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IN THE UNITED STATES DISTRICT COURT
OR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	
)	Case No. 14 CR 564
)	
MOHAMMED HAMZAH KHAN,)	Chicago, Illinois
)	November 18, 2016
Defendant.)	1:30 p.m.
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN J. THARP, JR.

APPEARANCES:

For the Plaintiff:	HON. ZACHARY T. FARDON UNITED STATES ATTORNEY BY: MR. RICHARD MATTHEW HILLER MR. SEAN K. DRISCOLL 219 South Dearborn Street Suite 500 Chicago, Illinois 60604
For the Defendant:	DURKIN & ROBERTS BY: MR. THOMAS ANTHONY DURKIN MS. ROBIN VALENTINA WATERS 2446 North Clark Street Chicago, IL 60614
Court Reporter:	KELLY M. FITZGERALD, CSR, RMR, CRR Official Court Reporter United States District Court 219 South Dearborn Street, Room 1420 Chicago, Illinois 60604 Telephone: (312) 818-6626 kelly_fitzgerald@ilnd.uscourts.gov

1 (Proceedings heard in open court:)

2 THE CLERK: 14 CR 564, U.S.A. v. Khan.

3 MR. HILLER: Good afternoon, Your Honor. Matt Hiller
4 on behalf of the United States.

5 THE COURT: Good afternoon.

6 MR. DURKIN: Good afternoon, Judge. Tom Durkin and
7 Robin Waters on behalf of the defendant who is present and in
8 custody.

9 THE COURT: Good afternoon.

10 PROBATION OFFICER CHRISTIANSEN: Good afternoon,
11 Judge. Jason Christiansen, U.S. probation.

12 PROBATION OFFICER POHLMAYER: Good afternoon,
13 Your Honor. Aron Pohlmeier on behalf of U.S. probation.

14 THE COURT: Good afternoon.

15 Are we ready to proceed with sentencing?

16 MR. HILLER: We are, Your Honor.

17 MR. DURKIN: Just one second, Judge. There was a
18 question raised just a second ago. Could I have a second to
19 talk to Mr. Hiller?

20 THE COURT: Sure.

21 (Off the record.)

22 MR. DURKIN: Could I just have a minute to explain
23 this question?

24 (Off the record.)

25 MR. DURKIN: Judge, could we have five or ten

1 minutes? I apologize. There was a question raised that I
2 have discussed with Mr. Hiller, but I just need to talk to the
3 client in private, if I could.

4 THE COURT: All right.

5 MR. DURKIN: I apologize.

6 THE COURT: We'll take a brief recess.

7 (Recess.)

8 THE COURT: All right. Ready to move forward?

9 MR. DURKIN: Yes, Judge.

10 THE COURT: All right.

11 MR. DURKIN: Thank you. I apologize.

12 THE COURT: That's all right.

13 The first thing we need to do is, Mr. Khan, could you
14 please stand.

15 And, Ms. Rone, would you please swear in Mr. Khan.

16 THE CLERK: Please raise your right hand.

17 (Defendant sworn.)

18 THE COURT: All right. I want to start by making
19 sure I have reviewed everything that has been submitted. In
20 addition to the plea agreement, I have reviewed the
21 presentence investigation report, the probation officer's
22 sentencing recommendation, the government's version of the
23 offense, the government's sentencing memorandum, the
24 defendant's sentencing memorandum, the defendant's
25 clarification to the PSR, the defendant's supplemental

1 sentencing submission, 15 letters of support that have been
2 submitted on behalf of the defendant. I have also reviewed
3 the defendant's prior motion to modify the conditions of
4 pretrial detention and the government's response to that
5 motion.

6 Is there anything that either party has submitted
7 that I did not include in that?

8 MR. HILLER: No, Your Honor, not that I'm aware.

9 MR. DURKIN: I don't think so. Judge, I don't
10 believe we've received the recommendation though, the
11 probation recommendation.

12 THE COURT: That was part of what was required to be
13 provided.

14 Do you --

15 PROBATION OFFICER CHRISTIANSEN: I can have it
16 submitted immediately, Judge.

17 THE COURT: All right. I've got a copy here
18 somewhere. You can take a look at it for the moment.
19 Probation can get you a copy, but for the moment --

20 MR. DURKIN: That's fine.

21 THE COURT: -- you can take a look at that.

22 All right. Does either party intend to present any
23 witness testimony or call anyone to speak on behalf of
24 Mr. Khan?

25 MR. DURKIN: No.

1 MR. HILLER: No, Your Honor.

2 THE COURT: All right. I'm going to start then where
3 the Supreme Court has directed trial courts to begin all
4 sentencing proceedings, and that is by correctly calculating
5 the applicable range under the United States Sentencing
6 Guidelines.

7 As I understand it, there are -- the defendant had no
8 objections to the calculation of the guidelines set forth in
9 the presentence investigation report, correct?

10 MR. DURKIN: That's correct.

11 THE COURT: And the government objected to the
12 recommendation that the enhancement for involving the use of
13 minors in the offense, the PSR does not include that. The
14 government believes that should be included, correct?

15 MR. HILLER: That's correct, Your Honor.

16 THE COURT: All right. Having reviewed that issue,
17 my conclusion is that the enhancement does apply, both by the
18 terms of the Application Note to Section 3B1.4 and on the
19 strength of the Seventh Circuit's opinion in *United States v.*
20 *Ramsey*, which is 237 F.3d 853, which confirm that when a
21 defendant's affirmative actions involved minors in his
22 criminal activities, the application is appropriate. Here,
23 Mr. Khan acknowledged in his plea agreement that he attempted
24 to provide material support in the form of personnel,
25 including himself and two other individuals. He expressly

1 acknowledged that in the factual basis to his plea agreement.

2 In addition, he also acknowledged in that factual
3 basis that he obtained a job for the purpose of earning money
4 to pay for not only his own ticket but the tickets of those
5 other two minors, that he did, in fact, pay for the tickets of
6 the other two minors, that he, in fact, booked the flights for
7 the other two minors and that he also arranged for the
8 issuance of visas for not only himself but the other minors.
9 That -- all of those facts I think clearly suffice to show
10 that Mr. Khan took affirmative actions to involve minors in
11 his criminal activities, and the enhancement I think must be
12 applied on that basis.

13 I'll also note that in *Ramsey*, the Seventh Circuit
14 specifically rejected the argument advanced by the defense
15 that Congress didn't authorize an enhancement for defendants
16 under the age of 21. In fact, the Seventh Circuit
17 specifically rejected that argument in *Ramsey*.

18 All of that said, as I'll go through the guideline
19 calculation in a moment, the application of that enhancement
20 is not material to the determination of the applicable
21 guideline range here because whether that enhancement applies
22 or not, the applicable guideline range here is the range that
23 is capped at the statutory maximum penalty that can be imposed
24 based on a conviction for this offense, which is 15 years.

25 So for the record, the presentence investigation

1 report reflects a total offense level of 37 and a criminal
2 history category of VI. The government's objection to the PSR
3 guideline calculation is sustained. I find the correct
4 calculation to be offense level 39, not level 37, and criminal
5 history category VI. But for the statutory maximum penalty
6 that could be imposed on this conviction, that would yield a
7 range of 360 months to life imprisonment. But, again, that
8 range is capped by the statutory maximum of 15 years, or 180
9 months imprisonment. So let me work through this calculation
10 again for the benefit of the record.

11 This is based on the November 2016 guideline manual.
12 The base offense level is 26 pursuant to Section 2M5.3(a).
13 That offense level is increased by two pursuant to
14 2M5.3(b)(1)(E), which is a provision which reflects the
15 provision of support to assist a violent act.

