



used to channel AAH and KH fighters into Syria. More recently, as the most powerful pro-Maliki militia in Iraq, AAH has been deployed to some of the most contested areas in Iraq in the battle against IS. For instance, the group has recently been leading the Shiite militias in the heavily contested city of Amerli. Iran has continued to provide AAH with significant amounts of financial and logistical aid. New AAH recruits are often taken to Iran for two weeks of intense training with the IRGC before being sent to the front lines. The Iranian government also pays the families of those soldiers who die in battle up to \$5,000 in addition to the cost of the burial. Currently the group also seeks to shore up the Assad regime in Syria, to turn back the advance of the Islamic State (IS) in both Syria and Iraq, and to secure Iranian strategic interests.

Exhibit D (footnotes omitted).⁷

ii. Al Fawadi's Membership

In his plea agreement, Al Fawadi admitted that "since he was 26 years old, while living in Iraq, he was a member of, and affiliated with Asa'ib Ahl al-Haq, an Iranian-backed Shiite militia and paramilitary organization and group." Docket #26 at p. 10, ¶ 5(i). Similarly, during his guilty plea colloquy, Al Fawadi acknowledged that "at age 26 he had joined this organization Asa'ib Ahl al-Haq." Exhibit E at pp. 28, 30. These admissions were consistent with various digital images of Al Fawadi that the FBI acquired during its investigation. See Renn declaration at ¶¶ 2-3. Some examples appear below:



⁷ <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/asaib-ahl-al-haq>

Al Fawadi is the second male from the left in the front row. See Renn declaration at ¶ 5. The AAH insignia is visible on his uniform sleeve. *Id.* Associated images reveal that this photograph was taken at the Al Sina'a Stadium in Baghdad, Iraq, likely on April 25, 2014, during an AAH rally. *Id.*





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Al Fawadi is the second male from the left in the front row. See Renn declaration at ¶ 5. The AAH insignia is visible on his uniform sleeve. *Id.* Associated images reveal that this photograph was taken at the Al Sina'a Stadium in Baghdad, Iraq, likely on April 25, 2014, during an AAH rally. *Id.*



This image depicts Al Fawadi receiving an award from Qais al-Khazali, the leader and founder of AAH. See Renn declaration at ¶ 6. The AAH insignia appears on the award. *Id.* Metadata associated with this digital image reflects a June 20, 2012 “taken” date. *Id.* The name of the file—“2012-06-20-026_1_001_001.jpg”—is consistent with this picture having been taken on that date. *Id.*

b. Concealment Requirement

Evidence shows that Al Fawadi “committed any part of the [offense of conviction, a violation of 18 U.S.C. § 1546(a)] to conceal the defendant’s membership in [AAH],” as required by U.S.S.G. § 2L2.2(b)(4)(A). In order to be classified as a refugee and gain admission to the United States, Al Fawadi had to demonstrate that he was persecuted or that he feared persecution due to race, religion, nationality, political opinion, or membership in a particular social group. See 8 U.S.C. § 1101(a)(42). He satisfied this requirement by alleging fear of persecution in Iraq from AAH in retaliation for his claimed refusal to assist AAH in kidnapping Sunni Muslims when requested to do. See Exhibits F, G, H, and I; Mere declaration at ¶¶ 2-6; PSR ¶¶ 11-15 & n.1.

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Thus, when Al Fawadi later submitted his application for permanent lawful residence, as charged in Count One, he had a powerful motive to continue to conceal his membership in AAH. Failure to do so would reveal that he made false statements during the refugee application process and likely would have foreclosed his effort to become a permanent lawful resident. Mere declaration at ¶ 8. Accordingly, as Al Fawadi admitted during his guilty plea colloquy and in his plea agreement, when asked on the USCIS Form I-485 Form “whether he . . . ever a member of





