

CR-17-00360-PHX-JJT-1, March 3, 2020

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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5	United States of America,)	
6)	
7	Plaintiff,)	
8	vs.)	
9)	CR-17-00360-PHX-JJT-1
10	Abdul Khabir Wahid,)	
11)	
12	Defendant.)	
13)	March 3, 2020
14)	9:01 a.m.
15)	

BEFORE: THE HONORABLE JOHN J. TUCHI, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
 Sandra Day O'Connor U.S. Courthouse, Suite 312
 401 West Washington Street, SPC 35
 Phoenix, Arizona 85003-2151
 (602) 322-7245/(fax) 602.322.7253

Proceedings Reported by Stenographic Court Reporter
 Transcript Prepared by Computer-Aided Transcription

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A P P E A R A N C E S

For the Government:

JOSEPH E. KOEHLER, ESQ.
KRISTEN BROOK, ESQ.
U.S. Attorney's Office
40 North Central Avenue, Suite 1800
Phoenix, AZ 85004-4408
602.514.7500

For the Defendant:

JOHN W. MCBEE, ESQ.
Law Office of John W. McBee
3104 E. Camelback Road, PMB 851
Phoenix, AZ 85016
602.903.7710

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I N D E X

TESTIMONY

WITNESS	Direct	Cross	Redirect	Recross
JOHN O'STEEN, M.D.	13	23		

MISCELLANEOUS NOTATIONS

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P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Defendant is present and in custody.)

(Proceedings begin at 9:01.)

COURTROOM DEPUTY: This is criminal cse 17-360,

09:00:57

United States of America v. Abdul Khabir Wahid, on for
sentencing.

Counsel, please announce.

MS. BROOK: Good morning, Your Honor. Kristen Brook
on behalf of the United States. Here as well, Joe Koehler and
Special Agent Brittany Stephenson from the FBI.

09:01:06

THE COURT: All right. Good morning.

MR. MCBEE: Good morning, Your Honor. John McBee
appearing on behalf of Mr. Wahid who is present and in custody.

THE COURT: Good morning, Mr. McBee.

09:01:18

Good morning, Mr. Wahid.

THE DEFENDANT: Good morning.

THE COURT: One housekeeping matter before we move
forward. I understand the probation officer is not in the
witness box because we will be having a witness as the
sentencing proceeds this morning. In case I have questions and
I want to have you on the microphone, Officer, I probably would
rather have you over here. That will save us a couple of
steps. The first thing that we need to take up is the filing
that Mr. Wahid initiated on his own I think yesterday. It

09:01:25

09:01:44

United States District Court

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1 reached my chambers this morning and I've had the opportunity
2 to review it. And that is a motion essentially to terminate
3 counsel again and I assume represent yourself Mr. Wahid.

09:01:51

4 DEFENDANT WAHID: Yes.

5 THE COURT: All right. Thank you, sir.

09:02:06

6 Mr. McBee, did you have an opportunity to see it?

7 MR. MCBEE: I did. And I also talked to my client
8 about it yesterday. He indicated that at the time he was
9 willing to withdraw it, but I'm not sure that's still the
10 situation.

09:02:16

11 THE COURT: All right. I'm going to check on that in
12 just a moment.

13 But I want to make sure that Ms. Brook, Mr. Koehler,
14 have you seen the motion as well?

15 MS. BROOK: Yes, Your Honor.

09:02:23

16 THE COURT: All right. Thank you.

17 So Mr. Wahid, what is your desire at the moment? Do
18 you wish to have the Court considering termination of Mr. McBee
19 as your counsel and to move forward representing yourself or do
20 you wish to withdraw the motion?

09:02:38

21 DEFENDANT WAHID: I wish to withdraw it.

22 THE COURT: All right. Thank you, sir. Then I will
23 consider the motion withdrawn and we will not have to rule on
24 it.

25 There are a number of steps that remain this morning

09:02:57

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1 with regard to the sentencing hearing and the sentencing
2 exercise and I understand that the Government wishes to present
3 a witness and I think the logical point at which to do that is
4 once the Court has proceeded through the calculation of the
5 guidelines and -- because if I understand it correctly, the
6 Government is presenting the witness, Dr. O'Steen, to counter
7 the request for downward departure and so I'm going to
8 establish the baseline first and then we will do that if
9 appropriate.

09:03:00

09:03:27

10 So let me take us back in the ordinary course.

09:03:46

11 We are here today because after a bench trial upon
12 waiver of Mr. Wahid's right to a jury trial, this Court found
13 Mr. Wahid guilty of two counts, one was the 1001 count, the
14 false statement, and the other was the 1512 count, the witness
15 tampering.

09:04:12

16 Based on the Court's determination as set forth in
17 the findings and conclusions and then amended, it is the
18 judgment of the Court that the defendant is guilty of Title 18,
19 violation of Title 18, United States Code, Section 1001. That
20 is false statements to a Government official in this case
21 during the course of a criminal investigation, and 18 USC, 1512
22 which is tampering with a witness. Those two incidents are
23 co-related and occurred during the same investigation which is
24 part of the reason that they are grouped for purposes of
25 sentencing analysis. And it is the judgment of the Court that

09:04:32

09:04:56

United States District Court

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1 Mr. Wahid is guilty of both of those offenses. 09:05:04

2 Once the determination had been made and the findings
3 and conclusions were filed into the docket, the Probation
4 Office created and then filed and then disseminated to both
5 parties and the Court a Presentence Investigation Report, which 09:05:22
6 has since been amended as of February 26 due to some delays in
7 this case and the Court's resolution of some motions and
8 briefing which would have influenced it as well.

9 The current document is found at docket entry number
10 284. And, Mr. Wahid, this document contains all of the 09:05:44
11 information that the Court knows about you and about the
12 offenses of conviction.

13 Mr. McBee, have you had the opportunity, adequate
14 opportunity, to go over this report with your client?

15 MR. MCBEE: Yes, Your Honor. 09:06:01

16 THE COURT: And I have a couple of questions for you,
17 Mr. Wahid. Did you receive a copy of the presentence report?

18 DEFENDANT WAHID: Yes, I did.

19 THE COURT: And did you read it all?

20 DEFENDANT WAHID: Yes. 09:06:10

21 THE COURT: And did you have the opportunity when you
22 were reading it or afterwards, to ask Mr. McBee any questions
23 that you wanted to ask him about what it means?

24 DEFENDANT WAHID: Yes.

25 THE COURT: As a result of that, do you feel like you 09:06:22

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1 understood the report pretty well? 09:06:23

2 DEFENDANT WAHID: Yes.

3 THE COURT: All right.

4 Mr. McBee, are there any additions or corrections to

5 the presentence report beyond the three objections that Mr. 09:06:38

6 Wahid placed in writing which I'll deal with in a moment?

7 MR. MCBEE: Nothing further, Judge, no.

8 THE COURT: Thank you.

9 Any additions or corrections from the Government,

10 Ms. Brook? 09:06:51

11 MS. BROOK: No, Your Honor.

12 THE COURT: All right. Thank you.

13 So in going back of the text of the objections

14 themselves, Mr. Wahid, when he was representing himself, before

15 he requested and the Court granted the reinstatement of 09:07:03

16 Mr. McBee from stand-by counsel to counsel, the first objection

17 dealt with in paragraph 36 of the presentence report the

18 presentence report writer's characterization of prior criminal

19 conduct when recounting criminal history as obstructing a

20 thoroughfare. 09:07:30

21 The Government took no position on that objection.

22 The Probation Office's response was to indicate that the

23 information she placed in the report came directly from a

24 Phoenix DR, police department report. So, therefore, to the

25 extent that the information existed in the report, she 09:07:49

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1 accurately reported it.

09:07:54

2 I would note that the characterization of this
3 criminal activity in the past is both remote and minor enough
4 that it does not impact the Court's consideration one way or
5 the other. Nonetheless, the objection is properly overruled
6 because the presentence report writer faithfully and accurately
7 reported the information in the report, in the police report.

09:08:14

8 As to the second objection, the objection was to the
9 18-level enhancement that was applied here, for connection with
10 or the underlying offense as alleged, and that was the false
11 statement being in support of, or related to, an act of
12 terrorism, international or domestic. And in this case, the
13 Court made findings after the bench trial beyond a reasonable
14 doubt that that application applied and so the objection is
15 overruled.

09:08:37

09:09:03

16 Finally, with regard to the third objection in
17 writing, defendant objected to the assertion, as he
18 characterized it, in the presentence report that he's an ISIS
19 supporter, the Court went back and read the presentence report
20 on that point and the probation officer in her responses
21 accurately characterized it. What she indicated was that he
22 was associating with ISIS supporters and, again, the Court
23 found that to be proven beyond a reasonable doubt that the two
24 deceased men, Soofi and Simpson, were, in fact, ISIS supporters
25 and it was also proven of the association so this is not a

09:09:27

09:09:56

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1 misstatement and so the objection is overruled. 09:10:00

2 With those overruling of the objections, the Court
3 will order the presentence report be adopted into the record in
4 its current form. I will now go through the guideline
5 calculations which come from that report and I ask the parties 09:10:20
6 to follow along.

7 Because as I've indicated, both of the offenses of
8 conviction were co-related in the same course of subject, the
9 guidelines require that they be grouped for purposes of the
10 calculation and they were. And the way that is done is to 09:10:41
11 take first the 1001 offense and Section 2J1.2 of the guidelines
12 tells us that the base offense level for that sentence is a 14.
13 There is, as indicated previously, an 18-level upward
14 adjustment when the offense -- and in particular, the

15 allegation was connected to the 1001 offense, the false 09:11:13
16 statement, is intended to promote terrorism. That is section
17 3A1.4 of the guidelines. Because the Court has found beyond a
18 reasonable doubt that the Government has proven that intent,
19 the 18 levels are added. And then there is a two-level upward
20 adjustment for obstruction of justice which could be found 09:11:37
21 either from the false statement to the Government investigators
22 or the attempt to tamper with a witness.

23 In any case, it's a single upward adjustment of two
24 levels. When I do the arithmetic, it takes the offense level,
25 final offense level, to a 34. 09:12:02

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1 Mr. Wahid's Criminal History Category, because what 09:12:06
2 criminal history he had was quite aged, would have been a level
3 I, the lowest. But, again, due to the operation of Section
4 3A1.4(b) of the guidelines and the Court's finding that the
5 1001 offense was intended to promote terrorism, the operation 09:12:25
6 of the guidelines raises that to a Criminal History Category
7 VI. And with an offense level of 34 and a Criminal History
8 Category of VI, the following ranges of consequences are
9 advised under the guidelines: Imprisonment of between 262 and
10 327 months, a supervised release term of one to three years 09:12:47
11 after release, a fine of between \$17,500 and \$175,000 but only
12 if the Court found that the defendant was able to pay such a
13 fine and then ordered it, and then a special assessment of
14 \$200, \$100 for each count of conviction.

