

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, : 08-CR-823 (NGG)

-against-

: United States Courthouse
: Brooklyn, New York

JOHN DOE,

: January 28, 2009
: 4:30 p.m.

Defendant.

----- X

CORRECTED FINAL TRANSCRIPT OF CRIMINAL CAUSE FOR MOTION TO
CLOSE COURTROOM
BEFORE THE HONORABLE NICHOLAS G. GARAUFIUS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: BENTON J. CAMPBELL, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: JAMES LOONAM, ESQ.
JEFFREY KNOX, ESQ.
Assistant United States Attorney

For the Defendant: FEDERAL DEFENDERS OF NEW YORK
16 Court Street
3rd Floor
Brooklyn, New York 11241
BY: LEN KAMDANG, ESQ.

Court Reporter: Marie Foley, RPR, CRR
Official Court Reporter
Telephone: (718) 613-2596
Facsimile: (718) 613-2648
E-mail: Marie_Foley@nyed.uscourts.gov

Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

Proceedings

2

1 (Open court.)

2 COURTROOM DEPUTY: All rise.

3 (Judge Garaufis takes the bench.)

4 COURTROOM DEPUTY: Criminal cause for a motion.

5 Counsel, please state your appearances.

6 MR. LOONAM: James Loonam and Jeff Knox for the

7 United States. Good afternoon, your Honor.

8 THE COURT: Good afternoon.

9 MR. KAMDANG: Good afternoon. Len Kamdang on behalf
10 of Bryant Vinas who should be on his way in from the back.

11 THE COURT: We have to deal with the motion first.

12 MR. LOONAM: Yes, your Honor. The Government moves
13 to close the courtroom.

14 The Government has complied with the procedures set
15 forth by the Second Circuit in the United States v. Alcantara.
16 We submitted papers under seal to your Honor on this issue.

17 We would note that the motion to close the
18 courtroom, this hearing, was listed on today's daily court
19 calendar which was published to the public yesterday, and the
20 hearing on the motion was also noted on the docket sheet.

21 We would note that there's compelling government
22 interests in closing the courtroom, and that compelling
23 government interest would be prejudiced if the courtroom were
24 not closed, that there's no reasonable alternative to the
25 closing the courtroom, and that the compelling interests of

1 the Government outweighs the qualified First Amendment right
2 that exists to public access to this proceeding.

3 Therefore, the Government requests that your Honor
4 enter the proposed order which the Government submits is
5 narrowly tailored to protect the compelling government
6 interest that exists in this case.

7 MR. KAMDANG: We join in the Government's motion.

8 THE COURT: All right. The Court has reviewed the
9 submission of the United States of America seeking an order to
10 close the courtroom and compliance with the procedures set
11 forth in the United States versus Alcantara, 396 F.3d. 189,
12 Second Circuit 2005. Having reviewed the Government's
13 submission and held a public hearing on the motion at which
14 the parties and any intervenors have been provided an
15 opportunity to be heard, based on the submissions of the
16 parties, the Court makes the following findings:

17 One, there is a substantial probability that a
18 public guilty plea would prejudice a compelling interest of
19 the Government in the integrity of significant government
20 activities entitled to confidentiality, including ongoing
21 investigations of serious and violent crimes.

22 Second, there is a substantial probability that a
23 public guilty plea would prejudice a compelling interest of
24 the Government in gathering information of potential
25 importance to protect the national security.

1 Third, no reasonable alternatives to closure of the
2 courtroom exist that can adequately protect the compelling
3 interests that would be prejudiced by a public proceeding
4 identified by the Government and identified above.

5 Fourth, the prejudice to the compelling interests
6 identified by the Government overrides the public's and the
7 media's qualified First Amendment right to access the guilty
8 plea.

9 Therefore, the motion to close the courtroom during
10 the guilty plea is granted, and the closure of the courtroom
11 is going to be narrowly tailored by requiring the Government,
12 with advance notice to the defendant, to disclose the
13 transcript as required by the Supreme Court case law and Rule
14 16 of the Federal Rules of Criminal Procedure, and 18 U.S.C.
15 3500.

16 MR. KAMDANG: Your Honor, just to make the record
17 complete, we do waive my client's presence for the purposes of
18 this motion.

