

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 08-20314

v.

HON. NANCY G. EDMUNDS

ISSAM HAMAMA,

Defendant.

\_\_\_\_\_ /

**DEFENSE SENTENCING MEMORANDUM**

Mr. Hamama, by and through undersigned counsel, submits the following sentencing memorandum setting forth an objection to the presentencing report and setting forth all the factors that the court should consider in determining what type and length of sentence is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. §3553(a).

**FACTUAL BACKGROUND**

Shortly after the United States invaded Iraq based on what later came to be recognized as faulty intelligence claiming the Iraqi government had Weapons of Mass Destruction, Mr. Hamama volunteered to work as a cultural advisor and translator with the Armed Forces of the United States.<sup>1</sup> Between 2003 and 2006 Mr. Hamama deployed three times with U.S. Army combat units and spent more than two years assisting the United States Army execute its mission in Iraq. He ultimately participated in hundreds of combat missions and undoubtedly had a large role in saving American Lives. Trial Transcript of CSM Ronald Coleman at 14; Letter from

---

<sup>1</sup> The reference to faulty intelligence is not intended to critique political decisions but to demonstrate how the same U.S. intelligence and law enforcement agencies that failed to accurately assess the WMD situation were confident in this case that Iraqi Intelligence documents contained information whose veracity should not be questioned.

LTC James Oliver; Letter from CPT Andrew Kimbrough. Trial Transcript of LTC James Olive at 38 (Unit's deployment was successful and rated a 9.5 on a scale of 10 because we brought everyone back and that's the ultimate success. LTC Oliver, CPT Kimbrough and CSM Coleman clearly credit Mr. Hamama with mission success and the saving of American lives. This accomplishment was no small feat during the intense combat period of 2004 through 2006, in Iraq. And despite attempts by prosecutors during cross examination to suggest that Mr. Hamama attempted to pass or remove classified information, the witnesses decisively responded that electronic counter intelligence assets integral to the units Mr. Hamama served with monitored cell phones and vetted all personnel with access to classified information. What was clear at the end of the testimony of LTC Oliver, LTC James Chapin, CSM Roland Coleman and the letters from these same witnesses as well as CPT Kimbrough is that while Mr. Hamama had ample opportunity to do harm to the United States, he served honorably, selflessly, with loyalty and dedication above and beyond the call of duty.

In 2006, while serving in Iraq with a U.S. Army unit, Mr. Hamama was informed by his unit that he needed to return to the United States. He was unnecessarily lied to and deceived by U.S. Government agents because, according to the FBI agent responsible for bringing him back, he believed him to be a flight risk; but the agent could offer no reasonable explanation as to why he came to that conclusion. Moreover, Mr. Hamama never gave anyone a reason to believe that he would flee and was cooperative and compliant.<sup>2</sup> This began a series of elaborate

---

<sup>2</sup> Mr. Hamama has never attempted to flee or avoid law enforcement. The falsehoods used by agents and the complex ruse employed to bring him back to the U.S. were a quixotic intelligence/counterintelligence undertaking that unnecessarily cast Mr. Hamama as a nefarious character making him appear criminally culpable and to prejudicing his case. Mr. Hamama has always cooperated and has never demonstrated the remotest flight risk. While the Government argues that he lied to the FBI, they fail to mention that he agreed to an interview every time he was asked for one, in spite of being represented by counsel.

Government actions that were undertaken under the mistaken belief that Mr. Hamama loyalty's lay with Saddam Hussein, that he would flee, and that he is disloyal to the United States. None of those beliefs are true or have any basis in fact. None of the agents bothered to question his commanders or his compatriots in the unit in which he served. No one asked if he could be trusted or if he were a flight risk. The easy assumption was that he is a flight risk.

Mr. Hamama is an Iraqi immigrant who fled Iraq in search of a better life. He came to the United States hoping to get away from the oppression experienced in Iraq, achieve some economic success, start a family, and secure his and his family's future. But like most immigrants, he continued to long for that which is familiar. He longed for home. He longed for his parents and siblings. He longed for friends and the comfortable familiarity of the place of his childhood. Upon arriving in the U.S. he and his wife, Amira, began to attend a local Chaldean church where they met other Iraqi immigrants like themselves. They slowly assimilated and became used to life in the United States.