16 There is a victim-related adjustment of 12 levels
17 pursuant to Section 3A1.4(a) because the offense involved
18 terrorism as that term is defined in 18, United States Code,
19 Section 2332b(g)(5). And as I've just noted, there is also a
20 role-in-the-offense adjustment of 2 pursuant to Section 3B1.4
21 for involving minors in the commission of the offense. There
22 are no obstruction of justice enhancements, and that leaves us
23 with an adjusted offense level of 42. The PSR recommends and
24 I concur that a three-level reduction for acceptance of
25 responsibility is appropriate. That gives a final offense

1 level of 39. There are no criminal history points, but the
2 defendant is in criminal history category VI by operation of
3 Section 3A1.4(b). That makes -- the applicable guideline
4 range is 180 months pursuant to Section 5G1.1(a) which is the
5 provision that caps the guideline range at the statutory
6 maximum. The supervised release range under the guidelines is
7 one year to life. There is a fine range of 20,000 to
8 \$200,000.

9 Those are the calculations of the guideline range.
10 Does any party have any comment or disagreement other than as
11 you've already objected to the calculation of the guideline?

12 MR. HILLER: No, Your Honor.

13 MR. DURKIN: No, Your Honor.

14 THE COURT: All right. Then let's move on -- well,
15 actually before I move on to the discussion of the 3553(a)
16 factors, I also note that with respect to sentencing
17 agreements that bear on the sentence to be imposed in this
18 case potentially, the government has agreed in the plea
19 agreement based on cooperation that Mr. Khan had provided at
20 the time of the plea and was expected to continue to provide
21 and my understanding is has continued to provide that the
22 government will move for a sentence -- that the Court impose a
23 sentence not at the guideline range of 180 months but for a
24 sentence of 60 months based on Mr. Khan's cooperation.

25 Assuming the government makes that motion, the

1 defendant still has the right to seek a lower sentence and to
2 argue for a lower sentence. The defendant has also, as I
3 understand it, waived -- if the government makes that motion,
4 has waived most of his appellate rights. He has no right to
5 appeal the sentence. His only appeal would be limited to an
6 appeal based on involuntariness or ineffective assistance of
7 counsel.

8 If the government does not make a motion based on the
9 defendant's cooperation, the plea is still binding, and the
10 parties are free to argue for any sentence. And there is a
11 joint agreement between the parties that the sentence should
12 include a term of supervised release of at least 180 months,
13 but the Court is not bound by that joint recommendation.

14 Do I have those agreements correct?

15 MR. HILLER: You do, Your Honor.

16 MR. DURKIN: Yes.

17 THE COURT: Okay. All right. Then let's proceed to
18 the discussion of all of the other factors that the Court is
19 required to consider under Section 3553(a) of Title 18 in
20 determining the appropriate sentence to impose in this case.

21 I'll hear first from Mr. Hiller for the government,
22 then Mr. Durkin for the defendant.

23 And then, Mr. Khan, you will have the right but not
24 the obligation to address the Court directly if you wish to do
25 so, all right.

1 Mr. Hiller.

2 MR. HILLER: Thank you, Your Honor.

3 I will not repeat the arguments raised in the
4 government's sentencing memorandum. But to highlight the 3553
5 factors, the government believes that a 60-month sentence of
6 imprisonment followed by 15 years of probably the most
7 intensive and customized supervised release ever imposed in
8 this district is not only imminently fair but it's also
9 necessary in light of the seriousness of the offense. Such a
10 sentence, it strikes the right balance between Hamzah's
11 background, which the government has outlined extensively in
12 the sentencing memorandum; the graveness of his attempted
13 plan, which is obviously addressed at length in the
14 government's version of the offense. And it also addresses
15 the value and the importance of his cooperation.

16 And Hamzah's cooperation is important for several
17 reasons. First and most importantly, it benefitted active
18 criminal investigations, and two of those investigations -- or
19 the two investigations are described at length in the
20 sentencing memorandum.

21 He benefitted investigations of important ISIL
22 targets, two recruiters who are also located in
23 ISIL-controlled territories and were fighters for ISIL. And
24 also -- his cooperation also benefitted an important American
25 foreign partner, and so he deserves credit for that.

1 His cooperation is also important because it's
2 hopefully telling. It's the first concrete step that Hamzah
3 has taken since October 4, 2014 in rejecting ISIS and
4 rejecting ISIL.

5 We are cautiously optimistic -- and that's the
6 critical importance of the lengthy supervised release -- that
7 this is indicative of his future, that the education and
8 things that Mr. Durkin addresses in his pleadings or his
9 briefing will be taken advantage of, that he will speak out
10 against ISIL and the recruiting and the propaganda that led
11 Hamzah to attempt to join ISIL in Syria.

12 It's also important to highlight that his agreement
13 and his attempt to cooperate publicly against a foreign
14 terrorist organization like ISIL and to attempt to cooperate
15 against the religious clerics, particularly Mizanur Rahman,
16 they kind of give ISIL's message that religious credence, the
17 obligation that Hamzah talked about in his letter and being
18 willing to stand up in a U.S. or even a foreign courtroom to
19 testify against ISIL operatives deserves significant credit.
20 I mean, Hamzah left, or attempted to leave on October 4th
21 because of what he believed was a religious obligation to
22 support the Caliphate. And overcoming that and willing to
23 testify against that is important.

24 That being said, cooperation alone cannot undo what
25 Hamzah attempted to do. He attempted to support an incredibly

1 barbaric foreign terrorist organization, and his cooperation
2 does not completely undo that. It also doesn't undo the fact
3 that he was willing to give his life and the lives of his
4 siblings for that organization, and that's an outcome that
5 undoubtedly would have happened but for the FBI's
6 intervention.

7 So in order to adequately address deterrence and the
8 seriousness of the offense, the government believes a
9 significant term of imprisonment is required, and it should be
10 coupled with an extremely intensive period of supervised
11 release. And that's why the supervised release terms were
12 designed in which they were. They're long. They're hard, but
13 they're set up with sunset provisions to incentivise him and
14 reward him for good behavior if he is seeking his education,
15 and if he is seeking employment and if he is complying with
16 those intensive terms that probation will enforce, he should
17 receive credit, but he must accomplish and overcome a lot of
18 obstacles before those conditions are released. And we
19 believe that the 60-month sentence combined with the 15 years
20 of supervised release provides the best balance in light of
21 all of the facts before this Court today.

22 Thank you.

23 THE COURT: Thank you.

24 Mr. Durkin.

25 MR. DURKIN: Well, Judge, I don't want to have to

1 reiterate our pleading either like Mr. Hiller said, but
2 there's a couple of things I want to point out.

3 I started out by saying this is a difficult case,
4 extremely difficult case, and I think this goes to 3553(a),
5 the nature and circumstances of the offense. It's an awful
6 lot on both ways. But as I submitted in my memorandum, I
7 think this is one of the problems trying to fit foreign policy
8 into a criminal case. And that's just a fact. I'm not
9 arguing it. I don't want to belabor it. I'm not condemning
10 the government or any such thing, but we are dealing with an
11 American citizen, a naive one, a foolish one, who was entirely
12 seduced by online recruiters and provided with a cause bigger
13 than himself. And that's a universal event. That's been
14 going on for centuries. It goes to the lack of critical
15 thinking skills that I have mentioned, again, which bases my
16 request that sooner or later he has to be released, and he has
17 to be trusted, and he has to change.

