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Federal Prosecution of Terrorism-Related Offenses: Conviction and Sentencing Data in Light of the "Soft Sentence" and "Data Reliability" Critiques

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Federal Prosecution of Terrorism-Related Cases: Conviction and Sentencing Data in Light of the "Data Reliability" and "Soft Sentence" Critiques

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ABSTRACT

This symposium article examines two critiques associated with post-9/11 criminal prosecutions in terrorism-related cases. The data-reliability critique attacks the reliability of the statistics reported by the Justice Department in connection with such cases, while the soft-sentence critique suggests that claims of success in such cases might be overstated in light of the relatively short sentences they produce.

I conclude that the data-reliability critique largely reflects disagreement regarding the types of cases that ought to be coded as terrorism-related. This dispute came to a head in the spring of 2007 in connection with a report issued by the Department's Inspector General, prompting the Executive Office for United States Attorneys (EOUSA) to revise its case code definitions. Whether the revised codes will suffice to resolve the data-reliability critique remains to be seen.

The soft-sentence critique in turn reflects the definitional dispute underlying the data-reliability critique; the Department's inclusion of preventive charging cases (and other such cases not involving overt allegations of involvement with terrorism) in its terrorism-related statistical categories inevitably leads to relatively brief aggregate sentences. It does not follow, however, that the Department has obtained similarly-brief sentences in cases that do involve allegations of conduct relating in some fashion to terrorism. Rather than examining disposition and sentencing data solely based on the controversial EOUSA case categories, therefore, I advocate reliance also on data developed on a per-offense basis. I conclude the paper with an example of such a study, focused on two statutes: 18 U.S.C. § 2339B (prohibiting the provision of material support to designated foreign terrorist organizations) and 50 U.S.C. § 1705 (criminalizing transactions in violation of sanction orders issued under the International Emergency Economic Powers Act). The study includes all prosecutions under both statutes between 9/01 and 7/07 (for § 1705, actually, it includes only those prosecutions arising out of terrorism-related IEEPA orders), and finds that they yield sentences considerably more substantial than the low numbers emphasized in the soft-sentence critique.

FEDERAL PROSECUTION OF TERRORISM-RELATED OFFENSES: CONVICTION AND SENTENCING DATA IN LIGHT OF THE "SOFT SENTENCE" AND "DATA RELIABILITY" CRITIQUES

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INTRODUCTION

In the aftermath of the 9/11 attacks, the Department of Justice (DOJ) made prevention of further terrorist attacks its top strategic priority.[1] In that spirit, DOJ has advanced a narrative of prosecutorial success based on the aggressive and successful pursuit of terrorism-related cases.[2] Critics contest the validity of that narrative, however, on at least two dimensions. First, some have challenged DOJ claims regarding the number of post-9/11 prosecutions that properly can be described as terrorism-related (the "data-reliability" critique).[3] Second, critics have drawn attention to data indicating seemingly low median sentences in terrorism-related cases, and on that basis have questioned the significance of the cases that have produced convictions (the "soft-sentence" critique).[4] Together, these critiques raise serious

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[1] *See, e.g.*, United States Attorneys' Annual Statistical Report Fiscal Year 2002, available at http://www.usdoj.gov/usao/reading_room/reports/asr2002/02_stat_book.pdf.

[2] *See, e.g.*, Department of Justice, Counterterrorism White Paper (June 22, 2006), available at http://trac.syr.edu/tracreports/terrorism/169/include/terrorism.whitepaper.pdf.

[3] U.S. General Accounting Office, "Justice Department: Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics," (2003) (GAO-03-266).

[4] *See, e.g.*, Center on Law & Security, "Terrorist Trial Report Card: U.S. Edition," (2006), available at

questions regarding both the scope and efficacy of DOJ's post-9/11 efforts, thus providing the foundation for a counternarrative of prosecutorial ineffectiveness.

My aim in this essay is to examine closely the origins and nature of both these lines of criticism. In Part I, I provide necessary context with a review of the various methods by which DOJ has pursued its strategic goal of terrorism prevention in the years since 9/11. Against that backdrop, Part II takes up the data-reliability critique, identifying the DOJ case-coding definitions and practices that have given rise to it and offering suggestions for reforms that would ameliorate those elements that do warrant criticism. Part III then turns to the soft-sentence critique, explaining the manner in which it depends on the data-reliability critique and the problem of relying on data sets defined in loose terms. Part IV concludes by illustrating an alternative approach in which dispositions and sentences are assessed on a charge-specific basis. This method avoids the data-reliability issue, and thus provides a firmer basis for assessing disposition and sentencing outcomes. Notably, the data sets offered here as examples of this approach—involving prosecutions under 18 U.S.C. § 2339B and 50 U.S.C. § 1705—tend to support DOJ claims that counterterrorism prosecutions have been relatively successful since 9/11.

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http://www.lawandsecurity.org/publications/TTRCComplete.pdf; Dan Eggen & Julie Tate, *Few Convictions in Terror Cases; U.S. Often Depends on Lesser Charges*, WASH. POST, June 11, 2005; Center on Law & Security, "Terrorist Trials: A Report Card," (2005), available at http://www.lawandsecurity.org/publications/terroristtrialreportcard.pdf; Transactional Record Access Clearinghouse ("TRAC"), "A Special TRAC Report: Criminal Enforcement Against Terrorists," (2001), available at http://trac.syr.edu/tracreports/terrorism/report011203.html; *id.*, "Criminal Enforcement Against Terrorists and Spies in the Year After the 9/11 Attacks, a TRAC Special Report," (June 2002), available at http://trac.syr.edu/tracreports/terrorism/supp.html; *id.* (Sep. 2002); *id.* (2003).

I. CONTEXT: THE STRATEGIC AND POLICY ASPECTS OF PREVENTION

Post-9/11 terrorism prosecutions do not take place in a vacuum. Rather, they occur against the backdrop of DOJ's strategic goals and a set of policies designed to achieve those goals. One must have at least some grasp of these strategic and policy considerations in order to assess the current debate regarding measurement of the scope and efficacy of DOJ's counterterrorism prosecutions.

According to DOJ's Fiscal Year 2004 Performance and Accountability Report, the Department's "foremost focus is protecting the homeland from future terrorist attacks."[5] Toward that end, DOJ has established prevention as its "highest priority," a strategic objective that it pursues not only through its intelligence-gathering powers but also its prosecutorial capacities.[6] In particular, DOJ has adopted prevention-oriented prosecutorial policies involving at least three tiers of targeted and untargeted methods. Having written extensively about this multi-tiered approach on other occasions, I will limit myself here to restating only so much of that material as is necessary to provide a proper context for the subsequent discussion of the soft-sentence and data-reliability critiques.[7]

The first and most traditional of these tiers involves prosecution for inchoate or completed crimes of violence. Such prosecutions involve targeted prevention in the sense that they aim

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[5] U.S. Department of Justice, Fiscal Year 2004 Performance and Accountability Report (Nov. 2004), at II-2.

[6] *Id.*

[7] The following discussion draws directly from my prior work in *The Sleeper Scenario: Terrorism-Support Laws and the Demands of Prevention*, 42 HARV. J. ON LEGIS. 1, 28-44 (2005), and "Anticipatory Prosecution in Terrorism-Related Cases," in THE CHANGING ROLE OF THE AMERICAN PROSECUTOR (Worrall & Nugent, eds.) (SUNY Press) (forthcoming 2007).

to incapacitate persons whom the government deems to be personally dangerous. Recent examples include the prosecution of Richard Reid for the attempted destruction of a transatlantic flight using a shoe bomb[8] and of Zacarias Moussaoui for his role in the 9/11 attacks.[9]

The second tier, in contrast, employs untargeted or "diffused" prevention methods in an effort to make up for the fact that in many if not most instances the government lacks sufficient information to identify the particular person(s) who may pose a terrorist threat.[10] In that circumstance, of course, the government can and does engage in intelligence-gathering activities and a variety of passive-defense, target-hardening measures.[11] But DOJ does have the capacity to take additional steps to achieve diffused prevention. In particular, DOJ can allocate investigative and prosecutorial resources so as to generate a systemic increase in the enforcement of laws relating to activities that may be integral to the preparatory and logistical stages of a terrorist attack, including enforcement efforts designed to make it more difficult to access critical infrastructure. By making it harder for potential terrorists to carry out various illegal but relatively-innocuous precursor activities such as immigration fraud, identity fraud, and money laundering, DOJ in theory achieves several benefits. First, potential terrorists may incidentally be jailed or removed, and thus incapacitated at least temporarily. Second, the increased difficulty of carrying out certain illegal precursor tasks without detection or arrest may delay or even render unworkable a particular plot. Third, systemically-increased enforcement of precursor crimes may generate information that in turn can be used to pursue targeted approaches.

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[8] United States v. Reid, No. 02-cr-10013 (D. Mass.).
[9] United States v. Moussaoui, No. 01-cr-455 (E.D. Va.).
[10] *See, e.g.*, PHILIP B. HEYMANN, TERRORISM AND AMERICA: A COMMONSENSE STRATEGY FOR A DEMOCRATIC SOCIETY (1998).
[11] *See* PHILIP B. HEYMANN, TERRORISM, FREEDOM, AND SECURITY: WINNING WITHOUT WAR (2003).

An important additional method of diffused prevention involves enforcement of 18 U.S.C. § 2399B, the federal statute prohibiting the provision of "material support or resources" to groups that have been formally designated by the Secretary of States as "foreign terrorist organizations." The essence of the material support law is to reduce the flow of resources to foreign terrorist organizations, and thereby to reduce their capacity to cause harm. Prosecutions under § 2339B of course are "targeted" from the perspective of the individual defendant at issue. But the statute does not require any showing of personal dangerousness on the part of the defendant; in the paradigm case, the defendant provides money, equipment, or services to other individuals. Section 2339B instead contributes to prevention on an untargeted basis by degrading the ability of unknown members of designated groups to cause harm on unknown occasions. Prosecutions under the criminal liability provision of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1705, serve a similar function by prohibiting transactions with foreign persons or entities subjected to embargoes by the President or his designee.[12]

The third tier of DOJ's prevention strategy concerns the situation in which the government suspects that a particular individual is a terrorist, but lacks evidence linking the suspect to any particular plot. The conventional response to this scenario is to engage in surveillance and other information-gathering activities until sufficient evidence can be developed to justify prosecution on related grounds. The imperative of prevention, however, has led DOJ to develop a trio of alternative approaches that permit immediate intervention to incapacitate the suspect.

One such alternative involves the use of preventive charges, an approach also known both as "pretextual prosecution"

[12] *See* Chesney, *Sleeper Scenario*, *supra* note __.

and as the "Al Capone strategy."[13] Under this heading, prosecutors pursue any criminal charge that may happen to be available, however unrelated to terrorism the charge may be.[14] Unfortunately, the efficacy of the preventive charging approach is inherently difficult to assess. In most instances there will be nothing in the indictment to reveal that the underlying investigation was motivated by terrorism concerns. Even if such a linkage comes to light informally, moreover, litigation of the pretextual charges by definition will not put that alleged linkage to the test. It thus is difficult both to identify the cases that count as instances of terrorism-related preventive charging and to determine whether any given prosecution of this type does in fact contribute to terrorism prevention. All that we can say with certainty is that DOJ views the preventive charging strategy – including in particular the use of relatively minor charges involving matters such as Social Security fraud – as an important component of its post-9/11 strategy.[15]

A second and more controversial option available to prosecutors who wish to incapacitate a potentially-dangerous person in these circumstances involves the federal material witness detention statute, 18 U.S.C. § 3144. The material witness detention statute authorizes the government to seek a warrant for the arrest and detention of a person where that individual's testimony is "material in a criminal proceeding" and there are grounds to believe that "it may become impracticable to secure the presence of the person by subpoena." In that case, a warrant may be issued for the arrest and detention of the witness for so long as is reasonably necessary to secure his or her testimony.

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[13] Daniel C. Richman & William J. Stuntz, *Al Capone's Revenge: An Essay on the Political Economy of Pretextual Prosecution*, 105 COLUM. L. REV. 583 (2005).

[14] Non-criminal enforcement of the immigration laws also forms part of the preventive charging strategy, of course.

[15] *See, e.g.*, J.K. Webb, *Use of the Social Security Fraud Statutes in the Battle against Terrorism*, 50 U.S. ATTY'S BULL. 1 (2002).

Although the statute is designed for purposes of preserving witness testimony, there is little doubt that it has been used since 9/11 in order to at least temporarily incapacitate suspected terrorists. "Aggressive detention of . . . material witnesses is vital to preventing, disrupting, or delaying new attacks," said then-Attorney General John Ashcroft in October 2001.[16] Specific information about such "pretextual" uses of the material witness detention statute is difficult to come by, but one report estimates that approximately 70 suspects were detained on material witness grounds in connection with the post-9/11 investigation.[17] In any event, although the practice has received judicial approval in connection with grand jury proceedings,[18] it remains the subject of sharp criticism.[19]

In limited circumstances, a third and final method is available to prosecutors who seek to incapacitate a potentially-dangerous person who cannot actually be linked to plans to commit a particular terrorist act. Recall 18 U.S.C. § 2339B (the statute prohibiting the provision of material support or resources to designated foreign terrorist organizations), mentioned above as a key component of the diffused-prevention strategy. On a few occasions since 9/11, prosecutors have used this statute to prosecute persons on the ground that they received training from

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[16] Atty. Gen. John Ashcroft, Press Conference, Oct. 31, 2001, available at http://www.usdoj.gov/archive/ag/speeches/2001/agcrisisremarks10_31.htm.

[17] Human Rights Watch and the American Civil Liberties Union, *Witness to Abuse: Human Rights Abuses under the Material Witness Law since September 11*, June 2005, available at http://hrw.org/reports/2005/us0605/index.htm.

[18] *See* United States v. Awadallah, 349 F.3d. 42 (2d Cir. 2003).

[19] *See* Human Rights Watch, *supra* note __. DOJ's Office of Professional Responsibility undertook a review of this issue in 2006, according to a recent Inspector General's report. *See* Office of the Inspector General, *Report to Congress on the Implementation of Section 1001 of the USA PATRIOT Act*, available at http://www.usdoj.gov/oig/special/s0603/index.htm.

or even became members of such foreign terrorist organizations. In this context, the material support statute is used not so much to reduce the capacity of the organization to cause harm but, more directly, to incapacitate a particular potentially-dangerous person.[20] In addition, federal prosecutors since 2004 have also had the option of using 18 U.S.C. § 2339D, which criminalizes the *receipt* of military-style training from a designated foreign terrorist organization, for similar preventive purposes.

Taken together, these options enable DOJ to pursue its strategic goal of terrorism prevention in a wide range of circumstances. But however useful they may be, some of these tools present difficult problems of measurement and accountability. This problem arises in particular with respect to the diffused-prevention strategy involving ramped-up enforcement of relatively innocuous "precursor" crimes and the targeted strategy of preventive (or pretextual) charging. By their nature, it is difficult if not impossible for outside observers to identify prosecutions that may fall under these headings, let alone to determine whether any such prosecution actually did contribute to the goal of prevention. This is not to say that these approaches do not actually make such contributions, of course. It is simply to say that outsiders cannot objectively assess the quantity and impact of cases falling under these headings. As discussed in more detail below, this may go far to explain the problems that have arisen since 9/11 with respect to efforts to quantify DOJ's performance in terrorism-related cases.