After the 1990 Gulf war and the devastating sanctions on Iraq that eventually resulted in the death of more than 500,000 Iraqi children.<sup>3</sup> Mr. Hamama sought for a way to help out the people of his home country. He was then a radio and TV host. His job brought him into contact with the Iraqi community in the United States and some Iraqi diplomats, whom he befriended. Some, and perhaps all, of those diplomats turned out to be IIS agents who were in the U.S. specifically to take advantage of Iraqi immigrants' sentiments toward their fellow Iraqis in Iraq. Mr. Hamama was one of those people who IIS officials befriended and began to use, unbeknownst to him. It is that relationship that became the bases for the offenses charged in this

---

<sup>3</sup> [http://en.wikipedia.org/wiki/Iraq\\_sanctions#cite\\_note-unicef99-25](http://en.wikipedia.org/wiki/Iraq_sanctions#cite_note-unicef99-25) (as it appeared on May 17, 2011)

case. Mr. Hamama intended to assist people in need. His good intentions were manipulated by Iraqi officials who were in the U.S. legally and credentialed. He reached out to the Iraqi officials to seek their help in facilitating the delivery of medicines and toys donated by the Iraqi community in the United States and intended for Iraqi children and civilians. He did not know that these so called diplomats who carried diplomatic credentials granted by the United States Department of State are intelligence agents. Nor should he have suspected that they were. *See Al-Dani Trial Transcript (IIS and specifically Jaber Abd Hamza went to great lengths to protect their true identities and maintain their diplomatic cover).*

Following the 2003 invasion of Iraq, Mr. Hamama saw a perfect opportunity to help the Armed Forces of his adopted country in freeing the people of his home country, while also assisting the people of his beloved Iraq. He joined U.S. forces deploying to Iraq as a contract linguist and cultural expert. He discharged his duties in a manner above and beyond the call of duty, throughout his deployments, until he returned to the United States and was arrested by the FBI.

At the time he was removed from his military unit in Iraq and sent back to the United States, Mr. Hamama was a critical member of his unit and was frequently relied upon to assure mission success, enhance force protection and minimize risk to American personnel. Mr. Hamama's total dedication to the success of America's endeavor in Iraq betrays the Government's theory in this case. If Mr. Hamama were an agent of the Iraqi government, had divided loyalties or questionable patriotism, he would not have volunteered to work with U.S. military forces. And if he merely sought to earn a living by volunteering to serve, he would not

have discharged his duties with such enthusiasm, loyalty, vigor and unwavering dedication. *See* Oliver, Chapin, and Coleman Transcripts. *See also Exhibits 1-3, 8-14, 20 and 25.*

Objection to application of 18 U.S.C. §2332(d) to the base level offense

**I. WHETHER THE GOVERNMENT HAS MET ITS BURDEN UNDER *APPERENDI* TO PROVE FACTS ENTITLING IT TO THE APPLICATION OF ANOTHER GUIDELINE OFFENSE, SPECIFICALLY 18 U.S.C. §2332(d) FOR THE PURPOSE OF CALCULATING THE BASE OFFENSE LEVEL?**

a. The applicable offense guideline level is 6

Pursuant to §2B1.1. of the guidelines, the base offense level is 6. Because Mr. Hamama was convicted of offenses that are closely interrelated and essentially cover a repetitive course of conduct against the same victim –the United States- connected by a common theme, guideline §3D1.1.-§3D1.2(a)-(c), applies requiring that offenses be grouped together. When counts are grouped together, guideline §3D1.3(a) counsels that the offense level of the group is the offense level of the highest offense. The highest offense level of the three offenses of which Mr. Hamama was found guilty is **6**.

b. The facts underlying the guilty charges are ineligible for the application of any cross referenced offenses.

