

1 MARK BRNOVICH
Attorney General
2 Firm Bar No. 14000

3 SCOTT W. BLAKE
Assistant Attorney General
4 State Bar No. 025068
1275 West Washington Street
5 Phoenix, Arizona 85007-2926
Telephone: 602-542-3881
6 crmfraud@azag.gov

7 Attorneys for Plaintiff

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 **STATE OF ARIZONA,**

11 Plaintiff,

12 vs.

13 **MAHIN KHAN,**

14 Defendant.

Cause No.: **CR2016-005270-001**

15 **STATE'S SENTENCING
MEMORANDUM**

(Honorable Dean M. Fink)

16
17 The State of Arizona, by and through undersigned counsel, hereby submits its sentencing
18 recommendation to the Court for defendant Mahin Khan.

19 **I. Facts**

20
21 In 2013 Mahin Khan (Khan) was contacted by agents with the Federal Bureau of
22 Investigation (FBI) after the FBI received information that Khan expressed an interest in
23 performing acts of terrorism. The FBI met with Khan and members of his family to inform
24 them about the information they received. Khan admitted to making the statements but denied
25 that he would have actually carried out an attack. Khan agreed that he would discontinue this
26

1 conduct and the FBI did not pursue criminal charges at that time.

2 In April 2015 Khan again caught the attention of the FBI. Khan made posts to a social
3 media site displaying his support of the Islamic State (IS). Shortly after these posts were
4 observed it was discovered that he sent an email to a known operative of the Islamic State of
5 Iraq and the Levant (ISIL/ISIS)¹ in Syria stating he was a jihadist living in America. He also
6 indicated that he wanted to join IS and wanted information on how to construct bombs.
7

8 A few months later in October 2015 he began corresponding with an undercover employee
9 with the FBI. At the time Khan believed that this undercover employee was an ISIS operative.
10 He sent numerous messages discussing targets for terrorist attacks. Those targets included
11 government buildings, military buildings, and Jewish people. On October 24, 2015 he contacted
12 an undercover employee with the FBI, again believing this individual to be an ISIS operative,
13 through Twitter and provided him with his phone number.
14
15

16 During a recorded phone conversation he asked the undercover employee how to make a
17 bomb and discussed becoming a martyr. He also discussed possibly using a knife during an
18 attack. He further discussed potential targets such as the Jewish Community Center in Tucson.
19 Initially he expressed that he only wanted to kill combatants, but when asked by the undercover
20 employee how they should deal with children at the Jewish Community Center, Khan said to
21 “shoot them.” During subsequent phone calls, Khan discussed more targets and told the agent he
22

23
24 ¹ The Islamic State of Iraq and the Levant (ISIL), also known as the Islamic State of Iraq and Syria (ISIS), and by its Arabic
25 language acronym Daesh is a Salafi jihadist militant group that follows a fundamentalist, Wahhabi doctrine of Sunni Islam.
26 On December 17, 2004, the U.S. Department of State designated the Islamic State of Iraq and the Levant as a Foreign
Terrorist Organization pursuant to section 219 of the Immigration and Nationality Act. The group first began referring to
itself as the Islamic State or IS in June 2014, when it proclaimed itself a worldwide caliphate, and named Abu Bakr al-
Baghdadi as its caliph.

1 knew individuals who had weapons and he wanted to take 200 to 300 people out. He referenced
2 terrorist attacks committed by others that he viewed as being successful including an attack that
3 had recently occurred in Paris, France.²
4

5 On April 4, 2016, Khan asked the undercover employee for a burner phone. Arrangements
6 were made in which another undercover employee with the FBI supplied Khan with a phone
7 during an in-person meeting. During a later conversation he asked the undercover employee for
8 assault rifles and a pistol (he expressed frustrations of not being able to obtain a gun himself due
9 to his age). Around this same time it was also learned that Khan had an email conversation with
10 a Tehrik-e Taliban³ operative in Pakistan. During this conversation Khan expressed a desire to
11 commit an act of jihad. He asked the operative for both firearms and instructions on how to
12 construct an explosive device.
13
14

15 On June 7, 2016 he emailed the undercover employee with the FBI regarding his plans to
16 attack a Motor Vehicle Division (MVD) office in Mesa, Arizona. He expressed that he had seen
17 instructions in a known terrorist publication *Inspire*⁴ on how to construct a hand grenade. He
18 indicated that wanted to use grenades and assault rifles during the attack. He sent the
19 instructions to the undercover employee and directed him to work on making one. He advised
20
21

22 ² On November 13, 2015, a series of coordinated terrorist attacks occurred in Paris. Three suicide bombers struck outside the
23 Stade de France in Saint-Denis, during a football match. This was followed by several mass shootings, and a suicide
24 bombing. Gunmen carried out another mass shooting and took hostages at the Bataclan theatre. The attackers killed 130
25 people, another 368 people were injured.