II. EXAMINING THE DATA-RELIABILITY CRITIQUE

The data-reliability critique contends that the number of terrorism-related prosecutions and convictions reported by DOJ

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[20] *See* Chesney, *Sleeper Scenario*, *supra* note __, at ___. One could characterize this approach as simply another instance of preventive charging, but given that a support charge necessarily has some nexus with terrorism—even if indirect—it seems fitting to discuss this method independently.

tends to overstate the scope and efficacy of its efforts. One species of this critique concerns the definitions employed by DOJ for purposes of coding cases as terrorism-related. This "labeling" argument contends that DOJ has adopted unduly broad conceptions of which cases should be reported as linked to terrorism. A second species of the data-reliability critique questions the accuracy of the actual process of determining whether a particular case actually falls within a terrorism-related category. The fact that more than one entity within DOJ compiles terrorism prosecution statistics further complicates the data reliability issue.

Both lines of criticism have at least some merit, but each can also be addressed with relatively straightforward reforms. The "labeling" problem can be addressed to some extent through a simple revision of the case-coding categories employed by the Executive Office for United States Attorneys ("EOUSA"). In particular, EOUSA could revise its categories to distinguish preventive charging scenarios from what I describe above as diffused prevention. Notably, it appears that EOUSA is developing some form of revision at this time, though whether the results will track the solution described above remains to be seen.

The solution to the "accuracy" problem also is clear: enhanced internal control measures for the personnel in the various U.S. Attorneys' Offices ("USAOs") who actually make case-coding decisions. But this solution might come at a high cost. Whereas reform of the case codes themselves would require negligible increases in the amount of money and time put into the case-coding process, significant improvement in data accuracy might require substantial new commitments of manpower and resources—commitments that might come at the expense of other priorities. Such commitments may nonetheless be worthwhile, of course, in order to enhance transparency and hence accountability

to managers, legislators, and the public.[21] As the DOJ Inspector General observed recently:

> Congress and the Department management ... use terrorism-related statistics to make operational and funding decisions for Department counterterrorism activities, and to support the Department's annual budget requests. For these and other reasons, it is essential that the Department report accurate terrorism-related statistics.[22]

A. The Accuracy Problem and the Distinction Between FBI and USAO Case Categories

The accuracy problem, which lies at the heart of the data-reliability critique as a whole, traces back to an investigation published in December 2001 in the *Philadelphia Inquirer*.[23] Reporters Mark Fazlollah and Peter Nicholas reviewed dozens of cases to determine whether they had properly been classified by DOJ as terrorism-related. The cases in question were part of a data set reported by DOJ in its annual accountability report. Notably, that set was derived from information provided by the FBI rather than the Executive Office for United States Attorneys ("EOUSA"). Although acknowledging that some cases in the set "clearly did involve terrorism," the reporters concluded that others "were clearly a stretch."[24] In support, they offered a sampling of five seemingly-problematic cases:

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[21] *Id.* at i.
[22] *Id.*
[23] Mark Fazlollah & Peter Nicholas, *U.S. Overstates Arrests in Terrorism Cases; For Years, Officials Said, Cases that Should Not Have Been in that Category were Included to Support Budget Requests*, THE PHIL. INQ., Dec. 16, 2001, at A1.
[24] *Id.*

> A tenant fighting eviction called his landlord, impersonated an FBI agent, and said the bureau did not want the tenant evicted. . . .
>
> A man from Ecuador tried to hide 12 pistols in a television set he was sending home from Miami. He admitted he planned to resell the guns for a profit in Ecuador.
>
> A commercial pilot in Seattle pleaded guilty to falsely implicating his copilot in a bogus plot to hijack a private airplane. The case boiled down to two men feuding.
>
> Seven Chinese sailors were convicted of taking over a Taiwanese fishing boat and sailing to the U.S. territory of Guam, where they hoped to win political asylum.
>
> A man under treatment in California told his doctor he needed anti-psychotic medication because he was hearing voices telling him to kill President Bush.[25]

The article's headline bluntly suggested malfeasance: "U.S. overstates arrests in terrorism cases. For years, officials said, cases that should not have been in that category were included to support budget requests."

Within three days, the Chairman of the House Committee on Government Reform held a news conference announcing his request that the General Accounting Office (GAO)[26] conduct an investigation.[27] GAO took up that task, proceeding over the next year to conduct interviews with officials from DOJ's Criminal

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[25] *Id.*
[26] In 2004, the GAO's name changed to the Government Accountability Office. *See* GAO Human Capital Reform Act, Pub. L. 108-271, § 8, 118 Stat 811 (July 7, 2004), 31 U.S.C. § 702 note.
[27] *See* Fazlollah & Nicholas, Dec. 20, 2006, at A1.

Division, Justice Management Division, the FBI, and EOUSA.[28] GAO also reviewed policies and guidance employed by the FBI and EOUSA for classifying cases, and compared the numbers of terrorism convictions recorded by the FBI from fiscal 1997 through 2002 to the comparable numbers recorded by EOUSA. Finally, they reviewed the supporting documentation in FBI case files for nine cases that were identified as problematic in the *Inquirer*'s story, as well as for all nineteen cases classified as terrorism-related by the FBI field offices in Baltimore, Dallas, and Washington, D.C., in fiscal 1999 and 2000.[29]

GAO's investigation revealed that a misunderstanding lay at the root of the data-reliability concerns raised by the *Philadelphia Inquirer*'s article, a misunderstanding that flowed from the different criteria that the FBI and EOUSA used to categorize cases. The FBI employed a holistic approach in which the decision to classify a case as terrorism-related depended on an assessment of the initial nature of the investigation, not on the nature of the charges ultimately included in the indictment (let alone the charges on which a defendant might ultimately be convicted). That approach has the merit of accurately reflecting the manner in which the FBI understands itself to be allocating its investigative resources, at least in the early stages of the investigative process. But insofar as investigations are not later re-coded to account for facts learned as the investigation progresses, this approach has the substantial drawback of including in terrorism data cases which the FBI itself ultimately may not believe actually have a terrorism link.[30]

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[28] *See* General Accounting Office, *Justice Department: Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics*, GAO-03-266, Jan. 2003 ("GAO Report").

[29] *See id.* at 1.

[30] Complicating the data picture further, FBI data also included convictions obtained in state and other non-federal forums, so long as FBI investigative resources had been involved. *See id*.

In contrast, the EOUSA data collection guidelines in place at that time directed U.S. Attorney's Offices (USAOs) to focus on the nature of the lead charge in the indictment.[31] Under that system, the relevant inquiry was whether the crime charged (or the crime of conviction) was one that could be characterized as involving the EOUSA program categories of "international terrorism" or "domestic terrorism," regardless of the nature of the underlying investigation.[32] Thus:

> [I]f the FBI arrested an individual for money laundering and, as part of its investigation, gathered evidence that indicated that the defendant was laundering money for a terrorist group, it generally classified such a case and any resulting conviction as terrorism-related. On the other hand, if a USAO prosecuted the defendant and obtained a conviction solely on money laundering charges, it generally classified the conviction as a money laundering conviction and not as terrorism-related.[33]

Not surprisingly, GAO found that these "different classification criteria resulted in differences in how each entity ultimately classified a case."[34] In fiscal 1997, for example, the FBI reported 124 terrorism investigations resulting in prosecution,

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[31] The EOUSA data also differed in that, not surprisingly, it reflected only the actions of federal prosecutors (rather than state prosecutors or other government actors).

[32] EOUSA defines domestic and international terrorism as "incidents that involve acts, including threats or conspiracies to engage in such acts, which are violent or otherwise dangerous to human life and which appear to be motivated by an intent to coerce, intimidate, or retaliate against a government or a civilian population." U.S. Department of Justice, Office of the Inspector General, Audit Division, "The Department of Justice's Internal Controls over Terrorism Reporting," Audit Report 07-20 (Feb. 2007), at 34 n. 37, available at http://www.usdoj.gov/oig/reports/plus/a0720/final.pdf.

[33] GAO Report, *supra* note __, at 4.

[34] *Id.*

while the EOUSA reported just 13 terrorism prosecution. In 1998, the figures were 162 and 44, respectively; in 1999, 173 and 59; in 2000, 249 and 30; and in 2001, 225 and 29.[35]

The GAO study thus clarified that the FBI and EOUSA data conflicted primarily because they sought to measure different phenomena. But the question remained whether the cases highlighted by the *Inquirer*'s investigation—or any others—actually had been properly categorized even in terms of the FBI standard. GAO concluded that every example in the sample it considered had been properly categorized when viewed in that light. The report explained that investigators had found "documentation to support the FBI's terrorism-related classifications for all 28 convictions" that were subjected to scrutiny—a figure that included 9 of the 18 cases at issue in the *Philadelphia Inquirer* story, in addition to all 19 terrorism cases reported by FBI field offices in Baltimore, Dallas, and Washington, D.C. during this period.[36]

The *Philadelphia Inquirer* investigation and the GAO report illustrate the risk of confusion that follows from reliance on the FBI's *ex ante* categorization approach as a window onto the success or failure of DOJ's terrorism prosecution efforts as a whole. But it was a problem that actually was addressed by DOJ on its own initiative not long after 9/11. DOJ's Annual Accountability Report for fiscal 2001 broke with past practice by relying on data collected by EOUSA, not the FBI. Explaining that

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[35] *Id.*at 9 fig.1.

[36] *Id.* at 10. The GAO report explains that investigators did not examine the remaining nine cases from the *Inquirer*'s story because the "FBI did not classify the remaining 9 convictions as terrorism-related." *Id.* Those cases instead had been "classified under other categories (e.g., violent crime, National Infrastructure Protection and Computer Intrusions, foreign counterintelligence, and civil rights)." *Id.* Assuming this to be correct, however, it is unclear how those nine cases then came to be included in the terrorism-conviction count in the Attorney General's annual report.

this change would "improve accuracy and reliability," the fiscal 2001 report not only provided conviction data for 2001 but also restated the conviction data for the past three fiscal years to account for the new source. Even so, however, other data reliability issues would emerge in the years to come.

B. A Revised System Gives Rise to a Labeling Issue, While the Accuracy Question Lingers

DOJ produced its next annual accountability report in late 2002. This was the first such report dealing entirely with post-9/11 developments, and it continued the practice of reporting the aggregate number of convictions in all terrorism cases during the past fiscal year based on EOUSA data. The results for FY02 departed significantly from FY01, however, with the number of reported convictions ballooning from 29 to 153. The report explained that the "substantial increase in offenses in these program categories is attributable to the Department's determination, after the terrorist attacks of September 11, 2001, to make the prevention of terrorism its highest priority."[37] The relatively high number may also reflect, however, the impact of an August 2002 policy memorandum in which EOUSA revised its instructions to the various USAOs concerning case classifications.

That memorandum accomplished several purposes. First, and most notably, it called for a holistic approach to case classification rather than a myopic focus on the nature of the lead charge alone. In this respect, the new system was similar to the FBI's approach, albeit with the important distinction that USAOs make coding decisions at a point in time much further along in the law enforcement process. Second, the memo created a new case code for "antiterrorism" prosecutions, supplementing the existing codes for "domestic" and "international" terrorism. The new "antiterrorism" category refers to "any matter or case where the underlying purpose or object of the investigation is antiterrorism,

[37] Attorney General, Annual Accountability Report 2002, section 1.

even where the offense is not obviously a federal crime of terrorism that would be coded under one of EOUSA's terrorism-related classification codes," and in that sense might be expected to capture at least some activity occurring under the rubric of preventive charging.[38]

These changes prompted criticism from some in the academy, including criticism on the ground that the new categories would extend the terrorism label to an inappropriate set of cases. Professor Nora Demleitner, for example, warned that the more flexible approach authorized in the memo "may lead to the overcounting of alleged terrorism cases."[39] Demleitner expressed particular concern about the inclusion in the data of preventive charging cases in which the prosecution ostensibly "disturbed terrorist activities" but "the criminal charge is unrelated to any terrorist activity."[40] Such prosecutions, in her view, "are unlikely to be terrorism-related though [they] are counted in this manner."[41] Demleitner's critique was not limited to the inclusion of preventive charging data, however. She also questioned the inclusion of hoax cases and cases involving conduct that was violent but did not conform to the terrorism paradigm, such as "attempted bombings of schools by disgruntled students."[42]

Demleitner summarized the normative core of the data-reliability critique by contending that such methods "create[] an impression of more effective and efficient enforcement than is actually the case."[43] Prosecutors and investigators would be

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[38] GAO Report, *supra* note __, at 12 n.17.
[39] Nora M. Demleitner, *How Many Terrorists Are There? The Escalation in So-Called Terrorism Prosecutions*, 16 FED. SENT. REP. 38, 40 (2003). Demleitner acknowledged that the prior approach (focusing on the lead charge) had flaws as well, given that such an approach could "conceal the nature of the case." *Id.*
[40] *Id.*
[41] *Id.* at 41.
[42] *Id.*
[43] *Id.*

tempted to pursue that path, she explained, because they "have substantial financial and reputational incentives in overstating the number of terrorism-related cases."[44] Thus, the "increase in the number of terrorism cases should not be interpreted as an increase in terrorism offenses, or in national security. Quite the contrary may occur as the increased application of the term may augment public insecurity and create unnecessary alarm over run-of-the-mail criminal activity."[45]

The version of the data-reliability critique offered by Professor Demleitner does not turn on the accuracy with which USAOs actually apply the case codes at issue, but rather with the potential for the codes themselves to create a misleading impression regarding the nature of the cases they encompass. The emergence of the labeling issue as a component of the data-reliability critique did not mean, however, that accuracy concerns had been eliminated.

In addition to mandating a holistic case-coding process and creating the "antiterrorism" category, the August 2002 EOUSA policy memorandum directed USAOs to conduct a review of FY02 cases "to ensure that all cases related to or involving terrorism-related activities were coded in [the automated case-tracking system] and that the most appropriate terrorism-related or antiterrorism-related criminal program category code were used."[46] This directive appears to have prompted DOJ to issue an amended version of its FY02 report. The revised report again reported 153 convictions in terrorism cases, but also indicated that there had been 251 convictions in a separate category described as "terrorism-related."[47] That category, in turn, encompassed the new

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[44] *Id.* at 42.
[45] *Id.*
[46] GAO Report, *supra* note __, at 12.
[47] Interestingly, the United States Attorneys' Annual Statistical Report for Fiscal Year 2002, published by EOUSA, reports 367 rather than 404 convictions in cases identified as involving "terrorism" or "antiterrorism." (USA 2002) There are at least two possible

antiterrorism category, as well as terrorism hoaxes and terrorism financing cases. [48]

Because all of this occurred before the GAO report described above was published, GAO was able to include in that report an audit of the new system in actual practice, focused on the categories of international terrorism, domestic terrorism, and terrorism-related hoaxes. From the beginning, it raised questions about the accuracy of the case coding process. As noted above, DOJ's annual report for FY02 put the combined number of international and domestic terrorism convictions at 153 both before and after the revision process mandated by the August 2002 EOUSA policy memorandum. According to the GAO report, however, USAOs in FY02 actually had reported 174 international terrorism convictions and 92 domestic terrorism convictions, for a total of 266.