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Thus, when Al Fawadi later submitted his application for permanent lawful residence, as charged in Count One, he had a powerful motive to continue to conceal his membership in AAH. Failure to do so would reveal that he made false statements during the refugee application process and likely would have foreclosed his effort to become a permanent lawful resident. Mere declaration at ¶ 8. Accordingly, as Al Fawadi admitted during his guilty plea colloquy and in his plea agreement, when asked on the USCIS Form I-485 Form “whether he . . . ever a member of any organization, association, fund, or party, et cetera, since his 16th birthday . . . [h]e answered that question none, despite knowing that at age 26 he had joined this organization Asa’ib Ahl al-Haq.” Exhibit E at pp. 28-30; Docket # 26 at p. 9, ¶ 5(f). Similarly, during both the plea colloquy and in his plea agreement, admitted that he “was asked if by fraud or willful misrepresentation of a material fact he had ever procured entry into the United States or any other immigration [benefit]” and that, in response “[h]e falsely stated no by checking a box, when in fact he knew that when he applied for refugee status he lied about never being in any country other than Iraq and Turkey, when in fact he had been in Syria in addition to that, and had been in Iran in addition to that.” Exhibit E at pp. 28-30; Docket # 26 at pp. 9-10, ¶ 5(g). In his plea agreement, Al Fawadi also admitted making other false statements on the USCIS Form I-485, all of which concealed his membership in AAH. Docket #26 at pp. 10-11, ¶ 5(h)-(j).

c. Section 2441(d) “Grave Breach(es)” Requirement

Each of the following atrocities in Iraq in which AAH was involved qualifies as a “grave breach of Common Article 3” as defined in one or more of the subsections of 18 U.S.C. § 2441(d), specifically subsections (d)(1)(B) (defining “cruel or inhuman treatment”); (d)(1)(D) (defining

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“murder”); (d)(1)(F) (defining “intentionally causing serious bodily injury”); and (d)(1)(I) (defining “taking hostages”).⁸

i. The June 11, 2014 Market Raid Abductions and Killings

In July 2014, police found 53 bodies buried in a ditch near Hilla, in Babel Province, Iraq.





[analysis/profile-asahb-ahf-al-haq-ir](https://www.denverpost.com/2007/01/26/4-u-s-soldiers-abducted-killed/); Denver Post, "4 U.S. Soldiers Abducted, Killed," January 26, 2007, <https://www.denverpost.com/2007/01/26/4-u-s-soldiers-abducted-killed/>. When he joined, Al Fawadi almost certainly was aware that AAH was committed to killing American soldiers.

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farthest to the right) and others at the Damascus, Syria airport. Al Fawadi is armed with an assault rifle and wearing camouflage fatigues. See Renn Declaration at ¶ 7.



Photographs taken the following day, September 15, 2013, such as those below (and those with taken dates shortly thereafter), indicate that Al Fawadi had come to Syria to engage in combat operations. See Renn Declaration at ¶ 8.



Although Al Fawadi had falsely concealed his travel to Syria when he applied for refugee classification and again in his application for permanent resident status, later during an interview on September 1, 2020, when confronted with a photograph of himself wearing a camouflage uniform and armed with a rifle, Al Fawadi acknowledged that the picture was taken in Damascus, Syria, and that he was taken there by AAH. He stated that AAH was defending the Sayyidah

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Zayhab Mosque but claimed that his role was limited to providing food, water, and supplies to others. Additional photographic evidence shows that Al Fawadi remained in Syria until September 29, 2013, when he and others flew on SyrianAir to Iran. See Renn Declaration at ¶ 9; Sealed





Under these circumstances, a criminal defendant and the government may include in a plea agreement a stipulated judicial order of removal. The relevant statutory provision states in part that:

The United States Attorney, with the concurrence of the Commissioner, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this chapter, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of removal from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both.

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8 U.S.C. § 1228(c)(5).

Al Fawadi and the government have included such a stipulation in their plea agreement. Docket #26 at pp 2-5, ¶ 1(c).

Upon receipt of appropriate paperwork, including a proposed order of removal—all of which the government intends to file before sentencing—this Court has authority to enter a judicial order of removal pursuant to the parties' stipulation. "The United States district court, in both felony and misdemeanor cases . . . may accept such a stipulation and shall have jurisdiction to enter a judicial order of removal pursuant to the terms of such stipulation." 8 U.S.C. § 1228(c)(5).

The Second Circuit has recognized the availability of this procedure. *See United States v. Young*, 143 F.3d 740, 741 (2d Cir. 1998) ("The alien defendant is required to waive his right to a removal hearing before an immigration judge and his right to appeal or otherwise challenge the removal order. The entry of the order of removal results in the immediate deportation of the alien defendant upon the completion of his period of incarceration."). District courts have issued removal orders based on such stipulations. *See, e.g., United States v. Asane*, No. 5:19-CR-423-FL-1, 2020 WL 413081, at *1 (E.D.N.C. Jan. 24, 2020).

Respectfully submitted this 22nd day of February 2022.

CARLA B. FREEDMAN
United States Attorney

Steven D. Clymer
Assistant United States Attorney
Bar Roll No. 509281

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