26 ³ Tehrik-i-Taliban Pakistan (TTP) alternatively referred to as the Pakistani Taliban, is an Islamic terrorist group, which is an
umbrella organization of various Sunni Islamist militant groups.

⁴ *Inspire* is an English language online magazine published by al-Qaeda in the Arabian Peninsula (AQAP). Includes articles
designed to motivate people to engage in violent jihad and some issues include suggested targets and attack methods,
including bomb making instructions.

1 that he would buy 300 to 400 rounds of ammunition. At one point during this conversation he
2 indicated he had been up all night thinking about the attack. He stated a lone jihad attack is the
3 most devastating.
4

5 On July 1, 2016, he left the undercover employee a voicemail talking about how the Orlando
6 nightclub shooting⁵ was great. He also expressed urgency in carrying out an attack because he
7 thought the FBI was onto him. Later that same day Khan was arrested and interviewed by the
8 FBI. He initially denied planning a terrorist attack but eventually confessed that he was a
9 jihadist and that he was planning a terrorist attack. He was asked about targets that he had
10 identified such as the MVD. He was asked why the MVD. He indicated that it was a “soft
11 target” because there was no security and a lot of people. During the interview he also admitted
12 to being an ISIS sympathizer. At the conclusion of the interview he provided a hand written
13 statement in which he stated that he was a “failed jihadist” and it was his “obligation and duty to
14 bring terror in their own backyards.”
15
16

17 **II. Plea Agreement**

18 On October 7, 2016, Mahin Khan pleaded guilty to the following: Count 1, Terrorism, a
19 class 2 felony, Count 2, Conspiracy to Commit Terrorism, a class 2 felony, and Count 3
20 Conspiracy to Commit Misconduct Involving Weapons, a class 4 felony. For Count 1, the
21 parties stipulated that the defendant be placed on probation after his release from custody on
22 Counts 2 and 3. As for Count 2, the parties stipulated that the defendant will serve a term of no
23
24

25 ⁵ On June 12, 2016, Omar Mateen killed 49 people and wounded 53 others in a terrorist attack inside Pulse, a nightclub in
26 Orlando, Florida.

1 less than 5 years and no more than 10.25 years in the Arizona Department of Corrections. As for
2 Count 3, the defendant shall be sentenced for no less than 2 years in the Arizona Department of
3 Corrections. The parties stipulated that Counts 2 and 3 shall run consecutively.
4

5 The State dismissed the Allegation of Multiple Dates of Offense.

6 **III. Recommendation**

7 The State requests the Court to sentence the defendant to a total term of imprisonment of
8 14 years followed by a consecutive term of lifetime probation. This sentence is appropriate given
9 the nature of the offenses and the aggravating circumstances present.
10

11 In regards to Count 1, Terrorism, a class 2 felony, the State requests supervised life
12 probation after the defendant's physical release from custody on Counts 2 and 3. Due to the
13 nature of his crime, the defendant is a continuing threat to the community.
14

15 In regards to Count 2, Conspiracy to Commit Terrorism, a class 2 felony, the State requests
16 the Court to sentence the defendant to the aggravated term of 10.25 years. As for Count 3,
17 Conspiracy to Commit Misconduct Involving Weapons, a class 4 felony, the State requests that
18 the defendant be sentenced to an aggravated term of 3.5 years to run consecutive to the term of
19 incarceration imposed in Count 2.
20

21 The State alleges A.R.S. §13-701(D)(1) and A.R.S. §13-701(D)(2) as aggravating
22 factors. A.R.S. §13-701(D)(1) states: "*Infliction or threatened infliction of serious physical*
23 *injury, except if this circumstance is an essential element of the offense of conviction or has been*
24 *utilized to enhance the range or punishment under 13-704.*" During various conversations with
25
26

1 undercover employees with the FBI Khan discussed potential targets for a terrorist attack. He
2 showed a complete disregard for human life by demonstrating a willingness to shoot children.
3 He sought out “soft targets” in order to maximize the number of casualties the attack would
4 produce. It is clear that Khan threatened the infliction of serious physical injury and was looking
5 to use deadly weapons during these attacks.
6