19 THE COURT: All right.

20 I'm going to sign an order to that effect which also
21 sets forth unsealing requirements for the transcript and
22 indicates that the amending of the public docket to reflect
23 the occurrence of the hearing on the motion to close the
24 courtroom, the disposition of the motion, and the fact of the
25 courtroom closure.

Proceedings

5

1 You can make your application to seal the transcript
2 of the guilty plea at the end.

3 MR. LOONAM: Yes, your Honor.

4 THE COURT: I'm going to need your representation
5 that everyone in the courtroom currently is authorized to be
6 here either in addition to the U.S. marshals, who we know.
7 The others who are here are with you, and they're engaged in
8 the investigation. Is that it?

9 MR. LOONAM: Correct, your Honor. Everyone in the
10 courtroom is either with the Government or with the Federal
11 Defenders office.

12 MR. KAMDANG: That's correct, your Honor.

13 THE COURT: Very well.

14 (At this time, the courtroom was closed and sealed.)
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEALED PAGES OF TRANSCRIPT OF PROCEEDINGS

Taken on January 28, 2009

Before Nicholas G. Garaufis, U.S.D.J.

*** SEALED PROCEEDINGS ***

7

1 THE COURT: Has the courtroom been closed and
2 sealed?

3 COURTROOM DEPUTY: Yes.

4 THE COURT: All right. The courtroom has been
5 sealed, and we can proceed with the taking of the defendant's
6 plea.

7 (Defendant enters.)

8 THE COURT: Are you Bryant Neal Vinas?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Counsel, the Government is proceeding by
11 way of a superseding information.

12 Have you had an opportunity to discuss with your
13 client the significance of proceeding by way of an
14 information?

15 MR. KAMDANG: Yes, your Honor.

16 THE COURT: In your view, does he understand the
17 rights that he would be giving up by proceeding by way of an
18 information?

19 MR. KAMDANG: Yes, your Honor.

20 THE COURT: Have you answered all of his questions
21 about it?

22 MR. KAMDANG: I believe so, your Honor.

23 THE COURT: How do you pronounce your last name?
24 Is it Vinas?

25 THE DEFENDANT: Vinas.

*** SEALED PROCEEDINGS ***

8

1 THE COURT: Mr. Vinas, has your attorney discussed
2 with you the procedure of pleading guilty to an information as
3 opposed to an indictment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And has he answered all your questions
6 about it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I'm going to share with you some of your
9 rights with respect to this procedure, and I want you to
10 listen very carefully to your rights.

11 I take it that you speak English and have no trouble
12 understanding English?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If at any time during this proceeding
15 you feel you don't understand something that's being said to
16 you in English and you want to stop and have an interpreter
17 assist you, we would stop and put this on for another time so
18 that you would have the assistance of an interpreter.

19 What is your native language?

20 THE DEFENDANT: English, sir. I was born here.

21 THE COURT: You were born here?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So there's no issue with regard to
24 needing an interpreter?

25 THE DEFENDANT: That's correct.

*** SEALED PROCEEDINGS ***

9

1 THE COURT: That's fine.

2 So you're a U.S. citizen?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, have you been furnished with a copy
5 of the charge against you in the superseding indictment S-1?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has your attorney had the opportunity to
8 go over the charges with you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The charges in the superseding
11 information Count One accuses you of a conspiracy to murder
12 U.S. nationals.

13 In Count Two, the Government accuses you of
14 providing material support to a foreign terrorist
15 organization.

16 And in Count Three, the Government accuses you of
17 receiving military-type training from a foreign terrorist
18 organization.

19 Do you understand these charges against you in the
20 superseding information?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, you have certain rights, and I'm
23 going to go over these rights with you with regard to
24 proceeding by way of a superseding information.

25 You have a constitutional right to be charged by an

*** SEALED PROCEEDINGS ***

10

1 indictment of a grand jury, but you can waive that right and
2 consent to being charged by information of the U.S. Attorney.

3 Do you understand what it means to waive a right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What does it mean?

6 THE DEFENDANT: It means I pass on.

7 THE COURT: You give it up.

8 THE DEFENDANT: Yeah.

9 THE COURT: You don't invoke your right. You give
10 up the right. That's what it means to waive something,
11 W-A-I-V-E. Okay.

