saying, is at you can't, you can't really hunt with high power rifle.

Eljvir Duka: So what. It's just for sniping

Abdullahu: That's why they won't have it.

Eljvir Duka: I really want to train with a rifle.

Dritan Duka: I want to train with a sniper rifle.

Abdullahu: I, I, I teach you brother.

Dritan Duka: That's good, do it, do it, must train. I know.

Abdullahu: It's easy.

CW-2: Dritan, come on man. You told me, You asked me if I am scared, man, I never thought you are going to ask me that though, okay brother, thank you man.

Dritan Duka: You think that we are terrorists?

Abdullahu: Maybe we are terrorists, you don't know.

Govt. Exh. H at 14:40 to 16:21 (transcript of February 1, 2007, recording). Later in that same conversation, as CW-2 tried to explain what he meant earlier when Dritan Duka asked if he was scared of Shnewer and the others, the following conversation ensued:

CW-2: Yeah man, now we are just talking man. I was a little bit you know, I was a little Dritan ask me for what Besnik you are scared, come on now why we joked around and all that stuff. If I was scared I would not hang out with you guys. We used to say in Albania, we use to say, "tell me who you stay with, I tell you who you are." Is that true or not?

Eljvir Duka: Yes it's true.

CW-2: Tell me whom you stay with, and I'll tell you who you are. If I had a problem, I wouldn't stay with you. If I was afraid with Muhamet and you, I would never meet you guys again, come on.

Abdullahu: Okay, so when you are ready to go to war.

CW-2: Oh brother.

Abdullahu: We got him in.

CW-2: Oh brother.

Abdullahu: Dritan he's in bro.

Eljvir Duka: Besnik!

Abdullahu: All we have to do is to train him now.

Id. at 17:27 to 18:7.

The group left one gun store to look for another. Defendant Abdullahu already having agreed to purchase a firearm with defendants Eljvir Duka and Dritan Duka, *supra* page 19 & Govt. Exh. H at 14:40 to 15:7, they talked about how Eljvir Duka and Dritan Duka would signal to defendant Abdullahu which firearm to purchase:

Eljvir Duka: Shqipe [Albanian] listen. If you go to a place, don't look at us too much, we are going to tell you yes or no in Albanian?

Abdullahu: Okay.

Eljvir Duka: Tell him I need to see it too and act like you are in control.

Abdullahu: Okay.

Dritan Duka: The first thing you should ask him I am from New Jersey. I am on vacation and I want to shoot something different, that's it, if they say no just walk away.

Abdullahu: Don't waste their time.

Dritan Duka: Don't waste their time.

Govt. Exh. I at 10:7 to 10:22 (transcript of February 1, 2007, recording). However, it appears that the second gun shop was closed by the time the group reached it. *Id.* at 10:43 to 11:3.

The group then discussed their practice at the shooting range the next day. The conversation took a chilling turn:

Dritan Duka: What's the range on this?

Eljvir Duka: Would you hit the American soldiers in Iraq

Dritan Duka: From a mile away.

Abdullahu: Not quite a mile, it shoots about three-quarters [3/4] of a mile.

Eljvir Duka: Do you think I can be like Chuba the sniper?

Dritan Duka: Do you think I can stand far enough from the White House?

Eljvir Duka: Do you think I can hit George Bush from [UI – car noise]

Dritan Duka: They will blow your fucking head away.

CW-2: Who said so? Ha.

CW-2: Who said so?

Eljvir Duka: No, no, if you ask him.

Eljvir Duka: Can you shoot an American soldier from a mile away and kill him?

CW-2: Uh huh.

Dritan Duka: That kind of bullets destroy you.

Dritan Duka: That's a one [1] shot kill, that's what they expect.

Dritan Duka: One [1] shot and the business is finished.

. . . .

Eljvir Duka: What happened to that commander? Right when he entered the kitchen of that building boom got shot..

Dritan Duka: Right in the head.

Abdullahu: Which commander?

Eljvir Duka: The American commander in Iraq.

Dritan Duka: That 10 hour battle in Haifa Street?

Abdullahu: Yeah.

