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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,	)	<b>CASE NO. 17-0387-CRB-1</b>
15 Plaintiff,	)	<b>UNITED STATES' SENTENCING</b>
16 v.	)	<b>MEMORANDUM</b>
17 AMER SINAN ALHAGGAGI,	)	
18 Defendant.	)	
19 _____	)	

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## INTRODUCTION

This case is back before the district court for resentencing, after a panel of the Ninth Circuit concluded in a 2-1 decision that this Court had not articulated enough of a factual basis to support application of the terrorism enhancement. *United States v. Alhaggagi*, 978 F.3d 693, 704 (9th Cir. 2020). The panel left the door open for this Court to apply the enhancement again on remand, if a sufficient factual basis exists. For the reasons discussed below, that is exactly what this Court should do: make additional factual findings, apply the enhancement again, and reimpose the same sentence that it previously issued, of 188 months in prison, followed by 10 years of supervised release, restitution in the amount of \$5,273.82, and a special assessment of \$400.

### I. FACTUAL SUMMARY

The Court no doubt recalls the key facts of this case, and, as the Court commented at the opening of the first sentencing hearing, the briefing in this case (on the Guidelines issue in particular) has been extensive. *See* Docket No. 116, Dec. 17, 2018 Sentencing Hearing Transcript (Court comments it had “received about a foot of filings in connection with sentencing.”) Most of those facts are undisputed. Accordingly, the government will briefly recount the essential facts here, and will otherwise rely in large part on the factual recitations from its previous submissions.<sup>1</sup>

In short, the defendant, Amer ALHAGGAGI, sought to unleash a series of devastating, coordinated terrorist attacks across the San Francisco Bay Area in the name of the Islamic State in Iraq and the Levant (“ISIL”, or, as it is also known, “ISIS”). He used encrypted online messaging applications to contact actual ISIS fighters in Iraq and Syria, obtained a bomb-making manual from them, and sent them photographs of his intended targets around the Bay Area. He also drafted a suicide note describing his attacks, claiming that they would bear the “pure fingerprints” of ISIS. Over several days in July of 2016, ALHAGGAGI described in detail his plans to carry out a series of coordinated attacks using bombs, arson, and poison to a source online who was reporting undercover to the FBI. At one point, ALHAGGAGI claimed that his goal, in his own words, was to match the death toll from 9/11,

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<sup>1</sup> To aid the Court and counsel, however, the government will provide a binder containing those exhibits filed in previous submissions that are most relevant to this proceeding.

1 and to “make it to the point where every American here like thinks twice or three times before he leaves  
2 his home.” *See, generally*, Docket No. 90, Government’s Sentencing Memorandum, at pgs. 1-24

3 ALHAGGAGI’s attack plans were derailed, however, after FBI agents used leads from the  
4 online source to identify him, locate him, and then introduce him in-person in August of 2016 to an  
5 undercover agent posing as an explosives expert who was able to provide bomb-making assistance.  
6 ALHAGGAGI met with the FBI undercover several times to prepare his attacks, going so far as to visit  
7 a storage locker containing mock explosive materials. Eventually, though, in September of 2016,  
8 ALHAGGAGI ceased all contact with the FBI undercover. *Id.* at pgs. 24-35.

9 Meanwhile, the FBI developed evidence that ALHAGGAGI had been engaging in identity theft.  
10 *Id.* at pg. 23-24. FBI agents kept him under constant surveillance until November of 2016, when they  
11 arrested him on identity theft charges and searched his home and electronic devices. In his home, agents  
12 discovered a plethora of fraudulent credit cards and access device-making equipment. On his electronic  
13 devices, agents discovered that, after ceasing contact with the FBI undercover, ALHAGGAGI had been  
14 consuming ISIS propaganda and regularly participating in ISIS-related chatrooms online. Agents also  
15 discovered that ALHAGGAGI shifted his focus from aiding ISIS in the real world to aiding ISIS in the  
16 online world, opening several social media accounts on behalf of people whom he believed were ISIS  
17 members, and who in at least one case actually was, a member of ISIS. *Id.* at pgs. 36-50.

## 18 **II. PROCEDURAL HISTORY**

19 ALHAGGAGI was charged by complaint in November of 2016 with one count of identity theft.  
20 Docket No. 1. He was subsequently indicted in July of 2017 with one count of providing material  
21 support to a terrorist group, in violation of 18 U.S.C. § 2339B, and three counts related to identity theft.  
22 Docket No. 33. In July of 2018, he pled guilty to all four counts, and the matter proceeded directly to  
23 sentencing. Docket No. 76.

