

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Criminal No. 3:17-cr-137 (SRU)
	:	
v.	:	
	:	
KAMRAM KHAN	:	
MUHAMMED ISMAIL	:	

UNITED STATES’S SENTENCING MEMORANDUM

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through the undersigned attorneys, and respectfully submits this Sentencing Memorandum with regard to defendants Kamran Khan and Muhammed Ismail (“Khan” or “Ismail” or “the defendants”) to assist the Court in consideration of the relevant issues in determining the appropriate sentences in this case pursuant the United States Sentencing Guidelines and Title 18, United States Code, Section § 3553.

I. Introduction

The defendants Kamran Khan and Muhammed Ismail pled guilty to International Money Laundering and admitted participation in a scheme to evade export controls that this nation put in place to prevent the spread of nuclear weapons, which constitute a threat to our national security. Specifically, the defendants, together with Imran Khan (Ismail’s older son), purchased goods that were controlled under the Export Administration Regulations (“EAR”) from manufacturers in the United States and abroad, and exported those goods, without a license, to organizations in Pakistan that were listed on the Commerce Department Entity List (“Entity List”) because of their involvement in Pakistan’s nuclear proliferation program.

Imran conducted business as Brush Locker Tools, North Haven Tools or as Kauser Enterprises-USA and Khan conducted business as Kauser Enterprises, Pakistan. A co-conspirator in Pakistan received tenders, that is, a request for a product, in some cases directly from agencies of the Pakistani Government and in other cases, the Pakistan-based co-conspirator attempted to fill tenders that were up for public bid from the Pakistani Government. He then sent email communications to Khan and/or his father, Ismail, requesting them to procure specific products that were subject to the EAR. Khan and/or Ismail then communicated the request to Imran. In some instances, Ismail contacted the U.S. manufacturers directly. If asked about the end-user, Imran, and/or Ismail always informed the manufacturer that the product would remain in the United States or would falsely fill out an end-user certification indicating the product would not be exported.

After products were successfully purchased, they were shipped by the manufacturer to Imran at either his residence in Connecticut or at one of his businesses, also located in Connecticut. The products were then trans-shipped to the Pakistan-based co-conspirator at Value Additions or to Kauser Enterprises-Pakistan, Khan's business, on behalf of either the Pakistan Atomic Energy Commission ("PAEC"), the Pakistan Space & Upper Atmosphere Research Commission ("SUPARCO") or the National Institute of Lasers & Optronics ("NILOP"), all agencies listed on the Entity List.

Imran, through Khan, would then send an invoice to the Pakistan-based co-conspirator, who would send payment for the items to Imran. A license was never obtained by Khan, Imran, or Ismail to export any item to the designated entity, despite them knowing that a license was required prior to export.

II. Procedural Background

On June 14, 2017, a federal grand jury returned a nine count indictment charging the defendants, along with Khan's company, Kauser Enterprises, with one count of Conspiracy to Violate the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1705, in violation of 18 U.S.C. 371; four counts of Export Without a License in violation of IEEPA, 50 U.S.C. 1705 and 18 U.S.C. 2; one count of Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. 1956(h); and two counts of International Money Laundering in violation of 18 U.S.C. 1956(a)(2)(A) and (2). Dkt. No. 50.

The defendants pled guilty to a one-count substitute Information, which charged them with International Money Laundering in violation of 18 U.S.C. §§ 1956(a)(2)(A) and 2. Dkt. No. 111. They face a statutory maximum sentence of 20 years imprisonment, a term of supervised release of not more than three years, a maximum fine of \$500,000, and a \$100 mandatory special assessment.

The individual Pre-Sentence Reports ("PSR") calculated the defendants' base offense level under U.S.S.G. § 2S1.1(a)(1) to be 26. Dkt. No. 129, p. 17; Dkt. No. 131, p. 17. Because the defendants were convicted under 18 U.S.C. § 1956, two levels are added. *Id.* Three (3) levels are subtracted pursuant to U.S.S.G. § 3E1.1 based on the defendants' timely acceptance of responsibility for a final base offense level of 25. *Id.*

The defendants have no known criminal history other than the criminal conduct underlying this case; therefore, their Criminal History Category is I. A base offense level of 25 and a CHC of I yield a sentencing range of 57 to 71 months and a fine range of \$20,000 to \$200,000. U.S.S.G. § 5E1.2(c)(3). The defendants are also subject to a supervised release term of not more than three years. 18 USC 3583(k) and U.S.S.G. § 5D1.2(a)(2). The Government agrees with the Guidelines

calculation in the PSRs, which is the same calculation that the parties agreed to in the Plea Agreements. *See* Signed Plea Agreement (Dkt. No. 111 and 106) at p. 4. The Government has no objections to the PSRs.

The defendants are scheduled to be sentenced on July 18, 2018.

III. The International Emergency Economic Powers Act

Under the International Emergency Economic Powers Act (“IEEPA”), the President is granted the authority to deal with unusual and extraordinary threats to the national security, foreign policy, and economy of the United States. Under IEEPA, the President can declare a national emergency through executive orders that have the full force and effect of law.

Pursuant to IEEPA, on August 17, 2001, the President issued Executive Order 13222, which declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States in light of the expiration of the Export Administration Act, 50 App. U.S.C. §§ 2401-2420, which lapsed on August 17, 2001. 66 Fed. Reg. 44,025 (Aug. 22, 2001). While in effect, the EAA regulated the export of goods, technology, and software from the United States. Pursuant to the provisions of the EAA, the Department of Commerce (“DOC”)’s Bureau of Industry and Security (“BIS”) promulgated the Export Administration Regulations (“EAR”), 15 C.F.R. §§ 730-774, which contained restrictions on the export of goods outside of the United States, consistent with the policies and provisions of the EAA. *See* 15 C.F.R. § 730.2. In Executive Order 13222, pursuant to IEEPA, the President ordered that the EAR’s provisions remain in full force and effect despite the expiration of the EAA. Presidents have issued annual Executive Notices extending the national emergency declared in Executive Order 13222 from the time period covered by that Executive Order through the present. *See, e.g.*, 81 Fed. Reg. 52,587 (Aug. 8, 2016).