In any event, GAO investigators asked EOUSA to review the case coding decision for a substantial percentage of these FY02 cases in order to validate them. This ultimately led EOUSA to produce substantially revised figures for international terrorism convictions, with the number dropping from 174 all the way down to 43. The two other categories examined experienced less dramatic revisions, with domestic terrorism convictions dropping from 92 to 85 and terrorism-related hoax convictions actually rising from 22 to 28.[49]

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explanations for this disparity. First, it may indicate that the category "terrorism-related" label used in the Attorney General's report includes cases left out of the EOUSA report, such as terrorism hoaxes or terrorism-related financing cases. Alternatively, it may be that the two reports rely on consistent categories but were simply prepared at two different points in time (with the Attorney General's report reflecting additional progress in the review of prior classification decisions mandated by the August 2002 memorandum).

[48] *See* IG Report, *supra* note __, at 34 n. 38.

[49] GAO Report, *supra* note __, at 13 & Table 2.

EOUSA attributed the errors revealed in the validation process to the exigencies associated with carrying out the reclassification mandated in the August 2002 EOUSA policy memo.[50] GAO concluded, however, that the matter at the very least raised "concerns about the overall quality and reliability of EOUSA terrorism-related conviction statistics" and revealed "the need for improvements in management oversight and internal controls to better ensure the accuracy of USAO terrorism-related performance data."[51]

C. The Inspector General's Report and the Contested Meaning of "Antiterrorism"

The concerns noted above recently came to a head in connection with a report by the Audit Division of the Justice Department's Office of the Inspector General ("OIG").[52] OIG's report—and the response it generated from EOUSA—illustrate that the strength of the data reliability critique turns primarily on how one believes three types of cases should be coded: (i) non-terrorism prosecutions arising from referrals from Joint Terrorism Task Forces (JTTFs); (ii) non-terrorism prosecutions motivated by the diffused prevention strategy of enhanced enforcement of precursor/infrastructure crimes; and (iii) non-terrorism prosecutions in which classified information not used in the case links the defendant to terrorism after all. Resolving the question of how best to code such cases would go a long way toward resolving data-reliability concerns.

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[50] *Id.*at 13-14 (explaining that the errors reflected the "limited time afforded the various USAOs to thoroughly reevaluate caseload and investigative data during their efforts to retroactively reclassify and identify convictions in closed terrorism-related cases dating back to the beginning of the fiscal year").

[51] *Id.* at 14.

[52] *See* U.S. Department of Justice, Office of the Inspector General, Audit Division, "The Department of Justice's Internal Controls over Terrorism Reporting," Audit Report 07-20 (Feb. 2007), available at http://www.usdoj.gov/oig/reports/plus/a0720/final.pdf.

OIG undertook its investigation in order to "determine if Department components and the Department as a whole gather and report accurate terrorism-related statistics."[53] Toward that end, OIG investigators identified no less than 192 separate statistics relating to terrorism that the Justice Department or its components had generated between 2000 and 2005. Ultimately they winnowed that list to 26 particularly important statistics, including the EOUSA data discussed above concerning convictions in terrorism and terrorism-related cases.[54] The report concluded that 24 of these 26 statistics—including EOUSA statistics for convictions in "terrorism" and "terrorism-related" cases—were inaccurate to some extent.[55]

Whether a USAO in fact properly coded a given case might seem to be a relatively simple matter to determine. Either that office has information substantiating the categorization or not. But the task of case coding turns in the first instance on how the coding entity construes the case codes themselves. And as it turns out, EOUSA and OIG construe at least one important case code quite differently. This dispute, it appears, accounts for a substantial amount of OIG's finding of inaccuracy.

As discussed above, there are two tiers of case codes at issue when it comes to terrorism prosecution statistics. As an initial matter, cases may be coded by USAOs as domestic terrorism, international terrorism, antiterrorism, terrorism hoax, or terrorism finance. The first two of these codes—domestic and international terrorism—are then combined to form the overarching category of "terrorism." The latter three—antiterrorism, hoax, and financing—are combined to form the overarching category of "terrorism-related." The core problem with this arrangement is that EOUSA and OIG disagree with

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[53] *Id.* at i.
[54] *See id.* at ii-iv.
[55] *See id.* at iv-xiv.

respect to the meaning of the "antiterrorism" code, which EOUSA had introduced following the 9/11 attacks.

Superficially, the dispute concerns the proper interpretation of the language in the EOUSA manual defining the antiterrorism category. That definition begins broadly:

> Any matter or case where the underlying purpose or object of the investigation is anti-terrorism (domestic or international). This program category is meant to capture [USAO] activity intended to prevent or disrupt potential or actual terrorist threats where the offense conduct is not obviously a federal crime of terrorism. To the extent evidence or information exists, in any form, reasonably relating the case to terrorism or the prevention of terrorism (domestic or international), the matter should be considered "anti-terrorism."[56]

Framed in this way, USAOs plausibly may code a wide range of cases under the "antiterrorism" label, including not only preventive-charging cases (in which the government believes the defendant is linked to terrorism but chooses to prosecute on other grounds) but also cases undertaken pursuant to the diffused prevention strategy of systematically enhancing enforcement of precursor crimes such as document and immigration fraud.

The manual's definition of antiterrorism does not stop there, however. Instead, it concludes with two examples that each entail a link between terrorism and the specific defendant at issue:

> For example, a case involving offenses such as immigration violations, document fraud, or drug trafficking, *where the subject or target is reasonably linked to terrorist activity*, should be considered an "anti-terrorism" matter or case. Similarly ,a case of identity

[56] *Id.* at 37-38 (emphasis in original deleted).

> theft and document fraud *where the defendant's motivation is to obtain access to and damage sensitive government facilities* should be considered "anti-terrorism."[57]

Drawing on these examples, OIG concluded that the antiterrorism category should be construed narrowly so as to encompass, in substance, only preventive charging cases or other circumstances in which a defendant can be personally linked to terrorism in some way.[58]

EOUSA, in contrast, rejects the idea of requiring a defendant-specific terrorism nexus. "In drafting and employing the code," EOUSA wrote in response to the draft version of the OIG report, "we have operated with the understanding that the definition includes cases that are brought to prevent and disrupt terrorist activity, whether or not the target or defendant is linked to terrorist activity."[59] In EOUSA's view, the antiterrorism code was specifically intended to reach beyond preventive charging scenarios to encompass "a much broader group of proactive cases that have been affirmatively and intentionally brought to deter and prevent terrorism, particularly in areas of critical infrastructure vulnerability, regardless of whether the defendant has any links to terrorist activity."[60]

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[57] *Id.* at 38 (emphasis added).
[58] *See id.* at 52-53.
[59] *Id.* at 108 (reprinting letter from Michael A. Battle, Director of EOUSA, to Guy K. Zimmerman, Assistant Inspector General for Audit, Jan. 17, 2007, at 2). The letter also notes that the "OIG's interpretation focuses on the examples rather than the general rule." *Id.*
[60] *Id.* at 108 (letter at 2). Both during the OIG investigation and then later in response to the draft version of the report, EOUSA gave the example of "Operation Tarmac," a nationwide initiative to crack down on document fraud among airport employees. Though there was no claim that defendants in fraud prosecutions arising out of that operation necessarily had terrorist connections, EOUSA maintained that all such defendants nonetheless "are properly coded under the anti-terrorism

Complicating matters, EOUSA takes the position that the antiterrorism code applies to any non-terrorism prosecution that results from a Joint Terrorism Task Forces (JTTFs) referral. In its letter replying to the OIG report draft, EOUSA wrote that

> a case brought by FBI's Joint Terrorism Task Force, regardless of whether the defendant has verifiable links to terrorist activity, is going to be, *by definition*, part of a proactive effort to prevent terrorism because that is what the JTTF does.[61]

OIG rejects that view, reasoning that

> [a]n investigative lead may be pursued by the JTTF but the outcome of the investigation may clear the defendant of any connection to terrorism while finding other criminal activity. We believe it to be inaccurate to include all such convictions as anti-terrorism simply because a JTTF pursued the lead rather than other investigators.[62]

These disagreements concerning the scope of the antiterrorism code—whether to include all JTTF referrals and all prosecutions otherwise arising out of systematically-enhanced enforcement efforts motivated by the diffused prevention strategy—appear to account for a substantial number of the cases that OIG found to be improperly coded. As OIG put the point,

> statistics for terrorism convictions were inaccurately reported *primarily* because the USAOs categorized the

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program activity." *Id.* at 52-53. An EOUSA official also stated during the investigation that prosecutors likewise could "properly code as anti-terrorism all cases arising from any illegal immigrants arrested crossing the southwest border into the United States," though this had not actually been done. *Id.*

[61] *Id.* at 110 (letter at 4) (emphasis added).

[62] *Id.* at 129.

> cases against the defendants under the anti-terrorism program activity when the case was filed but did not change the categorization based upon further investigation or based on the actual offenses for which the defendants were convicted.[63]

Complicating matters, there may be a third scenario in which EOUSA would approve the use of the antiterrorism code despite the lack of an apparent nexus between terrorism and the particular defendant at issue. After EOUSA reviewed the draft version of the OIG report, it ordered the relevant USAOs to review those cases that in OIG's view were not properly coded. As one would expect in light of the debate described above, EOUSA asked that the USAOs determine whether these were JTTF referrals or prosecutions arising out of a diffused prevention, systemic-enforcement program. In addition, however, EOUSA also asked the USAOs to identify any cases where the defendants "had classified links to terrorist activity."[64] Though EOUSA did not elaborate the relevance of such links, the request plainly implies that EOUSA construes the antiterrorism category to include preventive charging cases where the terrorism nexus appears only in classified information (according to EOUSA, "OIG had said it did not plan to review" any such information).[65] OIG does not address that particular issue in its reply to EOUSA's letter, indicating that there may be agreement as to the propriety of including such cases in the antiterrorism category.

In any event, let us assume for the sake of argument that EOUSA's constructions of the antiterrorism category are appropriate. The category is, after all, entirely an EOUSA creation, and thus could be redefined by EOUSA tomorrow in order to accommodate those understandings. Does the OIG report

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[63] *Id.* (emphasis added).
[64] *Id.* at 110.
[65] *Id.* at 110-11.

indicate other accuracy problems? Yes, though their magnitude and hence their significance is unclear.

First, it appears that some cases were inappropriately included in a given year's data despite the fact that the conviction at issue occurred in a different year. In a sample of 30 cases categorized as "terrorism" during FY03, for example, OIG found that six involved convictions from a different fiscal year and hence should have been excluded from the FY03 data.[66] For FY04, the comparable error rate was three out of 40 sampled cases.[67]

Second, and more significantly, it appears that some "domestic" or "international terrorism" cases should have been coded instead as antiterrorism cases.[68] This mistake had two consequences. Most directly, it meant that the figures for core terrorism prosecutions (in which the case involved an affirmative and direct nexus between the defendant and terrorism) were higher than they otherwise would have been (and, conversely, that the figures for terrorism-related convictions were lower than they otherwise would have been). Also, it meant that the debate described above concerning the proper scope of "antiterrorism" impacted both the "terrorism-related" category (which one would expect) and the "terrorism" category (which one would not have expected).

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[66] *See id.* at 49.

[67] *See id.* The OIG report indicates that the FY03 errors involved cases that affirmatively did not belong in the FY03 set. The report describes the FY04 errors in different terms: "either the convictions did not occur in the year reported *or* the USAOs could not provide documentation to show the convictions occurred in the year reported." *Id.* (emphasis added).

[68] *See id.* 49 (discussing inappropriate use of antiterrorism code with "terrorism" cases). *See also id.* at 111 n.5 (EOUSA acknowledges that antiterrorism cases should appear only under the "terrorism-related" heading and that "defendants in any terrorism-coded case must absolutely have an identifiable link to terrorist activity").

Given that one should not actually expect 100% accuracy in the coding process, are these discrepancies cause for serious alarm? EOUSA takes the position that the error rate is within OIG's own standard of tolerance once one sets aside the debate regarding the proper construction of "antiterrorism."[69] As noted above, EOUSA had asked the relevant USAOs to validate their coding decisions in those cases identified by OIG as unsupported, with specific reference to JTTF referrals, diffused prevention programs, and classified information linking defendants directly to terrorism:

> The results showed that overall, 81 percent of the cases that OIG considered unsupported or inaccurate met at least one of these three criteria. Once these cases are considered to be accurately coded, even assuming that all the remaining cases are inaccurately coded, then the overall number of supported cases for most statistics would be well over 90 percent, a level that OIG considers to be within normal statistical limits.[70]

D. Reasonable Transparency?

The foregoing discussion suggests that the most important issue driving the data-reliability critique is the question of how best to account for those prosecutions that have a relationship to terrorism that is not apparent from the face of an indictment. The status quo with respect to EOUSA statistics takes an inclusive approach, using the antiterrorism code as a catch-all for (i) preventive charging cases (whether the nexus with terrorism exists can be seen only through classified information or not), (ii) diffused prevention prosecutions arising out of systemically-enhanced enforcement of precursor and infrastructure crimes, and (iii) JTTF referrals that do not fit into either of those categories.

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[69] *See id.* at 110-11.
[70] *Id.* at 111 (letter at 5).

This approach has virtues and vices. On one hand, it has the virtue of ensuring that DOJ statistics in some manner reflect the full range of counterterrorism strategies described in Part I above. On the other hand, the use of the undifferentiated label "antiterrorism" to describe such varied phenomena runs a substantial risk that observers in the public or in Congress will misconstrue the significance of the data. It is difficult to assess the comparative success of these distinct methods even in the best of circumstances; having their results conflated in this manner makes that task much harder still.

In response to the OIG report, EOUSA "acknowledge[d] that the report has raised important issues regarding what constitutes an 'anti-terrorism' case."[71] Moreover, in recognition of the need to "provide the clearest possible statistical picture of the important terrorism and anti-terrorism work being done by [federal prosecutors] around the country," EOUSA has promised to "rename its anti-terrorism category code, and will modify and clarify its definition, in order to eliminate any misunderstanding regarding its meaning."[72] It appears that the revised approach may be in place beginning in Fiscal Year 2008 (i.e., beginning in October 2007).[73] What might that solution be? What should it be?

The most straightforward way to improve transparency and accuracy in light of the "antiterrorism" issue would be to account separately for the various terrorism prevention strategies described above, while avoiding the use of labels that might give the wrong impression to the uninitiated. In particular, the "antiterrorism" code could be replaced by two separate codes for "preventive charging" and "precursor/infrastructure protection." "Preventive charging" would be defined to include all prosecutions in which the government has information—classified

[71] *Id.*at 107.
[72] *Id.*
[73] Conversation with DOJ Official, July 26, 2007 (non-attribution basis).

or unclassified—reasonably linking the defendant to terrorism, but such information has no connection to the charges in the indictment. "Precursor/infrastructure protection" would be defined to include all prosecutions undertaken as a result of enforcement programs motivated primarily by a desire to make terrorism more difficult through the systemically-enhanced but untargeted enforcement of precursor and infrastructure protection crimes such as document fraud among airport employees, in circumstances where neither the charges nor other information in government possession actually links the particular defendant to terrorism. These separately-tracked categories would continue to be combined with financing and hoax crimes to comprise the "terrorism-related" umbrella category. Cases not falling into either of these new categories—nor into the existing categories of domestic terrorism, international terrorism, terrorism finance, and terrorism hoax—would not be included under any terrorism program category even if they happened to originate with a JTTF investigation (most referrals from the JTTF would, of course, fall under one of the aforementioned categories).

