



U.S. Department of Justice

United States Attorney
Southern District of New York

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April 28, 2016

BY ECF AND MAIL

The Honorable Vincent Briccetti
United States District Judge
Southern District of New York
300 Quarropas St.
White Plains, New York 10601

Re: United States v. Hamid Reza Hashemi, 12 Cr. 804 (VB)

Dear Judge Briccetti:

The Government writes to oppose defendant Hamid Reza Hashemi's April 1, 2016 request for early termination of supervised release (the "Early Termination Request"). The Early Termination Request is principally premised on Hashemi's desire to return home to Iran. Because the defendant has not satisfied the requirements of 18 U.S.C. § 3583(e)(1), which requires the completion of one year of supervised release before the term may be modified, and for the other reasons stated below, the Government opposes the defendant's request.¹

Background

As the Court knows, in July 2013, the defendant pled guilty to an Indictment charging him with violating IEEPA by causing carbon fiber to be exported to Iran without the appropriate license and attempting to procure a carbon fiber winding machine from the United States. The defendant pled guilty to his role in a scheme to illegally export high-grade carbon fiber without a license, which was transhipped through Europe, and into Iran, as well as his attempt to procure a winding machine from the United States.² In November 2013, the defendant was sentenced to 46 months' imprisonment, to be followed by one year of supervised release.

¹ Hashemi is currently being supervised out of the Northern District of Ohio. I have spoken with his probation officer there, and that probation officer opposes early termination of supervised release in this case primarily because Hashemi has, as described below, been on supervised release only since early April—that is, for less than one month. The Ohio probation officer does not oppose, however, allowing Hashemi to travel back to Iran, so long as Hashemi remains on supervised release so that he is under supervision should he return to the U.S. The investigating case agent in this case from the Federal Bureau of Investigation joins in the Government's opposition to the Early Termination Request.

² Carbon fiber is a product that consists of thin fibers made of carbon atoms. Carbon fiber has a wide variety of industrial uses. For example, it can be used in aerospace engineering and it can

On November 16, 2015 the defendant was released to the Bureau of Prison's Home Confinement Prerelease Program. Between November 16, 2015 and April 1, 2016—which is when his term of supervised release began—Hashemi was under conditions of home confinement in Ohio. The defendant filed the Early Termination Request on April 1, 2016—the very day he began his term of supervised release. He has therefore served less than one month of his term of supervised release and still has over 11 months remaining. According to the Probation Department, the defendant has not violated the conditions of his supervised release during the three weeks he has been under their supervision.

Discussion

I. The Defendant is Not Eligible for Modification of Supervised Release

A district court may modify a term of supervised release if, *after the expiration of at least one year* of supervision, “it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.” 18 U.S.C. § 3583(e)(1). Early termination of supervised release is reserved for “new or unforeseen circumstances,” and, “[o]ccasionally, changed circumstances” such as “exceptionally good behavior by the defendant” that “will render a previously imposed term or condition of release either too harsh or inappropriately tailored to serve the general punishment goals of section 3553(a).” United States v. Lussier, 104 F.3d 32, 36 (2d Cir. 1997). The determination to terminate a term of supervised release is within the Court’s discretion. Id.

Here, because the defendant has served less than one month of his one-year term of supervised release, he is ineligible for modification of the terms of his supervised release pursuant to the terms of 18 U.S.C. § 3583(e)(1). Moreover, even if he were temporally eligible, there are no “changed circumstances” that render this defendant’s term of supervised release “too harsh or inappropriately tailored” to the goals of 18 U.S.C. § 3553(a). Lussier, 104 F.3d at 36. While the Government acknowledges that the defendant has not overtly violated the terms of his supervised release, this is not “exceptionally good behavior” on the part of the defendant. Rather, this is the defendant comporting himself exactly as he is supposed to and following the conditions of his November 2013 sentence. It is not grounds for early termination of the defendant’s supervised release. See United States v. Karasconyi, 1998 WL 401273, at *1 (2d Cir. 1998) (summary order) (upholding district court’s denial of motion for early termination of supervised release and noting that full compliance with terms of supervised release is not “exceptionally good,” rather it is “merely what is expected of all people serving terms of supervised release”); United States v. Gonzalez, 2015 WL 4940607, at *1 (S.D.N.Y. Aug. 3, 2015) (Rakoff, J.) (noting that if being a model probationer, presenting a low risk of recidivism, and fulfilling the deterrence value of the case were enough for early termination of supervised release, “the exception would swallow the rule” (quoting United States v. Medina, 17 F.Supp.2d 245, 247 (S.D.N.Y. 1998)); United States v. Sarna, 2009 WL 2633153, at *1 (S.D.N.Y. Aug. 26, 2009) (Keenan, J.) (explaining that defendant’s compliance with the terms and conditions of his

be used in gas centrifuges that enrich uranium. Since carbon fiber has both military and non-military uses, it is typically characterized as a “dual use” commodity.

supervision, including paying restitution and a fine, is insufficient to “rise to the level of ‘exceptionally good behavior’ that would warrant early termination of supervised release”).

II. The Defendant was Likely Committing Additional Offenses from Prison

In Early Termination Request, the defendant states: “Even though the sanction laws I violated are now being removed from the books due to the recent international agreement, I realize that I violated these laws when they were in full effect. I very much take responsibility for these actions and have learned from my mistake.”

The defendant is incorrect about the law—the regulations that he violated are still in effect. In general, today, unless licensed by OFAC (with some exceptions), goods, technology, or services may not be exported, re-exported, sold or supplied, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran or the Government of Iran. The ban on providing services includes any brokering or business function from the United States or by U.S. persons, wherever located. For example, a U.S. person—like Hashemi, a U.S. citizen—wherever located, or any person acting within the United States, may not broker offshore transactions that benefit Iranian companies or the Government of Iran, including sales of foreign goods or business services. See 31 C.F.R. § 560.204.

