

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

* Case No. 22-CR-00471 (RER)

*

* Brooklyn, New York

*

* November 29, 2022

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v.

*

IBRAHIM ALHUSSAYEN,

*

Defendant.

*

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* * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE ERIC R. KOMITEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Proceedings commenced at 3:04 p.m.)

2 THE CLERK: Criminal cause for sentencing, United
3 States of America vs. Ibrahim Alhussayen, docket no. 22-CR-
4 471.

5 Would you all please state your appearance for the
6 record, starting with the government.

7 MS. WINIK: Good afternoon, Your Honor. Sara Winik
8 on behalf of the United States.

9 THE PROBATION OFFICER: Good afternoon, Your Honor.
10 Meghan Wing for Probation.

11 THE COURT: Good afternoon.

12 MR. LEWIN: Good afternoon, Judge. Nick Lewin for
13 the defendant --

14 THE CLERK: I'm sorry. Would you adjust the
15 microphone so that -- thank you.

16 MR. LEWIN: -- who is seated next to me.

17 Next to Mr. Alhussayen is Mounir Khaddar, who is
18 the court certified interpreter.

19 THE INTERPRETER: Good morning, Your Honor.

20 MR. LEWIN: Next to Mr. Khaddar is Varan Gumaste,
21 who is a lawyer at our law firm and also represents Mr.
22 Alhussayen. And finally, Rachel Kenny, who's an analyst at
23 our law firm.

24 THE COURT: Good afternoon, to you all.

25 THE COURT: And Mr. Alhussayen, good afternoon to

1 you.

2 THE DEFENDANT: Good afternoon, sir.

3 THE COURT: Am I pronouncing that correctly, by the
4 way?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. All right.

7 So as you all know, we are here today in connection
8 with sentencing in this case.

9 Do we need to swear the interpreter?

10 THE CLERK: Yes, Judge.

11 (The interpreter is sworn.)

12 THE INTERPRETER: My name is Mounir Khaddar, Arabic
13 interpreter.

14 Your Honor, I'd like to state to the court that I
15 would be next to the defendant and use as needed, as I was
16 instructed.

17 THE COURT: Instructed by counsel, by the defendant
18 himself?

19 THE INTERPRETER: By defendant and counsel.

20 THE COURT: Okay. And Mr. Lewin, that's your
21 preference today?

22 MR. LEWIN: Yes, Judge. It's Mr. Alhussayen's
23 preference and it's fine by us. We have no concerns about
24 his ability to understand the proceedings.

25 THE COURT: Okay. I will say first of all that

1 that's fine with me but also second that, Mr. Alhussayan,
2 it's obviously vitally important that you understand what's
3 going on here today and there will be some legal jargon being
4 spoken presumably, in addition to ordinary English.

5 And if at any point you want to have something
6 repeated, have a minute to talk to your attorneys, have a
7 question put to the court about something you don't
8 understand, you should feel free to get your attorney's
9 attention and let them know.

10 Do you understand?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Okay. All right. So before we begin
13 my practice is to explain the process for this proceeding.

14 First of all I will say a word or two about the
15 guilty plea in this case. Second, I'll list the submissions
16 that I have received and considered for sentencing.

17 And the purpose of listing all those submissions is
18 to assure myself that I've received everything that the
19 parties think I should have and also so that the parties know
20 that they have all received everything that they should have
21 and that way to confirm that we are all working off the same
22 information here.

23 Next, under federal sentencing law, it's my
24 obligation to determine what the guidelines range is. The
25 United States Sentencing Guidelines, as you know, are

1 advisory. Nevertheless, I must determine what the guidelines
2 range is and I must consider the advisory guidelines, as well
3 as any departures that might apply in this case, even if I am
4 not bound to follow the guidelines.

5 After I consider all of this, I will give the
6 attorneys an opportunity to make any arguments they wish to
7 make. That phase of today's proceeding takes on special
8 significance, because we do not have a presentence report
9 and, therefore, I will be leaning on the parties to fill any
10 gaps, any relevant caps in the record.

11 And after I've heard from the attorneys, Mr.
12 Alhussayen, you will have the right to make a statement to
13 the court, if you wish, before I impose sentence.

14 Once all of this has happened, I may take a short
15 break to collect my thoughts and then I will then review what
16 we call the 3553(a) factors. Those are the factors that
17 federal law requires me to consider in order for me to
18 determine the appropriate sentence in this case.

19 The factors include the defendant's personal
20 history, the offense conduct at issue, and other factors that
21 we will discuss. Following that I will impose sentence.

22 Mr. Alhussayen, do you understand the process?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: Do you have any questions at this
25 point?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: I understand the government has one or
3 more individuals with us today who would like to be heard in
4 terms of victim impact statements. Is that correct?