15 Notwithstanding that the parties have filed a great 09:13:12
16 deal on the issue of the propriety of the range laid out, my
17 question to the attorneys at the moment is, do you agree that
18 the guidelines were properly calculated absent the operation of
19 other statutory factors?

20 Mr. McBee? 09:13:38

21 MR. MCBEE: That's correct.

22 THE COURT: And Ms. Brook?

23 MS. BROOK: Yes, Your Honor.

24 THE COURT: All right. Thank you.

25 There is no logical way to go through the remainder 09:13:49

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1 of issues here. We have several. I think probably the easiest 09:13:52
2 way to do it, and to keep from tying at least some people up
3 any longer than necessary, is to have Dr. O'Steen called,
4 examined and cross-examined so that I have the information I
5 need to rule on the motion for -- that one motion for downward 09:14:15
6 departure pursuant to issues dealing with health and then I
7 will serially go through the remaining issues.

8 Ms. Brook, if you would call your witness.

9 And, Mr. McBee and Mr. Wahid, if you would return to
10 counsel table, we'll go ahead and do that. 09:14:32

11 MS. BROOK: Thank you, Your Honor. Your Honor, the
12 Government is going to call Dr. John O'Steen. And as Your
13 Honor had mentioned, the issues before the Court are 5H1.4,
14 which is extraordinary physical impairment; 5C1.1, which was a
15 physical condition or appearance; and 5H1.1, which is age, 09:14:52
16 three different bases from which defendant is arguing a
17 downward departure is appropriate and the Government's
18 objecting.

19 THE COURT: Mr. O'Steen, if you would step forward to
20 my court reporter, she'll swear you in. I'm sorry, to my 09:15:08
21 courtroom deputy.

22 COURTROOM DEPUTY: Please state your name and spell
23 your last name for the record.

24 THE WITNESS: John Thomas O'Steen, M.D. O-S-T-E-E-N.

25 COURTROOM DEPUTY: Raise your right hand. 09:15:24

JOHN O'STEEN, M.D. - Direct

1 (JOHN O'STEEN, M.D., a witness herein, was duly sworn 09:15:25
2 or affirmed.)

3 MS. BROOK: Would you like a glass of water?

4 May I?

5 THE COURT: You may. 09:16:01

6 **DIRECT EXAMINATION**

7 BY MR. MCBEE:

8 Q. Good morning, Doctor.

9 A. Good morning.

10 Q. Could you please introduce yourself to the court? 09:16:15

11 A. I'm John Thomas O'Steen, M.D.

12 Q. And how long have you been a doctor?

13 A. For 40 years.

14 Q. Are you licensed here within the State of Arizona to
15 practice medicine? 09:16:26

16 A. Yes, I am.

17 Q. And has that been for the last 40 years?

18 A. It's actually 39 because I did my internship in Mexico.

19 Q. Where are you employed?

20 A. At Central Arizona Florence Correctional Complex. 09:16:38

21 Q. And, Doctor, what is your assignment at that facility?

22 A. I'm the complex medical director.

23 Q. As the medical director, do you oversee other doctors?

24 A. Yes.

25 Q. And as the director, do you also treat patients at the 09:16:53

JOHN O'STEEN, M.D. - Direct

1 facility? 09:16:57
2 A. Yes.
3 Q. In your time -- is it at FCC? Is that what you call it?
4 A. CAFCC. The name was changed two years ago or so.
5 Q. So in your time as a physician and as the director of 09:17:10
6 medical care at CAFCC, have you had occasion to treat Abdul
7 Khabir Wahid?
8 A. Yes.
9 Q. And when did you first treat him?
10 A. On January 7 of this year. 09:17:24
11 Q. Do you recognize him here in the courtroom?
12 A. Yes.
13 Q. Can you point to him, articulate something that he's
14 wearing.
15 A. He's the gentleman with glasses and orange jumpsuit on 09:17:34
16 sitting over to my right.
17 MS. BROOK: Your Honor, may the record reflect that
18 the doctor has identified his patient, the defendant?
19 THE COURT: Yes.
20 BY MS. BROOK: 09:17:47
21 Q. So how many years have you been at CoreCivic?
22 A. I have been there almost 17 years.
23 Q. And when I say CoreCivic, is that another term that is
24 used to describe the CAFCC?
25 A. CoreCivic the is the corporation name. CoreCivic has 09:18:02

United States District Court

JOHN O'STEEN, M.D. - Direct

1 prisons all over the United States. 09:18:05
2 Q. You have been there for 16 years?
3 A. Yes.
4 Q. And at that facility, do they have standard treatment
5 protocols for HIV and AIDS? 09:18:11
6 A. Yes.
7 Q. As the director of that facility, do you ensure that the
8 complex follows those procedures?
9 A. Yes.
10 Q. And are there national guidelines for the treatment of HIV 09:18:20
11 and AIDS?
12 A. Yes.
13 Q. Does CoreCivic following those national guidelines?
14 A. Yes.
15 Q. Are you familiar with the Bureau of Prisons? 09:18:31
16 A. Yes.
17 Q. And whether or not they, too, follow the national
18 guidelines when it comes to the treatment and care of patients
19 with HIV and AIDS?
20 A. Yes. 09:18:41
21 Q. Do they?
22 A. Yes.
23 Q. Over your 16 years as a treating doctor and director at
24 CoreCivic, roughly how many patients have you treated with HIV
25 and AIDS? 09:18:55

United States District Court

JOHN O'STEEN, M.D. - Direct

1 A. Between 500 and a thousand. 09:18:56
2 Q. And during those 16 years, have you lost any patients?
3 Have any of those patients under your care died at the
4 facility?
5 A. No. 09:19:08
6 Q. What do you attribute that to?
7 A. Hard work and dedication and following national guidelines
8 and having CoreCivic allow us to do what's needed to be done in
9 these cases.
10 Q. By that do you mean providing the best medications? 09:19:27
11 A. Yes.
12 Q. And does Bureau of Prisons likewise provide to its inmates
13 and patients with HIV and AIDS the same type of medications?
14 A. Yes.
15 Q. You had mentioned that you first saw the defendant, Mr. 09:19:42
16 Wahid, in January of 2020.
17 A. Yes.
18 Q. When was the last time you saw him?
19 A. This past Friday.
20 Q. Have you continued to treat him over the last two months? 09:19:53
21 A. Yes.
22 Q. Are you aware that he has been diagnosed with AIDS?
23 A. Yes.
24 Q. And under your care over the last two months, have you
25 helped him modify his treatment regime? 09:20:07

United States District Court

JOHN O'STEEN, M.D. - Direct

1 A. I initiated his treatment regime. 09:20:11
2 Q. What do you mean by that?
3 A. He was not taking any medication before when I first saw
4 him. He initially refused laboratory work. He refused any
5 medication. 09:20:24
6 Q. And now is he taking medication?
7 A. Yes.
8 Q. He is taking FDA-approved medication, antivirals for the
9 treatment of AIDS?
10 A. Is he on a preferred treatment regimen for the treatment 09:20:37
11 of HIV and AIDS.
12 Q. And over the last two months under your care, have you
13 seen any changes with him that you would attribute to him
14 taking medication?
15 A. Symptomatically, he admits to being much improved. He 09:20:50
16 feels better. He made the comment that he was dragging when he
17 first came over to see me and now he's feeling rather normal.
18 Q. How about with his viral load count, have you noticed any
19 difference with his viral load count?
20 A. His initial viral load was 6,000 copies per milliliter of 09:21:09
21 blood. And after only a five weeks of treatment with Genroya,
22 it dropped down to only 57 and that is very close to full
23 suppression on the technical.
24 Q. So the viral load count at present shows that he has an
25 undetectable amount? 09:21:28

United States District Court

JOHN O'STEEN, M.D. - Direct

1 A. It's almost. 40 is undetect -- less than 40 is 09:21:30
2 undetectable. He dropped down to 57. I would suspect if we
3 drew his lab work right now, he would be under technical.
4 Q. In your medical opinion, is Mr. Wahid's AIDS diagnosis a
5 terminal condition? 09:21:45
6 A. No.
7 Q. Can you explain that?
8 A. There's been a phenomenal change in the ability to treat
9 HIV and AIDS patients since I graduated from the University of
10 Michigan, at which time we didn't even know what caused AIDS 09:21:58
11 and people were -- it was essentially a death notice if you
12 were diagnosed with HIV during that time. With the advent of
13 these rather miraculous new drugs, people simply aren't dying
14 any more. They are living, they are living very long lives.
15 And I would expect that to be the case with Mr. Wahid as long 09:22:18
16 as he continues to take his medication.
17 Q. Does Mr. Wahid suffer presently from any significant
18 physical impairment?
19 A. No, not that I'm aware.
20 Q. Are you aware of whether or not he has presented with a 09:22:40
21 rash?
22 A. I have actually not seen the rash. I think he was
23 referring to a cyst that he has on his buttocks area that he
24 may feel is a rash. It's really a cystic mass.
25 Q. And is that a secondary condition onset to his other 09:22:58

United States District Court

JOHN O'STEEN, M.D. - Direct

1 diagnosis? 09:23:02

2 A. No. It has nothing to do with HIV.

3 Q. And for that cyst, with CoreCivic and also with the Bureau
4 of Prisons, are there medical interventions that he has
5 available to him for the treatment and care of the cyst? 09:23:17

6 A. Yes.

7 Q. Can you explain that?

8 A. He's already been referred and seen by a general surgeon
9 which occurred just in the past week or two. If necessary,
10 felt to be necessary by the surgeon, it could be operated on. 09:23:30

11 The surgeon deferred it for now because it's not actively
12 draining and asked him to return promptly if it should start
13 draining again.

14 Q. Are you familiar with whether or not Mr. Wahid has used
15 hyper-chloric acid for treatment historically? 09:23:47

16 A. Yes.

17 Q. And to your knowledge, what was that hyper-chloric acid
18 used to treat?

19 A. What he told me, and it's in the record, is that he was
20 using it to treat this rash or cyst, not for treating his HIV. 09:23:59

21 Q. Other than the rash or the cyst, as you have referred to
22 it, has he presented with any other physical impairments to
23 your knowledge?