The cross reference is misapplied. In count five of the indictment, Mr. Hamama was specifically found not guilty of having any foreign property, business connections, or financial interests. *See Jury Verdict Form*. Accordingly, the application of the cross reference that he engaged in financial transactions contradicts the Jury finding Mr. Hamama not guilty. The jury

did find Mr. Hamama guilty of misrepresentation regarding receipt of a \$250 U.S. Postal Service money order and the value of a dinner from an Iraqi official assigned to Washington DC or New York posing as a diplomat. The jury made no finding regarding what the compensation was for; nor did the government present any competent evidence as to why Mr. Hamama received the money order, and certainly no evidence that it was for an unlawful purpose. The charge alleged that Mr. Hamama denied receiving compensation. There is no evidence indicating that the money order and dinner that Mr. Hamama received were for an improper purpose. The charge of false statement denying compensation requires no improper purpose for the compensation, but merely denial of its receipt. The people that the Government accuses Mr. Hamama of financially transacting with were in the U.S. legally. They transacted in all sorts of financial and business transactions during the many years they lived in the United States as diplomats. Based on the Government's reasoning, every person, business, government official and organization that engaged in any financial transaction with those same Iraqi officials violated 18 U.S.C. 2332(d).

An enhancement of the base level offense by 26 points based on a cross reference to 18 U.S.C. §2332(d) requires that the government submit the facts to a jury and prove the elements beyond a reasonable doubt. *United States v. Rebmann*, 226 F.3d 521, 524-525 (6th Cir. Tenn. 2000) (citing *Appendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2nd 435, 120 S. Ct. 2348, 2355 (2000)). In *Rebmann*, the Sixth Circuit concluded that a court must examine whether the sentencing factor in a case is a factual determination, and whether the determination increases the maximum penalty for the crime charged in the indictment. *Rebmann*, 226 F.3d 524-5. The issue addressed in *Rebmann* is whether death or injury resulting from a drug distribution charge could be considered for sentencing purposes without the Government first proving whether the

defendant intended to cause death or serious bodily harm. *Id.* at 525. The Sixth Circuit reversed the sentence and remanded for resentencing consistent with the offense the defendant pled to because the Government did not present evidence of the intent to kill or harm which would have to be proven beyond a reasonable doubt.

In this case Mr. Hamama was found guilty of 18 U.S.C. §1001. The jury made no factual findings with respect to the elements of 18 U.S.C. §2332(d). In fact, based on the jury's finding of not guilty as it relates to Charge 5 of the indictment, the jury specifically found that Mr. Hamama did not engage in financial transactions. Pursuant to the Due Process Clause of the Fifth Amendment and the notice and jury guarantees of the Sixth Amendment as well as the holding in *Apprendi, infra*, any fact (other than prior conviction) that increases the maximum punishment, must be charged in the indictment, submitted to a jury, and proven beyond a reasonable doubt. *Id.* The facts at issue here is whether Mr. Hamama knowingly engaged in financial transactions with a Government that has been listed as a state sponsor of terrorism. The jury made no findings as it relates to whether Mr. Hamama engaged in financial transactions. Simply receiving a money order and a meal does not create a financial transaction. The Government must prove beyond a reasonable doubt that at the time Mr. Hamama received the money order it was not for a legitimate purpose and that it is not prohibited by the statute. Only then would the Government be entitled to the application of the base offense level of 18 U.S.C. §2332(d) to Mr. Hamama's base offense level of 6. Without the Government proving those facts, before a jury, beyond a reasonable doubt, this court cannot consider those allegations for sentencing.

The maximum penalty for a conviction of 18 U.S.C. §1001 is five years confinement with a base offense level of 6. The enhancement sought by the Government raises the offense level to 26 and increases the sentence maximum to 78 months. Because the sought after enhancement increases the maximum sentence Mr. Hamama faces, the facts underlying the offense must be proven beyond a reasonable doubt. *Apprendi, supra*.

- c. Application of the cross reference is not mandatory and is unsupported by the facts of this case.

18 U.S.C. 2332(d) is misapplied. The facts alleged by the government to apply the cross reference guideline §2M5.1(a)(1) (Financial Transactions with countries supporting International Terrorism) fail to fit the definition of “financial transaction” under 18 U.S.C. 1956(c)(4). The term ‘financial transaction’ within 18 U.S.C. 2332(d) is defined under 18 U.S.C. 1956(c)(4). 18 U.S.C. 1956(c)(4) defines “financial transaction” as:

(A) A transaction which in any degree affects *interstate commerce or foreign commerce* (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments....