EOUSA's revised approach probably will reject this two-track solution. In its letter to OIG indicating its intention to revise the "antiterrorism" code, EOUSA explained that it

> does not plan to create a program code solely for those defendants who have links to terrorist activity, but who are investigated and/or charged with non-terrorism charges. EOUSA sees significant problems with a program code devoted solely to such cases and defendants.[74]

EOUSA's letter did not explain what those problems would be, but one may assume that they have to do with a desire to avoid drawing further attention to the government's terrorism-related suspicions in a particular case (both because some defendants would object to being linked in such a way to terrorism,

[74] *Id.* at 107 n. 1.

and because the government may wish to gather further intelligence on or to build a case against the defendant or the defendant's associates). These are valid considerations, even if they are in tension with the need for DOJ managers, the public, and Congress to have a clear picture of the nature and scope of DOJ's counterterrorism efforts.[75]

Could useful reforms be accomplished without distinguishing preventive charging from diffused prevention cases? The most likely solution within these parameters would involve the continued use a single label to report both preventive charging and diffused prevention prosecutions, but with the label itself changed to reduce the risk of misunderstanding. Instead of "antiterrorism," which has connotations of a direct terrorism nexus, the code could be changed in a manner designed to disclaim any clear relationship between the defendant and terrorism, such as "indirect terrorism prevention" or some other such awkward but descriptive formulation.[76]

The relabeling solution would be an improvement over the status quo, but not by a great deal. Ultimately, both departmental management and oversight from Congress and the public would be better served by the more straightforward approach in which preventive charging and diffused prevention prosecutions are tracked separately (and in which JTTF referrals do not automatically qualify for inclusion in a terrorism category). Congress can and should consider mandating that approach if

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[75] One might object that the status quo already labels such cases and defendants "terrorism-related." This is a fair point, but the inclusion within "antiterrorism" of both preventive charging and diffused prevention cases does tend to muddy the waters in an important way. So long as the latter category is included, one cannot assume that the government in fact suspected an individual defendant of personal involvement in terrorism

[76] Given that EOUSA rejects OIG's contention that JTTF referrals are not inherently terrorism-related, the newly-renamed category presumably will continue to include such cases.

necessary. Whether the data-reliability critique would retain bite under a reformed coding system then could be reconsidered based on a review conducted after a full year's experience with the new system.[77]

One very important point remains with respect to the data-reliability critique: EOUSA statistics are not the only terrorism prosecution statistics collected by DOJ, nor are they the only DOJ-collected statistics that play a significant role in the public debate from which the data-reliability critique derives. After the 9/11 attacks, DOJ's Criminal Division began collecting its own terrorism prosecution statistics, a responsibility that presumably passed to the National Security Division in conjunction with the transfer of the Counterterrorism Section from the former to the latter. These statistics may not be the main focus of the criticisms outlined above, but they do impact the public debate—as illustrated by DOJ's release of a white paper in June 2006 expressly invoking this in-house data.[78] For that reason, the foregoing discussion of how best to define terrorism case categories and to ensure accurate application of the resulting definition applies equally to this in-house data.

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[77] As noted above, it is not clear whether there is a significant accuracy problem aside from the dispute over the meaning of "antiterrorism." Certainly the status quo is not perfect, but it appears that OIG itself accepts that some degree of error is tolerable and to be expected. If it did prove necessary to adopt reforms designed to suppress such errors further, however, one option to consider would require a USAO's "ATAC coordinator"—i.e., the senior Assistant United States Attorney in charge of the daily operation of the district's Anti-Terrorism Advisory Council—to certify the decision to enter a case in the tracking system under a terrorism or terrorism-related code. If this step is taken, it would be especially important that the coordinator's certification reflect the nature of the case as actually charged, in order to ensure that preventive charging cases do not appear in the core domestic and international terrorism categories.

[78] *See* White Paper, *supra* note 2.

III. The Soft-Sentence Critique

Let us assume for the sake of argument that DOJ accurately codes and reports cases relating to terrorism. The larger critical narrative challenging DOJ claims of prosecutorial success in such cases would not simply wither away in that case. It would still exist due to a related but distinct line of argument I describe as the "soft-sentence" critique.

The soft-sentence critique takes a set of cases that should bolster DOJ's preferred narrative of success—those cases resulting in convictions—and uses them to call into question the significance of DOJ's achievements. In particular, it contends that convictions in terrorism cases tend to produce very short sentences. Such sentences, the argument suggests, support either of two negative conclusions: On one hand, if the sentences reflect the significance of the underlying allegations, then those defendants must not be significant after all. On the other hand, if the defendants in those cases *are* significant then DOJ failed to obtain an appropriate sentence. However one looks at the matter, on this view, DOJ's record of success is hollow.

That conclusion rests on a misleading premise, however. It is not necessarily true that prosecutions making significant contributions to terrorism prevention should result in relatively long sentences. As described above, a substantial component of DOJ's post-9/11 prevention strategy involves (i) preventive charging (in which non-terrorism offenses, perhaps involving relatively minor crimes are used to prosecute persons suspected of involvement in terrorism when other options are unavailable) and (ii) diffused prevention (in the form of enhanced enforcement of relatively minor, precursor-type crimes). Both strategies are likely to produce convictions for relatively minor offenses, and hence short sentences. To the extent that collective measures of terrorism prosecutions incorporate such cases, one should expect sentencing measures to fall; and to the extent that such cases significantly outnumber the relatively rare cases involving

allegations of direct involvement in terrorism, one should expect sentencing measures to fall dramatically.

All of which supports the conclusion—already described above in connection with the data-reliability dispute—that statistical measures of DOJ's counterterrorism performance should not be measured collectively, or at least not without attention also paid to more finely grained measures. Just as preventive charging and diffused prevention cases should be distinguished from core terrorism prosecutions for purposes of counting convictions, in other words, so too should they be distinguished for purposes of determining the quality of those convictions via assessments of sentence length. Indeed, the most reasonable approach may require consideration of conviction and sentence rates on a per-charge basis.

A. Origins and Evolution of the Soft-Sentence Critique

The soft-sentence critique appears to have originated with the Transactional Records Access Clearinghouse ("TRAC") at Syracuse University, which in December 2001 published a report on terrorism prosecution statistics reported by DOJ during the fiscal years from 1997 through 2001 (thus capturing the five-year period ending at about the time of the 9/11 attacks).[79] Under the provocative subheading "International Terrorists Receive Light Sentences," TRAC wrote that

> News reports about high-profile cases leave the impression that extremely long sentences usually are imposed on all convicted terrorists. Justice Department data focusing only on international terrorists, however, suggest otherwise. Eleven of the 19 convicted terrorists where sentencing information was available, for example,

[79] *See* "A Special TRAC Report: Criminal Enforcement Against Terrorists," available at http://trac.syr.edu/tracreports/terrorism/report011203.html

> received no prison time or one year or less. The median sentence . . . was ten months.[80]

The report acknowledged a higher median sentence for convicted defendants in the domestic terrorism category, but noted that the figure—37 months—was lower than the comparable figure for drug offenses and general weapons offenses.[81]

Future reports by TRAC extended the soft-sentence critique. In February 2003,[82] for example, TRAC observed that while "the prosecution of individuals charged with crimes the government classified as involving terrorism or internal security violations increased by a factor of ten" during fiscal 2002, "during the same period the records also show a significant decline in the prison sentences imposed on those convicted of these crimes."[83] TRAC explained that the median prison sentence in terrorism and security cases fell to a mere two months in fiscal 2002, in contrast to a median of 21 months in fiscal 2001.[84] Consistent with the thesis that preventive charging and diffused prevention cases contributed to these declines, the report observes that the median sentence varies depending on the identity of the agency that

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[80] *Id.*

[81] *Id.* Recall that prior to 9/11 EOUSA did not have a separate program category for "antiterrorism" cases, and that even after the introduction of the new category some cases that belonged in it appeared to have been left in the core domestic and international terrorism categories.

[82] TRAC also produced two interim reports between its 2001 and 2003 reports. On June 17, 2002, it reported data regarding terrorism cases during the first six months of fiscal 2002, observing that referrals for prosecution in such cases were high, but that most of these referrals had not yet been acted upon at the time of the report. In September 2002 TRAC published a brief supplement to the June report providing data for one additional month.

[83] "Criminal Enforcement Against Terrorists and Spies in the Year After the 9/11 Attacks," (Feb. 13, 2003), available at http://trac.syr.edu/tracreports/terrorism/fy2002.html.

[84] *See id.*

referred the charges to prosecutors, with FBI-referred cases resulting in a median sentence of twelve months, referrals from the Immigration and Naturalization Service (INS) resulting in median sentences of two months, and referrals from the Social Security Administration (SSA) resulting in a median sentence of just one month.[85] TRAC concluded that the combination of these trends "document a significant shift in the government's definition of what kinds of behavior will be dealt with under the terrorism and internal security umbrellas and which agencies will be called upon to handle these matters."[86]

Up to that point, TRAC's reports had generated relatively little media attention, and no particular response from DOJ. That changed with the publication of TRAC's next report in December 2003.[87] The report began by observing that federal investigators referred over 6400 individuals for prosecution in the two-year period following 9/11, but that only five individuals thusfar had received sentences of 20 years or more.[88] During that period the median sentence for persons convicted in international terrorism cases was a mere 14 days, while for domestic terrorism and terrorism finance the medians were three and four months.[89] TRAC conceded that more serious cases typically take longer to process and thus that these medians might rise over time as the 874 pending cases filtered through the system.[90] Nonetheless, TRAC concluded that the

> extremely low typical sentences so far imposed in all terrorism cases and the declining number sentenced to even five years in prison . . . would seem to raise certain

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[85] *See id.*
[86] *Id.*
[87] *See* "Criminal Terrorism Enforcement Since the 9/11/01 Attacks: A TRAC Special Report," (Dec. 8, 2003), available at http://trac.syr.edu/tracreports/terrorism/report031208.html.
[88] *Id.* at 1.
[89] *See id.* at 5.
[90] *See id.*

> pertinent questions about current strategies: Are the right people being targeted? Or have the FBI and other agencies adapted [sic] a general round up policy?[91]

Ultimately, the report concluded, "the data indicate that by this measure [i.e., sentencing outcomes] the government effort does not seem particularly impressive."[92]

The report set off a groundswell of criticism. Richard Schmitt of the *Los Angeles Times* observed that to DOJ's critics, the report "is further evidence that the department is exaggerating the success of its anti-terrorism efforts, and raises questions about its strategy of casting a wide net."[93] Senator Charles Grassley issued a statement arguing that "[i]f the data in the report is correct, this raises questions about the accuracy of the department's claims about terrorism enforcement."[94] The ACLU issued a press release stating that the report "paints a startling and disturbing picture of statistical inflation, intended perhaps to bolster the Department's

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[91] *Id.* at 5.

[92] *Id.* at 6. TRAC acknowledged the difficulties inherent in any attempt to measure the efficacy of law enforcement strategies in light of the inability to know how many events, if any, may have been averted by the government's actions. TRAC also showed at least some awareness that the relatively short sentences may reflect the use of the terrorism classification in cases that are far removed from the paradigm case of the 9/11 attacks. *See id.* at 8. It characterized this approach to data tracking as "mis-labeling," however, and cautioned that the practice "could undermine the legitimacy of government efforts by turning the 'terrorist' label into a convenient method to justify government actions sought for other purposes. If that happens, it also could undermine the efforts of the courts to treat defendants in a fair and just way and make judging the effectiveness of the government extremely difficult." *Id.*

[93] Richard B. Schmitt, *Terror Sentences Brief, Study Finds*, L.A. Times, Dec. 8, 2003, at A14.

[94] *Id.*

image."[95] One ACLU official added that DOJ was using "misclassification" to "tweak [its] record of success in the war on terrorism, and then use the resulting and undeserved kudos from Congress and the public to justify expansions of their surveillance and police power. . . . [T]he strikingly low sentences show that judges are not accepting that these cases have any connection to terrorism at all."[96]

Such criticisms continue to the present day, contributing significantly to the larger counternarrative criticizing DOJ's post-9/11 performance. In 2005, for example, the *Washington Post* published a study of the results in terrorism-related prosecutions involving 330 individual defendants, observing that the median sentence for the entire set "was just 11 months."[97] The study observed that only 39 of these convictions involved charges overtly related to terrorist actions, with the remainder consisting of convictions for "relatively minor crimes such as making false statements and violating immigration law."[98] The study concluded "that the government's effort to identify terrorists in the United States has been less successful than authorities have often suggested."[99] Similarly, TRAC in 2006 again issued a report emphasizing short median sentences in terrorism cases, stating that "the typical sentences recently imposed on individuals considered to be international terrorists are not impressive," with a median sentence of just 20 days.[100] Combined with what it characterized as the "small and declining number of prosecutions and

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[95] American Civil Liberties Union, "ACLU Says Skewed Statistics on Terrorism Prosecutions Show Credibility Gap," Dec. 8, 2003, available at http://www.aclu.org/safefree/general/16972prs20031208.html.
[96] *Id.*
[97] *See* Dan Eggen & Julie Tate, *U.S. Campaign Produces Few Convictions on Terrorism Charges*, WASH. POST, June 12, 2005, at A1.
[98] *Id.*
[99] *Id.*
[100] *See* TRAC, "Criminal Terrorism Enforcement in the United States During the Five Years Since the 9/11/01 Attacks," Sep. 2006, available at http://trac.syr.edu/tracreports/terrorism/169/.

convictions" in such cases, TRAC wrote that the short sentences in such cases raised questions as to whether the threat of terrorism "is in some ways inaccurate or exaggerated," whether surveillance and intelligence efforts have been effective, and whether investigators are collecting sufficient evidence.[101]

B. Assessing the Short-Sentence Critique

Ultimately, the short-sentence critique is an unfair and misleading line of argument, though DOJ may have only itself to blame for having to contend with it.

If DOJ routinely obtained only brief sentences in cases involving defendants whom the government alleged to be personally involved in terrorism, that would indeed be cause for alarm. But notwithstanding the way in which TRAC has framed the issue in the past, the statistics discussed in their reports appear not to be limited to such defendants. On the contrary, the statistics appear to include cases brought under the rubrics of both preventive charging and diffused prevention. Thus we see DOJ's Director of Public Affairs, Mark Corallo, contending in 2003 that "the TRAC study ignores the value of early disruption of potential terrorist acts by proactive prosecution of terrorism-related targets on less serious charges."[102] According to Corallo, the "fact that many terrorism investigations result in less serious charges does not mean the case is not terrorism-related," and that "pleas to these less serious charges often result in defendants who cooperate and provide invaluable information to the government – information that can lead to the detection and prevention of other terrorism-related activity."[103] Corallo offered the example of a diffused prevention operation in which airport employees were prosecuted

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[101] *Id.*
[102] Department of Justice, "Statement of Mark Corallo, Director of Public Affairs, Regarding TRAC Study," (Dec. 7, 2003), available at http://www.usdoj.gov/opa/pr/2003/December /03_opa_670.htm.
[103] *Id.*

for immigration offenses, noting that in such cases the defendant typically is "sentenced to time served, and then rendered to the custody of the Department of Homeland Security for deportation. . . . [W]hile the actual sentences received in these cases may be minimal, the goal of ensuring airport security, so crucial to preventing terrorist acts, is being achieved."[104]

In short, DOJ responded to the TRAC report by suggesting that relatively low sentences were the product at least in part of diffused prevention and preventive charging strategies. And no doubt this is so. The problem with this line of response, however, is that preventive charging and diffused prevention prosecutions (including the airport enforcement program cited by Corallo) should not be reported as international or domestic terrorism cases, but instead as anti-terrorism cases collected with others under the "terrorism-related" category. As we have seen in connection with the data-reliability critique, however, there is good reason to believe that USAOs have not succeeded in maintaining that distinction in the past. Data-reliability problems in this sense facilitate the soft-sentence critique; remedying the former will contribute to a fairer examination of the latter.