24 Sentencing revolved largely around one central legal issue: whether to apply the Guidelines’  
25 terrorism enhancement, set forth in U.S.S.G. § 3A1.4. The parties submitted memoranda describing in  
26 great detail the facts surrounding both the defendant’s act of opening social media accounts on behalf of  
27 ISIS (the conduct for which he was charged and convicted), and his attempt to carry out multiple  
28 bombing attacks across the Bay Area on behalf of ISIS (the conduct which initially brought him to the

1 attention of the FBI, and which led to the discovery of his social media activities). The Court heard two  
2 full days of evidence, beginning with testimony from a defense expert witness who opined that  
3 ALHAGGAGI had been “egged on” by the FBI to plot his attacks, an opinion that this Court expressly  
4 rejected. Docket No. 116, Dec. 17, 2018, Sentencing Transcript at pgs. 152-3.<sup>2</sup> The defense expert also  
5 opined that despite plotting multiple violent terrorist attacks in the name of ISIS, the defendant was “no  
6 more dangerous... than a randomly picked” American. *See* Exhibit C, “Sage-man Report,” attached to  
7 Docket No. 87, Defendant’s Sentencing Memorandum. This Court also heard evidence from a jailhouse  
8 informant about how, while in pretrial custody, ALHAGGAGI plotted to explode a bomb in the  
9 basement of 450 Golden Gate, evidence which the Court found credible (and which the defense expert  
10 disregarded when reaching his conclusion that the defendant was “no more dangerous... than a  
11 randomly picked” American). Docket No. 146, Feb. 26, 2019, Sentencing Transcript, at pgs.115-16  
12 (Court notes “I observed – obviously - observed the demeanor in the questioning of Mr. Jump. I found  
13 his testimony to be credible.”).

14 This Court applied the terrorism enhancement and its 12-level increase to the offense conduct,  
15 finding that there was clear and convincing evidence that when the defendant opened social media  
16 accounts on behalf of ISIS, he was doing so with the specific intent that the accounts would be used to  
17 intimidate, coerce, or retaliate against government conduct. The Court then departed downwards from  
18 Criminal History Category V to I, articulating a policy disagreement with the Guidelines. The resulting  
19 Guidelines range was 188 to 235 months, and the Court sentenced the defendant to 188 months’  
20 imprisonment, consisting of 164 months on Counts One and Two and 120 months on Count Three, to be  
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22 <sup>2</sup> Specifically, the Court told the defense expert, “I must tell you I don’t have the same  
23 impression that you have. Looking at car bombs, looking at the poisoning, looking at the fires, and  
24 looking at the backpack bombs, all four discrete and very serious criminal activities if pursued, those  
25 four ideas came from the defendant as I read it. It wasn’t, like, the agent put that in the defendant’s  
26 mind. It was the defendant who suggests it. I mean, this is almost like a reverse sting. It is almost like  
27 the people who are being stinged or stung actually is the Government because it is the defendant who,  
28 unbeknownst to the Government, according to what you find, didn’t have the intention of carrying  
things through; but from the Government’s point of view, they saw this as a very dangerous threat and it  
emanated from the defendant, not the Government. So, I mean, I think we have to be somewhat precise  
here because -- and it may not change your conclusion, it may not change your conclusion, but I think  
the facts are, as I read them, the facts are that these proposed activities or contemplated activities,  
notwithstanding the fact that the defendant would never go through with them, were emanated from the  
defendant and not from the Government; and I think that that is, to me, an important distinction.”

1 served concurrently, followed by 24 months on the aggravated identity theft in Count Four, to be served  
2 consecutively.

3 This Court then issued a written opinion, explaining its reasoning for applying the terrorism  
4 enhancement, and for its subsequent downward departure. Specifically, the Court found that  
5 ALHAGGAGI's online activities and the disturbing nature of the ISIS-oriented chatroom in which he  
6 was participating meant that the ultimate purpose of the social media accounts he opened at the request  
7 of ISIS members was "no mystery." *United States v. Alhaggagi*, 375 F.Supp.3d 1005, 1010 (N.D. Cal.  
8 2019). Crucially, this Court elaborated in a footnote that it was also taking into consideration "all of the  
9 relevant conduct" regarding ALHAGGAGI's various attack plans, from the gay nightclub bombing to  
10 the arson attack on the Oakland Hills and everything in between, which demonstrated to the Court "the  
11 Defendant's dangerousness and stark lack of empathy for the people of his community, as well as his  
12 understanding of ISIS." *Id.* at fn. 3. This Court added that those issues had been addressed "at length"  
13 during oral proceedings, so it would not revisit them in its written opinion. *Id.*

14 The defendant appealed. In a 2-1 decision, a panel of the Ninth Circuit vacated the sentence and  
15 remanded. *United States v. Alhaggagi*, 978 F.3d 693, 704 (9th Cir. 2020). The majority indicated that  
16 this Court had syllogistically concluded that "because ALHAGGAGI knew he was providing support to  
17 ISIS sympathizers and he knew that ISIS is a terrorist organization," ALHAGGAGI therefore knew his  
18 conduct was calculated to influence or affect government conduct by intimidation or coercion. *Id.* The  
19 panel found that this Court's "'cause and effect' reasoning is insufficient because the cause—opening  
20 social media accounts—and the effect—influencing government conduct by intimidation or coercion—  
21 are much too attenuated to warrant the *automatic* triggering of the enhancement." *Id.* at 702 (emphasis  
22 added).