*Id.* (Emphasis added)

There has not been a scintilla of evidence that the money order received by Mr. Hamama was an interstate or foreign transaction, or that it affected interstate or foreign commerce in any way. Mr. Hamama received a U.S. Postal Service Money Order that he then deposited. There is no evidence that the transaction was a foreign or interstate transaction, nor any evidence that it affected interstate or foreign commerce. While there is an argument to be made that because the U.S. Postal Service engages in interstate commerce, purchase of the money order, therefore, had an effect on interstate commerce. Mr. Hamama did not purchase the money order. He simply



received the money order and deposited it.<sup>4</sup> Not unlike cash, a money order may be negotiated by depositing in a bank, a credit union, or by endorsement to a third party. The money held by the U.S. Postal Service awaiting to be transferred to Mr. Hamama is not FDIC insured.

Accordingly, no federal funds or bank funds implicating FDIC insured funds and hence interstate commerce were ever at stake. *See United States v. Peay*, 972 F.2d 71 (4<sup>th</sup> Cir. N.C. 1992).

Likewise for the meal that Mr. Hamama allegedly consumed in Northern Virginia, there is no evidence of any affect on interstate of foreign commerce.

- d. Even if the transactions fit within the definition of interstate commerce, they fail to satisfy the definition of “financial transaction” under 18 U.S.C.1956(c) as required by 18 U.S.C. 2332(d).

Seeking to apply 18 U.S.C. 2332(d) to the transactions in this case is a perverse abuse of the law. The two transactions at issue are the meal in Northern Virginia and a U.S. Postal Service Money Order for \$250. The dinner was with a person who carried legitimate diplomatic credentials issued by the U.S. government. There was no evidence presented that Mr. Hamama knew that the Iraqi officials were intelligence agents. Speculation, innuendo, and argument by the Government are insufficient to establish the scienter necessary to carry the burden that Mr. Hamama knew the Iraqi officials were IIS agents.<sup>5</sup> The jury concluded that he was not truthful with the FBI and on his SF-86. The logical conclusion that may be drawn from the Jury’s findings is that they did not believe that Mr. Hamama knowingly worked as a source but that in

---

<sup>4</sup> Mr. Hamama was found not guilty of the conspiracy charge. Accordingly, the actions of others cannot be attributed to him.

<sup>5</sup> While the charges do not require the Iraqi agents to be intelligence agents or that Mr. Hamama believe that they are intelligence agents, knowledge that a person is an intelligence agent rather than a diplomat may gave rise to an inference that the transaction is of a dubious nature.

2006 he knew or had reason to know that he had been an Iraqi government source and failed to disclose it.

In analyzing whether the cross reference should apply, the application notes to the Commentary of guideline §2M.5.1. are instructive. The application notes at paragraph 2, state “[i]n determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences.” See *U.S. v. Juan Savilla*, 2006 U.S. Dist., N.D. IL No. 04 CR 0171, Lexis 87252 (holding that while §2m5.1(a)(1) of the guideline is applicable because it was proven that the defendant circumvented export controls whose violation threatened the security of the United States, the actual machine exported was not proved to be a product that threatened controls relating to the proliferation of Nuclear, Biological, and Chemical weapons which entitled the defendant to a 14 point reduction.) (citing *United States v. McVee*, 131 F.3d 1, 14 (1<sup>st</sup> Cir. 1997).

By the Government’s own evidence Mr. Hamama received \$250 and a meal, not \$825 as alleged in the Government’s Objections Letter to the Probation Department. Gov. Ex. 1.44-1.47. No evidence was ever presented, however, as to what that money order was for. Mr. Hamama is entitled to the presumption that the \$250 was for a legitimate purpose while the Government may only argue it is for an illegitimate purpose if they present evidence of the fact and prove it beyond a reasonable doubt. *Apprendi*, 530 U.S. 490, (any fact (other than a prior conviction) that increases the defendant’s sentence above the otherwise applicable statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.) In its submission to the probation officer of its guideline calculation, the Government argues that Mr. Hamama is guilty of working

*Hamama Sentencing Memorandum*

as an unregistered foreign agent because the jury found that he made a false statement about receiving compensation from the Iraqi Government. But that is a disingenuous position. Mr. Hamama was specifically found NOT GUILTY of that charge. Moreover, and critically important, he was found not guilty of count five alleging foreign property, business connections or foreign interests. The logical explanation of the jury's findings is that they believed that Mr. Hamama did not tell the truth to the FBI about receiving \$250 but that it was not a business transaction. *See* Jury Verdict form Count Five. The Government's argument flips logic and the jury's finding on their head. It convolutes the jury's findings, conflates charges and fabricates facts that have no bases in evidence. The jury's findings are consistent with the testimony provided by the Government's own witness. Mr. Al-Dani testified that sources receive regular payments. Al-Dani Transcript Jan 7, 2011 pp. 69-70. There is no evidence whatsoever that Mr. Hamama received regular payments.<sup>6</sup> The Government's entire argument rests on a \$250 money order and a meal.