12 Instead of an indictment, these felony charges
13 against you have been brought by the U.S. Attorney by the
14 filing of an information. Unless you waive indictment, you
15 may not be charged with a felony unless a grand jury finds, by
16 return of an indictment, that there is probable cause to
17 believe that a crime has been committed and that you committed
18 it. If you do not waive indictment, the Government may
19 present the case to the grand jury and ask it to indict you.

20 A grand jury is composed of at least 16 and not more
21 than 23 persons, and at least 12 grand jurors must find that
22 there is probable cause to believe you committed the crime
23 with which you are charged before you may be indicted. The
24 grand jury might or might not indict you. If you waive
25 indictment by the grand jury, the case will proceed against

*** SEALED PROCEEDINGS ***

11

1 you on the U.S. Attorney's information just as though you had
2 been indicted.

3 So let me ask you again: Have you discussed waiving
4 your right to indictment by the grand jury with your attorney?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Do you understand your right to an
7 indictment by a grand jury?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have any threats or promises been made
10 to induce you to waive indictment?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you wish to waive your right to
13 indictment by a grand jury?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Counsel, is there any reason why your
16 client should not waive indictment?

17 MR. KAMDANG: No, your Honor.

18 THE COURT: Now, I have in front of me a waiver of
19 indictment in the United States of America versus John Doe,
20 and I'm going to show this to the defendant and his attorney
21 and ask a few questions.

22 (Hanging.)

23 THE COURT: Mr. Vinas, have you read this document?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And have you discussed it with your

*** SEALED PROCEEDINGS ***

12

1 attorney?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has he answered any and all questions
4 that you had about it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that this is a waiver
7 of indictment form?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: At the bottom of the form, is that your
10 signature at the bottom?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you sign it today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Kamdang, did you also sign the
15 waiver?

16 MR. KAMDANG: I did, your Honor.

17 THE COURT: Why don't you return it to me?

18 MR. KAMDANG: (Handing.)

19 THE COURT: I find that the defendant has knowingly,
20 intentionally and voluntarily waived indictment by the grand
21 jury.

22 Mr. Vinas, your attorney advises that you wish to
23 plead guilty to the information in which you are charged,
24 which is superseding information S-1 in 08-CR-823.

25 This is a serious decision, and I must be certain

*** SEALED PROCEEDINGS ***

13

1 that you make it understanding your rights and the
2 consequences of your plea. I'm going to explain certain
3 rights to you, and then ask you questions. I want your
4 answers to be under oath. The deputy clerk will swear you in.

5 Before you do that, do you want to swear or affirm?

6 THE DEFENDANT: Affirm.

7 COURTROOM DEPUTY: Raise your right hand.

8 (Defendant affirmed.)

9 THE COURT: Mr. Vinas, you understand that having
10 affirmed to tell the truth, you must do so. If you were to
11 deliberately lie in response to any question I ask you, you
12 could face further criminal charges for perjury.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If I say anything that you do not
16 understand, or if you need me to repeat anything, you have
17 only to ask. It is important that you understand everything
18 that goes on in these proceedings.

19 Is that clear?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Vinas, how old are you?

22 THE DEFENDANT: I'm 26 years old.

23 THE COURT: How far did you get with your education?

24 THE DEFENDANT: I just completed high school.

25 THE COURT: Where did you go to high school?

*** SEALED PROCEEDINGS ***

14

1 THE DEFENDANT: Longwood High School.

2 THE COURT: Is that in New Jersey?

3 THE DEFENDANT: Long Island, sir.

4 THE COURT: It's on Long Island?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you are a U.S. citizen?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And English is your primary language?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you had any trouble communicating
11 with your client?

12 MR. KAMDANG: No, your Honor.

13 THE COURT: Very good.

14 Now, Mr. Vinas, I must be certain that whatever
15 decision you make today you make with a clear head. So I'm
16 going to ask you some questions about your health.

17 Are you currently or have you recently been under
18 the care of a doctor or psychiatrist for any reason?

19 THE DEFENDANT: No, sir.

20 THE COURT: In the past 24 hours, have you taken any
21 pills or drugs or medicine of any kind?

22 THE DEFENDANT: No, sir.

23 THE COURT: In the past 24 hours, have you drunk any
24 alcoholic beverages?

25 THE DEFENDANT: No, sir.

*** SEALED PROCEEDINGS ***

15

1 THE COURT: Have you ever been hospitalized or
2 treated for any drug-related problem?

3 THE DEFENDANT: No, sir.

4 THE COURT: Is your mind clear as you stand here
5 today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand everything being said to
8 you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Counsel, have you discussed the question
11 of a guilty plea with your client?