Dritan Duka: This commander was raiding a building, an apartment building. He just went to the kitchen boom right in the head Sergeant the leader of the squad. He just went in, not even ten seconds he got fucked in the head. This guy just waited.

Eljvir Duka: It's dangerous you don't know where he's at.

Eljvir Duka: They just closed themselves in the room, in the apartment.

Dritan Duka: If he hits you and he leaves, that's it, he did his job. Got one, that's good enough.

Eljvir Duka: Play it safe, let me come to kill another day.

Dritan Duka: Fuck somebody up.

Dritan Duka: You don't want to lose your position, once they find your position.

Abdullahu: You don't want to see nobody's brain blow up.

Dritan Duka: You don't even give a shit. Too far away. You don't feel... [UI]

....

Eljvir Duka: If you had a good sniper, you'll hit somebody down at the yellow light down there, the yellow sign. Not the first one, the second one. See those three signs in a row.

CW-2: It can go more.

Dritan Duka: Oh easy.

CW-2: Easy that one.

Dritan Duka: Especially from this high range, the bullet going down.

Abdullahu: That's far

Eljvir Duka: That is far.

Dritan Duka: They hit it bro, they hit it.

Abdullahu: You need a nice scope.

Dritan Duka: Yeah, scope...

Eljvir Duka: I am saying look how far you can be.

Abdullahu: You need a nice scope.

Eljvir Duka: You need aim.

Abdullahu: Range. You got to be good. You got to know your range, your wind, your everything.

Eljvir Duka: That's why I want to learn nothing close most of the battles are beyond 200 meters.

Dritan Duka: Everything goes pretty much that range.

Eljvir Duka: Sure beyond 200 meters, you rarely are 50 meters.

Dritan Duka: That's why they shoot freaking automatics, wherever it goes dat dat dat [imitating automatic weapon].

Eljvir Duka: The most we practice on is the 100 meters, 200 meters rarely, and we don't hit it.

Dritan Duka: We go practice tomorrow.

Eljvir Duka: That's not practice.

Abdullahu: Tomorrow we can go to the mountain on the top and then just put some targets in the bottom.

Dritan Duka: Bottles, whatever. We have a lot of cans, as many as you want. 200 meters.

Eljvir Duka: Balloons

Abdullahu: I had them too.

Eljvir Duka: Buy nice size balloons, blow them up the size of the head, pop! The best.

Dritan Duka: Balloons are the best.

Id. at 12:24 to 16:16.

Following a discussion on the availability and pricing of such weapons as fully automatic AK-47 rifles, grenades, remote-control bombs, and rockets, and how the mujahideen in Afghanistan acquire them, *see, e.g., id.* at 25:3 to 27:9, the conversation turned to the United States military. During that portion of the conversation, defendants Dritan Duka and Eljvir Duka made crystal clear to defendant Abdullahu their violent anti-American feelings, and glorified violence by the Iraqi insurgents against United States military personnel:

Dritan Duka: If I wanted to be a cop I join the military and kill from inside.
[Laughs]

Eljvir Duka: Yeah, like the black guy.

Dritan Duka: Friendly fire.

Eljvir Duka: Like in the beginning of the war he threw a grenade.

Dritan Duka: Remember that, the first death of the U.S. soldiers, U.S. military, black guy he was Muslim, in American army.

CW-2: Ahah.

Dritan Duka: As soon as the war started in Iraq, he took out a hand grenade and he killed 80 Americans.

....

Eljvir Duka: The American general said it we are going to defeat them, even if Muhammad and the God of Muhammad is with them, we are still going to defeat them. You know what happened to that general?

Abdullahu: What happened?

Dritan Duka: He got killed.

Eljvir Duka: He took off on the helicopter and they shot it down, the mujahideen.

....

Eljvir Duka: Zarqawi [Abu Musab al-Zarqawi], this is when Zarqawi was alive he said, he couldn't take the fierce fire from the mujahideens on the grounds.⁸

Dritan Duka: In Fallujah America lost 6,000 people.

....