Pursuant to its authority derived from IEEPA, the DOC reviews and controls the export of certain goods and technologies from the United States to foreign countries. In particular, the DOC has placed restrictions on the export of goods and technologies that it has determined could make a significant contribution to the military potential or nuclear proliferation of other nations or that could be detrimental to the foreign policy or national security of the United States.

The EAR contain a list of names of certain foreign persons – including businesses, research institutions, government and private organizations, individuals, and other types of legal persons – that are subject to specific license requirements for the export, re-export and/or in-country transfer of specified items. These persons comprise the DOC’s “Entity List,” which is found at Title 15, Code of Federal Regulations, Part 744, Supplement No. 4. *See* Exhibit A hereto attached. The DOC first published the Entity List in February 1997 as part of its efforts to inform the public of entities who have engaged in activities that could result in an increased risk of the diversion to weapons of mass destruction (“WMD”) programs of items exported, re-exported, and transferred (in-country). Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the U.S. State Department and activities contrary to U.S. national security and/or foreign policy interests.

On an individual basis, the persons on the Entity List are subject to export licensing requirements and policies supplemental to those found elsewhere in the EAR. On November 19, 1998, the DOC added the Pakistan Atomic Energy Commission (“PAEC”), the Space & Upper Atmosphere Research Commission (“SUPARCO”), and the National Institute of Lasers & Optronics (“NILOP”) to the Entity List because they were “determined to be involved in nuclear or missile activities.” *See* § 744.11, attached as Exhibit A. Each has remained on the list at all times relevant to the Information filed in this case. Accordingly, at all times relevant to the

Information, a license was required from the DOC for all exports to PAEC, SUPARCO, and NILOP of all items subject to the EAR. No license exception may be used to export, re-export, or transfer (in-country) to such entities unless specially authorized on the Entity List.

Under IEEPA and the EAR, it is a crime to willfully export, or attempt or conspire to export, from the United States, any item requiring an export license without first obtaining the license from the DOC. *See* 50 U.S.C. § 1705(c) and 15 C.F.R. § 764.2. “IEEPA authorizes the President to prohibit virtually any commercial transaction that, in his judgment, threatens national security.” *United States v. Dhafir*, 461 F.3d 211, 216-17 (2d Cir. 2006).

IV. Factual Background

According to information obtained through search warrants executed on a number of email accounts, including “imran@bltdusa.com,” “sales@bltdusa.com,” and “brushlocker@yahoo.com,” all used by Imran; “kentp26@yahoo.com,” used by Khan; “skdh65@yahoo.com” used by a Pakistan-based co-conspirator; “sbnzam@yahoo.com,” used by Sabin Zamir; and “ismailkauser786@gmail.com” used by Ismail, it was determined that Imran, Khan and Ismail were involved in a scheme to purchase goods that were controlled under the EAR from manufacturers in the United States and abroad, and export those goods without a license to organizations in Pakistan that were listed on the Entity List. Four such purchases are described below.

A. The August 2012 purchase from Company #1

On August 18, 2012, a Pakistan-based co-conspirator, using email address “skdh65@yahoo.com,” sent Khan, at email address “kentp26@yahoo.com,” a request for

quotation (“RFQ”) for several items, including an Alpha Duo Spectrometer.¹ In the email message, the Pakistan-based co-conspirator warned: “Just don’t ask these items for Pakistan. Also don’t go all the Items at one time. Ask quotation partially. Act carfully (sic).” On August 19, 2012, Khan forwarded the email from the Pakistan-based co-conspirator, including the warning, to Imran at email address imran@bltdusa.com. On August 22, 2012, Imran sent an RFQ to Company #1, the manufacturer of the Alpha Duo Spectrometer.

On August 23, 2012, Company #1 provided Imran with a form end-user statement. The form stated, in pertinent part:

As a supplier of commodities listed on the Commerce Control List (CCL), we are required by the U.S. Department of Commerce to comply with the Export Administration Regulations (EAR) to ensure complete compliance with the U.S. export controls.

According to records provided by Company #1, on August 27, 2012, Imran returned the form as the Purchasing Manager for Brush Locker, falsely identifying Brush Locker as the end-user organization.

On August 27, 2012, Company #1 provided Imran with a quote for one Alpha Duo Spectrometer, among other items, addressed to Kauser-USA via email at imram@bltdusa.com. On September 3, 2012, Khan forwarded the manufacturer’s quote to the Pakistan-based co-conspirator via email at skdh65@yahoo.com. Throughout September and October 2012, Khan and the Pakistan-based co-conspirator exchanged several email messages concerning the transaction, including an email message on September 26, 2012, that contained a spreadsheet detailing the transaction and potential profits. On September 26, 2012, Khan forwarded the information concerning costs and profits in the spreadsheet to Ismail via email at

¹ A spectrometer is a device used for recording and measuring spectra. An Alpha Duo Spectrometer is a benchtop spectrometer with two alpha spectroscopy channels. Spectrometers have both commercial and military applications.

Ismaelkauser786@gmail.com. On October 4, 2012, the Pakistan-based co-conspirator instructed Khan to proceed with the transaction, stating: “Ok go ahead and Best of Luck.”

On October 9, 2012, Company #1 provided Imran a final quote for the Alpha Duo Spectrometer and other items in the amount of \$26,331.38. This final quote (Company #1 #AK2675-4) was addressed to “Imran Khan, Brush Locker Tools Division ...” On October 10, 2012, Imran provided Company #1 a shipping address for “Brush Locker Tools Division,” which was the same as Cerda Market, a business he owned, and a billing address that was the same as Imran’s residence.

On November 7, 2012, Khan sent an email to the Pakistan-based co-conspirator, attaching an invoice from “Kauser Enterprises USA LLC in Massachusetts, from email: Kentp26@yahoo.com [an email address associated with Khan]” to “Kauser Enterprises, LA 6/B Block 22, F.B (IND) Area, Karachi, Pakistan Email: Info@kentp.com [an email address associated with Khan]” in the amount of \$35,549.658. The Massachusetts address was the residence of the uncle of Imran and Khan.