The Government's evidence included a credit card receipt of \$164.82 for a meal allegedly consumed by Mr. Hamama in Northern Virginia. The receipt is not signed by Mr. Hamama, nor is the credit card his. Even assuming that Mr. Hamama attended and consumed the meal, the benefit inuring to Mr. Hamama from that transaction is the value of half of the receipt, \$82.41. Gov Ex. 1.47-1.49. The Government's best evidence even if considered in the light most favorable to the Government indicates that Mr. Hamama<sup>7</sup>, at most, received a benefit valued at \$332.41. After years of investigating, combing through hundreds of pages of Mr. Hamama's

---

<sup>6</sup> In U.S. v. Shemami and U.S. v. Latchin as well as several other cases in other Districts there was ample evidence of regular payments to the defendants in stark contrast to the evidence in this case.

<sup>7</sup> This is not the standard by which the Government's evidence is considered but is used here for the sake of argument.

Bank records covering at least the last sixteen years, thousands of emails from two accounts spanning nearly two decades and millions of Iraqi Intelligence Service documents, the entirety of the Government's evidence as to any monetary transactions involving Mr. Hamama is a \$250.00 U.S. Postal Service Money Order and a dinner for at least two people in the amount of 164.82, paid for with the use of an American bank credit card, presumably lawfully obtained from a U.S. bank.

The use of a U.S. Postal Service Money Order and an American credit card beg the question, as to why the IIS would use a payment method that can so easily be traced if they are handling one of their alleged agents? Why not pay in cash? The Government's star witness and paid informant testified that IIS agents took extraordinary steps to ensure they are not discovered. They do not use telephones or emails to communicate IIS business to IIS headquarters but rely on couriers to move messages back and forth. *See Al-Dani Transcript Jan 7, 2011, 59-65.* Yet, the government now wants to peddle an argument that these same agents conducted their business by using credit cards and paying "informants" by using U.S. Postal Service money orders.

The jury findings clearly indicate that they believed Mr. Hamama was not involved in any prohibited transactions with the Iraqi Government and that the money he received was not for a nefarious purpose but for something legitimate and permissible. Had they believed that Mr. Hamama was a paid informant, they would have found him guilty of the conspiracy charge. They did not. He was found guilty of denying that he received compensation. They made no finding as to the propriety or impropriety of the transaction and no evidence was presented on the matter. By declining to find him guilty of acting as a foreign agent, that is to find that the money

was for certain compensation but not for work as an agent of the Government of Iraq nor to find that he was involved in any business or financial transactions, they implicitly decided that the transaction was for a proper and legitimate purpose.<sup>8</sup>

It must be kept in mind that the jury decided that Mr. Hamama did not tell the truth on an SF-86 or to the FBI. That finding could have easily led the jurors to decide that he was not truthful about being an agent of the IIS or that he was involved in business or financial transactions. Yet, they were unanimous in rejecting those charges. That is a powerful affirmation of Mr. Hamama's innocence on those charges, not merely lack of evidence as to guilt.

- e. The history of cases arising from the Government's discovery of IIS documents does not support the conclusion that Mr. Hamama engaged in any financial transactions.

The paltry sum of money of \$250 that the Government seeks to shoehorn the financial transaction with a country supporting international terrorism base offense level pales in comparison to other cases brought by the Government regarding IIS operations in the United States. In *U.S. v. William Shaoul Benjamin*, CR 06-221, regular payments to Mr. Benjamin totaled \$8500 and were not made using U.S. Postal Service Money Orders. In *U.S. v. Sami*