18 The whole idea of trying to balance the barbarousness
19 of ISIS against an 18-year-old who is seduced by very slick
20 online recruiters -- and that's one of the reasons I
21 submitted -- resubmitted our bond motion. You know, *Dabiq*
22 magazine, we've shown you the slickness of that.
23 President Obama, which I pointed out in the bond motion,
24 shortly before Mr. Khan and his sister and brother are
25 arrested, goes to the United Nations and talks about

1 brainwashing or propagandized American youth and how we have
2 to do something. Not long after he is arrested, Attorney
3 General Holder with President Obama's backing announces that
4 there's going to be a White House summit on countering violent
5 extremism. And I point that out -- and that summit was
6 delayed considerably, but it's now beginning to happen, as I
7 said in my memo, and there are at least three pilot programs
8 in the United States -- Boston, Minneapolis, Los Angeles --
9 with respect to programs for countering violent extremism.

10 The other thing I pointed out in my memo in this
11 regard is that while it is certainly easy for everyone to
12 barbarize ISIS today in terms of its being a threat to the
13 United States because of some of the attacks that have
14 happened in San Bernardino and so forth, I do point out in my
15 memo -- and, again, this is not to belabor, and it's certainly
16 not in any way to argue in favor of ISIS -- but I do think if
17 you put this in the right context, the comments I made in my
18 pleading about the report from the Brookings institute and the
19 Princeton scholar Cole Bunzel about what ISIS's status was
20 around this time was more of the Caliphate. And as is
21 frequently the case, in cases that don't go to trial, I
22 believe we could have shown a considerable, if not major,
23 portion of his desire and his sister and his other brother,
24 and you know how much the sister had a part in this, was for
25 the Caliphate. And, again, that's not -- I mean, you know,

1 it's an absurd Caliphate. It's an absurd Caliphate even under
2 Islamic theology, as I understand it. But for an 18-year-old
3 in Bolingbrook with his background and education, it was very
4 alluring. The whole concept of going somewhere for a
5 religious purpose with higher ideals and the youthful
6 sophomoricness of, you know, I'm leaving this country because
7 it's so filthy in its values and so forth, as I said also in
8 my memo, anybody that has raised teenagers certainly
9 understands how that works, at least that kind of looking for
10 something else and how stupid the elder generation is and how
11 stupid everything else in the world is. That's not to excuse
12 it. None of this is an excuse, but it goes to context I
13 think.

14 The fact that the people of ISIS are crazy and
15 barbarous is a bigger fact today than it was then. And,
16 again, I just don't want to belabor it. But I genuinely think
17 that his motivation was religious and it was misguided. And
18 would he have been dead? Probably. I do agree with the
19 government on that, but, you know, in many ways for different
20 reasons. Even in his statement, he talked about a number of
21 things when he was first interviewed by the FBI that he could
22 have done or expected to do. One was medical. There were a
23 bunch of other social service issues, and then he said and
24 probably some military training or words to that effect. So I
25 get it. But that goes I think to the whole difficulty of this

1 case. And I don't know whether you took the time to read my
2 law review article that I cited, but I think it's also
3 difficult and dangerous to discuss war rhetoric or to use
4 rhetoric in the criminal justice system. We're old enough to
5 see what's happened with wars on crime, wars on drugs, wars on
6 terror. Criminal courts aren't designed to fight wars. And I
7 credit the government enormously for accepting that here in
8 one way, shape or form.

9 I give tremendous credit, as I do in my pleading, to
10 the U.S. Attorney's Office in Chicago for having the good
11 sense to be reasonable. That has not been the case all over
12 the country. It's not necessarily even the position of the
13 National Security Division in Washington. But much to its
14 credit, and the Khan family is extremely grateful for the
15 wisdom, for some short -- no other term I think would apply to
16 it, and I think it's largely Mr. Hiller, to see both sides of
17 this case.

18 And I think that's where we're at. I think we have a
19 case where neither side is that far apart. I'm only asking
20 for 40 months, and I have I think a very reasoned approach for
21 the 40 months, which is he needs to go to college desperately.
22 And is it necessary as a deterrent to add 20 more months to
23 that and run the risk that he gets further radicalized, if
24 that's the case, in a prison? I cited Dr. Xenakis' reports.
25 I cited some scholarly journals about that. That's a real

1 danger. It's hardly a coincidence that a considerable number
2 of radical preachers in the Middle East were all radicalized
3 in prison. I don't think any more prison beyond what I'm
4 asking for will do any good, and I was very careful at what I
5 selected because I think 40 months -- if the only reason we're
6 talking 60 is for general deterrence, I have a hard time
7 imagining that somebody is going to calculate whether, if he
8 gets on a plane and wants to go to Istanbul to try to get into
9 Syria to go fight with ISIS, that he's going to try to
10 calculate, well, let's see, kid in Chicago got this, and
11 somebody else got -- I just don't see the difference. I don't
12 see the difference between 40 and 20 as meaningful in that.

13 And that's my request. I think it's -- I think what
14 I'm asking for is not unrealistic in that regard. I don't
15 think deterrence is an overriding factor here in light of all
16 the circumstances if we're talking 3553(a). I think it's
17 obviously a point you have to consider. But I don't think
18 there's any specific deterrence you have to worry about
19 because it's certainly not going to be helped by 20 more
20 months, and from a general deterrence standpoint, I think it's
21 as much the same. I mean, 40 months for a first-time offender
22 who committed an offense when he was 19, and, you know, when
23 this started with his sister's involvement two years before
24 when he wasn't even an adult, I think a 40-month sentence is
25 -- I'm not saying it's harsh by any stretch of the imagination

1 because I understand the guidelines and you're correct on the
2 guidelines. But there are all kinds of times when the
3 guidelines just don't fit a case, and if there was ever such a
4 case, it doesn't fit this case. It just doesn't. This is a
5 terrorist case in the most technical sense of the term. And I
6 think that's very, very tricky. And, again, I think it's part
7 of this problem with going -- putting -- mixing up foreign
8 policy with the criminal justice system, and I think it's
9 tricky. These are difficult times we're in, but people have
10 always been in difficult times. I couldn't help but think
11 today, I read the *Washington Post*. There's an article in the
12 *Washington Post* today that they're citing *Korematsu* as a basis
13 for permitting a registry of Muslims in this country. Now,
14 I'm not saying that's going into effect, and the article goes
15 to that point. It was not an official transition team person,
16 but it was a high-up contributor to a pack for the
17 president-elect. I'm dumbfounded by that. I'm absolutely
18 dumbfounded that in civil liberties discourse in this country
19 today we could be talking about *Korematsu* as being precedent
20 for anything.

21 And that's the problem. That's the problem with the
22 war on terror in the criminal context. It's -- we
23 shouldn't -- and I hope you won't and I trust you won't --
24 give into, like, fear because that's what would happen if
25 somehow we were to apply the guidelines, if somehow we were to

1 have to scare everyone.

2 The fact of the matter is that Hamzah Khan is either
3 going to be okay or he's not. And the choice is his. As
4 Mr. Hiller said, these are the most severe supervised release
5 restrictions I have ever seen. I think I would venture to say
6 they are the most severe. I could not disagree more with
7 probation's recommendation of life. That would be a disaster.
8 That would be a -- that would give in to the very fear that
9 drives the same issue with talking about *Korematsu* and
10 registries and everything else: Let's keep an eye on him to
11 make sure nothing ever happens. And that's insane, with all
12 due respect. And it's not only insane, it's dangerous. It is
13 very dangerous to suggest that we have to then keep an eye on
14 somebody. We have to keep some type of preventative
15 detention. And you know as well as I do that that's right
16 around the corner in this country because we don't know what
17 we're going to do with Guantanamo. And these issues of
18 incredible civil liberties importance are being litigated an
19 issue at a time.

20 And I'm not trying to say the sky is falling on this
21 case; just the opposite. You know, five years is -- you know,
22 can we live with it? Of course we can live with it. We can
23 live with anything. But it's do we give in? Do we give in to
24 the fear that we just can't trust that this kid is ever going
25 to change? That's a real scary country for me to live in.