23 In particular, the panel found that this Court "did not make sufficient factual findings concerning  
24 ALHAGGAGI's knowledge of how the accounts he opened were to be used," to justify the terrorism  
25 enhancement. *Id.* at 703. This Court "failed to determine whether [ALHAGGAGI] knew how the  
26 accounts he opened were to be used" and therefore it "could not find that he specifically intended that  
27 the accounts be used to coerce or intimidate a government." *Id.* at 701. "[T]o properly apply the  
28 enhancement," this Court must determine that ALHAGGAGI "knew the accounts were to be used to

1 intimidate or coerce government conduct.” *Id.* at 702.

2 Likewise, the panel found that the Court “did not find sufficient facts to indicate that  
3 ALHAGGAGI’s opening of social media accounts was intended to retaliate against government  
4 conduct.” *Id.* at 704. It was not enough for this Court to “reason[] that” because “retaliation against  
5 government conduct is a ‘central feature of ISIS,’ is ‘a central feature of the propaganda ISIS distributes  
6 through social media,’ and was ‘a theme in the chatroom Defendant frequented,” that ALHAGGAGI  
7 necessarily intended to retaliate against government conduct by opening social media accounts for ISIS.  
8 *Id.* The panel found that this “reasoning does not distinguish between conduct that satisfies the material  
9 support statute and the specific intent required to establish calculated retaliation for purposes of the  
10 terrorism enhancement.” *Id.* “Generally assisting a terrorist organization with social media does not  
11 necessarily demonstrate an intention that the accounts are to be used to retaliate against a government  
12 . . . .” *Id.* The panel suggested that, to support the retaliation prong of U.S.S.G. § 3A1.4, the Court  
13 would need to find that “ALHAGGAGI harbored retaliatory intent against [a] particular government, or  
14 that he posted retaliatory messages from the social media accounts he created, that he had a particular  
15 purpose in mind as to how the accounts would be used, or that he knew how ISIS sympathizers would  
16 use them.” *Id.*

### 17 **III. ARGUMENT**

18 The Ninth Circuit left the door wide open for this Court to make additional factual findings on  
19 remand to conclude that the terrorism enhancement still applies.<sup>3</sup> In a similar scenario, the Fourth  
20 Circuit took this approach in the *Chandia* line of cases. *United States v. Chandia*, 675 F.3d 329 (4th Cir.  
21 2012). There, a district court applied the terrorism enhancement, but the Fourth Circuit remanded for  
22 resentencing, directing the district court to “identify the evidence in the record that supports its  
23 determination” that the terrorism enhancement applied. On remand, the district court reapplied the  
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25 <sup>3</sup> The Ninth Circuit has held that, “as a general matter, if a district court errs in sentencing, we  
26 will remand for resentencing on an open record—that is, without limitation on the evidence that the  
27 district court may consider.” *United States v. Matthews*, 278 F.3d 880, 885 (9th Cir. 2002). Here, the  
28 Ninth Circuit’s remand order placed no limitation on what evidence this Court may consider in  
resentencing the defendant. *Cf. United States v. Espinoza-Morales*, 621 F.3d 1141, 1152 (9th Cir. 2010)  
(showing that court of appeals specifies when a remand is on “existing record”). In any event, most of  
what the government describes below was already submitted to the Court as exhibits in anticipation of  
the first sentencing.



1 enhancement, but the Fourth Circuit remanded again, directing the district court to ““make clear that it  
2 has made independent findings’ and, ‘[i]f it again finds application of the enhancement warranted,  
3 explain how specific facts indicate that [Chandia’s] motive in providing material support was to  
4 influence or affect government conduct by intimidation or coercion, or to retaliate against government  
5 conduct.” *Id.* On its third attempt, the district court highlighted specific conduct that the defendant  
6 engaged in, and made reasonable inferences from those facts to conclude that the defendant had the  
7 requisite specific intent to warrant application of the terrorism enhancement. *Id.* at 339-41. That is  
8 precisely what this Court should do here.

9         At the outset, this Court should explicitly articulate that there is nothing automatic about its  
10 reasoning to apply the enhancement; rather, in determining the defendant’s intent when he opened social  
11 media accounts for ISIS, the Court is relying on circumstantial evidence and reasonable inferences from  
12 his conduct in planning various bombing plots around the Bay Area. “A district court need not wait for  
13 the defendant to confess a specific intent to influence the government. The court can find this intent  
14 based on circumstantial evidence and reasonable inferences from the facts presented.” *United States v.*  
15 *Wright*, 747 F.3d 399, 419 (6th Cir. 2014). This is common sense: as this Court has instructed countless  
16 juries, when trying to determine someone’s intent, factfinders will rarely have direct evidence of what  
17 someone was thinking. As a result, the factfinder will often have to rely on circumstantial evidence,  
18 looking at a person’s conduct and actions in order to make reasonable inferences about their intent. And  
19 that is exactly what this Court should do here. The government will readily concede that the defendant  
20 never overtly stated “I am opening these social media accounts for ISIS so that they will intimidate,  
21 coerce, or retaliate against government conduct.” But if one considers his conduct before, during, and  
22 after he opened the accounts, one is left with the inescapable conclusion that that is exactly what he was  
23 thinking. To some degree, this Court already articulated this reasoning, in a footnote in its written  
24 sentencing order. *United States v. Alhaggagi*, 375 F.Supp.3d 1005, 1010 at fn. 3 (N.D. Cal. 2019). To  
25 address the concerns of the majority panel, this Court should elaborate on that footnote, and specifically  
26 articulate the facts underpinning it and the reasonable inferences that can be made about the defendant’s  
27 intent when he opened social media accounts on behalf of ISIS. In addition to elaborating on that  
28 footnote, below the government sets forth additional factual findings the Court can make and rely on,

1 based largely on evidence already in the record before it.