24 A. He had issues with a peripheral neuropathy in the past
25 which is somewhat commonly seen in people with HIV and AIDS. 09:24:27

JOHN O'STEEN, M.D. - Direct

1 That seems to have improved with his initiation of treatment. 09:24:32
2 He had an episode of pleuritic-like chest pain, inflammation of
3 the lining of the lung, when I first saw him but that
4 apparently has gone away as well with initiation of treatment.
5 Q. So let's go back to that first condition, was that some 09:24:49
6 leg pain that he had suffered?
7 A. Yes.
8 Q. And that has gone away with treatment?
9 A. Yes.
10 Q. And additionally you mentioned pleurisy? 09:24:56
11 A. Yes.
12 Q. Has he recently complained of any chest pain?
13 A. No.
14 Q. Additionally, has he shown to have any fluid in his lungs?
15 A. No. 09:25:07
16 Q. Have there been chest x-rays conducted of him to determine
17 whether or not there is a fluid in his lung?
18 A. He's had three chest x-rays at our facility.
19 Q. And the results of those chest x-rays, have any of them
20 shown to have fluid in his lungs? 09:25:20
21 A. No.
22 Q. I want to talk about his over all physical condition. In
23 your assessment, how would you rate or describe his physical
24 condition?
25 A. He seems to be rather fit for someone in his condition. 09:25:34

United States District Court

JOHN O'STEEN, M.D. - Direct

1 Q. Is part of that analysis a determination of body mass 09:25:41
2 index?
3 A. Yes, and he's at the upper limit of normal. He's almost
4 beginning to approach the point where he'll be classified as
5 overweight. 09:25:50
6 Q. And through CoreCivic and also the Bureau of Prisons, are
7 you familiar with the nutritional plans that patients, inmates,
8 are provided?
9 A. Yes.
10 Q. Are patient inmates provided access to nutrition? 09:26:01
11 A. Yes.
12 Q. And if an individual starts to waste or have body mass
13 issues, what is CoreCivic and Bureau of Prisons able to do or
14 provide that patient?
15 A. We can provide them with additional food and supplements 09:26:18
16 like on behalf of the defendant.
17 In the case of AIDS-wasting syndrome, we provide them
18 with medications that help to stimulate their appetite.
19 Q. And so an AIDS-wasting scenario, can you describe what
20 that would be? 09:26:37
21 A. It's really essentially anorectic. They lose their
22 appetite much like a cancer patient and it usually occurs with
23 advanced AIDS and they can severely waste away. I had
24 mentioned to you we had one patient at our facility that went
25 from 1 -- at the hospital, not inside our facility, went from 09:26:54

JOHN O'STEEN, M.D. - Direct

1 182 pounds down to 120 pounds over the course of one month. 09:26:58

2 And came to us with AIDS-wasting. And we had to do fluid
3 resuscitation, give him several different medications to
4 stimulate his appetite, food supplements, Boost, and he left
5 the facility weighing 185 pounds. 09:27:17

6 Q. So an individual came to you roughly at 120 in an
7 AIDS-wasting condition?

8 A. Yes.

9 Q. And you were able to alter or change that condition
10 through the implementation of nutritional supplements? 09:27:29

11 A. Yes.

12 Q. Such that they were no longer in an AIDS-wasting
13 condition?

14 A. Correct.

15 Q. That's a scenario that can be rectified or fixed within
16 CoreCivic or the Bureau of Prisons? 09:27:35

17 A. Correct.

18 MS. BROOK: May I have one moment?

19 THE COURT: You may.

20 BY MS. BROOK: 09:28:11

21 Q. Since Mr. Wahid arrived in CoreCivic in your facility, has
22 he improved or declined in his physical condition?

23 A. He's improved significantly.

24 Q. Can you describe that?

25 A. His various aches and pains have gone away, he's gained 09:28:21

JOHN O'STEEN, M.D. - Cross

1 weight. He's quite functional. I've seen him out in the cell 09:28:25
2 blocks where he's as functional as anyone else. He's doing
3 quite well.

4 One of the interesting things about Mr. Wahid is that
5 he shared with me that it was his understanding of AIDS that 09:28:37
6 once his CD4 count dropped down to 40 that it was inevitable
7 that he was going to progress on to death, and I have spent
8 quite a bit of time trying to reassure him that that simply is
9 not true unless he refused treatment. If he accepts treatment,
10 he can live for many decades yet. 09:28:58

11 Q. And CoreCivic and the Bureau of Prisons provides that
12 treatment that you're referring to?

13 A. Absolutely.

14 MS. BROOK: I don't have any other questions.

15 THE COURT: All right, sir. Thank you Ms. Brook. 09:29:10

16 Mr. McBee?

17 MR. MCBEE: Thank you, Your Honor.

18 **CROSS - EXAMINATION**

19 BY MR. MCBEE:

20 Q. Good morning, Doctor. 09:29:20

21 A. Good morning.

22 Q. What is the CD4 you were talking about a moment ago?

23 A. Pardon?

24 Q. What is the CD4 you were mentioning?

25 A. It's a white blood cell that's attacked by the HIV virus 09:29:28

JOHN O'STEEN, M.D. - Cross

1 and ultimately destroyed if the virus is not contained and 09:29:32
2 controlled and it's necessary for fighting off various
3 infections and cancers, the CD4 cell.
4 Q. If the viral load goes down, does the CD4 go back up?
5 A. Yes. There's -- sometimes there's a discordance between 09:29:48
6 those two but it's rarely seen. Most of the time, particularly
7 with our modern medications, CD4 or the load rapidly declines
8 and the CD4 count increases.
9 Q. Now, does that potentially lead to an infection?
10 A. Pardon? 09:30:10
11 Q. Could that lead to an infection?
12 A. Well, as long as he has a CD4 count under 200, he's at
13 risk. He is taking medications to prevent opportunistic
14 infections now in addition to his HIV medication.
15 Q. So he still has that opportunity of opportunistic 09:30:26
16 infection?
17 A. Of course.
18 Q. Doctor, is the care given inside the prison, is that
19 equivalent to what somebody would find in the health care
20 facility outside of prison? 09:30:39
21 A. We recently had an outside nephrologist claim that he felt
22 our inmates were receiving better care than most people in the
23 general public were and we provide exceptional care. You know,
24 CAFCC in 2018 was voted the best correctional health care
25 facility in the United States by NCCHC, so we do a good job 09:30:59

JOHN O'STEEN, M.D. - Cross

1 there. 09:31:07

2 Q. Other than anecdotally speaking with that other doctor, do
3 you know if the care is equivalent to or better than the care
4 that you would receive in the private sector?

5 A. I think many cases it's better. 09:31:16

6 Q. And when you say "in many," do you mean most or?

7 A. Most.

8 Q. Okay. So in most cases you would say that prison health
9 care is better than --

10 A. At least at our prison. I'm not talking about other 09:31:25
11 prisons such as Arizona Department of Corrections.

12 Q. Are you talking about the federal prison system in general
13 as well?

14 A. You know, I've never had direct experience with the Bureau
15 of Prisons as far as working there. So I couldn't say with 09:31:38
16 certainty. I know what their protocols are because we have
17 access to those.

18 Q. You mentioned a moment ago that CADC basically lets you do
19 what you need to do in order to treat patients?

20 A. Yes. 09:31:57

21 Q. Do you mean in terms of giving them drugs or what do you
22 mean by that exactly?

23 A. Subspecialty consultations, hospitalizations, medications,
24 supplemental feeding if needed. We're really not restricted by
25 CoreCivic. 09:32:11

United States District Court

JOHN O'STEEN, M.D. - Cross

1 Q. Do you know if the federal Bureau of Prisons is? 09:32:13
2 A. I don't think they are restricted either. They can pretty
3 much do whatever needs to be done.
4 Q. Do you know if they do that?
5 A. Yes. They even have their own prison hospitals where they 09:32:22
6 can take care of very seriously ill people.
7 Q. Okay. So you're saying that you would know that the care
8 in the federal Bureau of Prisons would be at least equivalent
9 to what you do at CADC?
10 A. No, I didn't say that. I said the actual care I've never 09:32:35
11 witnessed. I just know what their protocols are.
12 Q. So you're assuming if they follow protocols, then they
13 would have good care?
14 A. Yes. And they don't have monetary concerns that cause
15 their care to be limited. 09:32:50
16 Q. And that was going to be my next question. Do you know
17 how much it's going to cost the taxpayers per year for
18 treatment like this?
19 A. The Genvoya that he's on currently costs \$3500 a month.
20 Q. And are there other associated costs besides that one? 09:33:07
21 A. Well, he's take something other medications, too, to
22 prevent opportunistic infections, but those are generic and the
23 cost of those are not great. Lab work is somewhat costly.
24 That has to be done on a regular basis.
25 Physician time is somewhat costly. 09:33:25

United States District Court

1 Q. Thank you, Doctor. 09:33:27

2 MR. MCBEE: May I have just one moment, Your Honor?

3 THE COURT: You may.

4 (Defendant confers with counsel.)

5 MR. MCBEE: No further questions. 09:33:41

6 THE COURT: All right. Thank you, Mr. McBee.

7 Ms. Brook, may the witness step down or do you have

8 redirect?

9 MS. BROOK: I have no further questions.

10 THE COURT: All right. May the witness be excused? 09:33:50

11 MS. BROOK: Yes.

12 MR. MCBEE: Yes, Your Honor.

13 THE COURT: All right. Dr. O'Steen, thank you. You

14 may step down.

15 THE WITNESS: Thank you. 09:33:58

16 (Witness excused.)

17 THE COURT: All right. Thank you, counsel. Does the

18 Government have anything further to present with regard to this

19 issue other than argument which we'll suspend for the moment?

20 MS. BROOK: No, Your Honor. 09:34:15

21 THE COURT: Thank you.

22 MR. MCBEE: Your Honor, should we return to the

23 lectern?

24 THE COURT: Yes. I think that will facilitate moving

25 things along. 09:34:38

1 Before we heard from the witness, the Court had
2 confirmed the judgment, gone through the guidelines, set forth
3 the calculations.

4 I will now begin to process through the issues. What
5 remains is to address departures and then address the
6 evaluation of the 3553(a) factors.

7 As a starting point, one of the reasons that this
8 sentencing hearing was continued was at the last sentencing
9 hearing when Mr. Wahid was representing himself, was the
10 homework that the Court gave the parties if they elected to
11 brief the Court on the issue of what I perceived as an
12 incongruency between the guideline calculations and a limiting
13 factor of statutory max on the 1001 charge. The issue, if the
14 parties will recall, is that the guidelines, properly
15 calculated as this Court found them to be in the last instance
16 and that the parties have agreed, the guideline here is 262 to
17 327 months. That is roughly 22 to 27 years.

18 But that the false statement charge has a statutory
19 maximum of eight years and the Court found that the 18-level
20 enhancement for being intended to promote terrorism was proven
21 but it was only alleged and, therefore, only found to be proven
22 as to the false statements charge and so there was a logical
23 disconnect that the Court sought to have the parties argue and
24 enlighten.

25 The Government took the opportunity to file a brief

09:34:40

09:35:09

09:35:36

09:36:05

09:36:36

09:37:04

1 according to the Court's schedule and the Court appreciates the 09:37:07
2 contents thereof.

3 The Government's position was that the enhancement
4 for being terrorism-related applies to any obstruction-related
5 charge. That would include witness tampering as well and the 09:37:37
6 Court agrees that it is true that you start off under Section
7 2J1.2, whether the conviction is for a false statement or
8 witness tampering, but the issue that the Court continues to
9 have is that the terrorism allegation was made in the
10 indictment and then proven or at least the Court found proven 09:38:02
11 only as to the false statement charge.

12 The argument is made in the Government's brief that
13 in so finding that the terrorism allegation has been proven, it
14 could apply to either charge.