On November 12, 2012, the Pakistan-based co-conspirator emailed Khan indicating that \$35,549.66 was being wired transfer to Kauser Enterprises USA. According to records provided by Company #1, on December 12, 2012, the Alpha Duo Spectrometer and related items were shipped to Cerda Market.

On December 18, 2012, a charge of \$25,661 appeared on Imran’s American Express Business Platinum Card. On December 12, 2012, a wire transfer in the amount of 35,549.66 was processed by Sanco, UAE to the order of Kauser Enterprises USA LLC at Account No. ending in 6327 at People’s Bank, Hamden, CT.

On December 18, 2012, the Pakistan-based co-conspirator instructed Khan to send the “Company #1 shipment” to “NTS (Nano tech Solutions)” H. No. 269-B, Street No. 17, F-10/2, Islamabad, Pakistan. On December 31, 2012, Khan forwarded the instructions to Imran. On January 4, 2013, Imran provided a “spectrometer tracking #” to Khan ending in 5978. Khan forwarded the information to the Pakistan-based co-conspirator.

According to records provided by the U.S. Postal Service, the 5978 shipment was sent on January 3, 2013, from New Haven to Islamabad, Pakistan. The shipment purported to originate from “Kauser Enterprises, USA LLC.” The shipment was purportedly addressed to “M/S Kauser Enterprises,” but the destination address was the address provided by the Pakistan-based co-conspirator for Nano Tech Solutions, that is, H. No. 269-B, Street No. 17, F-10/2, Islamabad, Pakistan. The customs declaration identified the sender as Muhamaad Ismail and falsely identified the contents of the package as a portable vacuum, a surge protector, and other accessories with a total value of approximately \$470.

On January 11, 2013, Khan sent an email message to the Pakistan-based co-conspirator with an attachment that appears to have been needed in order for the shipment to be delivered. Specifically, the attachment, on the letterhead of Kauser Enterprises, stated that the 5978 shipment in the name of “(M/S Kauser Enterprises H. No. 269-B, Street No. 17, F-10/2, Islamabad, Pakistan)” actually belongs to “Directorate of Technical Equipment” in Islamabad, which was “authorized” to receive the shipment on behalf of Kauser and clear it through customs.

Open-source internet websites indicate that the Directorate of Technical Equipment is a subdivision of PAEC. As stated previously, PAEC is listed on the Entity List. According to a

U.S. Department of Commerce, Bureau of Industry and Security, License Determination, a license was required to export a spectrometer to PAEC.

B. The January 2013 purchase from Company #2

On January 2, 2013, the Pakistan-based co-conspirator, from email address “skdh65@yahoo.com,” sent Khan, at email address “kentp26@yahoo.com,” a RFQ for Capran 980 Bagging Film.² Khan forwarded the request to Ismail at “ismailkauser786@gmail.com” and to Imran at “sales@bltdusa.com.”

On January 3, 2013, Khan sent an email to Ismail with the subject header “Bagging Film.” The body of the email stated, “The End user needs it urgently and can go for SPOT Purchase too. So please quote urgently. This item is to be airlifted to Karachi.”³ Also included in the email was the spreadsheet containing technical specifications of the Bagging Film.

On January 4, 2013, Imran sent an RFQ on the Bagging Film to Company #2. Between January 7-8, 2013, Imran and a representative from Company #2 discussed a price for two 100-pound rolls of Bagging Film. On January 11, 2013, Khan emailed the Pakistan-based co-conspirator stating that the price for one 100-pound roll of Bagging Film would be \$1204.

On January 16, 2013, Khan emailed Imran stating “Buy this see attached data sheet . . . [description omitted] Need 2 Roll.” On January 25, 2013, Imran placed an order with Company #2 for two rolls of Capran 980 Bagging Film for \$1,808. In the distributor’s “Sold to” and “Ship to” sections on the order confirmation was the address: Brush Locker Tools Division, USA LLC.

² Capran 980 Bagging Film is a clear (low haze level) heat stabilized cast film produced from modified nylon 6 resin. It is recommended as bagging film for advanced composite fabrication and other high temperature applications where dimensional stability, adherence to sealant tapes and uniform film gage are essential. Capran 980 Bagging Film has both commercial and military applications.

³ A “SPOT” purchase in this context means that the Pakistan-based co-conspirator is authorizing the immediate purchase of the item.

(Imran's residence). On February 15, 2013, a charge of \$1,808 appeared on Imran's American Express Business Platinum Card from Company #2.

Between February 5-13, 2013, Imran arranged for the pick-up of the Bagging Film in Santa Fe Springs, CA and delivery to Pakistan via UPS Freight Forwarding. On February 20, 2013, Khan sent an email message to the Pakistan-based co-conspirator with an attachment that appeared to have been needed in order for the shipment to be delivered. Specifically, the attachment, on the letterhead of Kauser Enterprises, stated that the shipment ending in 0918 "IN THE NAME OF (M/S KAUSER ENTERPRISES . . .) ACTUALLY BELONGS TO Pakistan Space & Upper Atmospheric Research Commission (SUPARCO)" in Karachi, which was "authorized" to receive the shipment. SUPARCO is on the Entity List.

On February 22, 2013, the Pakistan-based co-conspirator emailed Khan and stated, "I am sending you our covering letter for the bagging film to be submitted at HQ SUPARCO on Monday morning at 9:00am along with your original letter head authority."

On February 25, 2013, the Pakistan-based co-conspirator emailed Khan stating, "...please check the format of 2 pages, page #2 & page #3 and submit it urgently by today." Attached to the email (page 2) was a letter, on letterhead from SUPARCO, stating:

TO WHOM IT MAY CONCERN

1. It is certified that goods received against Tracking No. 3027480918 were imported by us on behalf of the National Development Centre [NDC], Islamabad.

According to the Nuclear Threat Initiative, the NDC, also known as the National Development Complex, is the focal point for Pakistan's missile development program and is credited for the redesign of several models, including the Ghaznavi and Shaheen I, II medium range ballistic missile originally developed by SUPARCO and PAEC. NDC is on the Entity List.