Eljvir Duka: So what happened, he said, when Zarqawi, he said, what happened he couldn't take the fierce fire from the mujahideens on the ground that military commander and, he said, he took a helicopter to break out, by grace of Allah, mujahideen brought that helicopter down

⁸ Abu Musab al-Zarqawi was a militant Islamist who organized and led al-Tawhid wal-Jihad, later known as Al-Qaeda in Iraq, until his death in June 2006 following targeted bombings by United States warplanes. See, e.g., Ellen Knickmeyer & Jonathan Finer, *Insurgent Leader Al-Zarqawi Killed in Iraq*, WASH. POST (June 8, 2006), at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/08/AR2006060800114.html>. Based in part on his own recordings, Zarqawi was believed to have been responsible for numerous suicide bombings and executions in Iraq. *Id.*

and he got destroyed. Allah recorded those words.

....

Eljvir Duka: When Zaraqawi was alive, he tallied, he tallied and gave estimated total....

Dritan Duka: 30,000

Eljvir Duka: 40,000.

Dritan Duka: Almost 40,000 he said.

Eljvir Duka: 40,000

Dritan Duka: We've killed.

Dritan Duka: American soldiers.

....

Dritan Duka: They [the mujahideen] record everything to get proof, look how many we are killing. I have seen 3,000 just killed by only big sniper.

Abdullahu: Yeah, right.

Dritan Duka: Forget how many killed by freakin road side bombs and suicide bombers.

Govt. Exh. I at 28:17 to 32:25 (transcript of February 1, 2007, recording).

The conversation then turned to the war in Iraq and Afghanistan, and the perception that the United States media was not truthful in reporting its casualties. With Dritan Duka partially reading from a document, the conversation continued:

Dritan Duka: What is the position of the Taliban and the Americans?

Eljvir Duka: What happened?

Dritan Duka: Alhamdulillah the Taliban are doing great and I give you glad tidings that we are winning the war. Most of the major areas are

controlled by us for example, Kos [Ph], Fatira [Ph], Punar [Ph] are in very good situation. The night is all controlled by Taliban. The local people help a lot, it is due to them that our position is so strong, in the day we retreat because we don't have endless ammunition. The Americans are so scared that they cry.

Eljvir Duka: Did you hear that? In the day time they retreat. They don't have endless ammunition. Because at night we are in control.

Dritan Duka: Look, one of my friends got caught and was in Bagram, but he got released Alhamdulillah. He asked the Americans during interrogation, you people are killed and are in such misery, don't you know you are losing. America shows videos that we will be welcomed with roses and the people love us, and they need us, but if we knew that this hell is waiting for us, we would never have arrived in the first place.

Eljvir Duka: They show them videos from here before they go there? That people love you that they are waiting for you with roses.

Abdullahu: Right.

Dritan Duka: The people have no aim in life to them everything in this life alone. They think that when this life is over nothing left and everything is put to end. The Americans are to begin are heavily armed from head to toe in kilograms, where mujahideen are light weight and have only a gun with them. The Americans can't even run the rockets will burn them. The mujahideen have so much spirit in them that Americans are scared even from their own planes, that they think that they're not their own. Allah has put a lot of terror in their hearts. There is not a single day when an American is not killed, not a single day.

CW-2: Hum.

Eljvir Duka: Read it good, read it good, because he says the Americans lie, we don't lie cause it's a sin.

Dritan Duka: The media are all a bunch of liars. Taliban never lies about their casualties because lying it's a sin.

Eljvir Duka: [Laughs]

Dritan Duka: Whenever anyone of us dies we say it so, the Americans are such

liars. Tari Isufi [PH] writes in papers about the truth regarding Taliban. Just now we used only four rockets and destroy a helicopter and 40 on the ground. The Americans are always hiding their casualties. Alhamdulillah. We give glad tidings to all that Allah give to mujahideen the victory is near.

Eljvir Duka: Did you hear that, the Americans always lie about that, but we don't lie Taliban say it's a sin, we don't lie because it is haram to lie he said.

Dritan Duka: Whom are you going to believe the true believer bro.