---

<sup>8</sup> The Government's position is difficult to reconcile. The Iraqi intelligence agents operated in the United States using legitimate diplomatic credentials. They rented places to live, paid their utilities, cable and telephone bills, engaged in various financial transactions such as purchasing groceries, food and drink at restaurants, and perhaps paid for household help or drivers. Based on the government's arguments regarding Mr. Hamama, everyone who ever received money from these Iraqis who lived in the United States with credentials issued by the U.S. Government, engaged in a financial transaction with a country that sponsors international terrorism. Even the most benign financial transaction between anyone and an Iraqi official operating under diplomatic cover in the United States becomes a nefarious act of engaging a country that sponsors international terrorism. By finding Mr. Hamama not guilty of being an agent, the jury decided that Mr. Hamama was an unwitting participant –not unlike the server at the Blue Parrot who received \$24 for serving a dinner to an alleged Iraqi IIS agent on July 30, 2000, or the owner of the Blue Parrot Grill who earned \$188.82; or the U.S. Postal Service that facilitated a transaction for a country that sponsors terrorism by receiving \$250 and issuing a money order to an unnamed agent of the IIS. But the jury also decided that Mr. Hamama should have disclosed that he received a money order and that he perhaps attended a dinner because he knew that the money order was from an Iraqi.

*Khoshaba Latchin*, 04 CR 661-1, the defendant was paid a total of between \$10,000 and \$15,000, which were made in smaller regular payments. Those payments corroborate the evidence elicited at this trial that IIS agents received regular payments. *See* Al-Dani Transcript, Jan 7, 2011, 69-70. In contrast to those two cases, Mr. Hamama's alleged payment stands as uniquely unfit to be included in the same category, as an example of a financial transaction. While the argument against characterizing the \$250 Money Order and meal as financial transactions with a country that sponsors terrorism certainly includes consideration of the small amount involved, the essence of the argument centers on the not guilty findings of the charges of working as a foreign agent and engaging in a financial or business transaction.<sup>9</sup> The other part of the argument draws a distinction between the evidence presented by the Government in other cases of this sort as compared with this one, the amounts involved, and the methods in which funds were transferred to the recipient. In both the *Benjamin* and *Latchin* cases the evidence indicated that the defendants received funds totaling thousands of dollars. All or some of the transactions took place overseas, presumably in cash payments, and certainly not in U.S. Postal Service Money Orders. Mr. Hamama, in contrast, is accused of receiving a meal and \$250. The meal was in the United States and paid for using a credit card issued by a U.S. Bank. The money order was issued by the U.S. Postal Service.

f. No other offense guideline applies to the false statements offenses by Mr. Hamama

The False statements Mr. Hamama was found guilty of are not covered by any other guideline. He made the statements to the FBI and on an SF-86 regarding matters that were

---

<sup>9</sup>Under 18 U.S.C. §1956, only a de minimis effect on interstate commerce is necessary. De minimis is not defined. The line of cases that embrace the de minimis effect from various circuits, all involve sums substantially higher than \$250.

several years old. Completion of the SF-86 is required for him to deploy with the U.S. military. He eventually deployed to Iraq in 2003 with the U.S. Army at a risk to his own life. While deployed in support of several Army units, he was exposed to hostile fires and was nearly injured or killed in an IED attack on his unit in January of 2006. His service has been recognized by many of the most senior Officers and Staff Non-Commissioned Officers of the units in which he served. He is credited by those people with assisting his military unit in accomplishing its mission and the saving of American lives. His untruthful statements on an SF-86 and later to the FBI resulted in harm to no one. On the contrary, his Army comrades credit him with success of their mission and the saving of American lives. *Coleman and Oliver Trial Transcripts; Oliver, Coleman, and Kimbrough letters to the court.*

**II. WHETHER MR. HAMAMA IS ENTITLED TO A SIGNIFICANT VARIANCE IN LIGHT OF THE SECTION 3553(a) FACTORS?**

a. Nature and circumstance of the offense.

Mr. Hamama was found guilty of making false statements. Mr. Hamama's false statements harmed no one and did not cause any harm to the United States. While the government successfully elicited testimony from some of its witnesses during trial indicating that if Mr. Hamama had disclosed contacts with Iraqi officials he may not have been granted a security clearance, the Government presented no evidence whatsoever that the granting of a clearance to Mr. Hamama resulted in any harm to the United States. On the contrary, the security clearance clearly resulted in a substantial benefit to the United States in that Mr. Hamama made an objectively measurable contribution to the success of the United States' mission in Iraq. Specifically, Mr. Hamama is credited by every witness who served with him

with contributing to the preservation of American lives. CSM Coleman and LTC Oliver specifically testified to that.