12 MR. KAMDANG: I have, your Honor.

13 THE COURT: In your view, does he understand the
14 rights he would be waiving by pleading guilty?

15 MR. KAMDANG: Yes, sir.

16 THE COURT: Do you have any question as to your
17 client's competence to proceed today?

18 MR. KAMDANG: No, your Honor.

19 THE COURT: Mr. Vinas, are you satisfied with the
20 assistance your attorney has given you thus far in this
21 matter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you feel you need any more time to
24 discuss with him the question of a guilty plea?

25 THE DEFENDANT: No, sir.

*** SEALED PROCEEDINGS ***

16

1 THE COURT: Now, you are pleading guilty to a three
2 count superseding information, and I'm going to ask the
3 Government to set forth the charges that are found in the
4 information and to identify the elements of the crimes for
5 each of the counts that the Government would have to prove to
6 a jury, beyond a reasonable doubt and unanimously, if you
7 decided to go to trial on these charges.

8 MR. KNOX: Yes, your Honor. It is a three count
9 superseding information.

10 Count One is conspiracy to murder U.S. nationals
11 abroad. There are seven elements to this charge: one, a
12 person outside the United States; two, knowingly,
13 intentionally and with malice aforethought; three, engages in
14 a conspiracy; four, to kill one or more nationals of the
15 United States; five, while such nationals were outside the
16 United States; six, that one or more members of the
17 conspiracy commits an overt act to effect the object of the
18 conspiracy; and seven, which applies in this case, the
19 defendant's last permanent address was in the Eastern District
20 of New York.

21 Count Two --

22 THE COURT: Let me just ask do you understand the
23 charge in Count One and the elements of the crime the
24 Government would be required to prove to a jury to convict
25 you?

*** SEALED PROCEEDINGS ***

17

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Count Two.

3 MR. KNOX: Count Two charges providing material
4 support to a foreign terrorist organization; in this case,
5 al-Qaeda. There are four elements to this charge: one, the
6 person knowingly provides material support; two, to a foreign
7 terrorist organization; three, the person knows that the
8 organization is a designated foreign terrorist organization or
9 knows that the organization engages in terrorism or terrorist
10 activity; and four, which applies in this case, the defendant
11 is a national of the United States.

12 THE COURT: Mr. Vinas, do you understand the charge
13 in Count Two?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand the elements of
16 the crime the Government would be obligated to prove to a jury
17 in order to convict you of this crime?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Very well.

20 Count Three.

21 MR. KNOX: Count Three charges receiving
22 military-type training from a foreign terrorist organization.
23 Again there are four elements to this charge: one, the person
24 knowingly receives military-type training; two, from or on
25 behalf of a designated foreign terrorist organization; three,

*** SEALED PROCEEDINGS ***

18

1 the person knows that the organization is a designated foreign
2 terrorist organization or knows that the organization engages
3 in terrorism or terrorist activity; and four, which applies
4 in this case, the defendant is a national of the United
5 States.

6 THE COURT: Mr. Vinas, do you understand the charge
7 in Count Three?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand the elements of
10 the crime that the Government would be obligated to prove to a
11 jury in order to convict you of this crime?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 Now, you have certain rights, and I'm going to go
15 over those rights with you. Please listen carefully to your
16 rights.

17 You have the right to plead not guilty to these
18 charges. No one can be forced to plead guilty.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you do plead not guilty to these
22 charges, you have the right, under the constitution and laws
23 of the United States, to a speedy and public trial before a
24 jury with the assistance of your attorney.