2 **A. ALHAGGAGI Likened Himself to ISIS’s Notorious Social Media Operative**  
 3 **Tujurman**

4 First, this Court should find that ALHAGGAGI likened himself to an individual or entity known  
 5 as Tujurman, a notorious ISIS social media operative well known for being shut down on Twitter for  
 6 posting graphic material intended to intimidate, coerce, and retaliate against governments. Specifically,  
 7 on July 24, 2016, at the very outset of the government’s investigation, ALHAGGAGI was chatting on an  
 8 encrypted messaging application with an online FBI Source, and was telling the source about his plans  
 9 to explode a bomb in a gay nightclub in San Francisco. Between approximately 1:58 AM and 2:16 AM,  
 10 the following exchange occurred:

11 ALHAGGAGI : A lot of fags now adays

12 FBI Source: Ugh filth man.

13 ALHAGGAGI : Yup, garbage, I can’t believe ppl are actually giving them so much  
 14 attention.

15 FBI Source: I was so happy about Orlando bro

16 ALHAGGAGI: I live close to San Francisco thats like the gay capital of the world  
 17 I’m gonna handle them right loool  
 ... Im gonna place a bomb in a gay club

18 FBI Source: That’s perfect bro!

19 ALHAGGAGI: Wallah Aki I’m gonna tear the city up

20 The conversation continued for a few more minutes, with ALHAGGAGI bragging that his attack ideas  
 21 “are genius,” but then complaining that “the brothers,” meaning his contacts in ISIS, hadn’t sent him  
 22 “the files,” referring to a bomb-making manual he had requested. ALHAGGAGI then boasted that his  
 23 aim was to “get 10,000 ppl,” and that he was “hitting up China Town, down towns, main streets, mission  
 24 Blvd every club and underground club in the city... I know I’ll probably get near the 500 but my goal is  
 25 10,000.” ALHAGGAGI then told the FBI Source how he had recently applied for a job at a local police  
 26 department so that he would have access to more weapons, and that he was “gonna redefine terror.”

27 So far, this conversation should sound quite familiar to the Court, because the government  
 28 highlighted it at the very beginning of its first sentencing memorandum. *See* Docket No. 90,

1 Government’s Sentencing Memorandum, at pgs. 6-7; *see also* Sealed Exhibit 1 to Docket No. 90 at pg.  
2 50-55 (Bates US-007600 – 007605). But in light of the majority panel’s opinion, the conversation that  
3 immediately followed is highly relevant. The government attached screenshots of this portion of the  
4 conversation as an exhibit to its first sentencing memorandum. *See* Docket No. 90, Sealed Exhibit 1 at  
5 pgs. 55-60 (Bates US-007605 – 007610). In particular, right after ALHAGGAGI said that he was  
6 “gonna redefine terror,” the FBI Source replied, “BizniAllah bro, you will make the kuffar [nonbelievers  
7 of Islam] tremble in their sleep.” ALHAGGAGI then responded, “Bro Europe is shaking in fear. Have  
8 you been watching the news?” For the Court’s reference, this conversation took place on July 24, 2016,  
9 just 10 days after a Tunisian man in Nice, France, drove a cargo truck into crowds of people celebrating  
10 Bastille Day, France’s national day, killing 84, and injuring 202 others. “Attack In Nice: Truck Driver  
11 Identified As 31-Year-Old Tunisia Native,” available at [https://edition.cnn.com/2016/07/15/europe/nice-](https://edition.cnn.com/2016/07/15/europe/nice-france-truck)  
12 [france-truck](https://edition.cnn.com/2016/07/15/europe/nice-france-truck) (last accessed on January 19, 2022). The FBI Source replied, “Yeah man there have been  
13 so many victories lately bro.” ALHAGGAGI replied, “Ikr!!”, an abbreviation in the online messaging  
14 world that often stands for “I know, right?”

15 The FBI Source then asked, “Are you on Twitter bro?” ALHAGGAGI initially replied, “Nah  
16 Unfortunately.” But then the FBI Source added, “I have been and I have had so many accounts lol,”  
17 implying that his accounts had been shut down for posting ISIL-related material. At this point,  
18 ALHAGGAGI admitted that he too had been on Twitter and had also had his accounts shut down.  
19 Specifically, ALHAGGAGI stated “Same here like two years ago... When turjuman had his first  
20 account lol... He got like 400 now?” Notably, it was ALHAGGAGI, not the FBI source, who brought  
21 up the name and likened himself to “Tujurman.” ALHAGGAGI then claimed that unlike Tujurman,  
22 who had upwards of 400 accounts, ALHAGGAGI “got tired after like 20 acciunts [sic].” He further  
23 claimed to be disenchanted by Twitter, commenting “So many children I can’t even properly debate  
24 anymore.... I feel sorry for anyone who takes social media too serious lol.” The conversation then  
25 returned to ALHAGGAGI’s kinetic attack plans, with ALHAGGAGI agreeing with the FBI Source’s  
26 assessment that ALHAGGAGI would “bring the city [presumably San Francisco] to its knees.”  
27 ALHAGGAGI added that he would hopefully cause “millions of dollars of damage,” as well. Docket  
28 No. 90, Sealed Exhibit 1 at pgs. 55-60 (Bates US-007605 – 007610).