15 I think that given that this enhancement of 18 levels 09:38:26
16 is greater than the base offense level by itself, it is truly
17 or would be the tail wagging the dog. In other words, having
18 an outsized effect on the overall range and, therefore, would
19 need to be proven as to the specific charge.

20 And so there the Court parts ways with the Government 09:38:46
21 and I don't conclude that the application of the enhancement
22 for 18 levels could be applied to the witness-tampering charge
23 in this circumstance where it was not alleged in the indictment
24 and not expressly found to be proven by the Court.

25 For that reason, the sentence on the false statement 09:39:14

1 claim necessarily would be limited to 96 months, eight years. 09:39:21

2 I understand exactly why Officer Duran wrote the
3 report and did the calculations the way she did. Again, the
4 calculations themselves are correct. They are created,
5 executed and formulated and then calculated in a vacuum that 09:39:42
6 doesn't necessarily consider the application of statutory
7 maximum up to a given case.

8 And if the guideline calculation were done as to the
9 witness-tampering charge without the enhancement, it would not
10 yield a number like 166 which is what was given. 09:40:15

11 Mr. Koehler?

12 MR. KOEHLER: Your Honor, if I might be heard on that
13 precise point. Section 1512 doesn't have the same enhancement
14 that Section 1001 has. If the Government had only charged Mr.
15 Wahid under Section 1512, so no 1001 charge at all, no 09:40:34
16 terrorism enhancement at all, the same guideline would apply,
17 the 2J guideline. The same cross-reference would apply. The
18 Government would have the burden under the guidelines and under
19 the Ninth Circuit case law to prove that cross-reference by
20 clear and convincing evidence and then that same 09:40:55
21 cross-reference would apply if, in fact, we had done so. And
22 we would submit in this case that we did, in fact, prove the
23 applicability of that cross-reference to Section 1512 even
24 independently of the 1001 charge.

25 THE COURT: All right. I don't think -- okay. I 09:41:13

1 don't think that anything you said is inconsistent with where I 09:41:14
2 was going. If my communication wasn't clear, I will say now
3 that I agree with what you stated. The one thing I don't agree
4 with is that because it was alleged in association -- the
5 terrorism enhancement was alleged in association with the 1001 09:41:35
6 in the indictment only and because I expressly found the
7 relationship to terrorism only with regard to 1001, it can't
8 carry forward in this case. That is the Court's ruling on that
9 point.

10 In some ways, however, while the Court feels it 09:41:54
11 necessary to clarify this now, in some ways, the issue of
12 statutory limitation and their effect here are mooted by the
13 Government's own position which the Court credits, and that was
14 that the Government's recommendation is a sentence of eight
15 years on each claim to be served concurrently or at the same 09:42:25
16 time and that would entirely obviate the concern, the legal
17 concern, of limitation and the guidelines being at
18 cross-purposes if the Court accepts that. And I will indicate
19 that the Court does accept that position as rational.

20 I will next move on to the motions for departure and 09:42:59
21 I would find that the defendant has not proven by a
22 preponderance or otherwise that he qualifies for departures
23 under 5H1.4 for extraordinary physical impairment or 5C1.1 for
24 physical condition based not only on the testimony of
25 Dr. O'Steen today but on the disclosure and submittal for the 09:43:30

1 Court of several of the same underlying facts in the 09:43:38
2 Government's brief prior.

3 And Government would also find that the requested
4 departure under Section 5H1.1 of the guidelines for age is not
5 triggered here given that where Mr. Wahid is in his life and 09:43:58
6 with health, he doesn't meet the qualifications for that
7 departure.

8 I think at this point, having streamlined what the
9 remaining issues are, it is now appropriate for the Court to
10 hear from the parties. I want to make a record that there were 09:44:34
11 copious filings in this case pertaining to the sentencing issue
12 which the Court considered, reviewed, internalized all of them
13 and that includes several filings that Mr. Wahid made on his
14 own even after Mr. McBee had been reappointed as counsel. The
15 Court didn't need to consider those because under ethical Rule 09:45:03
16 1.2, the client is responsible for the decisions involving the
17 strategic objectives of the representation; that is, whether to
18 go to trial or plead guilty, whether to testify at trial,
19 whether to appeal if the result is not favorable, but that the
20 attorney is specific for all tactical decisions to implement or 09:45:30
21 seek the strategic objective that the client has identified and
22 that includes things like filing motions or not, calling
23 witnesses or not, asking certain questions or not.

24 And so -- and I indicated this in an order, just to
25 be clear, that once Mr. McBee was reappointed, the Court need 09:45:53

1 not consider the filings that Mr. Wahid made because it is the 09:45:58
2 decision of the attorney to make those filings or not.

3 Nonetheless, given that Mr. Wahid had filed them and
4 may have been confused about it at the time, I went ahead and
5 read them and considered them and internalized all of them and 09:46:13
6 they are part of this.

7 So in addition to the indictment, the amended
8 findings of fact and conclusions of law, the presentence report
9 in its final form, all of the objections filed and all of the
10 motion practice, I'm now ready to hear from the parties. 09:46:35

11 I would like to start with the defense. And
12 Mr. McBee, I will allow you to control the order of
13 presentation in case it's more than just you speaking.

14 MR. MCBEE: Thank you, Judge. If possible, I would
15 like some of the family members to speak first if that is 09:46:48
16 acceptable to the Court.

17 THE COURT: That's fine. And if you would like them
18 to go first, then if you and Mr. Wahid would return to counsel
19 table, we can have them come forward.

20 Good morning, ma'am, and welcome. If you want to 09:47:09
21 step up to the lectern. And if you could start by telling us
22 your name for the record.

23 MS. HYMEN: My name is Yazmin Hymen.

24 Your Honor, I am writing this urge leniency in the
25 sentence of my father. Not only is he my best friend but he is 09:47:22

1 a good man with a good heart. He's kind and caring, person who
2 puts everyone's needs before his own. If you need a place to
3 stay to get back on your feet, my father will welcome you with
4 open arms. He simply wants the best for everyone.

5 My father is also the one who stayed when my mother
6 left. Even with the very little he had, he still managed to do
7 the best and give us the world. For that I will be forever
8 thankful. Therefore, losing my father would hurt a million
9 times more, probably no different than the feeling from losing
10 my sister in a car accident.

11 Locking my father up would force to us lose our home
12 and separate the very few family I have. So, Your Honor, my
13 father means no harm and I am begging you to take what I said
14 into consideration. Thank you.

15 THE COURT: All right. Ms. Hymen, thank you.

16 MR. MCBEE: And, Your Honor, I would just like to
17 make a quick record. Normally, most of his kids, if not all of
18 his children, are able to come. They just weren't all able to
19 make it today, but he does have good family support from those
20 individuals.

21 In reference to the sentencing itself, from my
22 perspective Your Honor, it's kind of challenging in the sense
23 that I think this case is one of perception more than many and
24 what do I mean by that? Well, if you have somebody, for
25 example, who committed kidnapping or an aggravated assault or

1 homicide and with a certain criminal history and how the act 09:49:01
2 was committed, most people involved in the criminal justice
3 system could say, "Your plea is probably going to end up in
4 this range," and be close within a couple of years. Or, "If
5 you go to trial and lose, your range is probably going to be 09:49:12
6 within this range."

7 But when you talk about a situation like this,
8 there's just not a lot of every day analogs. There's just not.
9 That's what I mean when it comes down to perception, Your
10 Honor. I know the Court has read many, many filings over the 09:49:25
11 years on this case then it was -- and that was the most
12 challenging part for me I think is to say something that I
13 didn't think the Court was already aware of because I know the
14 Court has reviewed so much and so much of it is duplicative.

15 But at the end of the day, Your Honor, I would 09:49:39
16 implore the Court to really look at this case and I know you
17 have, Your Honor, because we are talking about something that
18 is on the same level, even if you're talking about eight years.
19 You know, you find that frequently in home invasion cases,
20 people who have been selling large amounts of drugs and usually 09:49:55
21 have priors, in that case, unless it's a very large quantity of
22 drugs and so forth.

23 It just seems incongruous that Mr. Wahid would do
24 that kind of time for an offense like this. And, again, as an
25 American, I know we hear the word "terrorism," we get terribly 09:50:13

1 bristled at that because, obviously, this nation is the target
2 of a lot of it. But on the other side of the equation, Judge,
3 most of the things I have found, the person was at least
4 similar to Mr. Wahid's situation, most of those individuals
5 were much more involved in terrorism.

09:50:18

09:50:31

6 In this case Mr. Wahid is sort of a tangential
7 character. He was asked, you know, by some individuals to do
8 them a favor and he did it and then he lied about it later and
9 all of that is wrong. And then, you know, as basically
10 advising another individual not to cooperate.

09:50:46

11 But as I mentioned in my memo, Judge, this one to
12 make sure that the plan came to fruition or they knew of the
13 plan was hoping that it would be carried out, that he was
14 actively seeking to, you know, siderail the investigation. I
15 think this is really much more of a situation that Mr. Wahid
16 feels that Muslims in this country are kind of unfairly
17 targeted and sometimes charges are brought up without having a
18 lot of evidence. And so he has a certain fear of the
19 Government, Judge, and I think more than any kind of terrorism
20 ties, that's really what led his two offenses, Judge. He
21 didn't want the other individual to get, you know, investigated
22 for something that he felt nobody could do anything about at
23 this juncture in terms of witness tampering.

09:51:03

09:51:20

24 In terms of the false statement again I don't think
25 he thought much of that envelope and I don't think he thought

09:51:37

1 it had anything to do with terrorism and he just didn't feel 09:51:39
2 the need to, you know, throw other individuals under the bus
3 that has been killed already or -- or any individuals who might
4 have had the envelope to be prosecuted. And, again, Judge,
5 none of that is right but it gets back to the issue of 09:51:53
6 perspective. When you talk about Mr. Wahid who, in all other
7 details, just lived an ordinary life, lived with his children,
8 helps raise his children, does what he can to get by on a daily
9 basis.

10 Again, as the Court is aware, there was a pretty big 09:52:07
11 investigation into Mr. Wahid and they found no personal links
12 to ISIS our ISIL or any of those kind of organizations where he
13 was seeking to do harm.

14 So, Judge, since he really -- again, the Court is
15 fully aware of his crime. Since he lied about the envelope and 09:52:21
16 then advised somebody not to come forward later, does that
17 amount to the worst kind of conduct you can see in this case
18 which would justify a max sentence? On the one hand, you could
19 say of course because that's why they had the guideline so
20 draconian; but on the other side of the equation, when you look 09:52:37
21 at the individuals that I pointed out in my sentencing
22 memorandum, I think all of those individuals were worse.

