UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v. -	:	13 Cr. 507 (VB)
BEHZAD POURGHANNAD,	:	
Defendant.	:	

GOVERNMENT'S SENTENCING MEMORANDUM

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PRELIMINARY STATEMENT

The Government respectfully submits this memorandum in advance of the sentencing of defendant Behzad Pourghannad, which the Court has set for Wednesday, November 13, 2019 at 9:30 a.m. The defendant pled guilty to one count of conspiracy to violate the International Emergency Economic Powers Act ("IEEPA") for his central role in a five-year scheme to illegally export high-grade carbon fiber from the United States to Iran for use in Iran's weapons of mass destruction ("WMD") program. Pursuant to the plea agreement, the parties agree that the applicable United States Sentencing Guidelines range is 46 to 57 months' imprisonment.

In his sentencing submission, the defendant offers a number of arguments for why the Court should impose a below-Guidelines sentence of time served (approximately 30 months' imprisonment). Among other things, the defendant contends that there is "no evidence" that he endorsed the use of WMDs; that his arrest and incarceration have caused distress to his friends and family; and that a below-Guidelines sentence would not result in unwarranted sentencing disparities. (Def. Mem. 7-10).

Both the facts and the law undermine the defendant's arguments. The Probation Office has recommended a Guidelines sentence of 50 months' imprisonment in this case. (Presentence Investigation Report, hereinafter "PSR," at 17). Based on the seriousness of the defendant's offense, which threatened the United States' national security over a five-year period; the defendant's critical role in the scheme; the defendant's knowledge that the carbon fiber shipments he worked to export from the United to Iran were intended for Iran's WMD program; and the compelling need for deterrence in this case, the Government respectfully submits that a sentence within the Guidelines range of 46 to 57 months' imprisonment is warranted.

FACTUAL BACKGROUND

A. The Offense Conduct

The defendant facilitated the purchase and illegal export from the United States to Iran of large quantities of carbon fiber, which were destined for use in Iran's WMD program. In particular, from in or about 2008 up to and including in or about 2013, the defendant worked with others—including Ali Reza Shokri and Farzin Faridmanesh, who were also charged in the same indictment (the "Indictment") and who remain at liberty—to purchase thousands of kilograms of carbon fiber from U.S. manufacturers. The defendant and his co-conspirators arranged to have that carbon fiber shipped to Iran through transshipment points without obtaining appropriate licenses from the Office of Foreign Assets Control ("OFAC"), in violation of U.S. export laws. The defendant was involved with the procurement of this carbon fiber and, among other things, served as a financial guarantor for large-scale carbon fiber transactions.

Certain types of carbon fiber may be used in gas centrifuges (which are used to enrich uranium into fissile material), military aircraft, strategic missiles, and space launch vehicles. (PSR ¶ 11). At all relevant times, and due to the carbon fiber's particular characteristics, the carbon fiber grades

referenced in the Indictment were controlled under Export Control Classification Number 1C010 (applicable prior to 2010) or 1C210 (applicable thereafter) for national security, nuclear nonproliferation, and anti-terrorism reasons because such carbon fiber can significantly contribute to the military potential of another country and can be of significance for nuclear proliferation. (PSR ¶ 13). Through its investigation in this case, the Federal Bureau of Investigation (the "FBI") learned that Shokri, the defendant's co-conspirator, was involved in the development of WMDs on behalf of the Government of Iran. (PSR ¶ 13). The carbon fiber that Shokri procured in the past and the carbon fiber that he and the defendant attempted and conspired to procure between 2008 and 2013 was being used or destined to be used in Iran's WMD Program. (PSR ¶ 13).

The 2008 and 2009 Carbon Fiber Transactions

In or about May 2009, the FBI, along with other federal investigative agencies, began an investigation into several individuals and entities involved in procuring carbon fiber for export to Iran. (PSR ¶ 14). Early in the investigation, the FBI uncovered a transnational network involved in procuring high-grade carbon fiber for several end users located in Iran. (PSR ¶ 14). The network operated through various transshipment points located throughout the world including, among other places, the United States, Belgium, the United Kingdom, France, Turkey, and the United Arab Emirates. (PSR ¶ 14). Most of the carbon fiber procured by this network was obtained without an export license from a United States-based carbon fiber supplier (the "U.S. Supplier"), who operated his business out of Orange County, New York. (PSR ¶ 14). To avoid United States and European export laws, the network: (i) falsified shipping records for the purpose of disguising shipments; (ii) removed carbon fiber labels from the shipments; and (iii) transshipped carbon fiber to various third countries prior to its final delivery inside Iran. (PSR ¶ 14).