25 Do you understand?

*** SEALED PROCEEDINGS ***

19

1 THE DEFENDANT: Yes, sir.

2 THE COURT: At any trial, you would be presumed to
3 be innocent. You would not have to prove that you were
4 innocent. This is because under our system of law, it is the
5 Government that must come forward with proof that establishes
6 beyond a reasonable doubt that you are guilty of the crimes
7 charged. If the Government failed to meet this burden of
8 proof, the jury would have the duty to find you not guilty.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: In the course of a trial, witnesses for
12 the Government would have to come here to court and testify in
13 your presence. Your attorney would have the right to
14 cross-examine these witnesses. He could raise legal
15 objections to evidence that the Government sought to offer
16 against you. He could offer evidence in your behalf if you
17 thought there was evidence that might help you in this case.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: At a trial, you would have the right to
21 testify in your own behalf if you wished to do so. On the
22 other hand, you could not be forced to be a witness at your
23 trial. This is because under the constitution and laws of the
24 United States, no person can be compelled to be a witness
25 against himself. If you wished to go to trial but chose not

*** SEALED PROCEEDINGS ***

20

1 to testify, I would instruct the jury that they could not hold
2 that against you.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: If, instead of going to trial, you plead
6 guilty to the crimes charged and if I accept your pleas of
7 guilty, you will be giving up your right to a trial and all
8 the other rights I have just discussed. There will be no
9 trial in this case. There will be no appeal on the question
10 of whether you did or did not commit these crimes. The only
11 thing you could appeal would be if you thought I did not
12 properly follow the law in sentencing you. Otherwise, I will
13 simply enter a judgment of guilty based upon your plea of
14 guilty.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you do plead guilty, I will have to
18 ask you certain questions about what you did in order to
19 satisfy myself that you are guilty of these crimes. You will
20 have to answer my questions and acknowledge your guilt, and if
21 you do this, you will be giving up your right not to
22 incriminate yourself.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Vinas, are you willing to give up

*** SEALED PROCEEDINGS ***

21

1 your right to a trial and all the other rights I have just
2 discussed with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: There is an agreement pursuant to which
5 this plea is being offered?

6 MR. LOONAM: Yes, your Honor. It should be in front
7 of you.

8 THE COURT: Okay. I have an agreement before me in
9 the United States of America against Bryant Neal Vinas. It is
10 marked as Court's Exhibit Number 1. It is dated today,
11 January 28th, 2009. It consists of eleven pages.

12 I'm going to hand it to the defendant and his
13 attorney and ask some questions.

14 (Handing.)

15 THE COURT: Mr. Vinas, have you read this document?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you discussed it with your
18 attorney?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has he answered any and all questions
21 that you had about it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand your rights and your
24 obligations under this agreement?

25 THE DEFENDANT: Yes, sir.

*** SEALED PROCEEDINGS ***

22

1 THE COURT: Mr. Kamdang, in your view, does your
2 client understand his rights and his obligations under this
3 agreement?

4 MR. KAMDANG: Yes, your Honor.

5 THE COURT: Very well.

6 On page 11 of the agreement, Mr. Vinas, is that your
7 signature by your name?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you sign the agreement today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Counsel, have you signed the agreement
12 also?

13 MR. KAMDANG: Yes, your Honor.

14 THE COURT: And the Government has executed the
15 agreement?

16 MR. KNOX: Yes, your Honor.

17 THE COURT: Please return the agreement.

18 MR. KAMDANG: (Handing.)

19 THE COURT: Mr. Vinas, I have a very important
20 question to ask you. Listen carefully.

21 Is there any other promise or agreement that has
22 been made to get you to plead guilty today that is not
23 contained in this agreement?

24 THE DEFENDANT: No, sir.

25 THE COURT: I'm going to go over the statutory

*** SEALED PROCEEDINGS ***

23

1 penalties associated with pleading guilty to these three
2 counts.

3 Count One charging conspiracy to murder U.S.
4 nationals. On that count, there is a maximum term of life in
5 prison. There is no minimum term of imprisonment. The
6 maximum supervised release term is five years, and that would
7 follow any term of imprisonment. If you violate a condition
8 of your release, you could be sentenced up to five years in
9 jail without credit for the time you previously served in jail
10 or the time you served on post-release supervision.

11 There is a maximum fine which is the greater of
12 \$250,000 or twice the gross gain or loss.

13 Restitution will be determined by the Court.

14 And there is a \$100 special assessment which is
15 mandatory.

16 Now, with regard to Count Two charging you with
17 providing material support to a foreign terrorist
18 organization. There is a maximum term of imprisonment of 15
19 years, and there is no minimum term of imprisonment.