On February 25, 2013, Khan emailed a SUPARCO representative, and copied the Pakistan-based co-conspirator, requesting payment for the bagging film. Attached to the email was an invoice from Brush Locker Tools Division for \$2,408, signed by Inram.

Between March 26-27, 2013, Imran exchanged emails with a representative from the Company #2 regarding “Urgent problem with product.” Imran provided test results (previously performed by SUPARCO) indicating the product did not meet specified technical parameters. The emails ceased when the representative from Company #2 asked who the end user was and who could be contacted regarding the testing. According to a U.S. Department of Commerce, Bureau of Industry and Security, License Determination, a license was required to export Capran 980 Bagging Film to SUPARCO or NDC.

Between approximately May 17 and June 20, 2013, Khan negotiated payment for the bagging film for Imran with the Pakistan-based co-conspirator. the Pakistan-based co-conspirator

C. The February 2013 Purchase from Company #3

On February 22, 2013, the Pakistan-based co-conspirator, sent Khan an RFQ for two items, including twelve Hybrid Couplers.⁴ Khan forwarded the descriptions of the requested items to Ismail and Imran. From February 25, 2013, through April 22, 2013, Ismail and Imran sent RFQs for the hybrid couplers to various vendors.

On February 28, 2013, a vendor responded to Ismail, declining to sell the hybrid couplers because “[w]e cannot export these.”

On March 13, 2013, Khan, from email address “kentp26@yahoo.com,” sent an email message to Ismail, at email address “ismailkauser786@gmail.com,” containing an attachment

⁴ A hybrid coupler is a passive device used in radio and telecommunications. It is a type of directional **coupler** where the input power is equally divided between two output ports. Hybrid Couplers have both commercial and military applications.

named “Supply order Suparco.” The attachment consists of an order for the same two items identified by the Pakistan-based co-conspirator, including the hybrid couplers, on the letterhead of the Pakistan Space and Upper Atmosphere Research Commission (SUPARCO).

On March 14, 2013, a distributor located in Massachusetts, responded to Ismail, quoting the hybrid couplers at \$1,722 each, for a total of \$18,942 for 11 hybrid couplers. The distributor also copied its response to the manufacturer of the hybrid couplers, Company #3. On April 12, 2013, Ismail forwarded the distributor’s quote to Imran. On April 30, 2013, Imran placed an order through the distributor for 10 hybrid couplers, providing a shipping and billing address for “Brush Locker Tools Division.”

On April 30, 2013, the distributor inquired if the couplers were being exported. Imran falsely responded “no”.

On May 1, 2013, the manufacturer sent the following email message to Imran, in pertinent part:

As we discussed, I have reason to believe that these parts might be ultimately exported out of the US, due to the fact that I had several fairly recent inquiries for the same part, in the same quantity. Can you please go back to your end user (your customer in the US as you indicated) and reiterate to them that [Company #3] is required to document any exports of our products with the country of ultimate destination, in order to comply with export regulations. This assurance from you and your customer is quite important.

On May 1, 2013, Imran responded: “I don’t want you and me to get into any kind of trouble. Give me few days will confirm and get you the answer.” On May 6, 2013, Imran sent an email message to the manufacturer, falsely representing: “It is going to stay in USA.” He also raises the quantity of the order to 11 couplers.

On May 13, 2013, the manufacturer sent an email message to Imran, requesting that Imran “sign and return” an attached purchase order. The “Bill To” portion of the order read:

“[Imran’s residence].” The “Ship To” portion of the order read: “Brush Locker Tools Division [Cerde Market address].” The purchase order stated, in pertinent part:

These items are sold strictly for use in the USA. If these items are to be exported from the United States, the party shown as the “Bill to” party on this document is responsible to determine that all applicable U.S. laws and regulations are followed.

On June 4, 2013, Imran forwarded the purchase order to Khan. According to records provided by the manufacturer, on September 27, 2013, Company #3 shipped 10 units, UPS ground tracking # ending in 0120 and on October 15, 2013, shipped 1 unit, UPS ground tracking # ending in 1901. The hybrid couplers were shipped to Cerda Market.

On October 29, 2013, Imran sent an email to Khan with no subject header. The body of the email was a snapshot from DHL Express Shipments indicating a shipment on October 28, 2013, from the sorting facility, New York City Gateway (origin service area Norwalk, CT) to Karachi, Pakistan, waybill # 3572319741. The DHL label reveals the shipment originated from Brush Locker Tools Division, North Haven, CT to Karachi, Pakistan. The shipment weighed one pound and the description was “cable connector and flash light.”

On November 5, 2013, Khan sent an email to the Pakistan-based co-conspirator with the subject heading label “Tracking # for VAL-KD-0115 & VAL-KD-0285.” The email content read: Dear Sir, Company #3 4336 [coupler model] & Cengong Course tech book dispatch by TCS. Tracking # 306012290147.” On the same day, Khan sent an email to the Pakistan-based co-conspirator, with the subject header of “Company #3 tcs tracking.” The body of the email appeared to be a screen shot of shipping detail from TCS. TCS is a courier service started in 1983 and has a strong presence in Pakistan and Middle East. The tracking number, 306012290147, indicated that on November 4, 2013, the shipment was picked up at the TCS

facility in Karachi and was delivered on November 5, 2013, to Rawalpindi, Pakistan. The shipper was shown to be Kauser Enterprises and the Consignee was Value Addition PVT.

On November 7, 2013, Khan sent an email to the Pakistan-based co-conspirator with the subject heading “narda detail.” The body of the email stated: $\$1940 * 11 = \21340 . Shipping with insurance = \$600, Duty = \$1050.

On January 21, 2014, Imran sent an email to Ismail with the subject heading of, “test result.” The body of the email stated, “I have attached both packlists associated with this order. Note Certificate of Compliance on the bottom right.” Attached to the email was a PDF file from Company #3, Shipping Department (shipping receipt). The receipt indicated on September 27, 2013, Company #3 sent Imran Khan of Brush Locker Tools Division ten (10) Hybrid Coupler Assemblies, Model 4336, S/N 01844-53.