While his conduct in Iraq does not excuse the offense, justice and case law demand that the consequences of the offense be considered. Mr. Hamama told a false statement that led to his saving American lives and assisting the United States in accomplishing its military mission. His subsequent statements to investigators, likewise impacted no one. Agent Rankin testified as to the progress of the investigation and the information it had revealed at the time Mr. Hamama was questioned. Questions from investigators after Mr. Hamama's arrest resulted in Mr. Hamama being exposed to additional charges and in no way swayed the course of the investigation or obstructed the agents from their duties.

b. History and characteristics of Mr. Hamama.

Mr. Hamama is a 61 year old man. He has no criminal history or history of drug abuse or alcohol abuse. Mr. Hamama immigrated to the United States to flee religious persecution and to pursue the American dream. He has been employed continuously ever since he arrived in the United States except the period immediately after his arrest. His employment record demonstrates a dedication to doing quality work and taking pride in his job. Mr. Hamama is the sole provider to his family which includes his mother, wife and members of his extended family.

After his arrest in 2008, Mr. Hamama could have used his age and his circumstance to convince himself to sit at home and collect state aid. He did not. He labored to find a job. He currently works as a sales and delivery person, delivering prepared foods to various stores



in the San Diego area. His wages are meager and his work tiring yet he is committed to working and being self sufficient.

Mr. Hamama is responsible for his wife and mother. He also assumes responsibility for various other members of his family. He genuinely is a good man who desires nothing more than to be useful and helpful. Despite his paltry wages, he provides financial help for his family and anyone in need.

Mr. Hamama's selfless nature is evident in the letters and testimony from his friends, neighbors and those Soldiers, Sailors and Marines with whom he served in combat in Iraq. CSM Coleman testified about the dedication Mr. Hamama demonstrated and his commitment to mission success. LTC Oliver testified about the extent to which he relied on Mr. Hamama. LTC Oliver's letter to the court is a powerful commentary about the heroic and selfless nature of man waiting to be sentenced by this court. CPT Kimbrough likewise credited Mr. Hamama with mission success and a selfless nature. Mr. Hamama would assist even when he did not have to. His assistance was pivotal to successful mission completion. perhaps it goes without say; but it must be said nonetheless; mission success in combat means survival, while failure means someone does not come home alive. Mr. Hamama was a substantial part of the mission accomplishment and why this unit brought everyone home alive.

- c. The need of the sentence imposed to promote certain statutory objectives: (A) to reflect seriousness of the offense, promote respect for the law and provide for just punishment (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.

Since his arrest and indictment, Mr. Hamama has suffered substantial harm. Mr. Hamama lost his job and became bankrupt. His and his wife's family home is in foreclosure proceedings because he cannot earn enough to pay his mortgage and provide for his family. He suffers from mental anguish and stress that results in a lack of sleep and depression. *See* Report of Psychological Examination. Mr. Hamama's reputation has been damaged among his friends and neighbors. A sentence should be sufficient but be no greater than that necessary to meet the goals of sentencing. *United States v. Foreman*, 436 F.3d 638, 644 (6<sup>th</sup> Cir. 2006). The question for this court is what would be a sufficient sentence in this case to achieve the goals of sentencing? In light of Mr. Hamama's background, his employment history, his community ties, and his military service as well as the hardship that he and his family have suffered from the time of his arrest until now, a sentence of probation of 4 years is adequate. Mr. Hamama clearly poses no danger of recidivism. He understands the seriousness of these proceedings and the charges. He has suffered real prejudice in his daily life as a result of these charges. There is certainly no danger of him committing an offense again. Moreover, when viewed from the perspective of broader society, the personal turmoil and angst as a result of the process is certainly a great deterrence to a member of the public aware of all the facts and circumstances of this case.

When contemplating the deterrent effect of punishment, the benefit to the defendant resulting from the offense must be weighed against the harm of the punishment. In this case Mr. Hamama gained nothing. The sum of \$250 and a dinner can hardly justify the turmoil of the criminal justice process on a defendant such as Mr. Hamama. Accordingly, Probation is an adequate punishment that serves the ends of justice under these circumstances.