Eljvir Duka: He said, we just now, we just launch only 4 rockets now, we dropped a helicopter and killed 40 on the ground.

Dritan Duka: 40 Americans on the ground.

Govt. Exh. I at 33:40 to 35:15 (transcript of February 1, 2007, recording).

The foregoing conversations occurred on February 1, 2007. The group had not even been to the shooting range yet. Throughout these conversations, defendant Abdullahu heard the Dukas speak explicitly of their desire to train to become snipers and inflict casualties on United States soldiers, and to murder United States soldiers "from the inside." Indeed, defendant Abdullahu heard the Dritan Duka and Eljvir Duka refer to the following day's shooting as "practice" to be a sniper. Defendant Abdullahu also heard both Dritan Duka and Eljvir Duka speak with reverence about the Taliban, Iraqi insurgents, and al-Zarqawi. Defendant Abdullahu also heard the Dukas plainly identify themselves with the Iraqi insurgents and the Taliban (*e.g.*, "Almost 40,000 [Zarqawi] said . . . We've killed. American soldiers."). Yet defendant Abdullahu did not collect his brothers and the firearms and leave. He did not protest the others' motives for shooting at the range. Rather, the very next day—February 2, 2007—defendant Abdullahu allowed the Dukas to use the firearms to train at the shooting range.

Indeed, rather than protest the Dukas' views, or refuse to make the firearms available to

them, defendant Abdullahu tried to identify with the Dukas and Shnewer, and to impress them. On February 6, 2007, while still at the Poconos, defendants Dritan Duka, Eljvir Duka, and Abdullahu, along with CW-2, discussed bomb-making, during which defendant Abdullahu professed significant knowledge about the process. *See* Govt. Exh. J at 1:3 to 4:45 (transcript of February 6, 2007, recording). Defendant Abdullahu talked about creating nitroglycerin, which he described as “[t]he most explosive and the most unstable explosive in the world.” *Id.* at 1:38 to 2:12. Defendant Abdullahu also described his unsuccessful attempt to create a bomb by rendering nitroglycerin from fat. *Id.* at 2:22 to 2:40. He also told the others that one could make a bomb with ammonia. *Id.* at 2:44 to 3:34. Abdullahu’s statements prompted the following exchange:

CW-2: How the hell do you know this much, much for bombs, man?

Abdullahu: Because I, I, I love that shit. I, I look for it, I learn about it.

.....

Abdullahu: I like, I like to know everything in case ever time comes, because in the time we live at any moment somebody can turn against you, and if they turn against me, I wanna, I want to have a fighting chance. You don’t have to have a fucking military to have bombs. You can break into a fucking house and steal stuff and make a bomb. You can break into a gun store and steal stuff and make a fucking bomb. At least [UI].

Eljvir Duka: At those moments we’ll be going to Sh, Shepa will be our factory maker. Shepa just make them [UI]. [Laughs]

Abdullahu: Yeah, I can break into Home Depot and make a fucking biggest bomb, get all the pipe they use they have there make a fucking bomb.

Govt. Exh. J at 4:24 to 4:45 (transcript of February 6, 2007, recording).⁹

Defendant Abdullahu later stated several times during that conversation that he would not hurt anyone unless he had no choice, but that he viewed knowledge as power. In fact, when the discussion later turned to whether violence or killing would be justified under various hypothetical scenarios, defendant Abdullahu stated he would not hurt someone unless he had a good reason to do so. However, those with whom he most closely associated during the 2007 Poconos trip surely did not. As must have been clear to defendant Abdullahu early into the 2007 Poconos trip, if not before, the Dukas apparently were not practicing shooting merely for recreation or amusement, but for a far more nefarious purpose. Repeatedly during the 2007 Poconos trip, the Dukas expressed their disdain for United States military personnel, their wish to do violence against those personnel, and their view that their time at the shooting range was training. Defendant Abdullahu could have left at any time in his own automobile, and taken his brothers with him. However, he stayed until February 6, 2007. By that time, he had made the four firearms available to the Dukas and others on three occasions.