1 So who or what is Tujurman, this entity on Twitter that ALHAGGAGI spontaneously brought up  
2 in the midst of discussing his own plans to “redefine terror” in the Bay Area? ALHAGGAGI appeared  
3 be referring to a notorious ISIS social media operative known on Twitter as Tujurman al-Asawirati.  
4 According to publicly available information, the individual or individuals behind the Turjuman al-  
5 Asawirati Twitter accounts have been prominent faces of ISIS’s social media operation since at least as  
6 early as 2014. *See, e.g.*, Exhibit 1 (report by SITE Intelligence Group, an American company that tracks  
7 online activity of jihadist and other hate groups, describing Tujurman’s history on Twitter). The  
8 Turjuman al-Asawirati accounts are well known for routinely posting material plainly designed to  
9 intimidate, coerce, and retaliate against government conduct, including the U.S. government. *Id.* For  
10 example, the image below is attributed to Tujurman: it bears the name Tujurman Asawirati in the bottom  
11 right corner in Arabic, and depicts the infamous British ISIS executioner “Jihadi John” stabbing former  
12 President Obama in the head with a knife:



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27 Because the Turjuman Twitter accounts referenced by ALHAGGAGI have been used so  
28 frequently to intimidate, coerce, and retaliate, Twitter routinely shuts them down for violating Twitter’s

1 terms and conditions. *Id.* This has resulted in an online game of cat-and-mouse, with Twitter shutting  
 2 down Turjuman accounts, only for Turjuman to reappear using different Twitter handles. Turjuman  
 3 gained fame amongst ISIS supporters for its ability to constantly evade Twitter’s shutdown efforts. *Id.*  
 4 Indeed, ALHAGGAGI was apparently well familiar with this cat-and-mouse game, when he told the  
 5 FBI CHS, “[Tujurman] got like 400 now?” Docket No. 90, Sealed Exhibit 1, at pg. 56 (Bates US-  
 6 007606).

7 The timing of this exchange is particularly compelling – in just an 18-minute span,  
 8 ALHAGGAGI described his own attack plans in the Bay Area, then bragged that he had been on Twitter  
 9 as early as ISIS’s own prolific Twitter operative Tujurman, then continued to talk about his own attack  
 10 plans. Equally compelling is the fact that, of all the ways that ALHAGGAGI could have answered the  
 11 FBI Source’s simple question “Are you on Twitter, bro,” ALHAGGAGI spontaneously went straight to  
 12 talking about ISIS’s prolific social media operative Tujurman, a Twitter user who was responsible for  
 13 publishing gruesome material plainly intended to intimidate, coerce, and retaliate against governments,  
 14 and whose accounts were routinely shut down and then regenerated by ISIS operatives. Taking all of  
 15 this into consideration, it is entirely reasonable, if not inescapable, for this Court to infer that, when  
 16 ALHAGGAGI was approached less than three months later by an actual ISIS member to open Twitter  
 17 and other social media accounts on behalf of ISIS, he knew exactly how ISIS would use those accounts:  
 18 to intimidate, coerce, and retaliate along the lines of Tujurman.

19 **B. ALHAGGAGI’s Car Fire Video**

20 This Court can also make reasonable inferences about ALHAGGAGI’s intent from the car fire  
 21 video that he narrated. Specifically, recall that on June 25, 2016, about four months before  
 22 ALHAGGAGI started opening social media accounts for ISIS members, he used a cell phone to record a  
 23 video of what appeared to be a police car on the side of a highway engulfed in flames. ALHAGGAGI  
 24 narrated over the video:

25 ALHAGGAGI: [Coughs] “--do not...” [coughs] “We warned you, Americans, you  
 26 scoundrels, God damn you, that this Caliphate is in-in America, in the  
 state of California; soldiers’ missions.”

27 ....

28 ALHAGGAGI: With God’s favor, we [coughs] –with the favor of God Most High, we, ah,  
 caused an accident for this filthy police officer, by way of killing him and

1 starting a fire in his car; it was an ambush carried out by the soldiers of the  
2 State.