1 It's a real scary thought that we're going to have a
2 20-year-old kid on lifetime supervised release for wanting to
3 go join the Caliphate. That is very frightening to me. And I
4 think the government even acknowledges that. I mean, the plea
5 agreement called for, what, a minimum of 15 years. There's
6 legions of statistics even in just regular criminal justice
7 statistics about the recidivism and dangerousness of people
8 once they get into their 30s and 40s. You know, we don't
9 demand of our criminal justice system or our law enforcement
10 system that we stop every murder. We don't try to -- and God
11 knows in Chicago we don't do much of a job of that at all.
12 And we don't have that same demand because we haven't made a
13 political promise that there won't be any more attacks. And
14 to give in to the idea of a lifetime supervised release is
15 part of this whole fear of what happens if something goes
16 wrong, and so, therefore, we're going to have to try to ensure
17 that no attack ever takes place, I don't know how we do that
18 because there's too many other societal issues connected to
19 that, but we certainly shouldn't try to do it with the
20 criminal justice system. And, again, I'm only speaking to the
21 idea of a lifetime supervised release. I think that's
22 incredibly dangerous, and I'm really disappointed that the
23 probation office would react to that, particularly when
24 they're going to be the same people conducting the CVE, or the
25 Countering Violent Extremism. That doesn't mesh in my mind

1 with trying to help somebody. We're going to help you, but,
2 you know, we're going to put you on a real short leash. We're
3 not going to give you any incentive to get off of these
4 conditions. I mean, the whole negotiation over these
5 conditions had to do with giving Mr. Khan some incentive to
6 show that he doesn't need these conditions, and I think 15
7 years is more than sufficient to do that. And I think there's
8 just such great supervision you can impose during that time
9 that would be really helpful.

10 I don't think we should lose our bearings over cases
11 like this, and these cases have that danger. There have been
12 some heavy sentences in these cases. I think usually they
13 involve a lot worse things than this and a lot more evidence
14 of danger. But I think this is a real dangerous time to
15 attempt to fight a war. We still have individualized
16 sentencing, and I know you know that. I'm not trying to
17 demean any of this, but there's just -- I think I use the term
18 "atmospherics" in our pleading. Those atmospherics make this
19 difficult today.

20 This is an important case. It's an important case to
21 the government. I understand that. But it's also an
22 important case to all the supporters that came for the Khan
23 family. This is a very, very important case I think even for
24 Mr. Khan. I have seen your remarks in the other sentencings
25 about how maybe he could appreciate the justice he has

1 received, and I trust that's what he will get.

2 And I'll leave it at that. I think he deserves a
3 chance. I think he deserves mercy. I think he deserves the
4 training, but most importantly, I think he desperately needs
5 to go to college as soon as he possibly can. And that's why I
6 selected August of next year because that's what he needs.
7 His best thinking got him here. And if he doesn't change his
8 thinking, then it's going to be only a matter of time. But I
9 wouldn't, if I were king, and nobody has even suggested --

10 THE COURT: Thanks for the promotion.

11 MR. DURKIN: Pardon me?

12 THE COURT: Thank you for the promotion.

13 MR. DURKIN: That I wouldn't run the risk of more
14 time in prison. I would rather run the risk to see whether he
15 could get his act together. I think he will, and I think he
16 deserves that chance.

17 Thanks.

18 THE COURT: All right. Mr. Khan, could you come
19 forward, please.

20 All right. Mr. Khan, you have the right but not the
21 obligation to make any comments you wish to. So you have the
22 right to do so but in no way are you required to make any
23 comments or remarks at all.

24 THE DEFENDANT: Yeah. I don't wish to make any
25 statements right now.

1 THE COURT: All right. Then I'm going to discuss the
2 factors that I think are material to the sentence to be
3 imposed in this case.

4 Under Section 3553(a) of Title 18, I am required to
5 impose a sentence that is sufficient but not greater than
6 necessary to serve the objectives of -- that are set forth in
7 that statute, which include the need for the sentence imposed
8 to reflect the seriousness of the offense, to promote respect
9 for the law and to provide just punishment for the offense, to
10 afford adequate deterrence to criminal conduct, to protect the
11 public from further crimes of the defendant and to provide the
12 defendant with needed educational or vocational training,
13 medical care or other correctional treatment in the most
14 effective manner. These four considerations align with the
15 four generally recognized objectives of criminal sentencing,
16 which are retribution, deterrence, incapacitation and
17 rehabilitation. And federal courts are required to fashion
18 sentences that will achieve all of those purposes to the
19 extent that they are applicable in a given case.

20 To do that, the Court must consider the nature and
21 circumstances of the offense of conviction and the history and
22 characteristics of the defendant. The Court is required to
23 consider a variety of factors, such as the kinds of sentences
24 available under the law, and that includes the applicable
25 sentencing guideline range and the policy statements that

1 inform the operation of the sentencing guidelines, the need
2 for the sentence imposed to avoid unwarranted disparities
3 among defendants with similar records who have been found
4 guilty of similar conduct, and in appropriate cases the need
5 to provide restitution to victims of the offense.

6 Many of the factors that bear on these objectives and
7 many of the objectives themselves are overlapping. Some of
8 the factors relevant to those objectives point in different
9 directions, and it is the Court's task to balance all of those
10 factors in a manner that best promotes all of the sentencing
11 objectives as they are relevant in this case.

12 In doing that, I start with the nature and
13 circumstances of the crime committed by Mr. Khan. And within
14 that heading, I start with the seriousness of the offense.
15 And I'm not going to belabor the point. Mr. Khan set off to
16 join and aid a terrorist organization that believes it's
17 appropriate and believes it's indeed holy to kill anyone who
18 disagrees with its religious dogma, not just people of other
19 faiths, such as Buddhists or Jews or Christians, but even
20 other followers of Islam who deviate in any way from ISIL's
21 interpretations of the Quran. That organization is a
22 terrorist organization, and the fact that its message is
23 religious or purports to be religious rather than overtly
24 political is a distinction without a difference.

25 I understand, Mr. Durkin, your point on some level

1 that Mr. Khan was inspired to join the Caliphate, but this is
2 an organization where the distinction between the Caliphate
3 and the distinction between a terrorist organization is
4 nonexistent. To want to join the Caliphate is to want to join
5 jihad, which is war. It's not the United States that has
6 interjected metaphors of war into the equation. The war is --
7 being fought by ISIL is jihad, and that can't be separated
8 from the purpose of this organization. There wasn't a
9 beneficent purpose to the organization and a maleficent
10 purpose to the organization. This is one organization with
11 one objective, and that objective is jihad. That's the
12 organization, Mr. Khan, that you set off to join. I
13 understand at age 19, 18, 17 when you were contemplating these
14 things that you were young and impressionable, so much more so
15 were the individuals that I think you were responsible for
16 ultimately being with you in the airport on your way to Turkey
17 in October of 2014.

18 So I find the seriousness of this offense to be quite
19 troubling, and I don't believe for a second that you really
20 believe that you would go to ultimately Syria and work as a
21 chef or work as a cook, that this is an organization that
22 would respect that kind of a wish of an able-bodied 20 year
23 old. And as you told me during your plea, you were prepared
24 to do anything called upon, including taking up arms. So,
25 again, this was a serious offense, and I think you understood

1 what you were effectively signing up for when you headed to
2 O'Hare Airport that day. You were 19 years old. You have
3 been -- you have led by almost any measure a very sheltered
4 life that, I completely agree with Mr. Durkin's assessment,
5 leaves individuals like yourself vulnerable to be preyed upon
6 by criminals, to be preyed upon by terrorists and be recruited
7 into their ranks. I also agree with Mr. Durkin that that does
8 not excuse your conduct. At 19 years old, for better or
9 worse, we consider people adults, and they are accountable for
10 their conduct.