A second shipping receipt indicates that on October 15, 2013, the remaining one (1) Coupler Assembly. S/N 01854 was shipped for a total of eleven (11). On both receipts was the following language:

The above commodity/technical data must be or is being exported from the United States in accordance with Export Administration regulations. Diversion contrary to U.S. law is prohibited. In accordance with U.S. law (Title 15 CFR part 746 and Supplement No.1 to part 774; and Title 31 CFR), resale/re-export or transfer to certain designated countries or foreign personnel, either in the U.S.A. or abroad, is prohibited without the prior written consent of the U.S. Department of Commerce.

On February 26, 2014, Khan sent an email to the Pakistan-based co-conspirator with the subject header “Original Certificate.” The body of the email stated, “Sir, please check attached certificate.” This was in reply to an email on February 23, 2014, stating, “Please send me the original certificate for adapter hybrid coupler as discussed.” Attached to the email were two PDF’s. The PDF attachments were the same Company #3 shipping receipts Imran sent to Khan; however, Imran’s identity, business address, phone, email address etc. was heavily redacted.

Such information, which is discernable, indicates the Hybrid Coupler Assembly receipt was from the first shipment of ten (10) units as information on the PDF shows one (1) unit left on order.

According to a U.S. Department of Commerce, Bureau of Industry and Security, License Determination, a license was required to export hybrid couplers to SUPARCO.

D. The February 2013 Purchase from Company #4

On February 15, 2013, a representative for NILOP, Islamabad, Pakistan, Erum Mehboob, (who is personally named on the Entity List), emailed a representative for Nano Tech Solutions, Islamabad, Pakistan, with attached requests for quotes, NILOP-514 (RFQ), for Ti: Al₂O₃ (Titanium doped or “aluminum oxide crystals”).⁵

On February 20, 2013, the Nano Tech Solutions representative sent the RFQ to the Pakistan-based co-conspirator, who then forwarded the NILOP-514 RFQ on to Khan on the same day at email address “kentp26@yahoo.com.” On February 20, 2013, Khan sent the same NILOP-514 RFQ to Imran at “imran@bltdusa.com.” On February 21, 2013, Khan sent an email to Imran and Ismail with the same RFQ, along with web addresses for two distributors of the crystals.

On or about February 20, 2013, Imran sent the NILOP-514 RFQ to a distributor in Lithuania. Between approximately February 21- March 26, 2013, Imran and a representative from the Lithuanian crystal distributor negotiated prices for the NILOP-514 RFQ with delivery to the U.S. On July 18, 2013, Imran sent an email to Ismail with the subject header, “payment paid.” The body of the email read:

- 1) 6/25 paid \$9070 for crystal paid with my line of credit will charge 1.5
- 2) 5/4/15 (actual date written) paid \$9471 narda cad will charge 2% every month
- 3) \$3706.83 paid 6/24 to wave line card will charge 1.5%

⁵ Titanium Crystals or aluminum oxide crystals are crystals used for making ultra-short pulse solid state or wavelength tunable lasers. Titanium Crystals have both commercial and military applications.

On July 22, 2013, Khan sent an email to I-1 [the Pakistan-based co-conspirator] stating “items ready to ship. Item in USA.” Attached to the body of the email was a picture (.jpg) of an invoice from Brush Locker Tools Division. The invoice (#90038) was dated July 22, 2013, and the “Bill to” section was revealed to be National Institute of Laser & Optronics (NILOP), Islamabad, Pakistan. The invoice indicated to send payment to Brush Locker Tools Division (Cerde Market). The description of the items in the invoice was shown to be the Al₂O₃ crystals in various lengths and the total cost of the invoice was \$10,696 euros. The invoice bank information was listed as: Brush Locker Tools Division. The bottom of the invoice was signed “Imran” in script.

Between July 24, 2013, and September 2, 2013, I-1 [the Pakistan-based co-conspirator] exchanged emails with representatives from Sanco Middle East (Sanco), Sharjah, UAE. According to Sanco’s website, “Sanco Middle East provides innovative and leading edge technology and advanced instrumentation for industry, research and educational institutions across the Middle East, Asia and Africa.” The emails pertained to the Pakistan-based co-conspirator arranging payment to Imran/Brush Locker Tools Division for the Al₂O₃ crystals.

On September 11, 2013, Imran sent an email to Khan, and cc’d SABIN ZAMIR, Imran and Khan’s sister, believed to be in Pakistan. The subject of the email read, “urgent crystals.” The body of the email stated, “Crystals are ready for shipping. Payment received is \$13,264. It should be between \$13,705 and \$13,666. There is \$400 missing in the exchange rate. My bank only charges \$20 for wire fee. If there is a discrepancy with the exchange rate it should not be more than \$50. Please check where is the remaining amount.”

On October 8, 2013, Khan sent an email Imran with the subject “Urgent dispatch today order.” The body of the email read, “please send crystal today, Kauser Enterprises, House No.

269, Street No.17, Sector F-10/2, Islamabad, Cell #0333-2294824.” On the same day, Imran replied to Khan stating, “Did you receive the oxygen sensor yet. As soon as you receive it I will dispatch the crystals.”

On October 10, 2013, Khan emailed the Pakistan-based co-conspirator with the subject header of, “Crystal Shipping.” The body of the email read, “please see DHL tracking info.” Attached to the email was a “.tif” file revealing a DHL Express Worldwide shipping label. The shipper indicated the package was from Brush Locker Tools Division, I. Khan, Phone: 970-380-0162 [Imran’s residence]. The “To” address was revealed to be; Kauser Enterprises, House No. 269, Street No.17, Sector F-10/2, Islamabad, Pakistan.100.

According to a U.S. Department of Commerce, Bureau of Industry and Security, License Determination, a license was required to export Titanium Crystals to NILOP.