3 Docket No. 90, Government’s Sentencing Memorandum, pgs. 48-49; *see also* Docket No. 90, Exhibit 9.

4 The substance of the video is chilling enough, and speaks volumes about ALHAGGAGI’s general  
5 mindset regarding ISIS. But this Court can also infer that the *means* ALHAGGAGI used to make the  
6 video is highly relevant to ALHAGGAGI’s specific intent when opening social media accounts a few  
7 months later – in this day and age, what else would one do with an outrageous video taken on a cell  
8 phone, besides post it on social media? This is particularly true for ISIS, whose lurid history of  
9 recording beheadings and other executions and then posting them on social media is well documented.  
10 *See* “Video shows ISIS beheading U.S. journalist James Foley” by Chelsea Carter, August 20, 2014,  
11 available at <https://www.cnn.com/2014/08/19/world/meast/isis-james-foley/index.html> (last accessed  
12 January 19, 2022). The fact that ALHAGGAGI began his narration with a warning to the general public  
13 (“We warned you, Americans, you scoundrels”) demonstrates he knew such videos were routinely  
14 distributed on social media, where they gained wide audiences. It defies logic that someone who  
15 narrated a video of a purported ISIS attack on a police car, warning the general public and claiming  
16 responsibility in the name of ISIS-California, would then have no idea how ISIS uses social media  
17 accounts to intimidate, coerce, and retaliate against governments.

### 18 C. ALHAGGAGI Kept a Copy of *Dabiq*, ISIS’s Influential Online Magazine

19 This Court should also make factual findings regarding ALHAGGAGI’s possession and apparent  
20 consumption of graphic ISIS propaganda. In particular, a key part of ISIS’s digital media operation  
21 involves producing a slick public relations-style online magazine called *Dabiq* as a PDF and then  
22 distributing it through social media. *See* “The Latest Issue of ISIS’s Magazine Is As Terrible As You’d  
23 Think,” by Madison Pauly, Mother Jones, November 19, 2015  
24 <https://www.motherjones.com/politics/2015/11/isis-magazine-dabiq-paris-beirut-russia> (last accessed  
25 January 19, 2022) (noting in particular that ISIS uses social media to distribute *Dabiq*). ALHAGGAGI  
26 had a copy of *Dabiq* on his electronic devices when he was arrested – and not just any copy. This one  
27 was replete with graphic images of child soldiers standing over the bodies of two executed prisoners.  
28 The caption lauded the “young lions to whom the Islamic State recently handed over two agents caught



1 spying for Russian Intelligence and an agent caught spying for the Israeli Mossad, to be executed and  
2 displayed as an example to anyone else thinking of infiltrating the *mujahidin*.” Docket No. 101,  
3 Government’s Reply to Defendant’s Sentencing Memorandum, Sealed Exhibit 1 at pg. 21. It is hard to  
4 imagine a more succinct or graphic message of intimidation, coercion, and retaliation against foreign  
5 governments than this one.

6 Also relevant is the manner in which ALHAGGAGI possessed this magazine, and the  
7 circumstances under which it was recovered. As set forth in the Government’s reply sentencing  
8 memorandum, FBI agents searching ALHAGGAGI’s house upon his arrest found ALHAGGAGI’s copy  
9 of *Dabiq* not on his laptop hard drive but on a removable storage device (specifically, an SD card),  
10 suggesting it was deliberately downloaded and placed there by ALHAGGAGI. More alarming is what  
11 *else* was found on that SD card: ALHAGGAGI’s suicide note, signed “Abu Harb al Yamany,” or  
12 “Yemeni father of war,” in which he described in detail the multiple bombing, poison, and arson attacks  
13 he wanted to carry out across the Bay Area. The fact that ALHAGGAGI stored ISIS’s most well-known  
14 online publication, which is distributed on social media, on the same removable storage device as his  
15 suicide note describing the bombings he wanted to carry out in the name of ISIS is deeply telling. From  
16 this, the Court can easily infer that ALHAGGAGI knew exactly what ISIS would do with the social  
17 media accounts he would later open on their behalf: intimidate, coerce, and retaliate.

18 **D. ALHAGGAGI Posted Online About How to Kill Soldiers/Officers with Chloroform**

19 This Court can also make reasonable inferences about ALHAGGAGI’s intent when he opened  
20 social media accounts on behalf of ISIS from his other alarming online activities. Specifically, on  
21 November 17, 2016, ALHAGGAGI posted on Telegram that he was a novice in poison and explosives,  
22 but shared a link to an online “course” for “jihadi beginners.” A few days later, on November 21, 2016,  
23 he posted “step-by-step instructions on how to build a napalm bomb at home.” Government’s Reply to  
24 Defendant’s Sentencing Memorandum, Sealed Exhibit 2. He followed this with a post on how to make  
25 chloroform, noting that “[jihadists] could inject a soldier/officer with a 3mm does to sedate, or a 10mm  
26 dose to kill.” ER: 630; SM: 100 – 10. In between these two posts, and in the same chatroom,  
27 ALHAGGAGI posted the text of a letter to him from the Oakland Police Department inviting him for an  
28 interview as a “cyber security specialist.” This Court can reasonably infer that, if ALHAGGAGI was

1 posting instructions online on how ISIS could kill government employees, and at the same time was  
 2 interviewing for a government job as a cyber security specialist, he likely knew that ISIS would use any  
 3 social media accounts he opened for them to intimidate, coerce, and retaliate against governments.