11 So against those choices that you made, I also do
12 consider the fact that you have absolutely no criminal record.
13 The people who know you best, your parents, your friends, your
14 relatives, the people who are here supporting you today, the
15 people that have written letters to the Court I have no
16 question were absolutely dumbfounded by your actions, which,
17 by all accounts, are completely at odds with what everyone
18 understood you to be and describes you to be, as a caring
19 human being capable of love and friendship and generosity.
20 And I have great difficulty reconciling those two pictures, a
21 young man willing to go and join an organization whose
22 professed goal is to exterminate anyone who disagrees with
23 their religious dogma with the young man who tutors children
24 in math, plays basketball with his friends in high school,
25 accompanies his father to work. Those are two portraits that

1 are very difficult to reconcile, but that's what I'm required
2 to do in assessing what the objectives of this sentence are.

3 I agree with Mr. Durkin that this is a case where
4 deterrence perhaps is not the foremost consideration. While
5 obviously there does need to be a sentence imposed that will
6 speak to not only you but to others and will speak with a
7 voice that says this is a serious crime, this is conduct that
8 cannot be tolerated, the real issue here I think in assessing
9 these factors is risk and what is the risk that you pose to
10 the public going forward. And I agree again with Mr. Durkin,
11 and I don't think the government disagrees either, that a
12 sentence that never offers you the opportunity to prove
13 yourself is a sentence that will, in all likelihood, be
14 counterproductive and will increase the risk as opposed to
15 decreasing the risk.

16 There has to be a prison sentence here. No one
17 disputes that. There has to be a significant term of
18 supervised release. No one disputes that. And there's --
19 again, I agree with much of what Mr. Durkin has said without
20 endorsing any of the issues raised, the contextual issues that
21 have been raised about the introduction or the juxtaposition
22 of politics in the criminal justice system. The question here
23 and the two competing visions of what's appropriate here, not
24 that either of those define the range that the Court is bound
25 by, are separated by a question of 20 months of imprisonment.

1 And it is difficult to -- when viewed at that level to discern
2 a meaningful distinction that is going to meaningfully affect
3 the calculus of when adequate deterrence has been reached,
4 when adequate incapacitation has been reached in the
5 relatively narrow difference between the parties with respect
6 to the sentence to be imposed in this case. I think that the
7 parties are in the appropriate neighborhood. I think that the
8 praise that Mr. Durkin has directed to the United States
9 Attorney's Office here and its ability to consider this case
10 in its full context is appropriate and deserved. I think the
11 government has taken a very restrained, principled and
12 compassionate approach to the prosecution not only of this
13 case but of the other individuals who were involved in this
14 conduct.

15 So when I sit here and I assess what is the prison
16 sentence that is necessary, the question for me comes down to
17 the question of, you know, what is -- is there a basis to
18 think that an additional 20 months in prison is going to make
19 a meaningful difference in the risk that Mr. Khan poses to
20 society? I don't think it will. Mr. Khan committed this
21 crime when he was 19 years old. He's never posed any other
22 danger to society. And under -- even the level that the
23 parties have agreed to, he's going to be under strict and
24 extensive supervision for an extended period of time.

25 I agree again with Mr. Durkin that this crime is in

1 part explained by and due to the cloistered and sheltered
2 existence that Mr. Khan has led which left him ill-equipped to
3 address the -- or think clearly about the proposals that were
4 being made to him. Again, it does not mean he's not
5 responsible for those decisions, but the question, again, is
6 how do we best remedy the problem that led him to the
7 decisions that he has made. And I don't think that imposing
8 years and years of prison time is a method that is best
9 calculated to reducing the threat that -- and the risk that
10 Mr. Khan poses.

11 We are prognosticating here to a large degree, and we
12 can't know for certain what the future holds. Mr. Khan, as I
13 sit here and I talk to you right now, I don't have a crystal
14 ball. I can't read your mind. I don't know if you're sincere
15 or not. I agree with the government that you have done what
16 you are able to do to demonstrate as clearly as you can
17 through your actions, if not your words, that you have come to
18 understand the foolishness of your course of conduct. But
19 ultimately you're going to have to demonstrate that, and
20 you're going to have to live that. And your best chance for
21 doing that and our best chance for you doing that I don't
22 think comes after years of additional incarceration in this
23 case, which while for some offers them opportunities that end
24 up -- and I intend no indictment of our prison system, but
25 this isn't what our prison system was made to do, to instill

1 the maturity and judgment and life skills necessary to address
2 these kinds of recruitment. That's not what the prison system
3 does. What I think will more likely accomplish those
4 objectives is treatment, education and supervision, the things
5 that are going to be central hallmarks of a term of supervised
6 release in this case.

7 Trust but verify. You've got to be given the
8 opportunity to learn and to be exposed to a broader world than
9 you have been exposed to so that you understand the
10 limitations and the defects in the presentations that have
11 been made to you about this religious utopia. Those are not
12 skills that you're going to get by spending years more in
13 prison. Those are skills that you're going to get by going to
14 college, by undergoing counseling, by having exposure to
15 family and friends who live responsibly in this world who can
16 mentor you and continue to teach and guide you and by having a
17 system in place that assures that if, despite our efforts, you
18 don't seem to be getting it, if, despite our best efforts,
19 you, in fact, do not and have not been sincere in your
20 rehabilitation, then we will know that, and we will know that
21 we have made the wrong call before it is too late and before
22 anyone is harmed.

23 So I think the appropriate sentence in this case, I
24 am going to impose a sentence of imprisonment that has been
25 requested by the defense. I'm going to impose a sentence of

1 40 months of imprisonment, which, assuming your good conduct,
2 will allow you to begin college in August of 2017. I don't
3 want to be confused as suggesting that college itself is a
4 panacea. It's one piece of the puzzle. It's one ingredient
5 that is necessary but not sufficient to ensure that Mr. Khan
6 does not, in fact, present a risk to the public going forward.

7 So I'm going to impose the sentence of 40 months.
8 Mr. Khan has served more than half of that. And, again,
9 assuming his good conduct for the rest of his prison term,
10 he'll be out on supervised release in time to begin going to
11 college.

12 I want to talk about -- the terms of supervised
13 release that are set forth in the government's submission are
14 generally I think adequate in some cases, though I have some
15 specific questions about the implementation of several of
16 these conditions, and I want to talk about that first.

17 I guess before we get to the specific conditions,
18 however, the term of supervised release, the parties have
19 agreed that it should be a minimum of 15 years. While I in no
20 sense disagree with Mr. Durkin's assessment that a term of
21 life supervision is inappropriate here, the issue here is, is
22 in my view, again, not the question of incapacitating and
23 imprisoning Mr. Khan for an extended period of time but
24 trusting and verifying. At the end of 15 years, Mr. Khan will
25 be roughly 35 years old. While that is an age that represents

1 and we all certainly hope will find Mr. Khan with much greater
2 maturity and much better judgment than he has now, that is
3 also a time when the risk of further criminality, the risk of
4 further participation and attraction to this sort of conduct
5 certainly can't be ruled out.

6 So from my view, the term of supervised release needs
7 to be longer than 15 years. I'm going to impose a modestly
8 longer period of time of 20 years of supervised release which
9 will take Mr. Khan into his 40s. At that stage I think it's
10 reasonable to believe that we would have a good sense of
11 whether Mr. Khan's remorse, rehabilitation, role in the
12 community, the indicia of his life would be adequate to
13 suggest that further supervision is not necessary. And it may
14 well be that those factors are evident to everyone's
15 satisfaction before that term of supervised release has
16 concluded. The agreement of the parties is Mr. Khan will not
17 receive reduction in the term -- or early termination of the
18 term of supervised release for a period of ten years, I
19 believe.