E. Post-Arrest Statements of Kamran Khan

Kamran provided a video-taped *Mirandized* post-arrest statement wherein he admitted that he is the user of email account “kentp26@yahoo.com,” and “Kamran@kentp.com.” Kamran further admitted using Kauser Enterprises – Pakistan to buy commodities in the United States for export to Pakistan. Kamran recalled seeing prohibitions against export on vendor documents, though he denied reading such prohibitions carefully. Kamran admitted using his brother’s presence in the United States to avoid vendor’s vetting process. That is, if a company refused to ship to him in Pakistan, Kamran would have his brother, Imran, procure items from U.S.-based vendors and have those vendors ship the items to Imran in the U.S., who would re-ship to him in Pakistan. Sometimes Kamran would purchase goods directly from the Internet because if he told vendors he was in Pakistan, they would not sell to him. Kamran also admitted falsifying end-user certificates; however, he claimed he did so to avoid having to deal with Pakistan-based distributors. Nonetheless, he admitted creating a letter indicating that his brother’s company

would comply with U.S. export laws. Kamran admitted to engaging in each of the transactions described above. He further admitted having completed security forms for a pre-qualification to do business with PAEC, which he knew to be the Pakistan Atomic Energy Commission, as evidence by an email he sent to a representative of PAEC on June 21, 2012. Kamran also acknowledged that selling goods to PAEC is prohibited by the U.S.

V. The Legal Framework for Determining an Appropriate Sentence

Title 18, United States Code, Section 3553(a) directs a sentencing court to consider, in determining the sentence to be imposed, both the nature and circumstances of the offense and the history and characteristics of the defendant. The sentencing court must also consider the need for the sentence imposed:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In reaching its sentencing decision, this Court should also construct its analysis within the framework of the advisory United States Sentencing Guidelines (the “Sentencing Guidelines” or “Guidelines”). Congress has established the Sentencing Guidelines as the foundation, or the starting point, from which sentencing courts should construct the appropriate sentence in each case using the Section 3553(a) factors noted above. *United States v. Booker*, 543 U.S. 220 (2005); *United States v. Cutler*, 520 F.3d 136, 155 (2d Cir. 2008); *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). The sentence imposed must be “sufficient, but not greater than necessary, to comply with” the factors listed above. *Kimbrough v. United States*, 552 U.S. 85, 102 (2007) (*quoting* 18 U.S.C. § 3553(a)).

A. The Nature and Circumstances of the Offense

The nature and circumstances of the offense are very serious and bear upon the national security of our country. As set forth above, the defendants, *knowingly and willfully*, engaged in a scheme to violate export controls by purchasing goods that were controlled under the Export Administration Regulations (“EAR”) from manufacturers in the United States and abroad, and to export those goods, without a license, to organizations in Pakistan that were listed on the Entity List. The defendants’ conduct was in knowing violation of controls that related to the proliferation of nuclear weapons. Moreover, the defendants engaged in the charged conduct for a period of years, with transactions sometimes taking several months to complete, procuring items not just from U.S. based manufacturers, but also from manufacturers abroad. During the course of the conspiracy, the participants, including the defendants, repeatedly misrepresented the end user of the products being exported and the country of final destination. It is worth noting that during much of the conspiracy defendant Khan was living in Pakistan and running Kaiser Enterprises, Pakistan.

During a recorded post-arrest *Mirandized* interview, defendant Khan admitted having engaged in the conspiracy described in the Indictment, and further admitted having participated in each of the export transactions described in Counts Two to Five of the original Indictment. Moreover, Khan admitted seeing prohibitions against export on vendor documents.

Despite admitting the above-related conduct, and further admitting that they were well aware that a license was required to export items to prohibited entities, and thus engaged in such conduct willfully, the defendants argue that the statutory scheme here is complex and note that “OFAC has an entire staff dedicated to clarifying confusion on the part of would-be exporters.” Def. Sent. Memo. p. 5. But the defendants were not confused would-be exporters. They were

well aware of the fact that they needed a license to export the items they exported to Pakistan and repeatedly misrepresented the end user of the products being exported and the country of final destination to U.S. based manufacturers. This is not a case where a defendant was confused and sought guidance from OFAC; therefore, the fact that OFAC does not offer compliance guidance in Urdu has no relevance here.

Similarly, whether the items were ultimately used for “peaceful industrial use” is of no consequence because the defendants exported items to prohibited entities, knowing that the items could be used for nuclear proliferation purposes. The Sentencing Commission has reflected the seriousness of violations of IEEPA by assigning a high base offense level of 26 to all export offenses that implicate national security concerns and by not differentiating among those offenses according to the nature of the goods involved. The issue is not whether the goods in question directly threaten national security, but whether the export control in question is based on a national security concern. *See United States v. McKeeve*, 131 F.3d 1 (1st Cir. 1997).

In *McKeeve*, the First Circuit considered the same issue, but in relation to an embargo involving Lybia. It concluded that the “embargo is an exercise of executive power authorized by IEEPA ‘to deal with any unusual and extraordinary threat . . . to the national security.’” 131 F.3d at 14. Therefore, the embargo itself “is intended as a national security control.” *Id.* Hence, the First Circuit concluded that “section 2M5.1(a)(1) applies to any offense that involves a shipment (or proposed shipment) that offends the embargo, whether or not the goods shipped actually are intended for some innocent use.” *Id.* The Sixth and Fifth Circuits have followed the First Circuit in this regard. *See United States v. Hanna*, 661 F.3d 271, 293 (6th Cir. 2011); *United States v. Elashyi*, 554 F.3d 480, 508-09 (5th Cir. 2008). *See also United States v. Shetterly*, 971

F.2d 67, 76 (7th Cir. 1992) (“ . . . exporting these kinds of things outside the United States is something that Congress decided would be a threat to national security.”).

Similarly here, the placement of PAEC, SUPARCO and NILOP on the Entity List because they were “determined to be involved in nuclear or missile activities” is intended as a national security control. The ultimate use of each item exported is of no consequence. Moreover, the fact that the Sentencing Commission increased the BOL applicable to this violation in 2001 from 22 to 26 is indicative of the seriousness of the offense.