5 MS. WINIK: Yes, Your Honor. We have one victim
6 present. I believe I might have flagged it for the court at
7 our last status conference, but I don't think I provided
8 written notification ahead, so I apologize for that.

9 THE COURT: That's fine. I have a victim impact
10 statement in writing attached to the government's sentencing
11 submission and I will be happy to hear from the person who's
12 with us today as well.

13 I take it that should occur after the government
14 has been heard on sentencing. Is that typically how you
15 expect things to work?

16 MS. WINIK: Whichever you prefer, Your Honor.

17 THE COURT: Okay. All right.

18 So a word about the guilty plea.

19 Mr. Alhussayen pleaded guilty on October 27th of
20 this year. So a fairly recent guilty plea before Magistrate
21 Judge Reyes.

22 The plea was to the sole count of an information
23 that charged him with knowingly concealing material facts and
24 making false statements to the Federal Bureau of
25 Investigation, in violation of 18 U.S. Code Section 1001.

1 I've received and reviewed the transcript of the
2 plea hearing before Judge Reyes. I had one question before I
3 accept it, which was defense counsel was asked, as is typical
4 in guilty plea proceedings, whether he was aware of any legal
5 defenses to the alleged conduct in this case. Not factual
6 defenses, but legal defenses and the answer, I'll paraphrase,
7 was along the lines of not that we would like to assert here.

8 Can counsel just elaborate a little on that? Are
9 there any legal defenses that you believe exist, whether or
10 not they're being asserted?

11 MR. LEWIN: Judge, that's hard to answer as
12 clearly. I think there are legal defenses that exist. We
13 don't believe they would succeed. We believe the resolution
14 that we've reached with the government is, frankly, a far
15 better outcome for Mr. Alhussayen.

16 So I would say there are no viable legal defenses.

17 THE COURT: No viable legal defenses.

18 MR. LEWIN: Yes, Judge.

19 THE COURT: Whether they're applicable in this case
20 or not, viable in this case or not, what are the legal
21 defenses to a 1001 claim? We don't have the exculpatory no
22 doctrine in the Second Circuit anymore.

23 MR. LEWIN: Right. I mean, so Judge, I think there
24 are -- I think in terms of legal defenses there were
25 potentially questions about materiality and notice, but I

1 don't think that they, frankly, would come close to
2 succeeding.

3 So, Judge, at this point, given where the facts
4 lie, because it's hard to disentangle, of course, factual
5 defenses from legal defenses. We don't have any viable legal
6 defenses here that are unasserted.

7 THE COURT: Okay. Is there anything else the
8 government thinks I should be asking on that subject?

9 MS. WINIK: No, Your Honor.

10 THE COURT: Okay. All right. So given that
11 response, which I agree with in terms of how it's been
12 phrased -- I mean, I don't know how the defense is thinking
13 about the application of law to facts in this case, but I
14 accept, having reviewed the plea colloquy, that Mr.
15 Alhussayen's allocution more than satisfied the elements of
16 the offense. I don't see any indication in anything before me
17 that there is an adequate legal defense to the charges.

18 I read the plea transcript to indicate that Mr.
19 Alhussayen's plea was knowing and voluntary and that there
20 exists a factual basis for it and I now accept the guilty
21 plea and adjudge Mr. Alhussayen guilty of the offense
22 charged.

23 I will say, and we'll get into this more later as
24 this proceeding goes on, that I view the conduct here as
25 being on the substantially more serious end of the spectrum

1 of Section 1001 cases and we can talk a bit as we go on about
2 why that is.

3 Let me next identify the documents in my possession
4 now. We don't have a presentence report. That was because
5 the defense requested and the government agreed not -- to
6 proceed without a presentence report in this case.

7 I have received the following: A sentencing
8 memorandum from the defense dated November 4th of this year
9 in both redacted and unredacted form, the government
10 sentencing memorandum dated November 14th also in redacted
11 and unredacted form and as I mentioned the government's
12 sentencing submission contains a victim impact statement on
13 behalf of a person who was targeted by the underlying conduct
14 here.

15 I have the executed plea agreement, which is dated
16 October 27th of 2022, and I have a letter from the government
17 dated October 31st enclosing the plea transcript, proposing
18 that I accept the plea and also including certain paperwork
19 related to a proposed removal order, which we'll also talk
20 about today.

21 The removal paperwork includes the following: A
22 proposed removal order, the government's notice of intent to
23 request that order, certain factual allegations that the
24 government sets out in support of judicial removal and also a
25 signed plea statement from Mr. Alhussayen in support of

1 removal. That statement is dated October 28th and indicates,
2 I believe, that Mr. Alhussayen consents to the order of
3 removal being entered.