20 MR. HILLER: That's right.

21 THE COURT: I may or may not be here in ten years.
22 The same could be said of all of us. Somebody will be here in
23 ten years. And if there's an argument to be made --

24 MR. DURKIN: Your odds are probably better than mine.

25 THE COURT: Well, we'll see. If there's an argument

1 to be made that further supervision is not necessary, either
2 Mr. Durkin or someone in his stead will be available to make
3 that argument, and I or someone else in my stead will listen
4 to that argument and consider it. But at the outset, at this
5 stage, given the uncertainties and the risks and the
6 consideration of the public's safety, I think that a somewhat
7 longer period of supervision should be implemented knowing
8 that that can be revisited and shortened if the evidence is
9 there to do that. So I'm going to impose the term of
10 supervised release of 20 years.

11 Now, with respect to the conditions of supervised
12 release, I am required to impose a variety of conditions, some
13 of which I'm required to impose, some of which I imposed
14 because they are prudent and I believe appropriate to ensure
15 that effective supervision over that term of supervised
16 release can be accomplished.

17 Mr. Khan, during the term of supervised release, you
18 cannot commit any other federal, state or local crime.

19 You may not unlawfully possess any controlled
20 substance, and you must cooperate in the collection of a DNA
21 sample if the collection of such a sample is required by law.
22 Those are mandatory conditions I am required to impose.

23 Now, there are a number of additional conditions.
24 You will be required to seek, and if you obtain work, to work
25 conscientiously at lawful employment or to pursue

1 conscientiously a course of study or vocational training that
2 will equip you for employment going forward.

3 You must refrain from knowingly meeting or
4 communicating with any person who you know to be engaged or
5 planning to be engaged with any criminal activity.

6 And you must refrain from knowingly meeting or
7 communicating with any person who claims to be associated with
8 a foreign terrorist organization, who claims to be involved
9 with violent acts or advocating for acts of violence and with
10 any persons who are located outside of the United States
11 without the prior approval of the United States Probation
12 Office. The need for that condition obviously is to preclude
13 communications that led to -- of the sort that led to the
14 commission of the crime that you have been convicted of.

15 You must refrain from possessing any firearm,
16 destructive device or other dangerous weapon.

17 You must participate at the direction of the
18 probation office in any mental health treatment program, and
19 any such program may include, at the recommendation of
20 appropriate professionals, the use of prescription medication.

21 You will be required to work and provide community
22 service. I'm going to impose a community service -- an annual
23 community service requirement of 100 hours. That's a slight
24 reduction from what the government proposed of 120 hours, 100
25 hours per year of supervised release, for the first five years

1 of the term of supervised release. By that time I expect that
2 you would be fully employed. I would also expect that work in
3 community service would become a part of your life without the
4 requirement of it being a term of your supervised release,
5 someone who professes to care for their fellow man, who should
6 be looking for opportunities to serve the community, whether
7 they're imposed on you or not. I think the reward for
8 community service, once you have -- it has become an ingrained
9 part of your life will prompt you to continue that pattern,
10 but I will not require it as a term of supervised release for
11 more than the first five years.

12 There are a number of conditions that assure that the
13 probation office can effectively monitor your whereabouts and
14 your activities. Those include that you must remain within
15 the district where you are being supervised, which absent
16 further court order will be the Northern District of Illinois
17 unless you're granted permission to leave by the Court or by
18 probation. You must report to probation when you are directed
19 by the Court or by probation.

20 You must permit probation officers to visit at any
21 reasonable time at home, work, school or community service
22 location or other reasonable location specified by probation.
23 And during such visits, you must permit the confiscation of
24 any contraband that the officers may observe in plain view.

25 You must notify probation within 72 hours if you

1 change your residence or your employer or your workplace.

2 And unless there is some constitutional or other
3 legal privilege that permits you not to do so, you must answer
4 any questions posed by the probation office.

5 You must also notify probation promptly, within 72
6 hours, if you are arrested or questioned by any law
7 enforcement officer for any reason whatsoever.

8 You must also satisfy a number of other special
9 conditions.

10 You are required to submit at any time, with or
11 without a warrant, to a search of your person or any property,
12 house, apartment, residence, vehicle, records, computer,
13 electronic communication devices or other data storage devices
14 or electronic media or social media accounts, electronic
15 communications accounts, e-mail accounts or other electronic
16 communication accounts by any probation officer or other law
17 enforcement officer acting at the request of a probation
18 officer who has reasonable suspicion concerning a violation of
19 a condition of these terms of supervised release or a
20 violation of state or federal law while in the lawful
21 discharge of that officer's supervision functions.

22 The purpose of that is, again, to effectively enable
23 probation to monitor your activities and to verify that you,
24 in fact, are not conducting the sort of communications and
25 activity that led to your conviction in this case in your

1 commission of the offense in this case.

2 You will be required to participate in job skill
3 training programs at the direction of probation during the
4 period of supervised release, unless you are registered as a
5 full-time student pursuing an associate's degree, a bachelor's
6 degree, a graduate degree or other vocational training.

7 If you're unemployed -- if you're not in school and
8 you're unemployed for a period of more than 60 days, you will
9 be required to perform additional periods of community
10 service, up to an additional 20 hours per week until you
11 either return to school or achieve employment. Again, it may
12 not be a saying that you are familiar with, but it is --
13 there's a phrase, idle hands are the devil's workshop. You
14 need to be working, studying, directing your energies, keeping
15 busy in a productive life, not trolling the Internet, not not
16 contributing in a productive fashion. So many of these
17 supervision requirements are designed to make sure that you
18 are doing the things that will reduce the risk that you pose
19 of future criminal conduct and will increase the likelihood
20 that you will have the tools and the education necessary to be
21 a productive and contributing member of our society.

22 You must provide probation with access to any
23 requested financial information necessary to monitor
24 compliance with any of the conditions of supervised release
25 that have been imposed.

1 Now, Mr. Hiller, one of the conditions suggested by
2 the government here was that the defendant not enter into any
3 agreement to act as an informant or a special agent of law
4 enforcement. That's in special condition No. 11.

5 We also have special condition No. 14 which
6 appropriately reflects the ongoing cooperation requirements
7 set forth in the plea agreement. I'm not sure that the
8 language that is set forth in the government's recommendation
9 really reconciles those two obligations.

10 MR. HILLER: Paragraph 11 was meant to address
11 proactive and any type of interaction with law enforcement
12 that we would not be aware of. If Mr. Khan, which is highly
13 doubtful, was asked to engage in proactive work, it would be
14 the government's intention to petition the Court and advise
15 the Court that we would be putting Mr. Khan in that type of
16 situation. At this point in time, we don't think Mr. Khan
17 associating with the types of individuals that made him
18 responsible for this would be productive, and we just put it
19 in as a condition. It's not necessary but just to be
20 complete.

21 THE COURT: All right. What I'm going to do is with
22 respect to that condition, I'm going to just preface it by
23 saying except as set forth in 14a below, the defendant shall
24 not enter into any agreement, et cetera.

25 Mr. Khan, understanding what Mr. Hiller has said, you

1 can't act as an informant or a special agent of law
2 enforcement without the permission of the Court except as you
3 are being directly supervised and directed by the United
4 States Attorney's Office consistent with the terms of your
5 plea agreement in this case. And I suppose -- I want to --
6 I'm going to add language that makes clear that any proactive
7 cooperation requires court notification and approval.

8 The next recommended condition is the third-party
9 notification. I am not going to impose requirement of
10 third-party notification. Probation, if there is a concern,
11 can raise the issue with the Court, but I'm not going to
12 impose an affirmative obligation on Mr. Khan to make
13 third-party notification. If third-party notification is
14 appropriate, it can be authorized by the Court for probation
15 to make as necessary. So I don't think that's a necessary
16 term of supervised release.