Can the soft-sentence critique be reassessed in the absence of recategorization of the data? Possibly so. One very sensible way of getting around the problem of relying on EOUSA to generate sufficiently specific case codes (and on USAOs to accurately label cases pursuant to such codes) would be to examine case outcomes on a per-offense basis. For example, one could examine disposition and sentencing data in all cases charging violations of statutes such as 18 U.S.C. § 2339B (criminalizing the provision of material support or resources to designated foreign terrorist organizations). This approach has its limits as well, but if used in conjunction with the more generalized (but, for now at least, less reliable) EOUSA data, it provides a useful tool for testing claims such as the short-sentence critique.

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[104] *Id.*

Accordingly, I conclude in the next section with an example of just such an analysis.

IV. Disposition and Sentencing Data in Terrorism Support Cases, September 2001-June 2007

To illustrate the utility of conducting offense-specific inquiries into disposition and sentences as a supplement to analyses of EOUSA data grouped by case code, I selected a pair of statutes that have played a particularly important role in post-9/11 terrorism prosecutions: 18 U.S.C. § 2339B and 50 U.S.C. § 1705. As described in more detail in Part I, these statutes criminalize the provision of support to designated foreign entities. Their core function is to reduce the capacity of designees to cause harm by preventing them from drawing on U.S. resources, and thus the statutes function primarily as a tool for diffused prevention. But the statutes also are particularly useful tools for incapacitating personally dangerous individuals who are not otherwise subject to prosecution, and in that respect contribute to targeted prevention as well.

As has happened with DOJ's counterterrorism efforts more generally, critics have specifically questioned DOJ's success in using the support statutes since 9/11.[105] An offense-specific inquiry appears especially apt for addressing such concerns. Accordingly, I have identified the complete set[106] of prosecutions initiated between September 2001 and June 2007 in which there is

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[105] *See, e.g.*, Greg Krikorian, *Terrorism Trial Begins This Week for Islamic Charity*, L.A. Times, July 23, 2007, at A12 (claiming that DOJ "has had spotty success winning convictions when charging Americans with providing material support to terrorists").

[106] The data set derives from a variety of official and unofficial sources, including but not limited to PACER, Westlaw, Nexis, and the indictment database operated by Drs. Brent L. Smith and Kelly R. Damphousse in connection with the American Terrorism Study project, available at http://www.tkb.org/ATSSummary.jsp?page=method.

at least one count under either § 2339B or § 1705.[107] For each case, I then used the PACER system (an online docket-access system operated by the Administrative Office of the U.S. Courts) to review docket reports, indictments, and other documents in order to confirm the presence, nature, and current disposition of the support charge(s).[108]

A. IEEPA Prosecution Data

1. Dispositions and Sentences Per Defendant

Consider first the pattern with respect to IEEPA prosecutions under 50 U.S.C. § 1705. DOJ has charged 44 individual defendants with at least one count based on IEEPA's terrorism-related regulations during the nearly six-year period under investigation. At the time of this writing, the charges against sixteen of these defendants remain pending (eight of the defendants are not yet in U.S. custody, while eight others are but await trial). Of the 28 defendants whose IEEPA charges have proceeded to disposition, 20 have been convicted on at least one IEEPA charge (7 by jury, 1 by bench trial, and 12 by plea agreement). Of the 8 defendants who were not convicted, 4 had their IEEPA charges dismissed in connection with a plea to other charges, 2 were acquitted by a jury, 1 was acquitted by bench trial, and the charges against one were dropped after the defendant was killed overseas. Table 1 illustrates.

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[107] Because the IEEPA regulations enforced by § 1705 at times involve embargoes not directly at states rather than at terrorist groups or their associates, I excluded from the set some § 1705 prosecutions (*e.g.*, any prosecutions for engaging in transactions with Libya or Iraq while those states were subject to embargo under IEEPA).

[108] I report the full results below in Appendices A (for § 1705) and B (for § 2339B), including docket numbers, types of support involved, dispositions, sentences, and other information.

Table 1 – IEEPA Prosecution Dispositions (by Defendant)

Disposition	Number (n=44)
Jury Conviction	7
Bench Trial Conviction	1
Guilty Plea	12
Dism'd with Plea to Other	4
Dism'd on Gov't Motion	1
Jury Acquittal	2
Bench Trial Acquittal	1
Dism'd on Defense Motion	0
Pending (but in custody)	8
Pending (not in custody)	8

This disposition data indicates that DOJ has had considerable success in § 1705 prosecutions. In light of the soft-sentence critique, however, we should also examine sentencing outcomes in these cases. Sentencing data is available for 18 of the 20 defendants convicted in these cases. Because one of the convicted defendants is a corporation, moreover, the actual number of defendants for whom a prison sentence was possible during this period is 17. The fact that some of these individuals were convicted on more than one IEEPA count complicates this inquiry, of course. One possible response is to calculate the figures based on the longest IEEPA-based sentence imposed for each individual. On that assumption, the mean sentence for these 17 defendants is 83.85 months, the median is 84, and the mode is 120. If one takes the reverse approach (counting only the shortest sentence for those convicted on multiple IEEPA charges), the median and mode remain unchanged, while the mean falls to 80.09 months. Either way, the sentences appear substantial, at least in comparison to the very brief sentences highlighted by TRAC and

others in connection with the soft-sentence critique.[109] Table 2 illustrates:

Table 2 – Sentencing Data for IEEPA Convictions on a Per-Defendant Basis (collective) (9/01-7/07)

	Mean	Median	Mode
Highest Sentence Counted (n=17)	83.85	84	120
Lowest Sentence Counted (n=17)	80.09	84	120

It may make more sense, of course, to distinguish between sentences that followed from trial convictions and those that followed from plea agreements. The single bench trial conviction produced a 120 month sentence. As to the defendants convicted by jury, the figures depend on whether the high or the low sentence is used for those convicted on multiple counts. If the high sentence is used, the mean sentence is 100.67 months, the median is 102 months, and the mode is 120 months; if the low sentence is used, then the mean is 90, the median is 90, and the mode is 60 and 120.. As to the defendants who pled guilty (none of whom faced differing sentences on multiple IEEPA convictions), the mean is 70.15 months, the median is 72 months, and the mode is 84 and 120. Table 3 illustrates:

[109] It should be noted that I did not account for the possibility of consecutive versus concurrent sentencing for defendants convicted on multiple counts (to the extent this impacts the data, it does so in favor of a more conservative estimate).

Table 3 – Sentencing Data for IEEPA Convictions on a Per-Defendant Basis (by type of conviction) (9/01-7/07)

	Mean	Median	Mode
Bench Trial (n=1)	120	120	120
Jury Trial (high) (n=6)	100.67	102	120
Jury Trial (low) (n=6)	90	90	60, 120
Guilty Plea (n=10)	70.15	72	84, 102

2. Dispositions and Sentences Per Count

One advantage of a defendant-specific inquiry is that it simplifies analysis and gives a concrete sense of how particular individuals actually are impacted by prosecutions. One weakness, however, is that it fails to account for nuances in the manner in which a particular offense may be charged. As it happens, prosecutors in IEEPA cases not only have charged direct violations of § 1705, but also conspiracies, attempts, and inducements to violate the statute. Complicating matters still further, § 1705 does not on its face provide for conspiracy liability, and while some of the conspiracy charges in these cases accordingly have relied on the general federal conspiracy statute (18 U.S.C. § 371), others have instead cited federal regulations promulgated by the Office of Foreign Assets Control in the Treasury Department (which purport to establish such liability for IEEPA violations). The distinction matters because § 371 provides a maximum sentence of just five years, while the data below indicates that conspiracy convictions based on the regulations tend to produce longer sentences (the statutory maximum for direct violations of § 1705 was ten years until 2006, at which point the ceiling was raised to twenty years).

The 44 defendants discussed above collectively have faced 220 separate IEEPA charges, though a full 172 of these charges derive from a pair of indictments in the Northern District of Texas in cases involving allegations of fund-raising for HAMAS and HAMAS-related individuals; removing those cases, there have been 48 charges against 30 defendants. In any event, of those 220 total counts, 177 allege direct violations of § 1705, 14 allege conspiracies based on § 371, 24 allege conspiracies based on the OFAC regulations, and 5 allege attempt or inducement. Many of these charges concern defendants who are not in custody (44 counts alleging direct violations of IEEPA, 5 counts alleging § 371 conspiracies, and 3 counts alleging conspiracies under the OFAC regulations) or who still await trial at the time of this writing (73 counts alleging direct violations of IEEPA, 1 count under § 371, and 7 conspiracy counts under the OFAC regulations). Of the 87 charges that have proceeded to disposition, however, the pattern again suggests considerable success.

Juries have convicted defendants on 41 IEEPA-related counts, including 34 counts of directly violating IEEPA, 4 counts of conspiracy to violate IEEPA under § 371, 1 count of conspiracy to violate IEEPA under the OFAC regulations, and 2 counts of attempt. Defendants have pled guilty to an additional 12 counts, including 4 direct violations, 2 § 371 conspiracy violations, 4 OFAC regulation conspiracy violations, and 2 attempt violations. In addition, one OFAC regulation conspiracy count resulted in a bench trial conviction. All told, then, 54 of the 87 counts that have been resolved at the time of this writing resulted in conviction. In addition, 20 other counts (13 direct, 6 OFAC, 1 attempt) were dismissed in connection with guilty pleas on other charges. Of the 13 remaining counts, one was dismissed on the government's motion after the defendant was killed overseas, 11 were the result of jury acquittals (9 involving allegations of direct violations, 2 involving § 371 conspiracies), and 1 OFAC regulation conspiracy count resulted in a bench acquittal. Table 4 illustrates:

Table 4 – IEEPA Prosecution Dispositions (by Count)

Disposition	Total (n=220)	Direct (n=177)	371 Consp. (n=14)	OFAC Consp. (n=24)	Attempt (n=5)
Jury Conviction	41	34	4	1	2
Bench Trial Conviction	1	0	0	1	0
Guilty Plea	12	4	2	4	2
Dism'd with Plea to Other	20	13	0	6	1
Dism'd on Gov't Motion	1	0	0	1	0
Jury Acquittal	11	9	2	0	0
Bench Trial Acquittal	1	0	0	1	0
Dism'd on Defense Motion	0	0	0	0	0
Pending (but in custody)	81	73	1	7	0
Pending (not in custody)	52	44	5	3	0

Reviewing the sentencing patterns on a per-count basis also provides useful insight, particularly when one distinguishes between direct violations of § 1705, conspiracy counts brought in connection with § 371, conspiracy counts brought in connection with the OFAC regulations, and attempt/inducement charges. One way to do this is to inquire into means, medians, and modes based both on the nature of the charge and the means of disposition. Table 5 illustrates:

Table 5 – Sentencing Data for IEEPA Convictions on a Per-Count Basis, by Type of Offense (9/01-7/07)

	Mean	Median	Mode
Direct Violation Jury Trial (n=24)[110]	86.67	84	80
Direct Violation Guilty Plea (n=3)[111]	84	84	(48, 84, 120 all appear once)
Section 371 Conspiracy Jury Trial (n=3)[112]	60	60	60
Section 371 Conspiracy Guilty Plea (n=1)[113]	57	57	57
OFAC Conspiracy Jury Trial (n=1)	120	120	120
OFAC Conspiracy Guilty Plea (n=4)	81	90	(24, 84, 96, 120 all appear once)
OFAC Conspiracy Bench Trial (n=1)	120	120	120
Attempt Jury Trial (n=2)	120	120	120
Attempt Guilty Plea (n=2)	34.25	34.25	(both 8.5, 60 appear once)

The most notable result from Table 5, arguably, is the readily-apparent distinction between the results in conspiracies brought under § 371 and those brought on the basis of the OFAC regulations. The relatively lengthy sentences in the latter category contrast with the sentences under the former. Sentences of five years or less are to be expected under § 371, of course, as that statute has a five-year maximum sentence. The fact that sentences routinely exceed that limit when conspiracies are prosecuted

[110] This data does not include the ten IEEPA counts for which a jury found Infocom Corporation guilty, as Infocom is a corporate entity not susceptible to a prison sentence.
[111] The sentence is pending with respect to one count in this category.
[112] This data does not include an IEEPA count for which a jury found Infocom Corporation guilty, as Infocom is a corporate entity not susceptible to a prison sentence.
[113] The sentence is pending with respect to one count in this category.

instead pursuant to the OFAC regulations demonstrates the utility to prosecutors of using that approach, though the practice also raises a fundamental question that does not appear to have been litigated in a terrorism-related case up to this point: Is it appropriate to premise conspiracy liability on a combination of the OFAC regulations and § 1705, in lieu of reliance on § 371? That question bears further investigation.[114]

B. Section 2339B Prosecution Data

The § 2339B disposition and sentencing data indicates that DOJ has had substantial success both in obtaining convictions and weighty sentences.

1. Disposition and Sentences per Defendant

Between September 2001 and July 2007, a total of 108 individual defendants have been charged with at least one count under § 2339B (including direct violations as well as conspiracies and attempts to violate the statute). The charges remain pending against 47 of these defendants at the time of this writing, with 23 of them not yet in U.S. custody and 24 others in custody but awaiting trial. Of the 62 defendants as to whom the § 2339B charges have been resolved,[115] 39 have been convicted on at least

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[114] *See* United States v. Quinn, 401 F. Supp.2d 80, 94 (D.D.C. 2005) ("[N]othing in the language or history of IEEPA-or in the surrounding body of law into which it is integrated-gives the Court reason to believe that the statute conferred upon the President the power to criminalize by regulation conspiracies to violate trade embargoes").

[115] In some instances, a single defendants faced multiple § 2339B counts that were resolved in different ways. Where at least one count resulted in conviction, I have included the defendant among the convicted even if other counts turned out otherwise. Conversely, where a defendant was acquitted by jury on at least one § 2339B charge, I have included the defendant among the acquitted even if other § 2339B charges were disposed of differently. For the few instances in which a defendant was convicted on some counts but acquitted on others, I have listed the

one § 2339B-related count, with 9 of these convicted by jury and 30 others convicted pursuant to a plea agreement. Another eleven defendants pled guilty to other charges, and had their § 2339B counts dropped as a result. The government moved to dismiss the charges against one additional defendant after the individual died overseas. Eight of the remaining defendants were acquitted on the § 2339B charges they faced (1 by bench trial, 7 by jury), and three others successfully moved to have the charges against them dismissed prior to trial. Table 6 illustrates:

Table 6 – § 2339B Prosecution Dispositions (by Defendant)

Disposition	Number (n=108)
Jury Conviction	9
Bench Trial Conviction	0
Guilty Plea	30
Dism'd with Plea to Other	11
Dism'd on Gov't Motion	1
Jury Acquittal	7
Bench Trial Acquittal	1
Dism'd on Defense Motion	3
Pending (but in custody)	23
Pending (not in custody)	23

These disposition data provide some support for DOJ claims of success, though again there are more than a few acquittals. On one hand, 50 out of 62 defendants to have reached resolution ultimately were convicted on some ground, with 39 of them convicted on the § 2339B charges. On the other hand, the substantial number of acquittals suggests that those § 2339B cases that proceed to trial present particularly difficult challenges for prosecutors.