3. Defendant Abdullahu's Post-Arrest Statements

Defendant Abdullahu's own post-arrest statements make clear that he knew that at least several other participants in the 2007 Poconos trip, including defendants Dritan Duka and Mohamad Shnewer, were violent and harbored strong anti-American sentiments. Defendant Abdullahu recalled political discussions on that trip during which the Dukas spoke in radical

⁹ Defendant Abdullahu has since denied knowing how to make bombs. *See, e.g.*, PSR ¶95n. However, it remains that on several occasions during the 2007 Poconos trip, defendant Abdullahu boasted to the others, including defendants Dritan Duka, Eljvir Duka, and Mohamad Shnewer, that he knew how to make bombs.

terms. *Id.* ¶95g. Indeed, defendant Abdullahu recalled a discussion in which defendant Dritan Duka stated that “maybe you could attack a military base.” *Id.* When defendant Abdullahu told Dritan Duka to consider his family, Dritan Duka responded that “Allah would take care of them.” *Id.* Upon hearing those words, defendant Abdullahu did not collect his brothers and firearms and leave the Poconos. He did not refuse to make his firearms available to Dritan Duka or the others. To the contrary, he continued to allow defendants Dritan Duka, Eljvir Duka, and the others to use the firearms to practice shooting.

Similarly, defendant Abdullahu recalled that defendant Mohamad Shnewer brought to the Poconos a laptop computer to show a video of al-Qaeda soldiers killing United States soldiers in Iraq. PSR ¶95k. Indeed, on February 4, 2007, defendant Shnewer played a terrorist-training video from his laptop computer for the others. PSR ¶65. The video depicted an attack on United States military vehicles. *Id.* At one point, defendant Shain Duka observed that a United States Marine’s arm had been blown off, and the group erupted in laughter. *Id.* On other occasions, defendant Shnewer asked defendant Abdullahu: (1) to purchase a handgun for him; and (2) to build a bomb for him. PSR ¶95k. Although defendant Abdullahu refused Shnewer’s requests, those requests demonstrate that defendant Abdullahu was well aware that defendant Shnewer, as well as the Dukas, was dangerous and appeared to be determined to inflict harm on United States military personnel. Nevertheless, defendant Abdullahu continued to allow the others to use the firearms he provided to practice their shooting at the range.

C. Legal Discussion

Although the sentencing court must first correctly calculate and consider the applicable Sentencing Guidelines as its benchmark, “[t]he Guidelines are not the only consideration.” *Gall v. United States*, — U.S. —, 128 S. Ct. 586, 596 (2007). The sentencing court must also examine the factors under 18 U.S.C. § 3553(a) to determine whether they compel a greater or lesser sentence. *Id.* “[A] sentence will be upheld as reasonable if ‘the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a).’” *United States v. Schweitzer*, 454 F.3d 197, 204 (3d Cir.) (quoting *United States v. Grier*, 449 F.3d 558, 574 (3d Cir. 2006), *cert. denied*, 128 S. Ct. 106 (2007)), *cert. denied*, 127 S. Ct. 600 (2006).

In *Gall*, the Supreme Court instructed that the sentencing court, in considering the factors under § 3553(a), should not presume that a sentence within the Guidelines range is reasonable, just as the sentencing court should not presume that a sentence outside of the Guidelines range is unreasonable. *Gall*, 128 S. Ct. at 595, 596. Rather, the sentencing court should apply § 3553(a) to the specific facts of each case to make an “individualized assessment.” *Id.* at 597. *See also United States v. Charles*, 467 F.3d 828, 831 (3d Cir. 2006) (“the record must demonstrate that the District Court gave meaningful consideration to the ‘relevant [§ 3553(a)] factors.’” (emphasis and brackets in original) (quoting *United States v. Cooper*, 437 F.3d 324, 329 (3d Cir. 2006)), *cert. denied*, 127 S. Ct. 1505 (2007). The sentencing court also must allow the other party a fair opportunity to respond to the requested variance, give serious consideration to the extent of any variance, and articulate the basis for that variance. *Gall*, 128 S. Ct. at 594. *See also Charles*, 467 F.3d at 830-31 (articulating three-step process for calculating defendant’s sentence). If the sentencing court adheres to the foregoing process, appellate review will be

limited to determining whether the sentence reflects a rational application of those factors.