23 Those were all west side of the country cases. And
24 of course they took plea agreements. And, again, there would
25 be benefits or plea agreements. That's why it's in there. But 09:52:50

1 really when you look at a plea agreement you usually talk about 09:52:53
2 four, maybe five the you're lucky departures downward for
3 taking a plea which in Mr. Wahid's case would still lead to a
4 fairly serious sentence, Judge. And that's why I point more to
5 the *Booker* decision, Your Honor, because these things should be 09:53:08
6 advisory because when you're talking about an 18-level
7 enhancement, there should be a gatekeeper that says, well,
8 maybe that just doesn't apply in this case factually.

9 And that's where I was -- really where I was going
10 for things more than anything, because if you look at the facts 09:53:21
11 of this case and Mr. Wahid as an individual, it just seems out
12 of whack to implement eight years. And on a certain level,
13 it's hard to articulate because, again, we all are in the
14 criminal justice system so there's just something we know.
15 When you do eight years ago there's a certain level baseline 09:53:37
16 offenses you do to get eight years. And if it's somebody who
17 has a negligible criminal history, it has to be something
18 pretty serious.

19 Was this serious? Absolutely it was serious but,
20 again, nobody was hurt as a result of his actions. Nobody got 09:53:49
21 killed. Nobody got maimed. Nobody got injured. And in fact,
22 I think it's pure speculation that the investigation would have
23 turned up anything else because I just don't think Mr. Wahid
24 was involved in that level.

25 So for those reasons, Your Honor, I would ask the 09:54:02

1 Court to take an objective look at this case and Mr. Wahid as 09:54:05
2 an individual and really what he's done in context with the
3 criminal justice system as a whole. Because if you add all of
4 those things, 96 months of incarceration seems very steep. And
5 really, even an area of five years is very steep. But, again, 09:54:19
6 I recognize that it's one of perception and the Court is maybe
7 different. But my overall objective this morning, Your Honor,
8 is that we could talk about departures and we could talk about
9 aggregating and mitigating factors; but at the end of the day,
10 it boils down to how does each individual view Mr. Wahid's 09:54:37
11 behavior? Because I think the charge itself is really what is
12 driving this bus because it's not just his criminal history.
13 It is what he's done but, again, the terrorist enhancement is
14 pretty broad. And when you look at it in a sense that it can
15 apply to somebody who is actually involved in terrorism or 09:54:55
16 somebody who is just peripherally involved in it, it really
17 seems like there should be a gatekeeper, again, Your Honor, and
18 I think that's why the *Booker* decision is so important.

19 So as I note in my memorandum, my perception in this
20 case is that it really doesn't call for any more than three or 09:55:11
21 four years of incarceration at the max. It seems like the
22 goals of the criminal justice system would be met. We're
23 talking about a individual who has never been to prison before,
24 never done anything substantially wrong before. Four years is
25 a long time in prison for somebody who made a false statement 09:55:26

1 and, you know, tampered with witnesses afterwards. 09:55:28

2 So I think that would meet just punishment,
3 deterrence and so forth and that is the kind of sentence I
4 would ask the Court to impose.

5 THE COURT: All right. Mr. McBee, thank you. 09:55:40

6 Mr. Wahid, is there anything you would like to add
7 sir?

8 DEFENDANT WAHID: Can I get some tissue, first?

9 THE COURT: Yes.

10 DEFENDANT WAHID: I kind of prepared -- it's a little 09:56:15
11 lengthy. I know you know how I like to write stuff.

12 THE COURT: That's fine Mr. Wahid.

13 DEFENDANT WAHID: It's kind of an addendum to my
14 sentencing memorandum and I'm going start and read it to you.

15 It says: Your Honor, I have received the Government's 09:56:32

16 sentencing memorandum and felt compelled to respond to it in my
17 defense. In my addendum for sentencing memorandum, Your Honor,

18 I wanted to respond to their sentencing memorandum in my

19 addendum for memorandum to clarify anything the Government had

20 stated in their sentencing memorandum to persuade you by 09:56:51

21 distorting my character, thereby clearing up any misconceptions
22 the Government presented to you about me.

23 Point one, beginning with the Government's memorandum
24 regarding imposition of consecutive sentences, on page five

25 under line ten, the prosecution states in relevant part, quote, 09:57:05

1 defendant was aware as of May 6, 2015, when he first spoke to
2 agents that the matter agents were investigating involved
3 international terrorism.

4 True, it did involve terrorism, but I was not aware
5 that there was an ongoing investigation that involved
6 international terrorism. Why? Because the FBI never mentioned
7 that there was an ongoing investigation.

8 Your Honor, point two, Your Honor, also on page five,
9 lines four, 14 and 15, the Government states in relevant part,
10 quote, this court found Wahid called and spoke to Ali at length
11 several times, including four telephone calls, unquote. Please
12 note that -- please note this, Your Honor. The Government only
13 played clips of what they wanted you to hear. They didn't play
14 the actual entire phone calls where you will hear Ali Soofi
15 dialing my number, calling me more than twice, because he was
16 there inadvertently working with the FBI, recording our phone
17 calls.

18 The entire phone calls can be found on Bates CD. The
19 way the Government portrays it, it is as if I went out of my
20 way to call Ali Soofi.

21 Once more, the truth lies within the Bates CD,
22 recordings of Abdul Malik, Ali Soofi and myself. It can be
23 heard on one of the Bates CDs, Ali Soofi telling Abdul Malik on
24 the phone for Abdul Malik to take Ali Soofi's phone number and
25 give to it me so I can call Ali Soofi. Initially, it was Ali

1 Soofi reaching out to me, not the other way around. In fact, 09:58:52
2 the first time I speak to Ali Soofi, it was him calling me.
3 This is the truth. I have no reason to lie. The Bates CDs
4 prove I am telling the truth.

5 Point three, moving along to the Government's 09:59:06
6 sentencing memorandum, Your Honor, also on page three, lines 14
7 through 28, it shows a dialogue of the prosecutor and I. The
8 prosecutor is asking me questions about Elton Simpson and ISIS
9 attacks. And I made it correctly, exactly, true, correct and
10 right as to what I meant about knowing that Elton Simpson was 09:59:28
11 an ISIS supporter in contrast to the prosecutor asking me
12 questions on the stand about me knowing that Simpson was a
13 supporter for ISIS was a great error on my part -- on my part.

14 Had I been paying close attention with how she was
15 questioning and the entire contents of her questioning and not 09:59:45
16 just focusing on the first half of her questioning and,
17 therefore, not paying any attention to the second half of her
18 questioning that all ended with ISIS attacks. In other words,
19 I didn't pay any attention to her constantly referring to ISIS
20 attacks. Had I paid attention to what she was asking me, I 10:00:01
21 would have told her that I couldn't answer her with a "Yes" or
22 "No" because, yes, I did not like him to encourage my son
23 concerning jihad, but I did not know at the time that he was an
24 ISIS supporter.

25 Also, yes, he did ask me to join him in the attack on 10:00:16

1 a military base, but he didn't mention to me that it was in the 10:00:19
2 name of ISIS.

3 The prosecution also goes as far as and says that I
4 am paraphrasing -- I am paraphrasing what they state on May 6,
5 2015, before their period, that I knew that Elton Simpson's was 10:00:39
6 an ISIS supporter. That is an untrue statement and
7 inconsistent with the FBI May 6, 2015, transcript. Your Honor,
8 if you read over the transcript, you will find a dialogue with
9 the FBI and I discussing Elton Simpson asking me to join him in
10 his attack on the military base. Please take note, Your Honor, 10:00:57
11 I never ever mentioned that I was aware or knew that Elton
12 Simpson was an ISIS supporter, nor did the FBI ask me about
13 Elton Simpson having ties to ISIS, nor did Elton Simpson
14 mention to me before May 6, 2015, that he was an ISIS
15 supporter. 10:01:15

16 Point four, also in the Government's sentencing
17 memorandum where the prosecution states in part, quote, Wahid
18 failed to alert law enforcement of the danger -- I'm sorry.
19 Let me start over.

20 It says: Also in the Government's sentencing 10:01:30
21 memorandum where the prosecution states in part, quote, Wahid
22 failed to alert law enforcement of the danger Simpson and Soofi
23 presented to the United States, unquote.

24 It's true I did not alert law enforcement with good
25 reason. Where I come from in Philadelphia, the rule of code is 10:01:48

1 mind your own business. In other words, if something sinister
2 is going down, you mind your own business or else something
3 sinister could happen to you.

4 This is something that is naturally passed down from
5 generation to generation in the black community, something that
6 some of the white race would not understand. In other words,
7 look at it from my perspective. When Elton Simpson came to me
8 with the idea, imagine how I felt? For one, I didn't really
9 think he would do something so crazy. And at the same time, I
10 felt a little leery and a bit frightened; and had I chose to
11 tell law enforcement, I'm pretty sure he would have figured out
12 it was me, since I was probably one of his few people he told
13 this -- he told in his circle of friends.

14 I don't know who he knows or what connects he could
15 have had and, therefore, if I alerted law enforcement, how
16 would I know if he -- how would I know if he had my name put on
17 some sort of hit list and had me killed or hurt my family?
18 These are the reasons why I didn't think of calling law
19 enforcement.

20 And point five, and on page five of the Government's
21 sentencing memorandum, on page five, lines two and four where
22 the prosecution states: Wahid's crimes were motivated by his
23 allegiance and commitment to his friend Elton Simpson, let me
24 state this and make this very clear: I have no allegiance to
25 no man, except Allah, who is my creator, who is not a man

1 because he is my creator.

10:03:19

2 Secondly, what good would allegiance mean to him? He
3 is nonexistent; therefore, it's no benefit for him. Most
4 important, Your Honor, how could the prosecutor say that I was
5 an allegiance and committed to Elton Simpson? Clearly, if
6 there was allegiance and a commitment to Mr. Simpson, then
7 there should have been no problem with Mr. Simpson trying to
8 influence my son to join his cause in jihad. I reiterate, the
9 prosecution states that I have an allegiance and commitment to
10 Elton Simpson, yet in their own pleading -- in fact, in their
11 sentencing memorandum, page three, lines 14 through 22, the
12 prosecution is asking me on the witness stand about Elton
13 Simpson talking to my son about jihad or the fact that he was
14 trying to influence my son and I started -- and I stated
15 negative, I did not approve.

10:03:35

10:03:53

10:04:08

16 This clearly proves that there was no allegiance or
17 commitment to Elton Simpson because if I were in allegiance or
18 committed to him, I would have approved of him speaking or
19 influencing my son concerning jihad.

20 Also, point six, also regarding my request for a
21 downward departure, concerning 4A1.3, the prosecution states on
22 page seven of the sentencing memorandum, lines one and two, the
23 prosecution in part states, quote, Wahid offers no
24 justification for this argument. Rather, he simply asserts
25 that Section 3A1.4 overstates his criminal history placing him

10:04:24

10:04:43

1 in a category VI. 10:04:50

2 Therefore, I state my justification for a downward
3 departure 4A1.3, that is by placing me into a category VI from
4 a category I classifies me as a career offender and that a
5 category VI would be equivalent to nine or ten felonies, which 10:05:02
6 is something I've never committed in my life, which I feel is
7 grossly unfair, and not just -- it also -- and not just that.
8 It also creates fictitious felonies. The above reasons are my
9 justification for the request of a downward departure for
10 4A1.3. 10:05:20

11 It would be as if I shot someone, as one of them did,
12 even though I was not par -- I was not -- even though I was not
13 a participant in their group.