7 A.R.S. §13-701(D)(2) states: “*Use, threatened use or possession of a deadly weapon or*
8 *dangerous instrument during the commission of the crime, except if this circumstance is an*
9 *essential element of the offense of conviction or has been utilized to enhance the range or*
10 *punishment under 13-704.*” During conversations with undercover FBI employees, Khan
11 discussed his plans to conduct a terrorist attack. He asked for weapons multiple times from the
12 undercover employees, a known ISIS operative, and a known Tehrik-e Taliban operative. Those
13 weapons included AKs, rifles, and pistols. He also conducted research on how to make grenades
14 and pressure cocker bombs. He specifically indicated that he planned to use an explosive device
15 when planning an attack on the MVD and directed the undercover employee to start obtaining
16 the necessary materials to construct the device.
17
18

19 As to the Terrorism Counts, if the Court finds that one of the aggravators is an essential
20 element, then the State requests that the Court find the other as an aggravating factor. As to
21 Count 3, Conspiracy to Commit Misconduct Involving Weapons, the aggravator described in
22 A.R.S. §13-701(D)(1) is not an element of the offense. The offense of Misconduct Involving
23 Weapons prohibits the possession of certain weapons. It does not require any showing on the
24
25
26

1 intended use of the weapon. It is clear that the defendant demonstrated during phone calls and
2 email exchanges, that he threatened the infliction of serious physical injury on his targets. He
3 specifically told an undercover employee with the FBI that he wanted to use an improvised
4 explosive device, homemade grenade, which is a prohibited weapon during a planned attack at a
5 MVD location in Mesa. The defendant told the undercover employee that he wanted to take
6 people out with weapons, including grenades.
7

8 The State also requests that the Court consider A.R.S. §13-701(D)(25) as an aggravator in
9 this case: “*Any other factor that the state alleges is relevant to the defendant’s character or*
10 *background or to the nature or circumstances of the crime.*” Khan stated he was an ISIS
11 sympathizer, he lied to the federal authorities, and he considers himself a failed jihadist. While
12 this factor cannot be used solely as an aggravator, if the court finds that either A.R.S. §13-
13 701(D)(1) or (D)(2) are aggravators this may be added on. *State v. Schmidt, 208 P.3d 214 (Ariz.*
14 *2008); State v. Bonfiglio, 295 P.3d 948 (2013).* Under A.R.S. §13-701, only one aggravating
15 factor is needed for an aggravated sentence. *State v. Martinez, 115 P.3d 618 (Ariz. 2005).*
16
17

18 Any sentence imposed by this Court should not be less than the presumptive term. The
19 defendant was adamant about engaging in terrorism and openly supported ISIS. The defendant
20 meticulously planned out attacks on specific targets. When he thought the FBI was onto him, he
21 expressed urgency on carrying out his attack. In addition, he tried to use burner phones to avoid
22 detection. He specifically wanted to target the MVD because the number of people that would
23 be present and the lack of security. He felt a lone jihad would be the most devastating.
24
25
26

1 Any mitigation presented by the defendant should not be given significant weight. Although
2 he is young and does not have any prior felonies, he was aware of the wrongfulness of his
3 conduct and what the results would be. The defendant's mother tried and failed to stop him from
4 planning his attacks. In addition, the defendant intended on murdering combatants and any
5 innocent people who got in the way, including children. The defendant has demonstrated no
6 remorse for his actions. In fact, he admitted to being a "failed jihadist."

8 **IV. Conclusion**

9
10 The State requests the defendant be sentenced to 14 years in prison followed by a term of
11 lifetime probation. This sentence is appropriate given the nature of the offenses and the
12 aggravating circumstances. An aggravated sentence to prison will hold the defendant
13 accountable for his actions and deter him from committing any further crimes upon release. It
14 will also demonstrate to the community that the Court views terrorism as a serious matter and
15 the sentence will act as a general deterrent against this type of behavior.
16

17
18 RESPECTFULLY SUBMITTED this 2nd day of November, 2016.

19
20 MARK BRNOVICH
21 ATTORNEY GENERAL

22 /s/ Scott W. Blake
23 Scott W. Blake
24 Assistant Attorney General
25 Criminal Division
26

1 ORIGINAL of the foregoing e-filed
2 this 2nd day of November, 2016, with:

3 Clerk of the Superior Court
4 201 West Jefferson
5 Phoenix, Arizona 85003

6 COPIES of the foregoing hand-delivered/mailed
7 this 2nd day of November, 2016 to:

8 Honorable Dean M. Fink
9 Maricopa County Superior Court
10 201 West Jefferson
11 Phoenix, Arizona 85003

12 Robert Shawn Ditsworth
13 John Champagne
14 Maricopa County Public Defender's Office
15 Attorneys for Defendant

16
17
18
19
20
21
22
23
24
25
26
By: /s/Maria Ramirez
#5424680