20 The maximum supervised release term is three years,
21 and that would follow any term of imprisonment. If a
22 condition of release is violated, you could be sentenced up to
23 two years in jail without any credit for the time you
24 previously served in jail or the time you previously served on
25 supervised release.

*** SEALED PROCEEDINGS ***

24

1 The maximum fine is the greater of \$250,000 or twice
2 the gross gain or loss.

3 Restitution will be determined by the Court.

4 And there is a \$100 special assessment which is
5 mandatory.

6 With regard to the third count charging you with
7 receiving military-type training from a foreign terrorist
8 organization. The maximum term of imprisonment is ten years,
9 and the minimum term of imprisonment is ten years, which means
10 it's a designated item of imprisonment of ten years.

11 MR. KNOX: Correct, your Honor.

12 THE COURT: The maximum supervised release term is
13 three years to follow any term of imprisonment. If a
14 condition of release is violated by you, you could be
15 sentenced up to two years if jail without credit for the time
16 you previously served in jail or the time you previously
17 served on supervised release.

18 There is a maximum fine that is the greater of
19 \$250,000 or twice the gross gain or loss.

20 Restitution will be determined by the Court.

21 And there is a \$100 special assessment which is
22 mandatory.

23 So do you understand the statutory penalties
24 associated with pleading guilty to Counts One, Two and Three?

25 THE DEFENDANT: Yes, sir.

*** SEALED PROCEEDINGS ***

25

1 THE COURT: And do you understand that with regard
2 to Count Three, that there is a designated term of
3 imprisonment under the statute of ten years in jail?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Anything you want me to add to that?

6 MR. KNOX: No, your Honor.

7 THE COURT: Counsel, have you discussed the
8 sentencing process with your client?

9 MR. KAMDANG: Yes, your Honor.

10 THE COURT: In your view, does he understand how the
11 sentencing process would work in his case?

12 MR. KAMDANG: Yes, your Honor.

13 THE COURT: Mr. Vinas, has Mr. Kamdang discussed the
14 sentencing process with you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And has he answered any and all
17 questions that you had about sentencing?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have an understanding of how
20 sentencing would work in your case based on your conversation
21 with your lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Well, I'm going to discuss sentencing
24 with you as well briefly. If you have any questions in the
25 course of my discussion with you, just ask me to stop, and

*** SEALED PROCEEDINGS ***

26

1 we'll take your question first to your lawyer and then
2 possibly to the Court. Okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In sentencing you, I'm required to take
5 into consideration a number of things about you and about the
6 crimes to which you are pleading guilty.

7 When I do that, I will be directed to a guideline
8 that will provide a sentencing range. I am not required to
9 sentence you within the range provided by the guideline, but I
10 am required to carefully consider the guideline
11 recommendation, among other things, in deciding what would
12 constitute a reasonable sentence in your case.

13 It is my experience that a sentence within the
14 guideline range is often reasonable and appropriate, although
15 this Court cannot presume that the guideline range is
16 reasonable. Rather, I must make an individualized assessment
17 based upon the facts presented by your case.

18 I will carefully consider whether a sentence within
19 the guideline range is appropriate in your case and may
20 ultimately decide to impose a sentence that is more lenient or
21 more severe than the one recommended by the guideline. If I
22 depart from the guideline, I will explain the reasons why I am
23 imposing an unusually lenient or an unusually harsh sentence.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

*** SEALED PROCEEDINGS ***

27

1 THE COURT: I cannot tell you today what guideline
2 range will apply in your case. Before I impose sentence, I
3 will receive a report prepared by the Probation Department
4 which will calculate a particular guideline range. You and
5 your attorney will have the opportunity to see that report.
6 If you think it is mistaken or incomplete in any way, you'll
7 have the opportunity to bring that to my attention.

8 You must understand that no one can make any promise
9 to you as to the sentence I will impose. Your attorney or the
10 prosecutor may have made predictions to you, and may make
11 recommendations to the Court concerning the sentence I should
12 impose. I will listen carefully to whatever they have to say,
13 but you must clearly understand that the final responsibility
14 for sentencing you is mine alone. While I may view this case
15 identically to the attorneys, I may also view the case
16 differently. If so, I may not impose the sentence that they
17 have predicted or recommended.