14 Also by accepting responsibility -- wait a minute. I
15 skipped. Oh. I did. Sorry. So sorry. Hold on. 10:05:46

16 I have to back up.

17 It says, point seven, now moving into accepting
18 personal responsibility, my reason as to why I revoked my
19 acceptance of personal responsibility, I will not accept
20 responsibility because the prosecution wants me to accept 10:06:01
21 responsibility per rule of Congress which is, if I committed
22 the act myself -- which is as if I committed the act myself.
23 This implies that I carried out the act of terrorism along with
24 Elton Simpson and Nadir Soofi; and, therefore, it would be as
25 if I shot someone as one of them did -- as one of them did, 10:06:20

1 even though I was a participant in that group. I'm just going 10:06:26
2 in circles.

3 It would be as if I shot someone as one of them did,
4 even though I was -- what I'm trying to say is that, basically,
5 because I kind of messed this when I was writing it. I was 10:06:43
6 writing it pretty fast. What I was saying was that I feel that
7 them asking me to accept responsibility would be as if,
8 according to the Congress rule or law or something like that,
9 where it states that it's as if I did the act myself, and that
10 made me assume that it meant that it is as if I went out there 10:07:02
11 and shot this guy in the leg along with the other two when they
12 were out there in Texas. And I was nowhere near them.

13 So that was one of the reasons why I wouldn't accept
14 personal responsibility.

15 I am also agreeing that I shouldn't be placed in a 10:07:18
16 category VI -- hold on.

17 I'm going to skip that part. Basically, the U.S. is
18 asking me to lie on myself in the name of justice. To me, that
19 doesn't sound like justice. That sounds like insanity. If I'm
20 wrong, then I apologize. However, I will not lie on myself for 10:07:58
21 the sake of justice.

22 Also, point eight, also in the prosecution's
23 sentencing memorandum, or memorandum regarding potential
24 imposition of consecutive sentences, it was stated by the
25 prosecution that my behavior by filing motions in my defense 10:08:14

1 was obstructive. If this is the place as to where the U.S.
2 justice system is, then why bother having trials and court?
3 Just simply snatch people up and lock them up in the name of
4 the United States.

5 The last time I checked, I thought I had a right to
6 stand up and at least halfway try and defend myself according
7 to the U.S. Constitution, especially if I feel injustice is
8 being done to me. So I guess according to U.S. Attorney, if
9 you try to defend yourself or don't agree with the judge's
10 decision or you don't agree with the prosecution, you are,
11 therefore, undermining authority and jurisdiction and being
12 disrespectful to the U.S. Government.

13 So, basically, the prosecution is implying that I
14 should be respectful and be silent and not stand up for myself
15 while the U.S. Government tramples all over my character and
16 labels me in the worst way possible. To be honest, Your Honor,
17 that doesn't sound like justice and fairness to me. It sounds
18 like the U.S. Government is being oppressive simply because it
19 can be.

20 I will say this: I am sincerely apologetic for any
21 harm or wrong I may have caused by lying, by omission, and the
22 fact that I may have tampered with a witness unknowingly. With
23 the false statement, I truly believed I was protecting a friend
24 from being scrutinized by the FBI. I didn't see or understand
25 the bigger picture that was seen by the Government with my

1 actions.

10:09:38

2 And as far as the tampering with a witness, once
3 more, I truly believe that I was helping a friend who portrayed
4 or pretended to act as if he was scared and didn't know how he
5 was going to deal with the FBI. It was never my intention that
6 he should lie to them. I was simply trying to encourage him
7 that if he didn't want to talk them, he didn't have to.

10:09:49

8 I paid no attention that he was a witness because I
9 did not understand that he was a witness for the Government,
10 which is something he never told me.

10:10:03

11 Also, Your Honor, the theory of the Government's
12 terrorist enhancement, even though it has enhancement on the
13 false statement, it appears to me that the Government has its
14 own theory as to how it's justified that the terrorist
15 enhancement also applies to the tampering with the witness.
16 What I notice is that legally, there is no lone laws on the
17 books such as the United States Code or Code of Federal
18 Regulations that gives the prosecution a right to enhance
19 tampering with a witness, considering there was no threat, no
20 injury or death to the witness, yet somehow they are requesting
21 that the judge sentence me to eight years for this charge.

10:10:23

10:10:38

22 Your Honor, as far as my health is concerned, like I
23 told you, I spoke with Dr. O'Steen and he did, in fact, educate
24 me with the right -- he did educate me that with the right
25 antiretrovirals, my viral level will decrease. However, it

10:11:01

1 will take at least three months for my T cells to increase up 10:11:05
2 to 200. Even though my viral load is decreasing, the fact
3 remains since my CD4 is still low, I am susceptible for
4 opportunistic infections. This is the reason why I requested
5 home detention. 10:11:20

6 I would like to say -- I would like to say as what my
7 attorney stated in the sentencing memorandum in the case of the
8 *United States District Court v. Akram Musa Abadallah* received
9 only 18 months from a judge from this very court for the same
10 offense I am being charged with, which is false statement, 10:11:38
11 except his level of degree concerning this charge was much more
12 serious than my statement. The fact that he was giving
13 material support to a terrorist organization whereas no such
14 thing happened in my case with the same charge, but yet the
15 prosecution is requesting that I receive eight years. 10:11:57

16 Your Honor, as I stated before, I am not a terrorist
17 and I don't aspire to be one. Why, I don't even own a gun. I
18 am just a typical, average American who is dad with his
19 children living with him. I am very close to my children and
20 that's -- I'm very close to my children -- I'm very close to my 10:12:19
21 children and that's all I have time for, devoting,
22 concentrating on working and taking care of my children, making
23 sure they will eventually get out into the world with the tools
24 they need on how to protect and take care of themselves so they
25 can become productive members of society. Therefore, I don't 10:12:36

1 have time for the terror nonsense. That prosecution -- I don't 10:12:40
2 have time for the terror nonsense that the prosecution is so
3 desperately trying to portray me as.

4 I am still asking for leniency, Your Honor.
5 Therefore, I am still asking for home detention or probation. 10:12:55
6 Also, it's true my attorney requested 36 months. However,
7 based off the *United States v. Akram Musa Abdallah*, who
8 received 18 months, considering the level of his false
9 statement was more heinous than mine, I also feel that there
10 would be a harm -- it would not be a harm in you giving me a 10:13:13
11 lesser sentence than what Akram Musa Abdallah received, which
12 is 12 months, and also included six months that I have been
13 incarcerated as time served.

14 If you don't feel that I deserve home detention or
15 probation, then I feel -- then I implore you to please send me 10:13:27
16 to Black Canyon prison. That way it would create -- would it
17 not create a hardship for my children to come see me. I am
18 asking you this, Your Honor, because my children are my life
19 and not being able to see them would definitely spiral me into
20 a deep depression. 10:13:54

21 Without seeing my children, I might as well --

22 No. I'm all right (to his attorney).

23 Without seeing my children, I might as well not be
24 alive or have a life. Sorry.

25 THE COURT: All right. Thank you, Mr. Wahid. 10:14:21

1 Ms. Brook? 10:14:26

2 MS. BROOK: Your Honor, I have a number of things to
3 address. Would Your Honor mind if I addressed it at the
4 podium?

5 THE COURT: If you would like to, that's fine. I'll 10:14:33
6 ask Mr. Wahid and Mr. McBee to return to counsel table.

7 MS. BROOK: Your Honor, before I begin, I'm wondering
8 the Court reporter could read back something that the defendant
9 just stated.

10 Cannot? I'll incorporate that later then. I wasn't 10:14:51
11 sure if that was something we could do.

12 Your Honor, the Government, as we have stated in our
13 filings before the Court, is requesting a sentence of no less
14 than eight years. There have a number of filings before Your
15 Honor. You sat before and presided over the trial in this 10:15:11
16 case. You're well aware of the facts. I'm going to tailor my
17 comments specifically to the application of 3553(a) factors,
18 the terrorism enhancement.

19 And before I begin, I want to come back and discuss
20 the two remaining downward departures that defendant has made 10:15:27
21 before the Court and had brought in argument.

22 The first, Your Honor, is that of family ties or
23 family responsibilities. As set forth in our sentencing
24 motion, the defendant has three adult children. In the PSR
25 under paragraph 47 it states clearly where each of those three 10:15:49

1 children are employed, and they are employed in positions where
2 they are receiving full-time work and full-time pay. So with
3 that, there is not a circumstance that rises to the level of a
4 family ties downward departure such that his family or his
5 children need him for financial support.

10:15:53

10:16:07

6 Additionally, the defendant made a motion for minimal
7 role and aberrant behavior and I want to be clear. As Your
8 Honor is well aware, this is not an instance of a one-time
9 lapse in judgment. This is not an instance of an individual
10 who was otherwise leading a law-abiding life and in one moment
11 made a bad choice.

10:16:27

12 The defendant, over a course of months, engaged in
13 premeditated, deliberate obstructionist behavior. That
14 behavior not only obstructed a terrorism investigation, kept
15 evidentiary from the FBI, it also obstructed, attempted to
16 obstruct testimony and information related to a critical
17 witness coming forward with information.

10:16:44

18 So aberrant behavior is not applicable in this
19 particular case because we have a course and scheme of conduct;
20 and, additionally, minimal role, he's the only participant.
21 That, too, is not available.

10:17:01

22 Your Honor, before I delve more into some 3553
23 factors, I want to discuss the issue of parity which was
24 brought before the Court in defense counsel's filing last
25 Thursday. This area of law is not one that is rich with case

10:17:16

1 law examples. It's not a dense field. But defense counsel has 10:17:20
2 cited four cases. Those four cases, when we look at them more
3 closely, are instructive in this case that the defendant
4 deserves a sentence of at least eight years.

5 And I want to walk through those a little bit. There 10:17:34
6 are -- there is a case here, it's the Abdallah case, Akram
7 Abdallah. He pled. And when he pled guilty, so did the other
8 three cases that were cited by defense. And just to be clear,
9 with the four cases total that were cited by the defendant,
10 none of those cases involved obstructing an ongoing terrorism 10:17:59
11 investigation in the aftermath of a terroristic attack. None
12 of those cases cited involved a lie to the FBI about evidence
13 in that terrorism investigation. And none of the cases cited
14 by the defendant involved tampering with a witness in a
15 terrorism investigation and a witness that was later a witness 10:18:19
16 in a material support charge.

17 All four of those cases cited by the defendant were
18 individuals who pled. Two of them, the Arizona case, Akram
19 Abdallah, as well as the Montana case, Fabjan Alameti, when
20 they pled, they were subject to a different sentencing 10:18:39
21 guideline than that which is applicable today, so both of their
22 guideline calculations were 46 to 57 months. The Montana case,
23 Fabjan Alameti, pled guilty and was sentenced to the maximum
24 under the sentencing regime which was 57 months.