4 I also have a letter from Immigration and Customs
5 enforcement concurring in the request for a removal order.

6 That letter is dated September 28th of 2022.

7 From the defense perspective, is there anything
8 else that I should have that I did not just list?

9 MR. LEWIN: No, Judge. There's not.

10 THE COURT: From the government's perspective?

11 MS. WINIK: No, Your Honor.

12 THE COURT: And I take it I have not received
13 anything from Probation in this case.

14 THE PROBATION OFFICER: Correct, Your Honor.

15 THE COURT: Thank you.

16 All right. So those are the documents we are
17 working off of today. I have no indication that either party
18 is seeking an evidentiary hearing on any issue.

19 Is that correct from the government's perspective?

20 MS. WINIK: Correct, Your Honor.

21 THE COURT: And from the defense?

22 MR. LEWIN: It is, Your Honor. That's correct.

23 THE COURT: Okay. Does the defense dispute -- and
24 we can get into this also more as we go along, but there are
25 a fair number of factual assertions in the government's

1 sentencing memorandum, some of which are taken from the
2 complaint and other sources. Does the defense dispute any
3 assertions in the government's sentencing submission that you
4 believe could be material to today's proceeding?

5 MR. LEWIN: Judge, I think you're right to say that
6 some of this perhaps makes sense to take as it arises. There
7 are -- Ms. Winik and I have spoken about a few very limited
8 areas in which there may not be total agreement on facts, but
9 they may be immaterial. And so certainly if they come up, we
10 can address them.

11 I'm happy to address them now with the court, but
12 I'm not sure that they're material facts. There are -- again,
13 I'm happy to address this however Your Honor wishes. Either
14 lay them out or take it in the ordinary course.

15 THE COURT: I think we take it in the ordinary
16 course, but let me just say by way of background, you know,
17 in the usual sentencing posture we would have a presentence
18 report. We'd have objections from either or both of the
19 government and the defense to some or all of the narrative
20 recitations in that report.

21 And to the extent there were paragraphs in the PSR
22 to which nobody had objected, the court would typically be
23 taking those as undisputed.

24 I think you will hear me make reference at times as
25 we go through today's proceeding to representations of fact

1 in the government's sentence submissions and you should
2 understand yourself as entitled and maybe even indeed
3 obligated to speak up, to the extent those are factual
4 assertions with which you would take issue.

5 MR. LEWIN: Thank you, Judge.

6 We won't hesitate to do that. I think we're talking
7 about general categories. To the extent Your Honor has
8 questions about the phone, whether or not it was lost, that
9 would be something that certainly we would dispute the
10 implication of.

11 To the extent Your Honor has questions about the
12 "multiple deleted WhatsApp messages," that's something that
13 we certainly could address in the ordinary course. And there
14 are a few other small things.

15 But, again, it's hard to know as we sit here now
16 what Your Honor deems material. And so we won't hesitate to
17 speak up. We understand the implications of not having a
18 presentence report in which some of these factual issues are
19 resolved.

20 And so, again, with Your Honor's permission, when
21 appropriate, we're happy to address those factual questions.

22 THE COURT: Okay. All right. It sounds like we
23 have a meeting of the minds there. The government is not
24 seeking an evidentiary hearing on any issue, correct?

25 MS. WINIK: Correct, Your Honor.

1 THE COURT: Okay. All right.

2 So turning next to the advisory guidelines
3 calculation, the parties agree that the total offense level
4 under the sentencing guidelines is four. We get there via a
5 base offense level of six under Section 2(b), as in bravo,
6 1.1(a)(2) of the guidelines, which provides a base offense
7 level of six.

8 Can the government just say a word or two about why
9 2(b)1.1(a)(2) is the appropriate guideline here and why you
10 don't see any cross references or specific offense
11 characteristics applying?

12 MS. WINIK: Yes, Your Honor. May I have just a
13 moment to consult the guidelines?

14 THE COURT: Yes, please.

15 (Pause.)

16 MS. WINIK: Your Honor, the sentencing guidelines
17 specifically refer to 2(b)1.1 for an 18 USC 1001 violation.

18 Based on a review of any of the specific offense
19 characteristics, the government does not see that any of them
20 apply and, therefore, 2(b)1.1(a)(2) would be appropriate.

21 THE COURT: Okay.

22 MS. WINIK: Unless there's a specific section that
23 the court would like to reference, I'm happy to take a look,
24 but I don't see any that would apply.