18 Even if I sentence you differently from what the
19 attorneys or anyone else has estimated or predicted, you would
20 still be bound by your guilty plea. Your guilty pleas in this
21 case, three of them.

22 Do you understand all of that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If, after I impose sentence, you or your
25 attorney think that I have not properly followed the law in

*** SEALED PROCEEDINGS ***

28

1 sentencing you, you have the right to appeal your sentence to
2 the U.S. Court of Appeals for the Second Circuit.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions you'd like to
6 ask me about the charges, your rights, or anything else
7 related to this matter that may not be clear, Mr. Vinas?

8 THE DEFENDANT: No questions, sir.

9 THE COURT: Okay. Mr. Kamdang, is there anything
10 you would like me to discuss with your client in further
11 detail before I proceed to formal allocution?

12 MR. KAMDANG: No, your Honor.

13 And just before we proceed to the formal allocution,
14 I just want to inform the Court that we have prepared an
15 allocution that I believe makes out all of the elements, and
16 the Government has reviewed it, and I believe they agree that
17 it makes out all of the elements, just to inform your Honor.

18 THE COURT: I'll listen to you and then I'll ask you
19 and the Government whether you believe that it fulfills all of
20 the requirements, and then we'll go from there.

21 MR. KAMDANG: Very well.

22 THE COURT: Is there anything you would like me to
23 discuss with your client in further detail?

24 MR. KAMDANG: No, your Honor.

25 THE COURT: Do you know of any reason why your

*** SEALED PROCEEDINGS ***

29

1 client should not enter a plea of guilty to these charges?

2 MR. KAMDANG: No, your Honor.

3 THE COURT: Are you aware of any viable legal
4 defense to these charges?

5 MR. KAMDANG: No, your Honor.

6 THE COURT: Okay. Mr. Vinas, are you ready to plead
7 at this time?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How do you plead to the charge contained
10 in Count One of the superseding information; guilty or not
11 guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: How do you plead to the charge contained
14 in Count Two of the superseding information; guilty or not
15 guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: And how do you plead to the charge
18 contained in Count Three of the superseding information;
19 guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Are you making these pleas of guilty
22 voluntarily and of your own free will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anyone threatened or forced you to
25 plead guilty?

*** SEALED PROCEEDINGS ***

30

1 THE DEFENDANT: No, sir.

2 THE COURT: Other than the agreement with the
3 Government, has anyone made you any promise that caused you to
4 plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anyone made you any promise about
7 the sentence that you will receive?

8 THE DEFENDANT: No, sir.

9 THE COURT: You have a written statement as to what
10 you did to commit these crimes? Is that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is this one statement for all three?

13 MR. KAMDANG: Yes, your Honor.

14 THE COURT: So what I'd like you to do now is to
15 tell me, in your own words, what you did to commit Counts One,
16 Two and Three that are set forth in the superseding
17 information.

18 What I'd like you to do is you prepared a statement,
19 is that right, in consultation with your attorney? Is that
20 right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I'd like you to read it slowly and
23 distinctly for me. We're in no hurry.

24 Okay?

25 THE DEFENDANT: Yes, sir.

*** SEALED PROCEEDINGS ***

31

1 THE COURT: Go ahead.

2 THE DEFENDANT: In the fall of 2007, I left my home
3 in Long Island to travel to Pakistan with the intention of
4 meeting and joining a jihadist group to fight American
5 soldiers in Afghanistan. When I arrived in Pakistan, I made
6 contact with and was accepted into al-Qaeda, a jihadist group
7 that I knew to be responsible for attacks against the United
8 States, including suicide bombings targeting civilians.

9 As a member of al-Qaeda, I received training in
10 courses in general combat and explosives. During my time in
11 al-Qaeda, I took part, at the direction of al-Qaeda leaders,
12 in two missions in September 2008 in which we agreed and
13 planned to attack a United States military base near the
14 border of Pakistan and Afghanistan. The first attack failed
15 and we had to abort the mission before firing on the base, but
16 a few days later, I took part in firing rockets at an American
17 military base. Although we intended to hit the military base
18 and kill American soldiers, I was informed that the rockets
19 missed and the attack failed.