4 **E. ALHAGGAGI Harbored Retaliatory Intent Towards Two Foreign Governments in**  
 5 **Particular: Saudi Arabia and the United Arab Emirates**

6 In the course of his conversations with the FBI Source online, ALHAGGAGI spoke about two  
 7 foreign governments against whom he harbored a particular retaliatory intent: Saudi Arabia and the  
 8 United Arab Emirates. With respect to Saudi Arabia, ALHAGGAGI told the FBI Source online that

9 You know how Saudi has a lot of our scholars locked up... what we could do is threaten  
 10 Saudi in exchange for American [UI]... Like every day passes by with you guys releasing  
 our brothers a bomb is going to blow up... with you guys not\* releasing

11 As for the United Arab Emirates, ALHAGGAGI had this to say to the FBI Source:

12 ALHAGGAGI: Akh I kinda made a decision on going to Dawlah [Arabic for  
 13 “State,” a shorthand way of referring to the Islamic State, or ISIS]  
 right way.

14 FBI Source: That might be smart.

15 ALHAGGAGI: After America I gotta go to Dubai

16 FBI Source: Oh yeah?

17 ALHAGGAGI: It seems that they are too happy aki, I don’t mind dying there  
 18 either. It’s close enough for me.

19 FBI Source: Wait Who is too happy... The puppets there?

20 ALHAGGAGI: Ppl in Dubai<sup>4</sup>

21 FBI Source: Bro that place is full of degenerates I hear

22 ALHAGGAGI: They gotta feel the wrath of the Caliphate.

23 FBI Source: So you got plans there too?... I hear you. Hmm

24 ALHAGGAGI: I’m gonna arrange some stuff *Insha ’allah*, so far is just to go and  
 25 kill some police with sneak attacks lol and take their weapons

26 FBI Source: I don’t need to go to Dawla right away bro. Is it easy to get to  
 27 Dubai?

28 ALHAGGAGI: Just as hard as getting to Turkey.

<sup>4</sup> According to the PSR, the defendant in fact knows “ppl” in the United Arab Emirates: his sister lives there. Docket No. 147, Presentence Report, at para. 75.



1 FBI Source: Lol that could be good. And I haven't seen anything from Dawla  
2 or anyone about victories there have you?

3 ALHAGGAGI: Not at all it'll be a first and very (as we say in Oakland) fly

4 FBI Source: Lol... Well when we are successful there and if we can make it out  
5 in one piece then let's do it... Lol

6 ALHAGGAGI: We won't make it out of there I know that for sure... But we could  
gather ppl

7 FBI Source: That's okay

8 ALHAGGAGI: And start something real

9 FBI Source: That would be perfect bro

10 ALHAGGAGI: And maybe just maybe we could hold down some territory

11 FBI Source: It might have more long lasting impact too than us just going to  
12 Dawla for a while... Do you already know some brothers there?

13 ALHAGGAGI: I have family there but I'm pretty sure they're pussies.

14 FBI Source: Or would we have to start from scratch? Lol

15 ALHAGGAGI: But I'll ask the brothers from Dawlah of [sic] they know anyone  
we could connect with.<sup>5</sup>

16 FBI Source: Still... that's a place to stay and set up a home base kind of... I bet  
17 they do.

18 ALHAGGAGI: Man o [sic] found my purpose in life [emojis]

19 The *very next* topic of conversation, within 2 minutes of the discussion about working with ISIS  
20 to carry out attacks in Dubai, was about social media, specifically about ISIS accounts getting shut down  
21 by Twitter. The FBI Source forwarded to ALHAGGAGI a list of Twitter accounts belonging to people  
22 who reportedly tried to hack or harass ISIS-related Twitter accounts. The FBI Source told  
23 ALHAGGAGI that if he uploaded the list into his account settings, ALHAGGAGI could automatically  
24 block those users from his own Twitter accounts. ALHAGGAGI responded, "Nah, it's fine, I remember  
25 my account was getting deleted every other day... annoying but satisfying."

26 *Immediately* after this comment about getting his Twitter accounts shut down all the time,  
27

28 <sup>5</sup> The Court will recall that one of the things that most alarmed the government during this investigation was that ALHAGGAGI had in fact been in contact with actual ISIS members.

1 ALHAGGAGI's next statement to the FBI Source was: "Ay about your cousin... I understand that he's  
2 down and all... But is he doing this because he's mad that he lost his job? Or angry at something  
3 specific?" The FBI Source's "cousin," of course, was an FBI undercover agent, posing as a skilled  
4 bombmaker, whose expertise ALHAGGAGI desperately needed if he was going to carry out any  
5 physical attacks. ALHAGGAGI said that if he could meet the "cousin" in person, ALHAGGAGI would  
6 ask him to hold the camera while ALHAGGAGI videorecorded himself swearing an oath to ISIS.  
7 (Again, as with the car fire video discussed above, what else would an ISIS operative do with such a  
8 video, besides post it on social media?) The FBI Source replied that his "cousin" saw the suffering of  
9 Muslims everywhere, and was upset at "how the USA just plays everyone like puppet masters and never  
10 gets held accountable," adding that perhaps ALHAGGAGI and the "cousin" should videorecord an oath  
11 to ISIS together. ALHAGGAGI's response? "Yezzir."