17 Mr. Khan, you will also be required to attend violent
18 extremism counseling from providers as directed by the
19 probation office. And you must also authorize as necessary
20 the release of any mental health treatment records or violent
21 extremism counseling records to the probation office. Again,
22 that is so that the risk of recidivism here can be effectively
23 monitored.

24 MR. DURKIN: Judge, could I just ask.

25 THE COURT: Yes.

1 MR. DURKIN: I'm assuming it's implicit in this that
2 probation couldn't otherwise share them with anyone without
3 court approval?

4 THE COURT: That is implicit and is a requirement of
5 law, I believe.

6 MR. DURKIN: I just -- that would be my only concern
7 with that. You know, I don't know...

8 THE COURT: We'll add some wording, for the exclusive
9 use of probation and the Court.

10 MR. DURKIN: Thank you.

11 And just to be safe, could we just say there will be
12 no dissemination without court approval?

13 THE COURT: Yes. All right.

14 Now, there are also, Mr. Khan, conditions here that
15 relate to your -- the requirement that you comply with the
16 requirements of the computer and Internet monitoring program
17 administered by the probation office. You must consent and
18 with respect to any computers or devices capable of accessing
19 the Internet that are in -- and I'm going to add this
20 language -- that are in your personal possession, custody or
21 control, that you consent to the installation of computer
22 monitoring software on those computers. And by that I mean
23 software that may restrict and/or record any and all activity
24 that occurs on the computer, including the capture of
25 keystrokes, the application information, the Internet use

1 history, e-mail correspondence and chat conversations. Notice
2 will be placed on any such devices at the time of installation
3 to warn others of the existence of the monitoring software,
4 and you may not remove, tamper with, reverse-engineer or in
5 any way circumvent such software.

6 Now, Mr. Hiller, I think that the term "in the
7 defendant's personal possession, custody or control as
8 necessary," we certainly hope that Mr. Khan will move forward
9 with his life and have productive employment. And I don't
10 think it's appropriate or reasonably feasible from a legal
11 standpoint to impose monitoring software on a third-party
12 computer like that. Does the government take any different
13 view?

14 MR. HILLER: No. No.

15 THE COURT: All right.

16 MR. HILLER: The probation office is not going to be
17 asked to put the monitoring software on a legitimate business'
18 computers.

19 THE COURT: All right. So that's the purpose of
20 adding in "the defendant's personal possession, custody or
21 control." That would not extend to devices that are the
22 property of an employer and subject to the employer's rights
23 as opposed to Mr. Khan's rights.

24 In addition, as part of the computer and Internet
25 monitoring program, you must allow probation to search any of

1 the devices or accounts that I have described that are in your
2 personal possession, custody or control up to four times a
3 month between 6:00 a.m. and 10:00 p.m. during the entire
4 period of supervised release. And I'm going to add, again,
5 just for clarity that this condition does not waive the right
6 of any other person or entity with respect to such devices,
7 accounts or property to ensure that any other entity that had
8 a protected right would have the -- the government would have
9 to address that right in order to carry out such a search.
10 But that would not apply to any property -- personal property
11 of Mr. Khan that is in his possession, custody or control.

12 Now, to the extent that any of the obligations under
13 the computer and Internet monitoring program are released
14 during the period of the term of supervised release, you will
15 nevertheless be required to provide notice to probation within
16 24 hours of opening any new online or communication accounts
17 that would enable you to communicate through electronic
18 devices or online.

19 You will be required to seek prior approval by the
20 probation office before you possess or -- before you possess
21 any device that can access the Internet. Now, again, and I'm
22 on paragraph F of condition 14, special condition 14. Both
23 subparagraph (i) and (ii) purport to -- would require prior
24 approval by probation for the use of any device that can
25 access the Internet, as well as in subparagraph (ii)(2) that

1 there be prior approval before accessing any website as well.
2 I have a question -- I just question the feasibility of those
3 restrictions. Given our hope and expectation that Mr. Khan
4 will be employed at some point, will be a student at some
5 point, how it's reasonably practical that he can obtain
6 advance notification from probation before accessing a
7 specific website?

8 MR. HILLER: I think it's a matter he's going to have
9 to work out with probation as he crosses those milestones. I
10 agree that functioning in an office environment or functioning
11 as a bachelor's degree student at a college is going to
12 require him to access the Internet and, in fact, many of his
13 classes may be online. We contemplate for that. But I think
14 he will be able to work through the computer Internet
15 monitoring software with probation. It's going to require
16 advance notice. It's going to require obtaining his syllabi
17 beforehand and working through what his requirements are so
18 that they can set the thresholds on the computer Internet
19 monitoring so he can even access those, so he can physically
20 access them because the program will limit where he is able to
21 go. So if he's on his home laptop, he will just not be able
22 to enter any website that he wants to and reach that website.
23 He will be prohibited, will not be able to access those sites.
24 So he's going to have to determine what types of sites and
25 work through those things. And it will be hard, and there

1 will be a lot of obstacles, but I know probation is prepared.
2 And they've been working through these issues and will be able
3 to accomplish them.

4 I think we can come back to the Court to seek
5 modification. Obviously my office understands the purpose of
6 these supervised release conditions in furthering his
7 education, and we're not going to stand in the way of that or
8 his employment. But at the same time, it is just too
9 impossible to allow him to access the web without extremely
10 serious conditions at first. And then as time comes on, I
11 think we can -- based on his response to the Court's
12 conditions can modify those appropriately. But he wouldn't be
13 able to take any computer class on day one. He wouldn't be
14 able to take any job without working through those issues with
15 probation. Just physically it wouldn't be possible.

16 THE COURT: All right. Well, again, it's not just a
17 question of taking a computer class. It's probably a question
18 of taking any class from the standpoint of, as you've said,
19 you know, most of this material is online now. Even if you've
20 got a syllabus for a particular course, you know, with a
21 required reading, you know, there might be internal jump sites
22 to reference materials, things like that. I mean, I don't
23 know as a practical matter -- I mean, how are you -- and maybe
24 this may be the way that the software works, and I don't
25 understand enough about how the software works. And I -- I

1 completely understand. I'm not suggesting the government is
2 trying to set Mr. Khan up to fail here, but how is this, on a
3 routine basis, handled in a way that permits someone to, you
4 know, reasonably do the assigned reading in several college
5 courses?

6 MR. HILLER: There is no routine basis because this
7 is the first time that we have taken the computer Internet
8 monitoring software and applied it to a situation like that.
9 So this is a unique situation. Probation has spent a lot of
10 time working through these issues already. I have spent a
11 considerable amount of time working through these issues. We
12 do realize that they will present obstacles, and I believe
13 we'll be able to work through them. But I do think it's
14 important that the conditions are restrictive initially and
15 then we ask to modify upon understanding the situation at that
16 point in time. When he comes in and if it's not practical,
17 then we come to the Court and say, we're going to have to
18 relax these to allow him to function as a student, as opposed
19 to giving him that freedom now. We just don't know the
20 situation he will be in. It could be a situation where we
21 give him a lot of latitude but really prevent the
22 communication applications. But we don't know where he's
23 going to be in 40 months and what he's going to be asking to
24 do so we would prefer those, the restrictions, to be at the
25 highest level now and then allow us to either work through

1 probation's discretion. They obviously maintain a lot of
2 discretion in applying the computer internet monitoring
3 program, and if it's not applicable, petition Your Honor for a
4 change in the conditions.