25 There's a case out of San Diego cited by the 10:19:00

1 defendant which is also instructive. This individual was not 10:19:01
2 charged with material support. It was a false statement with a
3 terrorism enhancement. He pled guilty to a stipulated 96
4 months. Again, his conduct were lies, amongst others, was
5 whether or not he knew ISIS supporters. The conduct there 10:19:18
6 received the sentence of eight years. And the Government here,
7 too, is asking for a sentence of no less than eight years for
8 conduct that is much more egregious. We were in the midst of a
9 terrorism investigation as the Court knows.

10 Additionally, Jonathan Paul Jimenez, he was sentenced 10:19:35
11 to 120 months. And when reading the transcript of sentencing,
12 it's clear that the Court said there were two counts from which
13 he was found guilty. One was tax fraud. The other was a 1001
14 with a terrorism enhancement. The Court found a sentence of
15 120 months to be appropriate and said it didn't matter to which 10:19:52
16 count, Count 1 or Count 2, that he applied the 96-month
17 sentence but he applied it to Count 1. Count 2 was sentenced
18 to 24 months for them to run consecutively for a sentence of
19 120 months.

20 At the end of the day, Your Honor, when it comes to 10:20:09
21 parity, the conduct by the defendant, as Your Honor is aware,
22 is different. It's unique. It's not just a lie to the FBI.
23 This was a lie to the FBI that was perpetuated over a period
24 time with systematic engaged conduct that was perpetuated by
25 the defendant in the midst of a terrorism investigation and the 10:20:29

1 obstruction of a witness in that terrorism investigation as
2 well.

3 To go back to the 3553 factors, I want to touch upon
4 briefly the nature and circumstances of this offense. Wahid
5 obstructed a terrorism investigations. It was into an
6 attempted mass murder to provide support to ISIS. In the hours
7 after that attempted mass murder, he boldly and repeatedly lied
8 to the FBI. He decided that he would be the arbiter of
9 information that was given to the FBI. He substituted his own
10 judgment for that of the FBI in determining what they should
11 know and when they should know it, who they should go and talk
12 to, where the investigation should go. He lied and he tried to
13 get Ali Soofi to do the same.

14 The nature and the circumstances of this crime are
15 severe and they are significant. Additionally, I want to talk
16 about general deterrence. Intentional deception, as we were
17 just talking about, is, at its very core, about general
18 deterrence as articulated by the Sentencing Commission when
19 they enacted the sentencing enhancement.

20 The purpose of the terrorism enhancement is to
21 provide a message to the community that in these scenarios,
22 just like the defendant found himself, that conduct like the
23 defendant engaged in is so significant and so serious, we have
24 to send a message to the public in order to promote respect for
25 the law and to deter this type of conduct, that the sentence

1 needs to be significant and it needs to be serious. 10:22:00

2 As the Court found in this particular case, the
3 defendant's conduct prevented the recovery of evidence that was
4 related to the investigation in the aftermath of this terrorist
5 attack. 10:22:13

6 Additionally, under the 3553, Your Honor, specific
7 deterrence for this defendant is critical. And it is a very
8 important 3553 factor. Wahid failed to alert law enforcement
9 to the danger of Simpson and Soofi even after he knew that he
10 had been invited by Simpson to participate in an armed attack 10:22:30
11 on a U.S. military base. He got up here just a few moments ago
12 and denied that, said he didn't understand it. He didn't know
13 the questions as he was multiple times asked not only on the
14 stand but also previously about this.

15 Your Honor, we put this excerpt into our sentencing 10:22:49
16 motion but I just want to highlight. So this is page 391 of
17 the transcript when Mr. Wahid was under oath and on the stand
18 he was asked in regards to Simpson showing up to talk to his
19 son:

20 You were angry about that. Question. You were angry 10:23:04
21 about that because you didn't like the idea of
22 Simpson talking to your son Waseem without you there?

23 His answer: Correct.

24 Question: And that frustrated you because you knew
25 that Simpson was obsessed with violent jihad? 10:23:18

1 Exactly. His answer. 10:23:22
2 You didn't want Simpson putting ideas into your son's
3 head about violent ISIS attacks?
4 This is true.
5 And you knew that because Simpson, just months 10:23:32
6 before, had asked you to partake in an ISIS attack
7 with him; right?
8 Correct, he responded.
9 He asked you to, with guns, go in and attack a
10 military base; correct? 10:23:48
11 Mr. Wahid responded: Right.
12 These questions weren't confusing and the defendant
13 now is engaging in revisionist history about what he knew or
14 didn't know. The primary concern is not only that he has
15 changed his position on these facts which were crystal clear 10:24:01
16 previously but that he is not taking responsibility for that
17 which he did, that which he knew, and that creates a concern
18 for specific deterrence.
19 Additionally, Wahid, when he spoke before, tried to
20 cast blame and said, "Ali is the one that contacted me." We 10:24:19
21 know from the record at trial that that is absolutely not true.
22 Government's Exhibit Number 76, Kareem, who was with Wahid at
23 the time -- that's Abdul Malik Abdul Kareem -- was with Wahid,
24 was the first to call Ali the night of the attack, at 11:58
25 a.m. And then the next day, this is Government admitted trial 10:24:42

1 Exhibit Number 77, Wahid texted Abdul Malik Abdul Kareem: 10:24:46
2 Would you send me the dang number already? And then roughly 20
3 minutes later, they talk on the phone and then he texts, Kareem
4 texts to Wahid Ali's phone number. And then Wahid messages
5 back to Kareem: Right on, with a smiley face. In that exact 10:25:06
6 same minute Wahid called Ali.

7 Your Honor, just a couple more notes. As has been
8 articulated through the testimony here today and filings, it is
9 through the defendant's care and treatment at CoreCivic and in
10 the future at the Bureau of Prisons that he will receive 10:26:00
11 extraordinary care in the sense that he will receive
12 medication, costly medication, but medication to which he is
13 entitled, the same medication which the Government would be
14 paying for regardless of whether or not he was in or out
15 because he is on disability. 10:26:15

16 And by nature of the fact that he's now taking
17 medication, he recognizes that through treatment and care, he
18 can live a long and healthy life.

19 The Government's hope for the defendant is that
20 through the course of the sentencing in this case that the 10:26:32
21 court exercises a verdict upon him that will deter him
22 specifically; that will resonate with him that the crime he has
23 committed is serious; and it will correct and adequately deter
24 him from criminal conduct in the future.

25 The Government asks for a sentence of no less than 10:26:50

1 eight years to find a just punishment for this defendant for
2 his lying, his obstruction, and witness tampering in the midst
3 of a terrorism investigation and the aftermath of an attempted
4 mass murder to support ISIS.

5 Thank you.

6 THE COURT: All right. Thank you, Ms. Brook.

7 All right. Thank you for returning to the lectern.

8 As a way forward, I think the way that I'm going to
9 do this is to address the outstanding requests for downward
10 departures, in other words, address the guideline issues first
11 and then once the guideline issues have all been exhaustively
12 addressed, moving to the 3553(a) factors which would be the
13 ordinary course in a sentencing although not as involved as it
14 is in this case.

15 I do still have the outstanding issues for minimal
16 role and I agree with the Government on that point that there
17 can't be a minimal role in an offense that is conducted
18 entirely by one individual, nor do -- and so that request will
19 be denied as will be the request for a downward departure based
20 on aberrant behavior because it was -- the conduct of
21 conviction consisted of more than one offense, that while all
22 related, took place with time in between to reevaluate and
23 abandon a course of conduct and that didn't happen.

24 With regard to the request for a downward departure
25 for overrepresentation of Criminal History Category, I will

1 deny that request as well because the upward adjustment under 10:29:20
2 the guidelines to a Criminal History Category VI is mandated
3 once the Court makes the finding that it did.

4 To the extent that that bump from a Criminal History
5 Category I to a Criminal History Category VI and all that it 10:29:37
6 implies is outsized or the Court concludes it to be outsized
7 that can be addressed in a variance, which variance I think may
8 well be necessary in this case even if I accept the
9 Government's position that no less than eight years is an
10 appropriate sentence, because there's still a lot of distance 10:30:07
11 between a range of 262 to 327 months down to a sentence of 96
12 or more months. So that addresses the guideline issues.

13 Once the guidelines have been correctly calculated,
14 the law mandates that the Court move on to consider the
15 sentencing factors that are listed exhaustively in Title 18 of 10:30:35
16 the United States Code, Section 3553(a). I would note that the
17 briefing by both Ms. Brook and Mr. Koehler on the one side and
18 Mr. McBee's sentencing memorandum on the other efficiently and
19 squarely took on all of the issues that the Court has been
20 thinking about in this case and the lawyers are to be commended 10:30:58
21 because they did not waste time and they brought to the fore
22 all of the issues in favor of each party that the Court
23 necessarily needs to consider when evaluating.

24 The 3553(a) factors, Ms. Brook --

25 MS. BROOK: Your Honor, I'm sorry for the 10:31:23

1 interruption. Did the Court make a finding on 5H1.6 which is 10:31:24
2 family ties and responsibilities?

3 THE COURT: I thought I did previously. If I didn't
4 make that expressly for the reasons that the Government
5 mentioned, both in its brief and then Ms. Brook just presented 10:31:36
6 to the Court, the defendant does not qualify for the downward
7 departure under family ties given the situation of his family
8 now or I should say responsibilities.

9 Regarding the 3553(a) factors, there are, depending
10 on how you count them, seven or eight, the Court has to 10:32:03
11 consider all of them and then balance them to determine what
12 the appropriate sentence is in the case.

13 The factors that the Court concludes have an outsized
14 effect in this case include the nature of the offense and the
15 quantum of the harm, number one. Number two, the individual 10:32:28
16 history and characteristics of the defendant, number two.
17 Number three, the need to protect the community from future
18 acts such as this by the defendant or by others who would see
19 what happened here and how the Court resolved it, which I will
20 shorthand as deterrence, both specific and general; and the 10:32:53
21 need for similarly situated defendants who commit similar
22 offenses under similar circumstances to receive similar
23 consideration or consequence from the Court, what Ms. Brook
24 referred to as parity and what I look to more broadly as
25 consistency and fairness. 10:33:24

1 With regard to the first factor, the nature of the 10:33:32
2 offense or offenses of conviction here, tied as they are, the
3 Court will not understate or underestimate the seriousness of
4 the offense. It would be grossly inaccurate to characterize
5 the offense as nothing more than, on the one hand, a 10:33:56
6 misstatement or lie to agents of the FBI and an attempt to, on
7 the other hand, an attempt to get someone not to speak to those
8 officers or not to speak the truth to those officers.