The defendant’s purported acceptance of responsibility also rings hollow since the FBI has uncovered evidence that the defendant may have been continuing to violate these export control laws while he was serving his term of incarceration. During the FBI’s initial investigation that led to the defendant’s arrest and guilty plea in this case, the FBI learned that the defendant was the sole proprietor of a company located in Iran called HB Composites. As the owner of this business, the defendant was the primary decision-maker for the company concerning imports, exports and financing. It was in his capacity as the owner and operator of HB Composites that the defendant committed the offense conduct in his criminal case—that is, exporting carbon fiber to Iran and attempting to purchase a carbon fiber winding machine. While managing HB Composites, the defendant was solicited on more than one occasion to produce nuclear centrifuge rotors for the Government of Iran.

During his incarceration for this offense, the defendant used the prison email and phone systems to engage in communications with other people that the investigating FBI agent (“Agent-1”) believes evinces the defendant’s continued involvement with HB Composites by brokering and directing transactions in Iran, in violation of U.S. regulations.³ For instance, on or about July 26, 2015, the defendant sent an email to another individual (“Individual-1”) instructing Individual-1 to “finish installation of his line in time to take advantage of the anticipated wave that will be coming” and noting that the defendant “will definitely have a business discussion with [another individual].” In this email, Agent-1 believes that the defendant was giving business-related instructions to Individual-1. At the time of his incarceration, the defendant’s only business interest was HB Composites—his Iranian

³ These communications were largely in Farsi. An FBI agent has reviewed draft English translations.

company—so Agent-1 further believes that this email suggests that the defendant was continuing to run his Iranian business from a U.S. prison.

On or about July 17, 2015, the defendant sent an email to his brother (the “Brother”) in which the defendant stated: “I agree fully with you that the latest developments will open a new era for HB and our friends in the holy land contacted me the next day after the agreement about a new begin to revive the activities.” Agent-1 believes that, in this email, the defendant is referring to his continued work on business deals for “HB,” or HB Composites, with his Brother.

On or about August 1, 2015, the defendant called his Brother and stated: “I say, there are a couple of points [Brother]: one is um, er, let me tell you, this, eh, I had written to this friend of ours [“Individual-2”] to go after the previous ones, instead of these antiques that you are currently working with, instead of them, he should go to the previous one . . .” The defendant continued to advise the Brother: “It seems that he didn’t understand very well, because I also write in a very covert manner, it seems he didn’t understand it well, I don’t know. You should make him understand, now if possible, with that . . . especially with those who are in Europe, not the other branch, if possible . . .” Later, during the same call, the defendant stated: “Yes, so I have to try again to somehow in a covert manner, I can’t really do it directly . . . , and I don’t know, maybe he doesn’t understand, I’m saying it too covertly, anyway now, one is that if possible we should try to get something from them. . . .” The defendant further stated to his Brother: “Let’s see how we can proceed. Also, um, make a plan so that you would be able to pay the money these friends of yours want, so that God willing they would be able to hopefully come and clean up the instruments, now you have to plan.” In this call, Agent-1 believes that the defendant was communicating to his Brother instructions that he had previously given “covertly” to Individual-2. Agent-1 further believes that these instructions relate to the business activities of HB Composites, since the defendant is instructing his Brother to make a “plan” to “pay the money” to “clean up the instruments.”

On or about August 9, 2015, the defendant placed a conference phone call to his Brother and another individual (“Individual-3”) in which the defendant stated, “[another individual] had written that they found someone who claims that he produces polypropylene and stuff like that. I thought if there is anyone in Iran who can do this, it’s you guys!” During this discussion the defendant explained how to heat polypropylene in order to soften fiber, and reiterated that the Brother associates should be the ones doing the “production” in Iran, not a newcomer. Agent-1 believes that, in this call, the defendant—a scientist—is giving technical advice to his Brother and another individual to benefit HB Composites.

Accordingly, based on these and other emails and phone conversations, Agent-1 believes that the defendant—a U.S. person—was attempting to continue operating his Iranian business from a U.S. prison. Moreover, it appears that the defendant knew that this behavior was illegal, as evidenced by his use of coded, secretive language, and his instructions to his Brother to insure that Individual-2 understood the defendant’s “covert” instructions. Given that the defendant took the extraordinary steps of attempting to continue to run an Iranian business from a U.S. prison, the Government has no confidence that he is not continuing these activities while on supervised release. For this reason, the Government opposes any modification of his terms of supervised release.

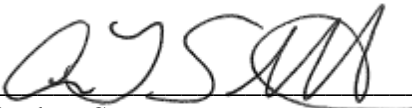
III. The Defendant's Seized Devices Contain Evidence and Cannot be Returned

At the time of his July 2013 arrest, the Government seized phones and other electronic devices from the defendant. The Government has not returned those devices because they contain evidence against targets of FBI investigations and indicted SDNY defendants who have not yet been apprehended (some of whose indictments remain under seal). Should any of these targets be arrested and brought to the SDNY, the evidence on the defendant's electronic devices may be needed at trial.⁴

For these reasons, the Government respectfully asks that the Court deny the defendant's application for early termination of his supervised release.

Respectfully,

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United States Attorney

by: 
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cc: Hamid Reza Hashemi (by U.S. mail)
Erich Ferrari (by ECF)

⁴ It is not sufficient to make a forensic image of the device for evidentiary purposes since without the device itself, it would be possible for a defendant to fatally challenge chain of custody.