Cooper, 437 F.3d at 329.

Section 3553(a) provides in pertinent part as follows:

(a) Factors to be considered in imposing a sentence. – The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider–

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed–
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for–
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines–
. . . .
- (5) any pertinent policy statement . . . issued by the Sentencing Commission;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct

18 U.S.C. § 3553(a).

Defendant Abdullahu’s admissions and his recorded conversations with the Dukas make

clear that a sentence of 10 to 16 months, or 12 to 18 months if the § 3C1.1 enhancement is applied, is inadequate to address the severity of defendant Abdullahu's offense conduct.¹⁰ That Guideline range merely punishes the offense of allowing an illegal alien to possess a firearm. The violative factor is the illegal alien's immigration status. Although the Guidelines account for the number of firearms in § 2K2.1(b)(1), they do not address at all defendant Abdullahu's awareness that the illegal aliens who used the firearms—*i.e.*, the Dukas—viewed their use as training for a more nefarious purpose.

Defendant Abdullahu allowed defendants Dritan Duka and Eljvir Duka to possess and fire the weapons, and to use ammunition that defendant Abdullahu provided to them, one day after: (1) Eljvir Duka stated he wanted to be a sniper (to which Abdullahu himself responded, "I'll teach you brother"); (2) Dritan Duka made repeated references to killing United States soldiers, both as a sniper and "from inside," and made clear his view that their time on the shooting range the next day was practice; and (3) both Eljvir Duka and Dritan Duka glorified al-Zarqawi and other Iraqi insurgents for killing United States military personnel. A sentence within the Guidelines calculation also would not address defendant Abdullahu's offers, whether sincere or not, to show others, including CW-2 and another friend, how to make bombs. It also would not address the fact that Abdullahu had agreed, on February 1, 2007, to use his firearms license to purchase a high-powered rifle and scope that he would illegally share with the Dukas.

¹⁰ Under § 3553(a)(1), the Court also should consider the "history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). That would include the threat that defendant Abdullahu posted on the cell door at the FDC-Philadelphia on or around May 25, 2007, and which we describe in detail above. *See supra* pages 2-3. Although the Government is separately moving for a two-point enhancement under U.S.S.G. § 3C1.1, the message conveyed by defendant Abdullahu of a gun shooting bullets at the FBI is relevant as well to the § 3553(a) analysis.

In short, apart from the bare facts that the Dukas were illegal aliens and that four firearms were involved, a sentence within the Guidelines range resulting from a level 13 would account for none of the other offense characteristics described above. Accordingly, a sentence within that Guidelines range would neither adequately account for critical circumstances of the offense conduct, nor reflect the seriousness of the offense.

A substantially longer sentence also is required to afford adequate deterrence. Under § 3553(a)(2)(B), this factor includes deterring others from committing similar conduct. *United States v. Serafini*, 233 F.3d 758, 776 (3d Cir. 2000). The sentence should reflect that it is wholly unacceptable to put firearms in the hands of those who would use that experience to sharpen their skills to do harm to others, including the men and women of the United States military. Only a sentence substantially greater than the Guidelines range would provide adequate deterrence.

For those reasons, the Government respectfully submits that under § 3553(a), the Court should upwardly vary from the advisory Guidelines calculation.

VI. CONCLUSION

For the reasons set forth herein, the Government respectfully submits that the Court should impose a two-point enhancement under U.S.S.G. § 3C1.1, which would raise defendant Abdullahu's Guidelines offense level to 13, and his advisory Guidelines range to 12 to 18 months. The Government also submits that an upward departure is warranted under U.S.S.G. § 5K2.14. Additionally, the Government submits that an upward departure is warranted under U.S.S.G. § 5K2.9.

Finally, the Government contends that under 18 U.S.C. § 3553(a), the Court should sentence the defendant to a term of imprisonment that is substantially greater than the advisory Sentencing Guidelines calculation.

Respectfully submitted,

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