In or about 2008, the U.S. Supplier received a request from a Turkey-based co-conspirator of

the defendant and Shokri (whom the Indictment refers to as "CC-2") seeking a type of carbon fiber known as IM7. (PSR ¶ 15). After receiving this request, the U.S. Supplier contacted a European-based broker and supplier of carbon fiber (the "European Supplier") for assistance with the transaction. (PSR ¶ 15). Through the European Supplier, CC-2 purchased carbon fiber from the U.S. Supplier and shipped it from the United States, through Europe and the United Arab Emirates, to Iran. (PSR ¶ 15).

In 2009, Shokri's business partner, Hamid Reza Hashemi[1], corresponded with the European Supplier about purchasing more carbon fiber to send to Iran. (PSR ¶ 16). Shokri ultimately entered into a contract with the European Supplier for 2,700 kilograms of carbon fiber. (PSR ¶ 16). Because the European Supplier did not reside in Iran, and the defendant did, the defendant agreed to assist in handling the carbon fiber contract with Shokri. (PSR ¶ 16). In particular, the defendant agreed to accept an advance payment for the carbon fiber from Shokri; act as a financial surety for the advance payment in the event that the European Supplier failed to deliver per the contract; and accept final payment from Shokri upon delivery of the carbon fiber to Tehran, Iran. (PSR ¶ 16). In addition, the defendant worked with an associate to coordinate a transshipment point through another country ("Country-1"). (PSR ¶ 16).

At the request of the European Supplier, the U.S. Supplier sent 2,700 kilograms of carbon fiber from the U.S. to Country-1, intending that the shipment would be transshipped to Iran. (PSR ¶ 16). Law enforcement authorities in Country-1 interdicted that shipment of carbon fiber, which never made it to Iran, and arrested the defendant's associate who had helped coordinate the

[1] The Indictment refers to Hashemi as "CC-1." The Government separately prosecuted Hashemi for his role in the instant conspiracy in *United States v. Hashemi, et al.*, 12 Cr. 804 (VB). Following Hashemi's guilty plea to one count of conspiracy to violate IEEPA and two counts of substantive violations of IEEPA, this Court sentenced Hashemi to 46 months' imprisonment on November 15, 2013. *See United States v. Hashemi, et al.*, 12 Cr. 804 (VB), Dkt. 26.

transshipment of the carbon fiber through Country-1. (PSR ¶ 16).

The 2013 Carbon Fiber Transaction

In or about 2013, the European Supplier began engaging in consensually monitored discussions with the defendant and Shokri about their procurement of carbon fiber from the United States to Iran. (PSR ¶ 17). In particular, in or about early January 2013, the European Supplier and Shokri discussed in a recorded video call the price at which the European Supplier could provide Shokri with carbon fiber. (PSR ¶ 18). Later that month, the European Supplier and Shokri engaged in another recorded video call, in which Shokri stated that he wanted to purchase 500 kilograms of carbon fiber every week, up to five tons of carbon fiber. (PSR ¶ 18). Shokri asked the European Supplier to send him an invoice. (PSR ¶ 18). On or about January 21, 2013, the European Supplier and the defendant had a recorded video call, during which the European Supplier and the defendant discussed the cost of transporting the carbon fiber requested by Shokri into Iran. (PSR ¶ 19).

On or about March 12, 2013, the European Supplier and Shokri engaged in a recorded video call, during which Shokri suggested a second carbon fiber deal. (PSR ¶ 20). On or about April 8, 2013, the defendant emailed the European Supplier a contract ("Contract-1") for five tons of carbon fiber, for delivery to Tehran. (PSR ¶ 21). Contract-1 listed Shokri as the buyer of the carbon fiber and the European Supplier as the seller. (PSR ¶ 21). On or about April 11, 2013, Shokri emailed the European Supplier a signed copy of Contract-1 and a second contract for, among other things, thousands of kilograms of carbon fiber, also for delivery to Tehran ("Contract-2"). (PSR ¶ 22).

About eight days later, the defendant, the European Supplier, and the defendant's co-conspirator, Faridmanesh, had a recorded video call in which Faridmanesh—who was making shipping arrangements for the carbon fiber—indicated that a portion of the carbon fiber would be transshipped through the Republic of Georgia in order to evade U.S. export laws. (PSR ¶ 23). Later,

Faridmanesh and the European Supplier discussed changing the shipping labels on the carbon fiber to indicate that the shipment contained something other than carbon fiber, in order to evade detection by U.S. authorities. (PSR ¶ 23).

On or about April 21, 2013, Shokri emailed the European Supplier a copy of Contract-1 and a signed copy of Contract-2. (PSR ¶ 24). Approximately one month later, the defendant sent the European Supplier a bank guarantee that was to serve as surety for Contract-1. (PSR ¶ 24). On or about June 26, 2013, the defendant and the European Supplier engaged in a recorded video call, during which the European Supplier told the defendant that the carbon fiber set forth in Contract-1 and Contract-2 would be shipped from a port in Manhattan. (PSR ¶ 25). The European Supplier also told the defendant that because of "U.S. sanctions," the European Supplier had to remove all of the labels indicating that the shipment consisted of carbon fiber. (PSR ¶ 24). The European Supplier informed the defendant that export licenses for shipping carbon fiber from the U.S. to Iran are not available. (PSR ¶ 25). That same day, the European Supplier had similar conversations with Shokri and Faridmanesh. (PSR ¶ 25).