Defendant Khan further questions whether every violation of IEEPA is properly considered under U.S.S.G. § 2M5.1. Def. Sent. Memo. p. 10. Contrary to the defendant’s argument, there are no “minor non-threatening violations of IEEPA.” Def. Sent. Memo p. 15. The President determined that SUPARCO, PAEC and NILOP constitute a threat to our national security because of their involvement in nuclear or missile activities. That determination cannot be second-guessed. Therefore, every violation of IEEPA is a threat to our national security.

Further, it is worth noting that the defendants were well aware of the identities of the agencies they were exporting to, PAEC, SUPARCO and NILOP and they were aware that exports to those agencies without a license was prohibited. For example, that the Titanium Crystals were destined to NILOP was reflected in the invoice generated by Imran. Similarly, the defendants were aware that the shipment of Capran 980 bagging film was for SUPARCO as they generated a letter to that effect to enable delivery in Pakistan. The same is true for the hybrid couplers as the tender received was on SUPARCO letterhead.

Moreover, in his post-arrest statements, Khan admitted having completed security forms for a pre-qualification to do business with PAEC, which he knew to be the Pakistan Atomic Energy Commission. He also admitted knowing that exports to PAEC were prohibited.

Therefore, they had sufficient information on hand from which to conclude that export to these agencies was prohibited because of their nuclear proliferation related work.

In support of his argument, Khan cites to two cases where the sentencing courts departed downward based on the fact that the specific product involved did not threatened controls relating to the proliferation of nuclear, biological or chemical weapons. *See United States v. Sevilla*, 2006 WL 1710139; *United States v. Groos*, 420 WL 5387852.⁶ The defendant argues that like the items at issue in *Sevilla* (computer) and *Groos* (fire sprinklers), the items he exported do not implicate national security. We disagree.

First, the purpose of placing agencies on the Entity List is to prohibit all exports to that agency because the nature of the work they do inherently furthers and promotes nuclear proliferation and threatens our national security. Hence, as established above, the nature of the items exported is irrelevant.

However, it is worth pointing out that the defendants here did not export computers or fire sprinklers. They exported spectrometers, Titanium or Aluminum Oxide Crystals, hybrid couplers and bagging film, all of which have significant military applications. Defendant Ismail is a trained Engineer, retired from the Pakistan International Airlines. Indeed, he was the technical person tasked with researching the items requested. The argument that he would not have been aware of the military applications of the items exported is particularly disingenuous.

An Alpha Duo Spectrometer is a benchtop spectrometer with two alpha spectroscopy channels that records and measures spectra. According to the website of the chief manufacturer of Alpha Duo Spectrometers, the manufacturer involved in the transaction in this case, Ortec:

Alpha spectroscopy is used to identify and quantify radionuclides based on the alpha particles emitted in the decay process. Similar to Gamma Spectroscopy, energy

⁶ The third case cited by the defendant relates to items in the Munitions List and the analysis is inapposite to this case.

spectra are generated with high precision detectors and electronics and analyzed with special software. Typically, samples are measured following chemical separation to isolate the radionuclides of concern.

Ortec indicates the potential applications for Alpha spectroscopy:

- *Environmental Radioactivity Monitoring
- *Health Physics Personnel Monitoring
- *Nuclear Fuel Cycle processing
- *Nuclear Forensics
- *Materials Testing
- *Geology and Minerology

Since the Pakistani end-user for the Alpha Duo Spectrometer was PAEC, the Pakistan Atomic Energy Commission, a nuclear-related end use for the goods was highly probable. A common alpha emitter is plutonium. The spectrometer was likely intended for PAEC's facilities to separate plutonium from irradiated fuel, an alpha emitter used in Pakistani nuclear weapons. Significantly, the email from the Pakistan-based co-conspirator warned Khan to act with caution, to not mention Pakistan and to not purchase all the products at once.

“Just don't ask these items for Pakistan. Also don't go all the Items at one time. Ask quotation partially. Act carefully (sic).”

Ortec sent an end-user certificate, which was completed falsely by Imran, listing Brush Locker Tools in Connecticut as the end-user. The defendants can hardly claim they were completely unaware of the potential military applications of the item they were unlawfully exporting.

Similarly, Capran 980 Bagging Film has military and commercial dual-uses. It is a clear (low haze level) heat stabilized cast film produced from modified nylon 6 resin. Capran 980 is recommended as bagging film for advanced composite fabrication and other high temperature applications where dimensional stability, adherence to sealant tapes and uniform film gage are essential.

Likewise, hybrid couplers are “passive” devices with dual commercial and military purposes and are used in radio and telecommunications. Specifically, they are a type of directional coupler where the input power is equally divided between two output ports.

The request for quote for the hybrid couplers was from SUPARCO. Moreover, a statement by Kauser Enterprises gave SUPARCO authorization to claim the shipment of Capran 980 bagging film on behalf of the National Development Complex, a critical part of Pakistan’s missile development program that was involved in redesigns of several models originally developed by SUPARCO. SUPARCO and NDC are barred from engaging in trade with the United States. As such, the items were probably used in Pakistan’s missile program.

A quick Wikipedia search on SUPARCO revealed the following:

“Sonmiani flight test range is a rocket launch facility operated by Space and Upper Atmosphere Research Commission (SUPARCO) located at Sonmiani, Balochistan province in Pakistan. The facility is also used by Pakistan Atomic Energy Commission and National Defense Complex for testing solid-fueled ballistic missiles.”

“In the 1980s, SUPARCO largely took participation in building the first space booster, Hatf-I, but lost its credibility to KRL who derived the space vehicle into an operational missile.”

“The Hatf-I is a tactical and subsonic unguided battlefield range ballistic missile jointly designed and developed by SUPARCO and KRL. The Hatf program was developed with the contribution of the SUPARCO’s scientists with collaboration from scientists of the KRL. The program was developed in extreme secrecy and was finally revealed in 1989 by the Pakistan Army.” The Hatf-I can carry a nuclear warhead.

Again, the defendants can hardly claim they were completely unaware of the potential military applications of the item they were unlawfully exporting, particularly given that much of their scheme was carried out online.