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defendant solely among the acquitted. This approach has its drawbacks, of course, but that is in part why I also provide a per-count review of the data in the next subsection.

In terms of sentencing for those § 2339B prosecutions that did result in conviction, the data again tends to militate against the soft-sentence critique. Of the 39 defendants convicted under § 2339B, 30 have proceeded to sentencing at this time (7 of the 9 convicted by jury trial, and 23 of the 30 convicted by plea agreement). The mode sentence for convictions during the post-9/11 period is 180 months (reflecting the statutory maximum of 15 years), and the median is 120. Because there is one defendant who received different sentences on a pair of § 2339B charges, the mean varies depending on whether the high or low sentence is included. With the high sentence included, the mean is 122.73 months, while inclusion instead of the lower sentence produces a mean of 118.73 months. In any event, the upshot of it all is that § 2339B prosecutions that result in convictions produce substantial sentences, typically some two years longer than those obtained under IEEPA. Table 7 illustrates.

Table 7 – Sentencing Data for § 2339B Convictions on a Per-Defendant Basis (collective) (9/01-7/07)

n=-30	Mean	Median	Mode
Highest Sentence Counted	122.73	120	180
Lowest Sentence Counted	118.73	120	180

As with the IEEPA data, it also helps to view the per-defendant sentencing data with an eye toward the nature of the conviction (in this case, whether the conviction followed from a plea agreement or from a jury verdict). Consistent with expectations about the sentencing advantages of pleading guilty, the data shows that sentences ran higher for those convicted by way of jury verdict. Table 8 illustrates.

Table 8 – Sentencing Data for § 2339B Convictions on a Per-Defendant Basis (by type of conviction) (9/01-7/07)

	Mean	Median	Mode
Jury Trial (n=7)	171.43	180	180
Guilty Plea (high) (n=23)	107.91	96	180
Guilty Plea (low) (n=23)	102.70	96	180

2. Dispositions and Sentences Per Count

Reexamining the disposition and sentencing data relating to § 2339B on a per-count rather than per-defendant provides few notable insights.

The 108 defendants discussed above collectively have faced 330 separate § 2339B charges. A full 201 of these charges remain pending, 80 of them involving defendants who are not yet in U.S. custody and 121 more involving defendants who are in custody but who are awaiting trial.[116] Of the 129 charges that have been resolved, 66 have resulted in § 2339B convictions (33 by way of jury verdict, and 33 by way of guilty plea). Twenty-five more charges have been dismissed in connection with guilty pleas on other counts, and one charge was dismissed on the government's own motion after the defendant was killed overseas. Of the 37 remaining counts, 6 were dismissed on defendants' motion and 31 resulted in acquittals (with 25 of these deriving from four defendants in the *United States v. al-Arian* prosecution). As indicated in Table 9, these results have been spread relatively evenly across the categories of direct, conspiracy, and attempt liability:

[116] As with the IEEPA data, a substantial portion of the pending charges derive from the Holy Land Foundation case in the Northern District of Texas.

Table 9 – § 2339B Prosecution Dispositions (by Count)

Disposition	Total (n=330)	Direct (n=175)	Consp. (n=98)	Attempt (n=57)
Jury Conviction	33	4	10	19
Bench Trial Conviction	0	0	0	0
Guilty Plea	33	13	17	3
Dism'd with Plea to Other	25	3	19	3
Dism'd on Gov't Motion	1	0	1	0
Jury Acquittal	30	25	3	2
Bench Trial Acquittal	1	0	1	0
Dism'd on Defense Motion	6	3	3	0
Pending (but in custody)	121	79	23	19
Pending (not in custody)	80	48	21	11

For the 66 § 2339B counts that have resulted in convictions thusfar, sentencing patterns continue to reflect the impact of pleading versus proceeding to trial, as seen above when the data is examined on a per-defendant basis. Table 10, which concludes this section, illustrates:

Table 10 – Sentencing Data for §2339B Convictions on a Per-Count Basis, by Type of Offense (9/01-7/07)

	Mean	Median	Mode
Direct Violation Jury Trial (n=4)	165	150	180
Direct Violation Guilty Plea (n=10)[117]	131.10	120	180
Conspiracy Jury Trial (n=9)[118]	173.33	180	180
Conspiracy Guilty Plea (n=12)[119]	82.83	60.50	(both 180 and 57 appear twice)
Attempt Jury Trial (n=17)[120]	180	180	180
Attempt Guilty Plea (n=2)[121]	118.50	118.50	(180 & 57 once each)

IV. Conclusion

The data-reliability and soft-sentence critiques have played important roles in the emergence of a narrative that challenges Justice Department claims of success in post-9/11 terrorism prosecutions. Neither line of critique wholly withstands close consideration, however.

The data-reliability critique is the stronger of the two. On one hand, it provides an important service by exposing ambiguity in the definitions employed by DOJ for case-tracking purposes. Because these ambiguities have the capacity to create misunderstanding regarding the significance of the data involved, there is a genuine need for more carefully-calibrated definitions.

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[117] The sentence is pending with respect to three counts in this category.
[118] The sentence is pending with respect to one count in this category.
[119] The sentence is pending with respect to five counts in this category.
[120] The sentence is pending with respect to two counts in this category.
[121] The sentence is pending with respect to one count in this category.

On the other hand, once the definitional issue is set aside, it is not yet clear that data reliability problems exist on a significant scale.

The short-sentence critique has greater potential to undermine DOJ's preferred narrative of success, but it is far from clear that it is justified. The short-sentence critique, at its core, rests on the assumption that short average sentences reveal a problem in cases that DOJ has categorized as terrorism or terrorism-related (using the ambiguous definitions giving rise to the data-reliability critique). Either the cases are not truly important, on this view, or else prosecutors have done a bad job in them. But there is another explanation: the short average sentences may flow from inclusion in the data of cases involving relatively minor crimes that relate to terrorism prevention in indirect ways. Changes to EOUSA case-codes designed to respond to the data-reliability critique should do much to eliminate this problem, permitting more reliable assessments to be made even when relying on the EOUSA case codes to identify the relevant data sets.

DOJ managers, Congress, and the public should not rely simply on the EOUSA case categories in conducting such oversight, however. Assessment should be conducted in combination with offense-specific reviews of dispositions and sentences, particularly with respect to statutes of special relevance such as 18 U.S.C. § 2339B (prohibiting the provision of material support or resources to designated foreign terrorist organizations) and 50 U.S.C. § 1705 (criminalizing violations of orders promulgated pursuant to the International Emergency Economic Powers Act). Such offense-specific inquiries avoid the problems associated with the data-reliability critique, and permit more effective testing of the soft-sentence critique. Indeed, a case study of the results in § 2339B and § 1705 prosecutions in the period between September 2001 and July 2007 tends to undermine the soft-sentence critique; though the results demonstrate that DOJ has had some difficulties in litigating such cases, on the whole the

pattern of dispositions and sentences supports the larger narrative of success.

APPENDIX A – 50 U.S.C. § 1705 Prosecutions (9/01-7/07)

Defendant	Docket #	Court	Charge	Support Type	Recipient	Disposition	Sentence	Personal Danger?	Total Sentence
Ihsan Elashyi	02-CR-33	N.D. Tex.	1705 (**13 counts**)	Computers	Unspecified	Guilty Plea (1 count); Dismissed with Plea to Other Charges (12 counts)	48 months	no	n/a
Bayan Elashi	02-CR-052	N.D. Tex.	1705 (**10 Counts**)	Money	Mousa Abu Marzook	Convicted by jury	84 months	no	**84 months** - 50:1705 (Conspiracy, via 18:371) (2 counts, though only one relating to terrorism as noted in the "charge" column), 60 months on each count; 50:1705 (17 counts), 84 months on each count; 18:1001(a)(3) (2 counts), 60 months on each count; 18:1957, 84 months; 18:1956 (Conspiracy), 84 months; 18:1956 (9 counts), 84 months on each count; to run concurrently
			1705 (Conspiracy, via 18 USC 371)	Money	Mousa Abu Marzook	Convicted by jury	60 months		
Ghassan Elashi			1705 (**10 Counts**)	Money	Mousa Abu Marzook	Convicted by jury	80 months	no	**80 months** - 50:1705 (Conspiracy, via 18:371) (2 counts, though only one relating to terrorism as noted in the "charge" column), 60 months each count; 50:1705 (11 counts), 80 months each count; 18:1001(a)(3)(Conspiracy), 60 months; 18:1001(a)(3) (2 counts), 80 months and 60 months; 18:1957, 80 months; 18:1956(h), 80 months; 18:1956(a) (9 counts), 80 months each count; to run concurrently
			1705 (Conspiracy, via 18 USC 371)	Money	Mousa Abu Marzook	Convicted by jury	60 months		
Basman Elashi			1705 (**10 Counts**)	Money	Mousa Abu Marzook	Acquitted by jury (**9 counts**); Convicted by jury (**1 count**)	80 months	no	**80 months** - 50:1705 (Conspiracy, via 18:371) (2 counts, though only one relating to terrorism as noted in the "charge" column), 60 months each count; 50:1705 (8 counts) 80 months each count; 18:1001(a)(3) (12 counts), 60 months each count; 18:1001(a)(3) (Conspiracy), 60 months; 18:1957, 80 months; 18:1956 (Conspiracy), 80 months; to run concurrently
			1705 (Conspiracy, via 18 USC 371)	Money	Mousa Abu Marzook	Convicted by jury	60 months		
Nadia Elashi			1705 (**10 Counts**)	Money	Mousa Abu Marzook	Pending (not in custody)	n/a	no	n/a
			1705 (Conspiracy, via 18 USC 371)	Money	Mousa Abu Marzook	Pending (not in custody)	n/a		

Mousa Abu Marzook			1705 (**10 Counts**)	Money	Mousa Abu Marzook	Pending (not in custody)	n/a	no	n/a
			1705 (Conspiracy, via 18 USC 371)	Money	Mousa Abu Marzook	Pending (not in custody)	n/a		
Infocom Corporation			1705 (**10 Counts**)	Money	Mousa Abu Marzook	Convicted by jury	n/a	no	n/a
			1705 (Conspiracy, via 18 USC 371)	Money	Mousa Abu Marzook	Convicted by jury	n/a		
John Walker Lindh	02-CR-37	E.D. Va.	1705	Personnel	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**240 months** - 18:844(h)(2), 120 months; 50:1705 (Conspiracy, via 31 CFR 595.205), 120 months; to run consecutively
			1705 (Conspiracy, via 31 CFR 595.205)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
			1705	Personnel	Taliban	Guilty Plea	120 months		
			1705 (Conspiracy, via 31 CFR 595.205)	Personnel	Taliban	Dismissed as part of plea	n/a		
Earnest James Ujaama	02-CR-283	W.D. Wash.	1705 (Conspiracy, via 31 CFR 545.206(b))	Fundraising Currency Computer Services	Taliban	Guilty Plea	24 months	yes (military training)	**24 months** - 50:1705 (Conspiracy, via 31 CFR 545.206(b)), 24 months
Jeffrey Leon Battle	02-CR-399	D. Or.	1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**216 months** - 18:2384, 216 months
Patrice Lumumba Ford			1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**216 months** - 18:2384, 216 months
Ahmed Ibrahim Bilal			1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Guilty Plea	120 months	yes (military training and attempt to fight)	**120 months** - 50:1705 (Conspiracy, via 31 CFR 595.205, 120 months; 18:924(c), (o), 120 months; to run concurrently
Muhammad Ibrahim Bilal			1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Guilty Plea	96 months	yes (military training and attempt to fight)	**96 months** - 50:1705 (Conspiracy, via 31 CFR 595.205), 96 months; 18:924(c), (o), 96 months; to run concurrently
Habis Abdulla Al Saoub			1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Dismissed on gov't motion (killed in Pakistan in 2003	n/a	yes (military training and attempt to fight)	n/a
October Martinique Lewis			1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Dismissed as part of plea	n/a	no	**36 months** - 18:1956 (6 counts), 36 months each count; to run concurrently
Maher Mofeid Hawash			1705 (Conspiracy, via 31 CFR 595.205)	Personnel Recruiting Money	Al-Qaeda	Guilty Plea	84 months	yes (military training and attempt to fight)	**84 months** - 50:1705 (Conspiracy, via 31 CFR 595.205), 84 months

Faysal Galab	02-CR-214	W.D.N.Y.	1705	Purchasing Uniforms Attending Training Camps	Al-Qaeda Usama bin Laden	Guilty Plea	84 months	yes (military training)	**84 months** - 50:1705, 84 months
Sami Amin al-Arian	03-CR-77	M.D. Fla.	1705 (Conspiracy, via 18 USC 371)	Money Fundraising Recruitment Expertise	PIJ, Abd al Aziz Awda, Fathi Shiqaqi, Ramadan A. Shallah	Hung Jury; guilty plea	57 months	no	**57 months** - 50:1705 (Conspiracy, via 18: 371), 57 months
Ramadan Abdullah Shallah			1705 (Conspiracy, via 18 U.S.C. 371)	Money Fundraising Recruitment Expertise	PIJ, Abd al Aziz Awda, Fathi Shiqaqi, Ramadan A. Shallah	Pending (not in custody)	n/a	no	n/a
Bashir Musa Mohammed Nafi			1705 (Conspiracy, via 18 U.S.C. 371)	Money Fundraising Recruitment Expertise	PIJ, Abd al Aziz Awda, Fathi Shiqaqi, Ramadan A. Shallah	Pending (not in custody)	n/a	no	n/a
Sameeh Hammoudeh			1705 (Conspiracy, via 18 U.S.C. 371)	Money Fundraising Recruitment Expertise	PIJ, Abd al Aziz Awda, Fathi Shiqaqi, Ramadan A. Shallah	Acquitted by jury	n/a	no	n/a
Ghassan Zayed Ballut			1705 (Conspiracy, via 18 U.S.C. 371)	Money Fundraising Recruitment Expertise	PIJ, Abd al Aziz Awda, Fathi Shiqaqi, Ramadan A. Shallah	Acquitted by jury	n/a	no	n/a
Mazen Al-Najjar			1705 (Conspiracy, via 18 USC 371)	Money Fundraising Recruitment Expertise	PIJ, Abd al Aziz Awda, Fathi Shiqaqi, Ramadan A. Shallah	Pending (not in custody)	n/a	no	n/a
Randall Todd Royer	03-CR-296	E.D. Va.	1705 (Conspiracy, via CFR)	Personnel	Taliban	Dismissed as part of plea	n/a	yes (military training)	**240 months** - 18:924(c)(2) and 18:3238, 120 months; 18:844(h)(2) and 18:3238, 120 months; to run consecutively
Masoud Ahmad Khan			1705 (Conspiracy, via CFR)	Personnel	Taliban	Convicted by bench trial	120 months	yes (military training)	**Life** - 18:371 (Conspiracy to violate inter alia, 18:960, 18:2390), 60 months; 18:2384, 120 months; 50:1705, 120 months, 18:2339A (Conspiracy), 120 months; 18:924(o), 120 months; 18:924(c) (three counts), 120 months, 300 months, and life in prison; first five counts concurrent, other counts to follow consecutively
Sabri Benkhala			1705 (Conspiracy, via CFR)	Personnel	Taliban	Acquitted by bench trial	n/a	yes (military training)	n/a