The FBI's investigation established that the defendant knew the carbon fiber he was working to illegally procure and export was destined for use in Iran's WMD program; the defendant knew that Shokri, for whom the defendant was coordinating the transactions, was part of the Islamic Revolutionary Guard Corps (the "IRGC")[2]; and the defendant had a keen understanding of the specific ways in which carbon fiber is used to manufacture WMDs for Iran.

[2] The IRGC comprises a branch of the Government of Iran's armed forces. At all times relevant to the charges in the Indictment, a sub-component of the IRGC that works to support Iran's ballistic missile and nuclear programs was designated as a Specially Designated National ("SDN"). On April 8, 2019, the State Department formally designated the IRGC as a foreign terrorist organization, noting, among other things, that the IRGC's "support for terrorism is foundational and institutional, and it has killed U.S. citizens." While this designation post-dates the defendant's offense conduct, it further illustrates the enduring gravity of the Iranian threat.

(PSR ¶ 26).

The FBI's investigation revealed that the defendant was considered by the Government of Iran as a candidate to manage a carbon fiber factory in Iran. (PSR ¶ 27). The FBI also learned that both Shokri and Hashemi are engineers, and that Hashemi was asked to manufacture a centrifuge rotor for an entity associated with nuclear research and development for the Government of Iran. (PSR ¶ 27). Centrifuge rotor components can be made out of carbon fiber, and are a key component in gas centrifuges that are used to enrich uranium into fissile material for a nuclear weapon. (PSR ¶ 27). In addition, on several occasions, Shokri received technical specifications for various ballistic missile/space launch vehicle airframe assemblies and sub-assemblies that include shells, rings, plates, and flanges. (PSR ¶ 27). Some of those components also can be made out of carbon fiber. (PSR ¶ 27). One of the specifications that Shokri received can be used in the casting of a solid propellant rocket motor, possibly for use in ballistic missiles, the motor casings for which can be made from carbon fiber. (PSR ¶ 27).

In or about August 2013, Faridmanesh engaged in a recorded call with the European Supplier, during which Faridmanesh explained that Shokri was part of the IRGC. (PSR ¶ 28). Faridmanesh said that the defendant had informed Faridmanesh of Shokri's association with the IRGC. (PSR ¶ 28).

In addition, in or about September 2014, the defendant had a conversation with the European Supplier during which the defendant made clear that he knew a carbon fiber shipment that the defendant and others had coordinated on Shokri's behalf was intended for use in manufacturing nuclear centrifuge rotors and nose cones for ballistic missiles. (PSR ¶ 29). During that conversation, the defendant said that Shokri had inquired into the quality of a pending shipment of carbon fiber referenced in Counts One and Three of the Indictment. (PSR ¶ 29).

Specifically, Shokri had asked whether the carbon fiber scheduled for shipment to Iran was of good quality. (PSR ¶ 29). According to the defendant, Shokri had told the defendant that the carbon fiber was to be used in the production of nuclear centrifuge rotors and in nose cones for ballistic missiles. (PSR ¶ 29). The defendant explained to the European Supplier that this information was very sensitive. (PSR ¶ 29).

The defendant further stated that Shokri had demonstrated to him the method for manufacturing rotors and nose cones, and proceeded to describe details of the nose-cone manufacturing process. (PSR ¶ 29). As the defendant explained to the European supplier, first a hollow foam form is packed with light-weight filler material, such as paper, for rigidity; then winding machine wraps the form in carbon fiber; and finally, once the form has cured, the filler material is removed and heat is applied to melt the foam in order to create carbon fiber tubes and cones.

B. The Defendant's Arrest, Extradition, and Guilty Plea

On July 11, 2013, a grand jury returned the three-count Indictment charging the defendant with conspiring to violate IEEPA and with violations and attempted violations of IEEPA, in violation of Title 18 United States Code, Section 2; Title 50, United States Code, Section 1705; and Title 31, Code of Federal Regulations, Sections 560.203 and 560.204. (PSR ¶¶ 1-4).

On or about May 3, 2017, German law enforcement authorities arrested the defendant in Germany pursuant to an Interpol red notice issued in connection with this case. (PSR ¶ 30). Following the defendant's arrest in Germany, the United States sought the defendant's extradition. Germany granted the Government's extradition request, and on or about July 15, 2019, the U.S. Marshals Service took custody of the defendant in Frankfurt, Germany and transported him to the United States.