12 In short, ALHAGGAGI and the FBI source talked about blackmailing the Saudi government,  
13 making the people of Dubai "feel the wrath of the Caliphate," and "holding the USA accountable," all in  
14 the same breath as ALHAGGAGI claimed how "satisfying" it was for his Twitter accounts to get  
15 routinely shut down. There is only one logical conclusion that one can draw from this. ALHAGGAGI's  
16 social media activities on behalf of ISIS and his plans to carry out bombing attacks shared the same  
17 motivation: to intimidate, coerce, and retaliate against government conduct.

#### 18 **F. Section 3553 Argument**

19 Finally, leaving aside the issue of the terrorism enhancement, this Court can and should reimpose  
20 the same sentence it initially imposed, based on the factors set forth in 18 U.S.C. § 3553. The  
21 overarching goal of a sentencing court is to impose a sentence that is sufficient to "reflect the  
22 seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate  
23 deterrence; to protect the public; and to provide the defendant with needed education or vocational  
24 training, medical care, or other correctional treatment." *United States v. Ressam*, 679 F.3d 1069, 1088-  
25 89 (9th Cir. 2012) (en banc) (quotation omitted); 18 U.S.C. § 3553(a)(2). The Court should begin the  
26 process by correctly calculating the applicable Guidelines range and must "remain cognizant of them  
27 throughout the sentencing process." *Gall v. United States*, 552 U.S. 38, 50 n.6 (2007). The Court  
28 should then consider the factors outlined in 18 U.S.C. § 3553(a) to determine the appropriate sentence.

1 *Ressam*, 679 F.3d at 1089. If the Court determines that a sentence outside of the Guidelines range is  
2 warranted, it must ensure that the “justification is sufficiently compelling to support the degree of the  
3 variance.” *Id.* (quotation omitted). “[A] major departure should be supported by a more significant  
4 justification than a minor one.” *Gall*, 552 U.S. at 50.

5 This Court offered significant justifications for its 188-month sentence when it initially rendered  
6 judgment. All of those justifications remain valid today. The Court found that ALHAGGAGI had  
7 obtained a bomb manual from an actual ISIS member, which the Court described as “an incredible step”  
8 for someone who claimed to have no intent to carry out a bombing attack. Docket No. 146, Feb. 26,  
9 2019, Sentencing Transcript, at pg. 190. The Court also found that ALHAGGAGI’s act of  
10 photographing BART stations as potential bombing locations (again, at the behest of ISIS members) was  
11 again, “a pretty big step” towards actually going through with an attack. And while the Court found that  
12 ALHAGGAGI probably withdrew to some degree when he saw the FBI undercover agent’s mock-up  
13 bombing supplies, the Court questioned, “how does one explain his conduct afterwards? How does he  
14 continue to go on to talk about guns and bombings and things if he really had a moment of... lucidity?”  
15 *Id.* at 191. The Court then focused closely on ALHAGGAGI’s words, commenting:

16 His words are very dangerous. Words matter. Conspiracies matter.  
17 Generally, conspiracies are words. That’s what – they’re words plus an  
18 overt act. And the danger here is not whether Mr. Alhaggagi actually  
19 intended to carry out these horrendous thoughts. The danger in part is as,  
20 as a person who is engaged in conduct with other people, does he support,  
21 encourage, participate in the planning or in the -- in the discussions of  
22 these sorts of things? In the agreements of these sorts of things?

20 So I go back to actually, Ms. McNamara, what I said at the outset, in a  
21 way, which was that but for the fact that this was an undercover agent, it  
22 would have been a conspiracy, in the Court’s view. And also, it would  
23 have been an extraordinarily dangerous conspiracy.

23 *Id.* at 192. The Court continued, explaining that “part of the danger of this type of activity is that its  
24 consequences are *horrendous*. They’re *horrendous*.” *Id.* at 193 (emphasis added).

25 The Court then concluded by describing

26 the most disturbing thing that I found in Mr. Alhaggagi: The lack of  
27 empathy for others. That is chilling. I don’t know that it rises to the level  
28 of a -- of mental illness. I don’t know whether it's truly sociopathic. I  
29 don’t know. But I do know that his – his constant references to what is to  
30 be done evidences a total lack of empathy. And I would say this. If  
31 people lack empathy towards one another, they are extraordinarily

1 dangerous, if given the tools of creating some criminal conduct. The fact  
2 that he's not focused on being sympathetic to innocent people, to students,  
3 to people who go to a nightclub, to -- to -- to individuals who are doing  
4 nothing, they're trying to live their lives, and he has no sympathy or  
5 empathy for them. And then when he speaks about his community, it's, of  
6 course, even -- even worse. Because you can't understand how he can  
7 have no feelings of compassion or sympathy or empathy towards those  
8 people.

9 Taking all of these factors into consideration, to afford adequate deterrence to criminal conduct; and to  
10 protect the public from further crimes of the defendant, the Court sentenced ALHAGGAGI to 188  
11 months in prison, followed by 10 years of supervised release, restitution in the amount of \$5,273.82, and  
12 a special assessment of \$400. That was the right sentence to impose then, and this Court should impose  
13 it again.

14 DATED: January 19, 2022

Respectfully submitted,

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/s/

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