Uzair Paracha	03-CR-1197	S.D.N.Y.	1705	Financial Services Document Fraud	Al-Qaeda	Convicted by jury	120 months	no	**360 months** - 18:2339B (Conspiracy), 180 months; 18:2339B, 180 months; 50:1705 (Conspiracy, via 31 CFR 595.205), 120 months; 50:1705, 120 months; 18:1028(a)(7), (b)(4), 300 months; last ten years of first four counts to run concurrently with 18:1028 count, final 15 years of 18:1028 count to run consecutively to that
			1705 (Conspiracy, via 31 CFR 595.205)	Financial Services Document Fraud	Al-Qaeda	Convicted by jury	120 months		
Mohammed Junaid Babar	04-CR-528	S.D.N.Y.	1705	Night-Vision Equipment	Al-Qaeda	Guilty Plea	Unknown	no	Unknown
Holy Land Found'n for Relief and Development	04-CR-240	N.D. Tex.	1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending	n/a		
Shukri Abu Baker			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending	n/a		
Mohammed El-Mezain			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending	n/a		
Ghassan Elashi			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending	n/a		
Haitham Maghawri			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending (not in custody)	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending (not in custody)	n/a		
Akram Mishal			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending (not in custody)	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending (not in custody)	n/a		
Mufid Abdulqader			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending	n/a		
Abdulrahman Odeh			1705 (Conspiracy, via 31 CFR 595.205)	Money	HAMAS	Pending	n/a	no	n/a
			1705 (**12 Counts**)	Money	HAMAS	Pending	n/a		

Ali al-Timimi	04-CR-385	E.D. Va.	1705 (Attempt)	Personnel	Taliban	Convicted by jury	120 months	no	**Life** - 18:924(n), 121 months; 18:373, 121 months; 18:2384, 121 months; 50:1705, 120 months; 50:1705 and 18:2, 120 months; 18:371, 60 months; 18:924(c), 360 months; 18:924(c), Life; 18:844(h)(2) (2 counts), 120 months and 240 months; first 6 counts concurrent, all other counts to be served consecutively after 121 months
			1705 and 2 (Inducing attempt)	Personnel	Taliban	Convicted by jury	120 months		
Mark Robert Walker	04-CR-2701	W.D. Tex.	1705 (attempt) (**2 counts**)	Night-Vision Equipment Bullet-Proof Vests	Al-Ittihad Al-Islamiya	Guilty Plea; other count dismissed as part of plea	8 1/2 months (**1 count**)	no	**8.5 months** - 50:1705, 8.5 months
Ahmed Omar Abu Ali	05-CR-53	E.D. Va.	1705 (**2 counts**)	Personnel Money	Al-Qaeda	Convicted by jury	120 months	yes (military and explosives training)	**360 months** - 18:2339B (Conspiracy), 120 months; 18:2339B, 120 months; 18:2339A (Conspiracy), 120 months; 18:2339A, 120 months; 50:1705 (2 counts), 120 months each count; 18:1752(d), 120 months; 49:46502, 240 months; 18:32, 240 months; first seven counts concurrent, followed by the final two counts concurrent to each other
Naji Antoine Abi Khalil	05-CR-200 04-CR-573	E.D. Ark. S.D.N.Y	1705 (Attempt)	Night-Vision Equipment	Hezbollah	Guilty Plea	60 months	no	**60 months** - 18:2339B, 57 months; 50:1705(all types, all counts) 60 months on each; to run concurrently
Mustafa Kamel Mustafa	04-CR-356	S.D.N.Y.	1705 (Conspiracy, via 31 CFR 545.206(b))	Fundraising Personnel Computer Services Money	Taliban	Pending (not in custody)	n/a	no	n/a
Syed Hashmi	06-CR-442	S.D.N.Y.	1705 (Conspiracy, via 31 CFR 595.205)	Military Equipment	Al-Qaeda	Pending	n/a	no	n/a
			1705	Military Equipment	Al-Qaeda	Pending	n/a		
Kobie Diallo Williams	06-CR-421	S.D. Tex.	1705 (Conspiracy, via 18 USC 371)	Money Personnel	Taliban	Guilty Plea	Pending	yes (firearms training)	n/a
Adnan Mirza			1705 (Conspiracy, via 18 USC 371)	Money Personnel	Taliban	Pending	n/a	yes (firearms training)	n/a

APPENDIX B – 18 U.S.C. § 2339B Prosecutions (9/01-7/07)

Defendant	Docket #	Court	Charge	Support Type	Recipient	Disposition	Sentence	Personal Danger?	Total Sentence
Ahmed Abdel Sattar	02-CR-395	S.D.N.Y.	2339B	Personnel, Communications, Expertise	Egyptian Islamic Group	Dismissed on Defendant's Motion	n/a	no	**288 months** - 18:371, 60 months; 18:956(a)(1), (a)(2)(A), 288 months; 18:373, 240 months; to run concurrently
			2339B (Conspiracy)	Personnel, Communications, Expertise	Egyptian Islamic Group	Dismissed on Defendant's Motion	n/a		
Yassir Al-Sirri			2339B	Personnel, Communications, Expertise	Egyptian Islamic Group	Pending (not in custody)	n/a		n/a
			2339B (Conspiracy)	Personnel, Communications, Expertise	Egyptian Islamic Group	Pending (not in custody)	n/a		
Lynne Stewart			2339B	Personnel, Communications, Expertise	Egyptian Islamic Group	Dismissed on Defendant's Motion	n/a	no	**28 months** - 18:2339A (Conspiracy, via 18:371), 28 months; 18:2339A, 28 months; 18:1001 (2 counts), 28 months each count; to run concurrently
			2339B (Conspiracy)	Personnel, Communications, Expertise	Egyptian Islamic Group	Dismissed on Defendant's Motion	n/a		
Mohammed Yousry			2339B	Personnel	Egyptian Islamic Group	Dismissed on Defendant's Motion	n/a	no	**20 months** - 18:371, 20 months; 18:2339A (Conspiracy, via 18:371), 20 months; 18:2339A, 20 months; to run concurrently
			23339B (Conspiracy)	Personnel	Egyptian Islamic Group	Dismissed on Defendant's Motion	n/a		
John Walker Lindh	02-CR-37	E.D. Va.	2339B	Personnel	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**240 months** - 18:844(h)(2), 120 months; 50:1705 (Conspiracy, via 31 CFR 595.205), 120 months; to run consecutively
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
			2339B	Personnel	Harakat ul-Mujahideen	Dismissed as part of plea	n/a		
			2339B (Conspiracy)	Personnel	Harakat ul-Mujahideen	Dismissed as part of plea	n/a		
Earnest James Ujaama	02-CR-283	W.D. Wash.	2339B (Conspiracy)	Training, Facilities, Computer Services, Personnel	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training)	**24 months** - 50:1705 (Conspiracy, via 31 CFR 545.206(b)), 24 months
Jaber Elbaneh	02-MJ-111	W.D.N.Y.	2339B	Personnel	Al-Qaeda	Pending (not in custody)	n/a	yes (military training)	n/a

Jeffrey Leon Battle	02-CR-399	D. Or.	2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed with plea	n/a	yes (military training and attempt to fight)	**216 months** - 18:2384, 216 months
Patrice Lumumba Ford			2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**216 months** - 18:2384, 216 months
Ahmed Ibrahim Bilal			2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**120 months** - 50:1705 (Conspiracy, via 31 CFR 595.205, 120 months; 18:924(c), (o), 120 months; to run concurrently
Muhammad Ibrahim Bilal			2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**96 months** - 50:1705 (Conspiracy, via 31 CFR 595.205), 96 months; 18:924(c), (o), 96 months; to run concurrently
Habis Abdulla Al Saoub			2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed on gov't motion (killed in Pakistan in 2003	n/a	yes (military training and attempt to fight)	n/a
October Martinique Lewis			2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed as part of plea	n/a	no	**36 months** - 18:1956 (6 counts), 36 months each count; to run concurrently
Maher Mofeid Hawash			2339B (Conspiracy)	Personnel, Recruiting, Money	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training and attempt to fight)	**84 months** - 50:1705 (Conspiracy, via 31 CFR 595.205), 84 months
Yahya Goba	02-CR-214	W.D.N.Y.	2339B	Personnel	Al-Qaeda	Guilty Plea	120 months	yes (military training)	**120 months** - 18:2339B, 120 months
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
Shafal Mosed			2339B	Personnel	Al-Qaeda	Guilty Plea	96 months	yes (military training)	**96 months** - 18:2339B, 96 months
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
Yasein Taher			2339B	Personnel	Al-Qaeda	Guilty Plea	96 months	yes (military training)	**96 months** - 18:2339B, 96 months
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
Faysal Galab			2339B	Personnel	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training)	**84 months** - 50:1705, 84 months
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
Mukhtar al-Bakri			2339B	Personnel	Al-Qaeda	Guilty Plea	120 months	yes (military training)	120 months - 18:2339B, 120 months
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		

Sahim Alwan			2339B	Personnel	Al-Qaeda	Guilty Plea	114 months	yes (military training)	**114 months** - 18:2339B, 114 months
			2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a		
Syed Mustajab Shah	02-CR-2912	S.D. Cal.	2339B (Conspiracy)	Missiles	Al-Qaeda	Guilty Plea	180 months	no	**225 months** - 21:846, 841(a), 225 months; 18:2339B, 180 months; to run concurrently
Muhammed Abid Afridi			2339B (Conspiracy)	Missiles	Al-Qaeda	Guilty Plea	57 months	no	**57 months** - 21:846, 841(a), 57 months; 18:2339B, 57 months; to run concurrently
Ilyas Ali			2339B (Conspiracy)	Missiles	Al-Qaeda	Guilty Plea	57 months	no	**57 months** - 21:846, 841(a), 57 months; 18:2339B, 57 months; to run concurrently
Carlos Ali Romero Varela	02-CR-714	S.D. Tex.	2339B	Weapons	AUC	Guilty Plea	Pending	no	Pending
Uwe Jensen			2339B	Weapons	AUC	Guilty Plea	168 months	no	**168 months** - 18:2339B, 168 months; 21:846 (Conspiracy), 168 months; to run concurrently
Cesar Lopez (aka Elkin Alberto Arroyav Ruiz)			2339B	Weapons	AUC	Guilty Plea	180 months	yes (military training)	**180 months** - 18:2339B, 180 months
"Commandante Emilio" (aka Edgar Fernando Blanco Puerta)			2339B	Weapons	AUC	Guilty Plea	180 months	no	**Life** - 18:2339B, 180 months; 21:846 (Conspiracy), Life; to run concurrently
Javier Conrado Alvarez Correa			2339B	Weapons	AUC	Pending (not in custody)	n/a	no	n/a
Diego Alberto Ruiz Arroyave			2339B	Weapons	AUC	Pending (not in custody)	n/a	no	n/a
Hassan Moussa Makki	03-CR-80079	E.D. Mich.	2339B	Money	Hezbollah	Guilty Plea	57 months	no	**57 months** - 18:2339B, 57 months; 18:1962, 57 months; to run concurrently
Sami Omar al-Hussayen	03-CR-48	D. Idaho	2339B (Conspiracy)	Expertise, Comm Equip, Money, Recruitment	HAMAS	Acquitted by jury	n/a	no	n/a
Sami Amin al-Arian	03-CR-77	M.D. Fla.	2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Hung Jury; Dismissed with plea	n/a	no	**57 months** - 50:1705 (Conspiracy, via 18: 371), 57 months
			2339B (**3 counts**)	Money	PIJ	Acquitted by jury	n/a	no	
Ramadan Abdullah Shallah			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Pending (not in custody)	n/a	no	n/a
Bashir Musa Mohammed Nafi			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Pending (not in custody)	n/a	no	n/a
Sameeh Hammoudeh			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Acquitted by jury	n/a	no	n/a
Abd al Aziz Awda			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Pending (not in custody)	n/a	no	n/a

Ghassan Zayed Ballut			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Acquitted by jury	n/a	no	n/a
			2339B (**9 counts**)	Money	PIJ	Acquitted by jury (9 counts)	n/a		
Hatim Naji Fariz			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Hung Jury; Dismissed with plea	n/a	no	**37 months** - 50:1705 (Conspiracy, via 18:371), 37 months
			2339B (**11 counts**)	Money	PIJ	Acquitted by Jury (11 counts)	n/a		
Mazen Al-Najjar			2339B (Conspiracy)	Money, Fundraising, Recruitment, Expertise	PIJ	Pending (not in custody)	n/a	no	n/a
Tomas Molina Caracas	03-CR-20261	S.D. Fla.	2339B (Conspiracy)	Weapons	FARC	Pending (not in custody)	n/a	yes (FARC Commander)	n/a
			2339B (**5 counts**)	Weapons	FARC	Pending (not in custody)	n/a		
Jose Luis Aybar-Cancho			2339B (Conspiracy)	Weapons	FARC	Pending (not in custody)	n/a	no	n/a
			2339B (**5 counts**)	Weapons	FARC	Pending (not in custody)	n/a		
Luis Frank Aybar-Cancho			2339B (Conspiracy)	Weapons	FARC	Pending (not in custody)	n/a	no	n/a
			2339B (**5 counts**)	Weapons	FARC	Pending (not in custody)	n/a		
Iyman Faris	03-CR-189	E.D. Va.	2339B	Personnel, Expertise	Al-Qaeda	Guilty Plea	180 months	yes (military training)	**240 months** - 18:2339B (Conspiracy), 60 months; 18:2339B, 120 months; to run consecutively
			2339B (Conspiracy)	Personnel, Expertise	Al-Qaeda	Guilty Plea	60 months		
Fanny Cecilia Barrera-De Amaris	03-CR-182	S.D. Tex.	2339B (Conspiracy)	Weapons	AUC	Guilty Plea	61 months	no	**61 months** - 18:2339B (Conspiracy), 61 months
Carlos Adolfo Romero Panchano			2339B (Conspiracy)	Weapons	AUC	Guilty Plea	36 months	no	**36 months** - 18:2339B (Conspiracy), 36 months)
Randall Todd Royer	03-CR-296	E.D. Va.	2339B (Conspiracy)	Personnel	Al-Qaeda	Dismissed as part of plea	n/a	yes (military training)	**240 months** - 18:924(c)(2) and 18:3238, 120 months; 18:844(h)(2) and 18:3238, 120 months; to run consecutively