In his sentencing submission, the defendant represents that he spent 26 and a half months in solitary confinement in Germany, during which time his "door was opened only for two hours a day." (Def. Mem. at 4, 9). The Government has communicated with its counterpart in Germany, the Federal Office of Justice, regarding the defendant's claim. According to the Federal Office of Justice, the defendant was not subjected to solitary confinement at any point during his detention in Germany. Rather, the defendant was housed in a single-person cell of 11.27 square meters, which is the standard accommodation in the Frankfurt correctional facility in which the defendant was detained. The defendant had ample opportunity on a daily basis to leave his cell and interact with other prisoners throughout his detention. Each day, he was permitted one hour of time outside in the prison yard and two hours of free time outside his cell. In addition to these three hours outside his cell, the defendant participated in a work-therapy program that required him to leave his cell. Imposition of solitary confinement is an extremely rare measure in German prisons requiring approval from the highest levels of the Federal Office of Justice, and the Federal Office of Justice made clear that it was never imposed on the defendant.

On August 29, 2019, Pourghannad pled guilty, pursuant to a plea agreement, to Count One of the Indictment, which charged him with participating in a conspiracy to violate IEEPA between in or about 2008, up to and including in or about July 2013. (PSR ¶ 6). The defendant allocuted to participating in the charged conspiracy between 2008 and 2013. (Transcript of August 28, 2019 Plea Hearing, hereinafter "Plea Tr.," at 25). Among other things, the defendant admitted that he wrote a contract for the purchase of carbon fiber and emailed it to the European Supplier. (Plea Tr. at 25). The defendant further stated that he knew exporting carbon fiber from the United States to Iran is illegal, but that the carbon fiber "was needed" in Iran. (Plea Tr. at 25).

C. The Plea Agreement and the Applicable Guidelines Range

The plea agreement between the defendant and the Government sets forth the calculation of the appropriate offense level under the Sentencing Guidelines. Based on the fact that the defendant's offense conduct involved the evasion of national security controls relating to the proliferation of nuclear, biological, or chemical weapons or materials, the applicable offense level is 26. (PSR ¶ 6). The defendant is entitled to a three-level downward adjustment for acceptance of responsibility, resulting in a total offense level of 23. (PSR ¶ 6). With zero criminal history points, the defendant falls into criminal history category I. (PSR ¶ 6). The resulting Guidelines range is 46 to 57 months' imprisonment. (PSR ¶ 6). The defendant's fine range is $20,000 to $1,000,000. (PSR ¶ 6).

Probation calculated the same Guidelines range as the plea agreement and recommended a sentence of 50 months' imprisonment. (PSR ¶¶ 34-44, 47, 85; PSR at 17).

In the event the Court imposes a sentence involving a further period of incarceration, the Government respectfully recommends that the sentence be adjusted to reflect the fact that the defendant was detained between May 3, 2017 and July 14, 2019 in Germany, and that any adjusted sentence of incarceration be ordered to run from July 15, 2019 (the date on which the Government took custody of the defendant).

The Government is not seeking a fine in this case, as the defendant does not have a readily available means of lawfully transferring his assets from Iran to the United States. That said, the defendant appears to have substantial assets in Iran. In particular, prior to the defendant's presentment in this case, the defendant disclosed to Pretrial Services that he had approximately $1.2 million in assets in Iran.[3]

[3] The defendant's disclosure to Pretrial Services is consistent with other evidence indicating that the defendant had access to large sums of money in Iran. For example, during a

THE SECTION 3553(a) FACTORS CALL FOR A GUIDELINES SENTENCE

A. Applicable Law

The Guidelines are no longer mandatory, but they still provide important guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). "[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," which "should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines range is thus "the lodestar" that "'anchor[s]'" the district court's discretion. *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345-46 (2016) (quoting *Peugh v. United States*, 569 U.S. 530, 549 (2013)).

After making the initial Guidelines calculation, a sentencing judge must then consider the factors outlined in Title 18, United States Code, Section 3553(a), and "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing outlined in Section 3553(a)(2). Those purposes are "(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." 18 U.S.C. § 3553(a)(2). In determining that sentence, the Court must consider "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1), "the kinds of sentences available," § 3553(a)(3), the Guidelines and Guideline range, § 3553(a)(4), the Guidelines' policy statements, § 3553(a)(5), "the need to avoid unwarranted sentence disparities among defendants with similar

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phone call recorded in the course of this investigation, the defendant asked the European Supplier for assistance moving 57 million euros (at the time, approximately $70 million U.S. dollars) in order to procure petrochemical equipment from Europe for use in Iran's petrochemical industry.

records who have been found guilty of similar conduct," § 3553(a)(6), and "the need to provide restitution to any victims of the offense," § 3553(a)(7). To the extent a district court imposes a sentence outside the range recommended by the Guidelines, it must "'consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.'" *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (quoting *Gall*, 552 U.S. at 50).

B. Discussion

As the Court examines the Section 3553(a) factors to determine the appropriate sentence for the defendant, the Government respectfully submits that several of the factors counsel strongly in favor of a sentence within the Guidelines range of 46 to 57 months' imprisonment. Specifically, the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, and to assure general deterrence, and the need to protect the public from further crimes of the defendant all demonstrate that a Guidelines range sentence is warranted in this case.

1. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The defendant committed a grave offense that directly threatened the national security of the United States. As detailed above, over a five-year period, the defendant worked with others to acquire and export into Iran multiple shipments of high-grade carbon fiber from the United States. In doing so, the defendant and his co-conspirators took a number of steps to evade U.S. export laws, including disguising the contents of their shipments, falsifying shipping records and package labels, and arranging to transship the carbon fiber through third countries in order to obscure its ultimate destination in Iran. The defendant quarterbacked this scheme by drafting and sending

contracts for the purchase of thousands of kilograms of carbon fiber; accepting advance payment for the carbon fiber and serving as a financial surety for the transactions; accepting final payment for the carbon fiber; and coordinating transshipment. The numerous recorded phone calls and emails in which the defendant plans and coordinates the carbon fiber transactions with the European Supplier and his co-conspirators demonstrates his critical role in the conspiracy.

Most important, the defendant acted with full awareness that the carbon fiber he was working to illegally export from the United States to Iran was intended for use in Iran's WMD program. The defendant knew that Shokri worked for the IRGC and informed Faridmanesh of Shokri's IRGC connections. In or about September 2014, the defendant explicitly informed the European Supplier that the carbon fiber he had worked to procure on Shokri's behalf would be used to manufacture nuclear centrifuge rotors and nose cones for ballistic missiles. The defendant described the information regarding the carbon fiber's intended use as very sensitive. He then proceeded to explain details of the nose-cone manufacturing process to the European Supplier. In his sentencing submission, the defendant acknowledges that he knew the carbon fiber "*could* be used for military purposes," including manufacturing WMDs. (Def. Mem. at 4 (emphasis added)). The undisputed facts of this case make clear, however, not only that the defendant understood the carbon fiber he was working to illegally export to Iran hypothetically could be used to manufacture WMDs but also that the production of WMDs in fact constituted the intended purpose of the carbon fiber shipments.[4]

[4] Even apart from the defendant's explicit statements to the European Supplier regarding his knowledge that the carbon fiber he sought to acquire was intended for Iran's WMD program, the types of carbon fiber the defendant and his co-conspirators sought to procure indicates a likely military purpose. Put simply, the carbon fiber the defendant and his co-conspirators sought to export to Iran was of a much higher grade than that typically used in consumer goods.

In his sentencing submission, the defendant argues that there is "no evidence" that he has "ever been a terrorist or endorsed the actual use of such weapons." (Def. Mem. at 7). But by working to procure high-grade carbon fiber for the IRGC knowing that the carbon fiber would be used in Iran's WMD program, the defendant sought to enable a sophisticated terrorist organization to develop and build some of the most dangerous weapons in existence using resources illegally exported from the United States. Whether or not the defendant is himself a terrorist or endorses the use of WMDs, his conduct threatened to empower the IRGC with weapons able to inflict destruction on a tremendous scale.

The defendant's observation that "supporters of Iran routinely argue that various weapons are justifiable as a means for self-defense" is irrelevant. (Def. Mem. at 7). If the IRGC had acquired carbon fiber needed to manufacture WMDs, the defendant would have no control or influence whatsoever on how or where those weapons were used. His conducted posed a serious threat to the safety and security of the United States, its allies, and other countries. And while the defendant argues in his submission that "no harm ever occurred" from his offense because the carbon fiber shipments he conspired to export never reached Iran (*see* Def. Mem. at 7), the defendant deserves no credit for law enforcement's ability to frustrate his scheme. The carbon fiber never reached the IRGC in spite of the defendant and his co-conspirators' dedicated and sustained efforts to secure its successful delivery to Tehran.[5]

[5] It is worth noting that although the two transactions involved in the instant conspiracy did not result in successful deliveries of carbon fiber to Iran, in recorded phone calls with the European Supplier, the defendant referenced earlier transactions in which he and another individual, Ali Karimian, had successfully imported high-grade carbon fiber into Iran. On December 1, 2011, Annex VIII to Regulation (EU) No 961/2010 was amended to include a number of persons and entities involved in nuclear or ballistic missiles activities, including Ali Karimian, who was identified as an Iranian national supplying goods, including carbon fiber, to United Nations-designated entities in Iran.

The statutory language and export regulations underpinning IEEPA and U.S. sanctions on Iran underscore the severity of the national security threat posed by the defendant's conduct. IEEPA granted the United States President authority to deal with unusual and extraordinary threats to the national security and foreign policy of the United States. *See* 50 U.S.C. §§ 1701, 1702. A series of presidents have repeatedly declared such a national emergency with respect to the Government of Iran, beginning in 1979.