Titanium or Aluminum Oxide Crystals are used for making ultrashort pulse solid state or wavelength tunable lasers and have dual commercial and military applications. The request for quote for the Aluminum Oxide Crystals came from Erum Mehboob, a representative of NILOP.

NILOP is part of the Pakistan Institute for Nuclear Science and Technology (PINSTECH). As far back as the 1970s, PINSTECH oversaw Pakistan's research, development, and eventual production of nuclear weapons. Pakistan Atomic Energy Commission (PAEC) scientists and engineers conducted advanced research at PINSTECH leading up to the 1998 nuclear tests. In its 2009-2010 annual report to the International Atomic Energy Agency (IAEA), PAEC noted that NILOP's facilities were being expanded and that NILOP had been involved in the development of pulsed energy laser systems for isotope separation. Certain pulsed energy lasers are controlled by the Nuclear Suppliers Group and require a license to Pakistan for nuclear nonproliferation reasons. Laser isotope separation is a method of uranium enrichment. Mehboob, NILOP and PINSTECH are listed on the Entity List. *See* Organizational Chart attached hereto as Exhibit B.

The offenses here were not mere oversights or performed without knowledge of the illegality of the conduct. Rather, they were deliberate choices of savvy, experienced individuals who successfully avoided detection in many instances, over the course of several years, and utilized companies like Kauser Enterprises Pakistan in aid of such unlawful purpose. Therefore, the nature of the offense weighs in favor of a guideline sentence.

B. The History and Characteristics of the Defendants

1. Kamran Khan

Defendant Khan does not have a criminal history other than the conduct charged in the Indictment. However, the conduct charged spanned over a period of years. The defendant was living in Pakistan for most of the conspiracy in this case. In fact, that is where he established his business Kauser Enterprises and carried on his business for the better part of six years. While the defendant denies ownership of Kauser Enterprises, the email communications examined during

the course of the investigation in this case revealed that defendant was the only individual acting on behalf of Kauser Enterprises, Pakistan. During his post-arrest interview, the defendant admitted having completed security forms for a pre-qualification to do business with PAEC, which he knew to be the Pakistan Atomic Energy Commission, as evidenced by an email he sent to a representative of PAEC on June 21, 2012. Khan also acknowledged that selling goods to PAEC is prohibited by the U.S.

Application Note 2 to U.S.S.G. § 2M5.1 provides that in determining a sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Here, the defendant's conduct involved multiple violations of IEEPA, carried out over long periods of time. The scheme involved misrepresenting material facts to U.S. based manufacturers, arranging for delivery to a U.S. business, trans-shipping items to Pakistan, and delivering those items to the prohibited entities. Therefore, a guideline sentence is warranted.

2. Muhammed Ismail

Defendant Ismail is a trained Engineer by profession, retiring from the Pakistan International Airlines. According to statements made by Imran Khan, the scheme to export items to Pakistan was his idea. Ismail had the technical background and was the person who reviewed the requests for quotes for any technical requirements. Accordingly, Ismail would contact manufacturers directly to inquire about specific items being procured. Contrary to what is stated in his Sentencing Memorandum, p. 15, Ismail did not immediately accept responsibility, and has not cooperated with the Government. Providing self-serving post-arrest statements that aim at excusing criminal conduct does not amount to cooperation.

Moreover, while Ismail does not have a prior criminal history, the Government submits that he has not demonstrated that he is entitled to a downward departure based on aberrant behavior. Section 5K2.20 provides that a court may depart downward “only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.” Participation in a scheme to avoid controls that affect our national security for years, and which included multiple transactions can hardly be characterized as aberrant behavior. Therefore, a guideline sentence is warranted.

C. The Need to Promote Respect for the Law, to Provide Just Punishment, to Afford Adequate Deterrence, and to Protect the Public

Deterrence and promoting respect for the law should be a significant goal of the Court’s sentences. The ease with which the defendants and others like them were able to commit their crimes is alarming. Anyone with a laptop and a modem who lives in a place overseas with a developed banking, communications, and transportation infrastructure can do what the defendants did. It is important for the next person in Pakistan who is contemplating trafficking in the same types of commodities in which Khan trafficked to know that there are serious consequences for violating these vital export controls. The sentence that the Government is advocating will have that result.

D. The Sentence to be Imposed

In *United States v. Booker*, 125 S. Ct. 738 (2005), the Supreme Court ruled that the U.S. Sentencing Guidelines are no longer mandatory. However, in the remedy portion of the opinion, the Court also made clear that, in determining the appropriate sentence for a defendant, the district court judge must calculate and consider the applicable guideline range, refer to the pertinent Sentencing Commission policy statements, and bear in mind the need to avoid

unwarranted sentencing disparities. *See also United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 205). Therefore, the Court must determine the applicable Guidelines range before imposing sentencing. In this case, the Government agrees that the Guidelines range calculated in the PSR, which is 57 to 71 months of imprisonment, is correct. In their plea agreements, the defendants also agreed that the Guidelines range calculated in the PSR is correct.

The offense in this case is extremely serious and affects the national security of our country. The conduct spanned over a period of years and included multiple transactions. Therefore, the Government submits that a sentence within the applicable guideline range is warranted. The Government acknowledges that the defendants have no prior criminal history. Therefore, the Government understands that a sentence at the lower end of the applicable guideline would achieve the goals of sentencing in this case. Such a sentence would also afford adequate deterrence to criminal conduct and help protect the public from further criminal conduct by the defendants.

The defendants refer the Court to a number of cases where the district courts have imposed non-guideline sentences of probation for violations of IEEPA. However, many more courts have imposed prison sentences for conduct similar to that of the defendants. The Government will file a supplement attaching a list of cases for the Court.

WEREFOR the United States respectfully requests that the Honorable Court take notice of the foregoing, and sentence the defendants Kamran Khan and Muhammed Ismail to 57

months in prison.

Respectfully submitted in Bridgeport, Connecticut this 13th day of July, 2018.

JOHN H. DURHAM
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date the foregoing motion was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

s/ *Jacabed Rodriguez-Coss*
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Assistant U.S. Attorney