5 THE COURT: All right.

6 Mr. Durkin, do you have any --

7 MR. DURKIN: Well, we talked about this a lot. I
8 don't profess to understand half of the sophisticated computer
9 monitoring, and obviously from a philosophical basis, I recoil
10 from it. But I think Mr. Hiller and I have been able to work
11 things out. I don't disagree with him that we should wait and
12 see where he's at. I think maybe if we -- I mean, we have a
13 record here. I think -- I guess, you know, I mean, we could
14 start parsing it but, you know, does it --

15 THE COURT: Well, it is obviously difficult to craft
16 the precise language at this stage.

17 MR. DURKIN: Right.

18 THE COURT: All right. I'm satisfied at this point.
19 You understand where I'm at. If there is a problem that
20 poses, you know, a material impediment to Mr. Khan's ability
21 to do the work necessary to, you know, complete his
22 coursework, I mean, I think we're all in accord --

23 MR. DURKIN: Could I have a second to talk -- could I
24 just ask Mr. Hiller something?

25 (Off the record.)

1 MR. HILLER: Judge, just to give you an example,
2 without these conditions as restrictive as they are, if he's
3 not working or if he's not in school upon his release or at
4 some point during his period of supervised release, he would
5 be able to access any computer that's not part of a computer
6 Internet monitoring program and have free reign. So until he
7 has a job or until he has a class that requires certain levels
8 level of access to the Internet, we'd prefer to keep it
9 strict. And at that point in time, we could say for purposes
10 of this job, you're able to access the Internet once we
11 understand what the job is going to be.

12 THE COURT: Sure.

13 MR. HILLER: So that really underlies the purpose.

14 THE COURT: All right. So I'll leave it as is,
15 understanding that if there is some material impediment that
16 you're not able to work out, that can be brought back and
17 addressed. I'm satisfied everyone is on the same page here,
18 that no one wants to impose that sort of impediment to
19 Mr. Khan getting what everyone agrees is the necessary
20 education to equip him to move forward productively.

21 All right. So those restrictions as set forth, you
22 cannot possess or use any device that can access the Internet
23 without prior approval of probation. You must seek prior
24 approval by probation to access websites or online
25 applications.

1 You may not view any online social media, chat
2 services, blogs, instant messaging or other communications,
3 applications or sites without prior approval from the
4 probation office. You may not use any encryption services or
5 online encrypted communication applications without prior
6 approval of probation or the Court. You may not use any
7 service or application that is designed to disguise, mask or
8 anonymize your online activity without prior approval of
9 probation or the Court, and you may not use any online gaming
10 services or systems without prior approval of probation or the
11 Court.

12 And, finally, with respect to those requirements, if
13 you have any questions about whether activity relating to the
14 use of computer services or accessing online sites or services
15 or application, all such questions should be addressed with
16 probation and/or the Court before resolving them on your own.

17 All right. I think that was it for the terms of
18 supervised release.

19 As set forth in and based on our discussion,
20 Mr. Durkin, do you have any objections to those terms of
21 supervised release?

22 MR. DURKIN: No, Judge.

23 THE COURT: All right. Are there any aspects of the
24 sentence to which you object at this point?

25 MR. DURKIN: No.

1 THE COURT: All right.

2 The government, in requesting the sentence to be
3 imposed of five years, I don't know if you ever expressly made
4 the motion, but I understand the government moved to --

5 MR. HILLER: Absolutely.

6 THE COURT: -- have the sentence depart from the
7 applicable guideline range to a sentence of five years. I
8 have actually gone below the government's recommendation. The
9 government has made the required motion.

10 The defendant is therefore -- his right to appeal the
11 sentence or his conviction on any basis other than the
12 voluntariness of his guilty plea or ineffective assistance of
13 counsel, which would face a hard road in light of Mr. Durkin's
14 very fine service, has been waived, but if any appeal is to be
15 taken from the judgment in this case, it must be done within
16 14 days of entry of judgment on the docket, which will be
17 entered in all likelihood on Monday.

18 Mr. Durkin, are you seeking any recommendation
19 regarding the place of incarceration for the balance of the
20 term of imprisonment?

21 MR. DURKIN: I would ask that he remain at the MCC.

22 THE COURT: Okay. I'm happy to make that
23 recommendation.

24 Mr. Khan, you need to understand that I do not have
25 the authority to dictate to the Bureau of Prisons where they

1 put you for the remainder of the prison term. That is up to
2 them.

3 From probation's perspective, is there anything I've
4 neglected to offer?

5 PROBATION OFFICER CHRISTIANSEN: No, Judge.

6 MR. DURKIN: Judge, there is an issue that Mr. Hiller
7 raises regarding --

8 MR. HILLER: Just with respect to recommendation that
9 Mr. Khan has publicly been named as a cooperator for the
10 government, so the Bureau of Prisons takes that into
11 consideration.

12 THE COURT: All right.

13 MR. HILLER: That was a discussion Mr. Durkin and I
14 had some number of weeks ago.

15 THE COURT: Okay. There are many factors the Bureau
16 of Prisons has to take into account, that being one of them.
17 They will also consider my recommendation, but ultimately they
18 are responsible for the security and management of those
19 institutions, and they have the final say in terms of where
20 somebody is designated. So it may end up being the MCC. It
21 may not.

22 All right. Anything else, Mr. Hiller, from the
23 government's perspective?

24 MR. HILLER: Judge, just imposition of special
25 assessment. That would be it.

1 THE COURT: Thank you. I am not imposing a fine. I
2 don't believe Mr. Khan in the foreseeable future will have the
3 resources to pay a fine.

4 Restitution is not an issue in this case.

5 I am required, however, to impose a special
6 assessment on the count of conviction of \$100.

7 Mr. Khan, I have made similar remarks before. You
8 have not been present for -- on those occasions, but I want to
9 end this proceeding by expressing my hope that you appreciate
10 what has happened in this case, which may be somewhat
11 difficult for you to do standing there in custody. But I want
12 to think about this: You are standing there as someone who
13 was on his way to joining an organization that would like
14 nothing better than to destroy the United States. And you,
15 who professed to regard this country as your enemy, have not
16 been treated as an enemy. You have been treated with
17 compassion and respect by the representatives of this
18 government, and that is certainly not the treatment a defector
19 would have received at the hands of ISIL. Instead of a public
20 beheading, you have been given a public trial proceeding. You
21 have had the benefit of able counsel. Your family and your
22 friends have had the right to be heard and have had the right
23 to be present here for every proceeding in this case.

24 You have been sentenced only after consideration of
25 your personal history and characteristics, and the sentence

1 that has been imposed in this case is far lower than the
2 sentence that the law would allow. And as part of that
3 sentence, you are going to be provided with support and
4 resources to help ensure that the mistakes you have made that
5 have put you in this circumstance will not haunt you for the
6 rest of your life and will not drag you down for the rest of
7 your life.

8 The enemy government has not tried to kill you. It
9 has tried to help you. And I don't think there is anything
10 that can demonstrate more eloquently or more powerfully this
11 country's respect for the dignity and worth of all human
12 beings than the justice and compassion that it extends even to
13 those who would seek to destroy it. Nothing can better expose
14 the moral depravity that is ISIS than to contrast its
15 barbarism with the very highest standards of civilized
16 behavior, and those are the standards that the government of
17 the United States has met in this case. And it is my profound
18 hope that by providing such clear evidence of the contrast
19 between civilization and barbarism that you will actually help
20 the world oppose and defeat ISIL rather than promoting it.
21 That would be the best penance that you could possibly perform
22 for the commission of this crime, and I hope you will continue
23 to do it.

24 We are adjourned.

25 MR. DURKIN: Thank you, Judge.

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MR. HILLER: Thank you, Your Honor.
(Which were all the proceedings heard.)

CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/Kelly M. Fitzgerald

December 12, 2016

Kelly M. Fitzgerald
Official Court Reporter

Date