20 Finally, during my time with al-Qaeda, I consulted
21 with a senior al-Qaeda leader and provided detailed
22 information about the operation of the Long Island Rail Road
23 system which I knew because I had ridden the railroad on many
24 occasions. The purpose of providing this information was to
25 help plan a bomb attack of the Long Island Rail Road system.

*** SEALED PROCEEDINGS ***

32

1 I am a citizen of the United States.

2 MR. KNOX: We believe this is sufficient, your
3 Honor.

4 MR. KAMDANG: As do we.

5 THE COURT: As does the Court.

6 Mr. Vinas, based on the information that you have
7 given me, I find that you are acting voluntarily, that you
8 fully understand the charges, your rights and the consequences
9 of your pleas. There is, moreover, a factual basis for your
10 pleas. I, therefore, accept your pleas of guilty to Counts
11 One, Two and Three of the superseding information S-1.

12 I'm going to set a control date for sentencing of
13 Friday, July 10th, 2009 at eleven a.m.

14 Now, Mr. Vinas, at some point in the future, you'll
15 be sentenced, and prior to being sentenced, you will have an
16 opportunity to be interviewed by a probation officer for the
17 preparation of a presentence investigation report. In that
18 report, which is provided to the Court, to you and to the
19 Government, it sets forth your background and other important
20 facts that the Court needs to consider at the time of
21 sentencing.

22 You'll have an opportunity to review the report,
23 read it and review it with your attorney prior to sentencing.
24 If there's anything in the report that's inaccurate or if you
25 want me to know anything about you that's not in the report

*** SEALED PROCEEDINGS ***

33

1 that you think would be helpful to me when sentencing you, Mr.
2 Kamdang will provide that to the Court, to the Government and
3 to the Probation Department in writing prior to sentencing.

4 Sentencing is my most important responsibility as a
5 judge. So I read the reports and anything else that is
6 presented to me by the parties very carefully before the day
7 of sentencing.

8 At the time of sentencing, you will also have an
9 opportunity to address the Court.

10 Any questions?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. Now, I'm going to return the
13 agreement to the Government and request that prior to the time
14 of sentencing, or near the time of sentencing rather, the
15 Court receive a copy of the report.

16 (Handing.)

17 MR. LOONAM: Yes, your Honor.

18 THE COURT: Or it's filed.

19 Is there an application?

20 MR. KNOX: Your Honor, yes. The Government moves to
21 seal the transcript of today's proceedings, as well as the
22 proceedings themselves, I guess.

23 MR. KAMDANG: No objection.

24 THE COURT: These proceedings are sealed. The
25 transcript is sealed, subject to the Government's continuing

1 discovery obligations in other cases.

2 MR. KNOX: Your Honor, I will also note for the
3 record that with respect to Count One, 2332, conspiracy to
4 murder U.S. nationals abroad, Section 2332 requires that,
5 quote, No prosecution for any offense described in this
6 section shall be undertaken by the United States except on
7 written certification of the Attorney General or the highest
8 ranking subordinate of the Attorney General ... that, in the
9 judgment of the certifying official, such offense was intended
10 to coerce, intimidate or retaliate against a government or
11 civilian population.

12 The acting attorney general of the United States did
13 make this certification, and we submitted that to the Court
14 this morning.

15 THE COURT: Right. Let me state for the record that
16 I have received the certification of which you speak. It's
17 dated January 23rd, 2009, and it was executed by Mark Filip,
18 F-I-L-I-P, the acting attorney general, and it will be part of
19 the sealed record in this case.

20 Anything else?

21 MR. KNOX: Just that there was a status conference
22 scheduled for tomorrow, and, obviously, we don't need to be
23 here for that.

24 THE COURT: The status conference is cancelled.

25 MR. KNOX: Right.

*** SEALED PROCEEDINGS ***

35

1 THE COURT: Anything else from the Government for
2 today?

3 MR. KNOX: No, that's it.

4 THE COURT: Anything else from the defense?

5 MR. KAMDANG: No, your Honor.

6 THE COURT: All right. Thank you, everyone.

7 Thank you, marshals.

8 MR. KNOX: Thank you, your Honor.

9 MR. LOONAM: Thank you, your Honor.

10 THE COURT: Have a good evening.

11 (Defendant remanded.)

12 (Time noted: 6:00 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25