On March 15, 1995, President William Jefferson Clinton issued Executive Order 12957, finding that "*the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States*," and accordingly, the President "*hereby declare[d] a national emergency to deal with that threat*." *See* Exec. Order No. 12,957, 60 Fed. Reg. 14,615 (March 15, 1995) (emphasis added). On two other occasions in 1995 and 1997, President Clinton again found that the actions and policies of the Government of Iran constituted a threat to the national security, foreign policy, and economy of the United States. *See* Exec. Orders 12959 (May 6, 1995) and 13059 (Aug. 19, 1997). These orders, among other things, prohibited the exportation, reexportation, sale, or supply, directly or indirectly, to Iran of any goods, technology, or services from the United States or by a United States person. Every President since President Clinton has continued the national emergency with respect to Iran and the executive orders issued during the Clinton Administration.

The defendant, fully aware of the laws prohibiting the export of carbon fiber from the United States to Iran, made sustained efforts to thwart this statutory scheme by coordinating a sophisticated international smuggling conspiracy involving people in at least four different countries (the United States, Country-1, Georgia, and Iran). Indeed, it was the defendant who brought Faridmanesh into the scheme as the individual who would coordinate the transshipment

of the second carbon fiber shipment through Georgia in or about 2013. When the defendant introduced the European Supplier to Faridmanesh during a recorded video call in or about April 2013, the defendant described Faridmanesh as a "shipper with a lot of experience all over the world." By definition, the defendant's conduct in furtherance of the scheme and his network required him to have a profound understanding of how to evade U.S. sanctions on Iran.

Tellingly, the defendant was not desperate for money or a means of supporting his family when he participated in the IEEPA conspiracy. The FBI's investigation in this case revealed that the defendant has had a long career in Iran's oil and gas industry, as the defendant himself disclosed to Probation. (*See* PSR ¶¶ 77-79). As noted above, moreover, the defendant disclosed to Pretrial Services that he has approximately $1.2 million in assets in Iran. And although the defendant reported earning approximately $5,000 a month in his most recent role as the operating director and board chairman of Down Stream Petrochemical Product Development Industries in Iran (*see* PSR ¶ 76)[6], during this investigation he asked the European Supplier for assistance moving the equivalent of approximately $70 million outside Iran in order to purchase petrochemical equipment from Europe. In addition, the defendant appears to have been a well-connected member of Iran's political elite for some time. Apart from his close association with an IRGC affiliate (Shokri) and his involvement procuring carbon fiber for Iran's WMD program, the defendant told the European Supplier that he had served as chief of staff to the President of Iran in the 1980s.

The defendant, moreover, not only understood that his conduct violated U.S. sanctions and export laws but also continued to engage in the scheme long after he learned of the arrests of two of his co-conspirators. In particular, the defendant continued participating in the instant conspiracy for years after learning of his associate's arrest in Country-1, which the defendant referenced in

[6] Probation and the Government have no means of verifying the defendant's claims regarding the details of his salary and employment in Iran.

several conversations with the European Supplier. In the same vein, the defendant learned that U.S. law enforcement had arrested Hashemi, another co-conspirator, based on charges related to the instant conspiracy in or about December 2012. The defendant mentioned Hashemi's arrest during several recorded phone calls with the European Supplier. Specifically, the defendant told the European Supplier on several occasions that as a result of Hashemi's arrest, Shokri was reluctant to travel outside Iran. Yet the defendant remained wholly undeterred and continued to participate in the scheme for months following Hashemi's arrest in the United States.

The defendant's other reported history and characteristics do not provide a justification for a below-Guidelines sentence. Although it is true that, as far as the Government knows, the defendant has no criminal history points, it is worth noting that as the defendant spent his entire life in Iran prior to his arrest on May 3, 2017, neither the Government nor Probation has any means of verifying the defendant's reported information or developing an accurate understanding of his full background. One thing that is clear, however, is that the defendant was deeply embedded in an international smuggling network that consisted of an IRGC affiliate, multiple transshippers, and a high-grade carbon fiber supplier.

In his submission, the defendant argues for leniency based on the distress his incarceration has caused his family. (Def. Mem. at 6, 8-9). In virtually every case where a defendant has the benefit of a caring family, however, the defendant's criminal conduct and subsequent incarceration have a negative effect on the lives of the defendant's relatives and friends. Although the Government has sympathy for the defendant's family members, this common circumstance does not counsel in favor of a below-Guidelines sentence. Many defendants who stand before this Court for sentencing, moreover, do not have the benefit of any loving family or friends at all. The fact

that the defendant has a supportive family with whom he regularly communicates through phone calls and letters is a circumstance many inmates do not enjoy.[7]

For all these reasons, both the nature and circumstances of the defendant's offense in illegally exporting high-grade carbon fiber from the United States for use in Iran's WMD program, as well as the defendant's history and characteristics, weigh heavily in favor of a Guidelines sentence. In recommending a mid-Guidelines-range sentence of 50 months' imprisonment, the Probation Office cited the fact that "Iran's nuclear program continues to pose a threat to the U.S. and the rest of the world," and that the defendant and his co-conspirators "possessed the knowledge as well as the resources to cause great harm to national security and must be held accountable." PSR at 18. The Government agrees with Probation's assessment that a Guidelines sentence is necessary in this case.