Masoud Ahmad Khan			2339B (Conspiracy)	Personnel	Al-Qaeda	Acquitted by bench trial	n/a	yes (military training)	**Life** - 18:371 (Conspiracy to violate inter alia, 18:960, 18:2390), 60 months; 18:2384, 120 months; 50:1705, 120 months, 18:2339A (Conspiracy), 120 months; 18:924(o), 120 months; 18:924(c) (three counts), 120 months, 300 months, and life in prison; first five counts concurrent, other counts to follow consecutively
Adriana Gladys Mora	03-CR-352	S.D. Tex.	2339B (Conspiracy)	Weapons	AUC	Guilty Plea	120 months	no	**120 months** - 18:2339B (Conspiracy), 120 months; 21:841 (Conspiracy), 120 months; to run concurrently
Uzair Paracha	03-CR-1197	S.D.N.Y.	2339B (Conspiracy)	Financial Services, Document Fraud	Al-Qaeda	Convicted by jury	180 months	no	**360 months** - 18:2339B (Conspiracy), 180 months; 18:2339B, 180 months; 50:1705 (Conspiracy, via 31 CFR 595.205), 120 months; 50:1705, 120 months; 18:1028(a)(7), (b)(4), 300 months; last ten years of first four counts to run concurrently with 18:1028 count, final 15 years of 18:1028 count to run consecutively to that
			2339B	Financial Services, Document Fraud	Al-Qaeda	Convicted by jury	180 months		
Muhammad Hamid Khalil Salah	03-CR-978	N.D. Ill.	2339B	Money, Personnel	HAMAS	Acquitted by jury	n/a	no	**21 months** - 18:1503, 21 months
Mohammed Ali Hasan al-Moayad	03-CR-1322	E.D.N.Y.	2339B	Money	Al-Qaeda	Acquitted by jury	n/a	no	**900 months** - 18:2339B (all types, all counts), 180 months on each count; to run consecutively
			2339B (Attempt)	Money	Al-Qaeda	Convicted by jury	180 months		
			2339B (Conspiracy)	Money	Al-Qaeda	Convicted by jury	180 months		
			2339B	Money	HAMAS	Convicted by jury	180 months		
			2339B (Attempt)	Money	HAMAS	Convicted by jury	180 months		
			2339B (Conspiracy)	Money	HAMAS	Convicted by jury	180 months		
Mohammed Moshen Yahya Zayed			2339B (Attempt)	Money	Al-Qaeda	Acquitted by jury	n/a	no	**540 months** - 18:2339B (all types, all counts), 180 months on each count; to run consecutively
			2339B (Conspiracy)	Money	Al-Qaeda	Convicted by jury	180 months		
			2339B (Attempt)	Money	HAMAS	Convicted by jury	180 months		
			2339B (Conspiracy)	Money	HAMAS	Convicted by jury	180 months		
Mahmoud Youssef Kourani	03-CR-81030	E.D. Mich.	2339B (Conspiracy)	Money, Personnel	Hezbollah	Guilty Plea	54 months	yes (military training)	**54 months** - 18:2339B (Conspiracy), 54 months

Mohammed Abdullah Warsame	04-CR-029	D. Minn.	2339B	Unknown	Al-Qaeda	Pending	n/a	yes (military training)	n/a
			2339B (Conspiracy)	Unknown	Al-Qaeda	Pending	n/a		
Mohammed Junaid Babar	04-CR-528	S.D.N.Y.	2339B (**2 counts**)	Night-Vision Equipment	Al-Qaeda	Guilty Plea	Unknown	no	Unknown
Nuradin Abdi	04-CR-88	S.D. Ohio	2339B (Conspiracy)	Training	Al-Qaeda	Dismissed with plea to other charges	n/a	yes (military training)	n/a
Holy Land Found'n for Relief and Development	04-CR-240	N.D. Tex.	2339B (Conspiracy)	Money	HAMAS	Pending	n/a	no	n/a
			2339B (**11 Counts**)	Money	HAMAS	Pending	n/a		
Shukri Abu Baker			2339B (Conspiracy)	Money	HAMAS	Pending	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending	n/a		
Mohammed El-Mezain			2339B (Conspiracy)	Money	HAMAS	Pending	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending	n/a		
Ghassan Elashi			2339B (Conspiracy)	Money	HAMAS	Pending	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending	n/a		
Haitham Maghawri			2339B (Conspiracy)	Money	HAMAS	Pending (not in custody)	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending (not in custody)	n/a		
Akram Mishal			2339B (Conspiracy)	Money	HAMAS	Pending (not in custody)	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending (not in custody)	n/a		
Mufid Abdulqader			2339B (Conspiracy)	Money	HAMAS	Pending	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending	n/a		
Abdulrahman Odeh			2339B (Conspiracy)	Money	HAMAS	Pending	n/a	no	n/a
			2339B (**12 Counts**)	Money	HAMAS	Pending	n/a		
Yassin Muhiddin Aref	04-CR-402	N.D.N.Y.	2339B (Conspiracy)	Missiles	Jaish-e-Mohammed	Convicted by jury	180 months	no	**180 months** - 18:1956(a)(3)(B) (2 counts) and 18:1956(h), 151 months; 18:2339A and B (Conspiracy), 180 months; 18:2339A and 18:2339B (2 counts of each), 180 months; 18:1001, 6 months; all counts to run concurrent
			2339B (Attempt) (**7 counts**)	Financial Services	Jaish-e-Mohammed	Convicted by jury	180 months		

Mohammed Mosharref Hossain			2339B (Conspiracy)	Missiles	Jaish-e-Mohammed	Convicted by jury	180 months	no	**180 months** - 18:1956(h) and 18:1956(a)(3)(B) (11 counts), 151 months each count; 18:2339A (all types all counts), 180 months each count; 18:2339B (all types, all counts), 180 months each count); all counts to run concurrent
			2339B (Attempt) (**7 counts**)	Financial Services	Jaish-e-Mohammed	Convicted by jury	180 months		
Carlos E. Gamarra-Murillo	04-CR-349	M.D. Fla.	2339B (Attempt)	Weapons	FARC	Guilty Plea	180 months	no	**300 months** - 22:2778(a), (b)(1)(A)(ii)(I)-(III), (c) and 22 CFR 121.1, 123.1, 127.1, 127.3, 129.1-129.3, 120 months; 18:2339B(Attempt), 180 months; to run consecutively
Ahmed Omar Abu Ali	05-CR-53	E.D. Va.	2339B (Conspiracy)	Personnel	Al-Qaeda	Convicted by jury	120 months	yes (military and explosives training)	**360 months** - 18:2339B (Conspiracy), 120 months; 18:2339B, 120 months; 18:2339A (Conspiracy), 120 months; 18:2339A, 120 months; 50:1705 (2 counts), 120 months each count; 18:1752(d), 120 months; 49:46502, 240 months; 18:32, 240 months; first seven counts concurrent, followed by the final two counts concurrent to each other
			2339B	Personnel	Al-Qaeda	Convicted by jury	120 months		
Lamont Ranson	05-CR-16	S.D. Miss.	2339B (Conspiracy)	Fake ID's	Abu Sayyaf	Guilty Plea	29 months	no	**29 months** - 18:2339B (Conspiracy), 29 months
			2339B (Attempt)	Fake ID's	Abu Sayyaf	Dismissed with Plea to Other Charges	n/a		
Cedric Carpenter			2339B (Conspiracy)	Fake ID's	Abu Sayyaf	Guilty Plea	68 months	no	**68 months** - 18:2339B, 68 months; 18:922(g)(1), 60 months; to run concurrently
			2339B (Attempt)	Fake ID's	Abu Sayyaf	Dismissed with Plea to Other Charges	n/a		
Tarik Ibn Osman Shah	05-CR-673	S.D.N.Y.	2339B (Conspiracy)	Training, Medical Expertise, Personnel	Al-Qaeda	Guilty Plea	Pending	yes (jihad camp trainer)	Pending
			2339B (Attempt)	Training, Medical Expertise, Personnel	Al-Qaeda	Guilty Plea	Pending		
Rafiq Sabir			2339B (Conspiracy)	Training, Medical Expertise, Personnel	Al-Qaeda	Convicted by jury	Pending	no	Pending
			2339B (Attempt)	Training, Medical Expertise, Personnel	Al-Qaeda	Convicted by jury	Pending		

Mahmud Faruq Brent			2339B (Conspiracy)	Personnel	Lashkar-e-Taiba	Guilty Plea	180 months	yes (military training)	180 months - 18:2339B (Conspiracy), 180 months
			2339B (Attempt)	Personnel	Lashkar-e-Taiba	Dismissed with Plea to Other Charges	n/a		
Naji Antoine Abi Khalil	05-CR-200 04-CR-573	E.D. Ark. S.D.N.Y	2339B (Attempt)	Night-Vision Equipment	Hezbollah	Guilty Plea	57 months	no	**60 months** - 18:2339B, 57 months; 50:1705(all types, all counts) 60 months on each; to run concurrently
Arwah Jaber	05-CR-50030	W.D. Ark.	2339B (Attempt)	Personnel	PIJ	Acquitted by jury	n/a	no	**15 months** - 42:408(a)(7)(B) (2 counts), 15 months; 18:1015(a), 15 months; 18:1542, 15 months; 18:1425, 15 months; all to run concurrently
Mustafa Kamel Mustafa	04-CR-356	S.D.N.Y.	2339B	Training	Al-Qaeda	Pending (not in custody)	n/a	no	n/a
			2339B (Conspiracy)	Training	Al-Qaeda	Pending (not in custody)	n/a		
			2339B (Attempt)	Unspecified	Al-Qaeda	Pending (not in custody)	n/a		
			2339B (Conspiracy)	Money	Al-Qaeda	Pending (not in custody)	n/a		
Oussama Kassir			2339B (Attempt)	Training	Al-Qaeda	Pending (not in custody)	n/a	yes (military training)	n/a
			2339B (Attempt	Computer Services	Al-Qaeda	Pending (not in custody)	n/a		
			2339B (Conspiracy)	Training, Personnel	Al-Qaeda	Pending (not in custody)	n/a		
			2339B (Conspiracy)	Computer Services	Al-Qaeda	Pending (not in custody)	n/a		
Haroon Rashid Aswat			2339B (Conspiracy)	Training, Personnel	Al-Qaeda	Pending (not in custody)	n/a	yes (military training)	n/a
			2339B (Attempt)	Training, Personnel	Al-Qaeda	Pending (not in custody)	n/a		
Ali Asad Chandia	05-CR-401	E.D. Va.	2339B (Conspiracy)	Equipment, Computer Services	Lashkar-e-Taiba	Convicted by jury	180 months	no	**180 months** - 18:2339A (Conspiracy), 60 months; 18:2339B (Conspiracy), 180 months; 18:2339B, 180 months; all concurrent
			2339B	Equipment, Computer Services	Lashkar-e-Taiba	Convicted by jury	180 months		
Mohammed Ajmal Khan			2339B (Conspiracy)	Equipment	Lashkar-e-Taiba	Pending (not in custody)	n/a	no	n/a
			2339B	Equipment	Lashkar-e-Taiba	Pending (not in custody)	n/a		

Adam Gadahn	05-CR-254	C.D. Cal.	2339B	Personnel, Services	Al-Qaeda	Pending (not in Custody)	n/a	no	n/a
Michael Curtis Reynolds	05-CR-493	M.D. Pa.	2339B (Attempt)	Property, Services, Personnel, Training, Expert Advice	Al-Qaeda	Convicted by jury	Pending	no	n/a
Victor Daniel Salamanca	06-CR-20001	S.D. Fla.	2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending (not in custody)	n/a	no	n/a
			2339B (Attempt) (**5 counts**)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending (not in custody)	n/a		
Luis Alfredo Daza Morales			2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a	no	n/a
			2339B (Attempt) (**3 counts**)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a		
Jalal Sadaat Moheisen			2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a	no	n/a
			2339B (Attempt) (**3 counts**)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a		
Jose Tito Libio Ulloa Melo			2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a	no	n/a
			2339B (Attempt) (**3 counts**)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a		
Julio Cesar Lopez			2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a	no	n/a
			2339B (Attempt)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a		
Bernardo Valdes Londono			2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending (Not in Custody)	n/a	no	n/a
			2339B (Attempt)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending (Not in Custody)	n/a		
Carmen Maria Ponton Caro			2339B (Conspiracy)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a	no	n/a

			2339B (Attempt) (**3 counts**)	Financial Services, Fake ID's, Weapons, Personnel, Transportation	FARC	Pending	n/a		
Syed Haris Ahmed	06-CR-147	N.D. Ga.	2339B (Conspiracy)	Personnel	Lashkar-e-Tayyiba	Pending	n/a	yes (military training)	n/a
			2339B (Attempt)	Personnel	Lashkar-e-Tayyiba	Pending	n/a		
Ehsanul Islam Sadequee			2339B (Conspiracy)	Personnel	Lashkar-e-Tayyiba	Pending	n/a	yes (military training)	n/a
			2339B (Attempt)	Personnel	Lashkar-e-Tayyiba	Pending	n/a		
Syed Hashmi	06-CR-442	S.D.N.Y.	2339B (Conspiracy)	Military Equipment, Currency	Al-Qaeda	Pending	n/a	no	n/a
			2339B	Military Equipment, Currency	Al-Qaeda	Pending	n/a		
Mohamed Shorbagi	06-CR-62	N.D. Ga.	2339B (Conspiracy)	Money	HAMAS	Guilty Plea	92 months	no	**92 months** - 18:2339B (Conspiracy, 92 months)
Sathajhan Sarachandran	06-CR-615	E.D.N.Y.	2339B (Conspiracy)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a	no	n/a
			2339B (Attempt)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a		
Piratheepan Nadarajah			2339B (Conspiracy)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending (Not in Custody)	n/a	no	n/a
			2339B (Attempt)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending (Not in Custody)	n/a		
Sahilal Sabaratnam			2339B (Conspiracy)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a	no	n/a
			2339B (Attempt)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a		
Thiruthanikan Thanigasalam			2339B (Conspiracy)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a	no	n/a
			2339B (Attempt)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a		
Nadarasa Yogrararasa			2339B (Conspiracy)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a	no	n/a
			2339B (Attempt)	Training, Expert Advice, Weapons, Personnel	LTTE	Pending	n/a		
Haniffa bin Osman	06-CR-416	D. Md.	2339B (Conspiracy)	Weapons	LTTE	Guilty Plea	Pending	no	Pending
Haji Subandi			2339B (Conspiracy)	Weapons	LTTE	Guilty Plea	Pending	no	Pending

Erick Wotulo			2339B (Conspiracy)	Weapons	LTTE	Guilty Plea	Pending	yes (former military officer in Indonesian armed forces)	Pending
Thirunavukarasu Varatharasa			2339B (Conspiracy)	Weapons	LTTE	Guilty Plea	Pending	no	Pending
Zeinab Taleb-Jedi	06-CR-652	E.D.N.Y.	2339B	Personnel	Mujahedin-e Khalq	Pending	n/a	no	n/a
Javed Iqbal	06-CR-1054	S.D.N.Y.	2339B (Conspiracy) (**2 counts**)	Expert Advice, Facilities, Comm Equip	Hizbollah	Pending	n/a	no	n/a
			2339B (**2 counts**)	Expert Advice, Facilities, Comm Equip	Hizbollah	Pending	n/a		
Saleh Elahwal			2339B (Conspiracy) (**2 counts**)	Expert Advice, Facilities, Comm Equip	Hizbollah	Pending	n/a	no	n/a
			2339B (**2 counts**)	Expert Advice, Facilities, Comm Equip	Hizbollah	Pending	n/a		
Maria Corredor Ibague (aka Boyaco)	06-CR-344	D.D.C.	2339B (Conspiracy)	Weapons, Ammunition, Comm Equip	FARC	Pending (Not in Custody)	n/a	no	n/a
			2339B	Weapons, Ammunition, Comm Equip	FARC	Pending (Not in Custody)	n/a		
Edilma Morales Loaiza (aka La Negra)			2339B (Conspiracy)	Weapons, Ammunition, Comm Equip	FARC	Pending (Not in Custody)	n/a	no	n/a
			2339B	Weapons, Ammunition, Comm Equip	FARC	Pending (Not in Custody)	n/a		
Karunakaran Kandasamy	07-MJ-507	E.D.N.Y.	2339B	Fundraising, Property, Personnel	LTTE	Pending	n/a	no	n/a