*Hamama Sentencing Memorandum*

Mr. Hamama poses no threat to the public nor is he in need of additional educational, vocational training or medical treatment. These factors do not apply and will not be analyzed.

**Proposed statement of reasons pursuant to 18 U.S.C. 3553(c) for sentence below the guideline range.**

After considering the 3553(a) factors this court finds that the seriousness of the offenses of which Mr. Hamama was found guilty is outweighed by substantial evidence mitigation Mr. Hamama's false statement on the SF-86 which is the gravamen of the of Charge II and III led to his assignment to several Army units in Iraq during the period of 2003 to 2006 while they were engaged in combat operations against a stubborn insurgency. The consequence of Mr. Hamama's offense led to his being able to provide honorable, loyal, selfless and courageous service that led to the success of the United States' combat mission in Iraq and the preservation of American lives. Although the guidelines counsel that consideration of military, civic, charitable or public service are not ordinarily relevant to imposing a sentence outside the guideline range, when there is a direct nexus between the offense and the conduct to be considered for sentencing, the otherwise irrelevant conduct becomes relevant and its consideration consistent with §3553(a)(1). Moreover, when the military service or other good works of the defendant may be classified as exceptional, a downward departure is permitted. *Koon v. United States*, 518 U.S. 81, 95-96 (1996). In any case, post *Booker*, the guidelines are advisory. And a non-guideline sentence is not presumptively unreasonable. *United States v. Foreman*, 436 F.3d 638, 644 (6<sup>th</sup> Cir. 2006). In departing from the guideline range this court relies on the following factual findings:

1. Mr. Hamama's offenses have no victim. To the extent that United States is a victim of the false statement, Mr. Hamama, mitigated his offense by undertaking a job that contributed to the success of the United States' mission in Iraq during a two year period and likely saved American lives.
2. This is Mr. Hamama's first offense.
3. Mr. Hamama has complied with all conditions placed upon him during his pretrial release.
4. Mr. Hamama has no history whatsoever of any drug or substance abuse
5. Mr. Hamama has substantial family and community ties as evidenced by the numerous letters this court has received
6. Mr. Hamama is the provider for a number of his family members including his wife and his elderly mother. A period of incarceration will result in substantial prejudice to his family. The court will not engage in speculation but it is reasonable to conclude that the American tax payers would be better served having Mr. Hamama provide for his own family rather than the State.
7. Because Mr. Hamama has no criminal history, and in light of his age, his history of full employment, and a demonstration of a sense of responsibility, there is no danger of recidivism.
8. The criminal justice process and arrest have taken a substantial emotional, financial and personal toll on Mr. Hamama and his wife. According to the Psychological Report Mr. Hamama has experienced depression, a lack of sleep and other emotional ailments as a result of the charges he faced. Mr. Hamama declared bankruptcy and is

in danger of losing the family home. Mr. Hamama's reputation in the community has also suffered. These facts along with those already mentioned in number 7 above, act as a deterrent to further criminal conduct by Mr. Hamama. This court is also convinced that in balancing the gain (none) inuring to Mr. Hamama from the offense committed compared with the prejudice he suffered, which is substantial, Mr. Hamama's case serves to act as a deterrence to the greater society.

### **Conclusion**

For the forgoing reasons, Mr. Hamama, respectfully submits that a sentence of three years probation is sufficient, but not greater than necessary to comply with the statutory directives set forth in 18 U.S.C. 3553(a)

Respectfully submitted,

/S/ Haytham Faraj  
Haytham Faraj (P72581)  
Attorney for Defendant  
22167 Morley Ave,  
Dearborn, MI 48124  
(760)521-7934  
Haytham@puckettfaraj.com

**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2011, I electronically filed the foregoing paper with the Clerk of Court using the ECF system which will send notification of such filing to the following: Mr. Michael Martin, Assistant U.S. Attorney at [michael.c.martin@usdoj.gov](mailto:michael.c.martin@usdoj.gov) and Ms. Cathleen Corken, Assistant U.S. Attorney, at [cathleen.Corken@usdoj.gov](mailto:cathleen.Corken@usdoj.gov).

/S/ Haytham Faraj  
Haytham Faraj (P72581)  
Attorney for Defendant  
22167 Morley Ave.  
Dearborn, MI 48124  
(760)521-7934  
[Haytham@puckettfaraj.com](mailto:Haytham@puckettfaraj.com)