2. Deterrence and the Need for the Sentence to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment

Two other factors under Section 3553(a) that weigh heavily in a case involving violations of U.S. sanctions on Iran are the need for the sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," and to assure adequate general deterrence. 18 U.S.C. §§ 3553(a)(2)(A) and (a)(2)(B).

These factors counsel in favor of a Guidelines sentence. As detailed above, from 1995 to the present, it has been the official foreign policy of the United States that "the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." *See* Exec. Order No. 12,957, 60 Fed. Reg.

[7] The defendant also cites his "solitary confinement" in Germany as a reason for a below-Guidelines sentence. (Def. Mem. at 4, 9). As noted above, however, Germany's Federal Office of Justice has informed the Government that the defendant was never subjected to solitary confinement during his detention in Germany and had ample opportunity to interact with others, including during several hours each day outside his cell.

14,615 (March 15, 1995). Accordingly, Presidents of both political parties have "declare[d] a national emergency to deal with that threat." *See id.* At his plea hearing, the defendant stated that although he "knew that exporting [carbon fiber] from the United States to Iran is illegal . . . because, in Iran, this material was needed, and under the Iranian law, this was not illegal, I did it." (Plea Tr. at 27). The defendant's statements underscore the challenge of deterring nuclear-proliferators and sanctions-evaders inside Iran—where schemes to violate IEEPA are not only lawful but, at times, expressly encouraged by the Government of Iran—from perpetrating their schemes.

It is critically important to send a message to similarly situated individuals that IEEPA violators who are caught will face serious consequences in the United States—particularly where, as here, the sanctions-evasion scheme sought to support and advance Iran's WMD program. This fact significantly ratchets up the gravity of the defendant's conduct and the need for future deterrence, and cuts strongly in favor of a Guidelines sentence. In conspiring to evade and defeat U.S. sanctions on Iran by smuggling valuable resources from the United States to Iran's WMD program, the defendant and his co-conspirators struck at the heart of the U.S. sanctions program and attacked the security and foreign policy of the United States. The seriousness of that crime and the need for general deterrence to help prevent this type of conduct by others cannot be overstated.

In his submission, the defendant contends that he poses no threat of recidivism, and thus there is little need to protect the public from further crimes of the defendant, pursuant to 18 U.S.C. § 3553(a)(2)(C). (*See* Def. Mem. at 9). But the defendant's claim overlooks the facts of this case. The defendant's criminal conduct consisted of a long-running conspiracy spanning from 2008 through 2013. It included an actual shipment of carbon fiber in 2009, which was interdicted before

reaching Iran, and an attempted shipment in 2013. In short, the defendant engaged in at least two distinct criminal transactions over a five-year period alone. In addition, the defendant continued participating in the instant conspiracy even after learning that his co-conspirator, Hashemi, had been arrested in the United States for his participation in the scheme.

For all these reasons, based on the great need for the sentence to reflect the seriousness of the offense against the United States' national security, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence to future conduct, a Guidelines sentence in this case is fair and appropriate.

3. The Need to Avoid Unwarranted Sentencing Disparities

Finally, imposition of a sentence within the Guidelines range serves "the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). In his submission, the defendant argues that a below-Guidelines sentence of time served (effectively, 30 months) "is fully consistent with [sentences] imposed in similar cases." The defendant then cites a number of cases where defendants received below-Guidelines sentences or sentences below the 46-to-57-month range that the parties stipulated to in this case. (*See* Def. Mem. at 10).

As a preliminary matter, in the Government's view, the exercise of comparing the instant case to supposedly comparable cases is not particularly illuminating, since no two cases involve identical fact patterns with Section 3553(a) factors that stack up in precisely the same way. For every case the defendant cites where a defendant received a sentence lower than the 46-to-57-month range applicable in this case, the Government can point to a different case in which a defendant received a higher sentence—including Hashemi, the defendant's own co-conspirator. *See United States v. Hashemi, et al.*, 12 Cr. 804 (VB), Dkt. 26. For that reason, the defendant's

incomplete survey is meaningless without a careful comparison of the offense conduct, the actual Guidelines ranges applicable in those cases, and all facts relevant to the Section 3553(a) factors contained in the PSRs and presented to the various sentencing courts to the facts of this case.[8]

The limited case summaries provided by the defendant do not provide enough details for the Court to determine whether the defendants in those cases are truly "similarly situated." In similar circumstances, courts have observed that comparing a defendant's sentence to those imposed in other cases is an unpersuasive argument. *See, e.g.*, *United States v. Saez*, 444 F.3d 15, 19 (1st Cir. 2006) (noting that such tenuous comparisons "open[] the door to endless rummaging by lawyers through sentences in other cases, each side finding random examples to support a higher or lower sentence, as their clients' interests dictate").