9 The context which is recognized in the -- both the
10 offense and in the enhancing factor, is that this was a 10:34:28
11 misstatement and an attempt to get someone else not to talk or
12 misstate in the process of a federal criminal investigation of
13 the gravest importance and significance. An attack in service
14 of a foreign and international terroristic organization that,
15 if successful, would result in the loss of life and just by its 10:34:57
16 existence, whether successful or not, would result in striking
17 fear and uncertainty into the public about their safety at
18 home.

19 Because of the nature of the existence of the
20 investigation and the nature of the existence of that 10:35:26
21 investigation, a misstatement, a lie, an attempt to get someone
22 not to speak has the potential for immediate effects that could
23 cascade into a lot more harm, a lot more loss. It is unknown
24 at the time the lie is told or the person is persuaded not to
25 speak what those consequences will be and that is the 10:35:59

1 particular danger here. 10:36:05

2 Even if the Bureau was delayed for an hour or a day
3 in following assets, they and we will never know what
4 information was lost, what other harm could have been
5 prevented. 10:36:29

6 It is proven, and the Court so found in writing, that
7 Mr. Wahid committed these two offenses and that he committed
8 them knowing something about the people involved, what their
9 sympathies were, what one of their past intentions was. It has
10 not been proven, nor did it need to be proven, that Mr. Wahid 10:37:12
11 intended for them to succeed. And the Court takes that into
12 account as well. The gravity of the harm is thereby proof of
13 the elements of the offense itself regardless of what he
14 intended.

15 With regard to the second factor, the individual 10:37:41
16 history and characteristics of the defendant, the Court has
17 before it an individual that has some criminal history,
18 although nothing like this and nothing violent and all of it
19 quite old. The defendant has made some statements during the
20 course of this matter, particularly when he was representing 10:38:06
21 himself on his own election, that could suggest hostilities,
22 recalcitrance and other things, but they also could be
23 something else and they also could reflect lack of legal
24 training, lack of understanding how to breach issues and lack
25 of how to contest evidence put on by the opponent. And so the 10:38:41

1 Court puts no weight on any of those statements that Mr. Wahid
2 may have made in the course of executing his own defense,
3 conducting his own defense.

4 With regard to the third factor, deterrence, both
5 specific and general, the Court still has a bit of the question
6 on the issue of specific deterrence, in other words, it is not
7 as confident as the Government counsel is that a large sentence
8 is necessary to specifically deter this defendant from ever
9 doing something like this again based on lack of criminal
10 history, lack of recent criminal history, new indication of a
11 propensity towards violence, family situation and other things.

12 With regard to general deterrence and somewhat tied
13 to the issue of the seriousness of the offense itself, the
14 Court does conclude that the sentence must reflect the possible
15 consequences of doing something like this to anybody else who
16 is contemplating lying to a federal investigative agency in the
17 course of an investigation like this where the stakes are so
18 high and the potential for harm is so outsized. And so that
19 factor at least militates towards a more serious sentence.

20 Finally, the fourth factor that the Court views as
21 having an outsized impact on the balance here is the parity
22 factor as referred to treating similarly situated defendants
23 who do similar things under similar circumstances similarly.

24 And I will agree with counsel for both Government and
25 defendant that this is not a situation that comes up so often

1 that there is a ready catalog of similar situations. 10:41:15

2 In the Court's view, Ms. Brook did a nice job and a
3 credible job and a persuasive job of highlighting those
4 differences where they mattered. The difference in the context
5 in which the offenses that were laid out by Mr. McBee were 10:41:40
6 different from here.

7 Mr. McBee also did a credible and persuasive job how
8 the overall impact of these cases and how they have been
9 treated and presenting a range of reasonable outcomes, if
10 favorable to a defendant, some unfavorable to a defendant, and 10:42:11
11 in that range established credibility.

12 When I evaluate all of the factors, including the
13 four that I've highlighted and the remaining three, and do my
14 best to balance them, given where this process started, first
15 of all, I conclude that a sentence of more than eight years is 10:42:40
16 problematic for the reasons that I stated before. But I
17 conclude that something slightly less than that eight years is
18 justified by a balancing of those 3553(a) factors. I am going
19 to impose a sentence of 67 months in this case because I find
20 that that sentence is sufficient, but not greater than 10:43:06
21 necessary, to recognize and balance in their appropriate
22 weights all of those factors focusing on the gravity of the
23 harm and the need for general deterrence at least, but
24 accounting for what comparable sentences and comparable
25 situations are out there that the Court can evaluate and then 10:43:33

1 count or discount, based on similarity, and accounting for the 10:43:39
2 individual history and characteristics of Mr. Wahid which
3 factor by itself weighs in his favor.

4 Pursuant to the Sentencing Reform Act of 1984, it is
5 the judgment of the Court that Abdul Khabir Wahid is hereby 10:43:58
6 committed to the Bureau of Prisons for an imprisonment term of
7 67 months with credit for time served. This consists of 67
8 months on Count 1 and 67 months on Count 2, terms to run
9 concurrently.

10 In so doing, the Court grants a downward variance. 10:44:23
11 The defendant shall pay a special assessment of \$200 which will
12 be due while in custody according to a schedule I'll lay out
13 momentarily, but I find he does not have the ability to pay a
14 criminal fine and I order that fine to be waived. That \$200
15 will be due at a rate of not less than \$25 per quarter, 10:44:44
16 payments to be made through the Bureau of Prisons' Inmate
17 Financial Responsibility Program.

18 And then upon release from imprisonment, the
19 defendant shall be placed on supervised release for three
20 years. That term consists of 36 months on Count 1, 36 months 10:44:56
21 on Count 2, terms to run concurrently.

22 Backing up to the sentence. Mr. McBee, you haven't
23 said it yet but I anticipate it, and I heard it from Mr. Wahid,
24 a request for a designation in central Arizona to facilitate
25 visitation by his children and I will make that recommendation 10:45:19

1 to the Bureau of Prisons. 10:45:21

2 MR. MCBEE: Thank you, Your Honor.

3 THE COURT: While on supervised release, Mr. Wahid
4 shall comply with mandatory and standard conditions of
5 supervision that have been adopted by this Court in our General 10:45:29
6 Order 17-18.

7 Of particular importance, he must not commit another
8 federal, state, or local offense during the term of
9 supervision. And within 72 hours of release from the Bureau of
10 Prisons, he must report in person to the Probation Office in 10:45:44
11 whatever District he is released in. He must also comply with
12 the following special conditions, of which there are five:

13 One, he must participate as instructed by the
14 probation officer in a program of substance abuse treatment,
15 either outpatient or inpatient, which may include testing for 10:46:02
16 substance abuse; number two, he must submit to substance abuse
17 testing and not attempt to obstruct or tamper with testing
18 methods; number three, he must not use or possess alcohol or
19 alcoholic beverages; number four, he must not be involved with
20 or knowingly communicate or associate with any person 10:46:21
21 affiliated with a domestic or international terrorist group;
22 and, finally, number five, he must cooperate in the collection
23 of DNA as directed by the probation officer.

24 Mr. Wahid, you have not waived your right to appeal
25 my condition in this case so I must advise you if you wish to 10:46:38

1 appeal, you have 14 days from the entry of judgment to file a 10:46:43
2 Notice of Appeal with the clerk of the court.

3 Mr. McBee do you have anything further on behalf of
4 your client today?

5 MR. MCBEE: No, thank you, Your Honor. 10:46:52

6 THE COURT: Thank you.

7 Mr. Koehler or Ms. Brook, do you have anything
8 further on behalf of the Government?

9 MS. BROOK: Your Honor, I have a brief housekeeping
10 matter that I just wanted to put on the record before we close 10:46:57
11 the record today. And that is that over the last two months,
12 Mr. McBee and I and Mr. Koehler have had a chance to
13 communicate about three defense filings by Mr. Wahid, 268, 269
14 and 270, and we have had a chance to confirm that the requested
15 items of discovery in those filings were, in fact, provided to 10:47:18
16 the defendant before trial. The only item that wasn't was Kim
17 Jensen's trial testimony that occurred during trial and was
18 provided to the defendant after trial.

19 THE COURT: All right. Thank you, Ms. Brook. I did
20 have three other housekeeping matters as well. 10:47:34

21 There are three filings that Mr. Wahid made at the
22 period he was representing himself which, out of an abundance
23 of caution, the Court will treat as motions which I think I've
24 resolved already but expressly I'll do that now. Docket entry
25 number 246 is denominated amended request for downward 10:47:53

1 departure. 248 -- and that is denied because I've addressed
2 the departures. 248 is a motion for home detention as a
3 substitute for imprisonment and for the reasons the Court has
4 ruled, it finds that improper resolution of the matter and so
5 it will be denied.

10:47:57

10:48:17

6 Finally, motion for revoking acceptance of
7 responsibility and I think this refers to the fact that in a
8 previous filing, Mr. Wahid had indicated he accepted
9 responsibility and then as he addressed in his statement to the
10 Court today, he gave his reasons for why he revoked it. This
11 document, 250, entitled Motion for Revoking Acceptance, may now
12 be -- I think it does not ultimately affect the result whether
13 I grant it or deny it as moot, because the acceptance of
14 responsibility credit was not given in the guidelines so I am
15 going to grant the motion.

10:48:32

10:48:59

16 All right. Ms. Brook, did the Government have
17 anything further?

18 MS. BROOK: Yes, Your Honor. Sorry, one last
19 housekeeping item and that would relate to terms of condition
20 of release and supervised release and that would be that the
21 Government requests that the defendant not have contact with
22 Ali Soofi.

10:49:10

23 THE COURT: Mr. McBee, do you wish to be heard on
24 that?

25 MR. MCBEE: May I have a moment, Your Honor?

10:49:22

1 (Defendant confers with counsel.) 10:49:25

2 MR. MCBEE: My client doesn't even know where he
3 currently is, Your Honor, so today there's no objection.

4 THE COURT: With that, that will be added to the
5 conditions. We'll have a no-contact provision. 10:49:36

6 Thank you. We are adjourned.

7 MR. MCBEE: Thank you, Your Honor.

8 MS. BROOK: Thank you, Your Honor.

9 (Whereupon, these proceedings recessed at 10:49 a.m.)

10 * * * * * 10:49:42

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C E R T I F I C A T E

10:49:42

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2
3 I, ELAINE M. CROPPER, do hereby certify that I am
4 duly appointed and qualified to act as Official Court Reporter
5 for the United States District Court for the District of
6 Arizona.

10:49:42

7
8 I FURTHER CERTIFY that the foregoing pages constitute
9 a full, true, and accurate transcript of all of that portion of
10 the proceedings contained herein, had in the above-entitled
11 cause on the date specified therein, and that said transcript
12 was prepared under my direction and control, and to the best of
13 my ability.

10:49:42

14
15 DATED at Phoenix, Arizona, this 18th day of June,
16 2020.

10:49:42

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18
19
20 s/Elaine M. Cropper

10:49:42

21 _____
22 Elaine M. Cropper, RDR, CRR, CCP
23
24
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10:49:42

United States District Court