Nevertheless, the Government attaches a chart showing seven relatively similar cases—six of which involved illegal exports to Iran—where the sentences imposed ranged from 46 months' imprisonment to 92 months' imprisonment. *See* Exhibit A. Suffice it to say, many defendants in IEEPA cases have received Guidelines sentences. And for all the reasons stated above, a Guidelines sentence is eminently justified where, as here, the offense conduct directly threatened the national security of the United States, involved extended planning and sophistication, and included multiple occurrences over a five-year period.

[8] For example, one of the cases cited by the defendant—*United States v. Fuyi Sun*, 16 Cr. 404 (SDNY), appears materially different from the instant case in several respects. First, the *Fuyi Sun* defendant sought to export carbon fiber for use by the Chinese military—whereas in this case, the defendant sought to procure carbon fiber for Iran's WMD program operated by the IRGC, a state-sponsored terrorist entity. Second, the *Fuyi Sun* defendant's offense conduct appears to have consisted entirely of interactions with undercover law enforcement agents. In this case, by contrast, the defendant and his co-conspirators actually obtained carbon fiber for shipment to Iran in 2009 and came dangerously close to succeeding with their scheme.

ADDITIONAL ISSUES

Because the defendant is an Iranian citizen and has no lawful immigration status in the United States, his conviction will result in his removal to Iran. The defendant has consented to a proposed judicial order of removal, which the Government will submit for the Court's consideration prior to sentencing. If the Court enters the judicial order of removal prior to sentencing, then the defendant will be promptly removed from the United States after he completes any sentence imposed. Accordingly, in the Government's view, supervised release need not be imposed in the event the Court enters the removal order.

CONCLUSION

For the reasons set forth above, the Government respectfully requests that the Court sentence the defendant to a period of incarceration within the applicable Guidelines range of 46 to 57 months' imprisonment, adjusted to reflect the defendant's 26-and-a-half-month detention in Germany. Such a sentence will not only reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the defendant, but it will send a clear message of deterrence to individuals in Iran and elsewhere who seek to attack the national security interests of the United States.

Dated: White Plains, New York
October 31, 2019

Respectfully submitted,

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EXHIBIT A

DEFENDANT	ORIGINAL CHARGES	MATERIALS	COUNTRY	CONVICTION	FINAL DISPOSITION	FINAL CHARGES
U.S. v. Hamid Hashemi, 12 Cr. 804 (VB), SDNY	50 U.S.C. § 1705	Carbon fiber	Iran	Plea (7/1/13)	11/15/13: 46 months' imprisonment; 1 year supervised release	50 U.S.C. § 1705
U.S. v. Amir Tamimi, S1 12 Cr. 615 (JPO), SDNY	50 U.S.C. § 1705	Helicopter parts	Iran	Plea (7/10/13)	11/15/13: 46 months' imprisonment	50 U.S.C. § 1705
U.S. v. Phillips, 11 Cr. 757 (EDNY)	50 U.S.C. §§ 1702 & 1705	Carbon fiber	Iran	Plea (1/18/12)	7/25/12: 92 months' imprisonment; 3 years supervised release	50 U.S.C. §§ 1702 & 1705
U.S. v. David McKeeve, 1:95-cr-10357 District of Mass.	18 U.S.C. § 371; 50 U.S.C. §1705; 18 U.S.C. § 1001	Computer Products	Libya	Jury Verdict (5/30/96)	8/22/96: 51 months' imprisonment; 36 months' supervised release	18 U.S.C. § 371; 50 U.S.C. § 1705; 18 U.S.C. § 1001
U.S. v. Arsalan Shemirani 12-cr-00075 District of Columbia	18 U.S.C.§ 371; 50 U.S.C. § 1705; 31 C.F.R. § 560; 18 U.S.C. § 1001	Electronic parts and components	Iran	Plea (1/25/13)	8/15/13: 48 months' imprisonment; 3 years' supervised release	18 U.S.C. § 371
U.S. v. Mohammad Reza Hajian 8:12-cr-00177 Middle District of Fla.	18 U.S.C. § 371; 50 U.S.C. § 1705	Computer & related equipment	Iran	Plea (7/18/12)	10/24/12: 48 months' imprisonment; 3 years' supervised release	18 U.S.C. § 371
U.S. v. Hamid Seifi 5:10-cr-00058 Middle District of Ga.	18 U.S.C. § 371; 22 U.S.C. § 2778; 50 U.S.C. § 1705; 18 U.S.C. § 1956; 50 U.S.C. § 1702; 31 C.F.R. § 560.203	Components of attack helicopters & fighter jets	Iran	Plea (2/24/11)	7/5/11: 56 months' imprisonment	18 U.S.C. § 371; 50 U.S.C. § 1705