25 THE COURT: Yeah. I mean, this -- again, this is a

1 subject we could take up now or later, but I will be
2 interested in the government's view of whether any of the
3 relevant conduct in this case, however defined, could have
4 been prosecuted under another statute or another section of
5 the guidelines. We'll take that up if and when it becomes
6 relevant.

7 I take it the defense has no objection to the
8 guidelines calculation?

9 MR. LEWIN: Correct, Judge. No objection. We
10 think it's correct.

11 THE COURT: Okay. So we have a base offense level
12 of six. As I mentioned, two levels are subtracted for
13 acceptance of responsibility under Section 3(e)1.1(a).

14 The government does not provide any information
15 suggesting that Mr. Alhussayen has any prior criminal
16 conviction so we have zero criminal history points, resulting
17 in a criminal history category of Roman numeral one.

18 And based upon a total offense level of four, and a
19 criminal history category of one, the guidelines provide for
20 a range of imprisonment of zero to six months.

21 The guidelines for Class D felonies like this one
22 is -- generally provide for a range of supervised release
23 from one year to three years, but the guidelines also provide
24 in Section 5(d), as in delta, 1.1(c), as in Charlie, that the
25 court ordinarily -- ordinarily should not impose a term of

1 supervised release in a case in which supervised release is
2 not required by statute and the defendant is a deportable
3 alien who will likely be deported after imprisonment.

4 I believe, as do other judges, that it can in
5 certain cases be appropriate to impose a term of supervised
6 release, especially when it could be that the defendant's
7 cooperation with immigration authorities might be made a term
8 of supervised release, and in the process, to state
9 explicitly on the record, that I do not wish or expect that
10 the defendant will be held in the United States for the term
11 of supervised release.

12 I'll be interested when the attorneys make their
13 arguments, if they have a view on that subject, to hear what
14 that view may be.

15 But what I'm contemplating in terms of supervised
16 release is a one year term, where cooperation with the
17 immigration authorities under the order of removal would be a
18 term of supervised release, maybe the payment of a fine, if I
19 were to impose one, would be a term of supervised release and
20 the like.

21 Speaking of fines, the guideline fine range in this
22 case is \$500 at the low end, and \$9,500 at the high end under
23 Section 5(e)1.2(c) (3) of the guidelines.

24 And in the absence of a presentence report I will,
25 of course, be interested in the party's arguments regarding

1 Mr. Alhussayen's ability to pay a fine. So that's the
2 application of the guidelines here.

3 In terms of the statutory provisions at issue, the
4 statutory maximum term of imprisonment for a violation of
5 Section 1001 is five years. The maximum term of supervised
6 release by statute is three years. The maximum fine is
7 \$250,000 by statute and a special assessment of \$100 is
8 mandatory.

9 Does the defense agree or disagree with anything I
10 just said?

11 MR. LEWIN: We agree, Judge.

12 THE COURT: And the government?

13 MS. WINIK: We also agree, Your Honor.

14 THE COURT: Okay. All right. So with all that
15 having been said by way of preliminaries and with the
16 parties' knowledge that I've reviewed their written
17 sentencing submissions, let me turn now to Mr. Lewin and ask
18 if you want to be heard further.

19 MR. LEWIN: I do, Judge. May I speak from the
20 podium?

21 THE COURT: Yeah, please.

22 MR. LEWIN: Thank you, Judge, and may it please the
23 court first, Your Honor, I'll introduce two people who are
24 here with us today, both of whom have traveled from Saudi
25 Arabia to be here.

1 The first who's standing now is Ibrahim's father,
2 Aborachman (ph) and the second is Ibrahim's mother, Turkia
3 (ph), who traveled just recently to be with Ibrahim during
4 this period leading up to sentencing.

5 THE COURT: Good afternoon to you both.

6 MR. LEWIN: Judge, we're here, obviously, because
7 on three separate occasions across a six month period Ibrahim
8 chose to lie to and to mislead federal agents.

9 In each of those three interviews federal agents
10 asked Ibrahim to list his social media accounts and in
11 intentionally withheld and did not tell them about certain of
12 those accounts, including one, an Instagram account, that
13 both the government and we have referred to as the Samer
14 account, S-A-M-E-R, for the court reporter.

15 Judge, the first interview, as Your Honor knows,
16 was in June of 2021. Ibrahim was visited at his home by
17 federal agents. They said they were there to ask questions
18 about his F-1 visa.

19 Among many other questions the agents asked him,
20 list your social media accounts. Ibrahim knowingly and
21 intentionally made the decision to omit other accounts and
22 only list the accounts that he believed he most frequently
23 used.

24 The second interview --

25 THE COURT: Hold on one second. I'm sorry.

1 (Pause.)

2 THE COURT: Is the microphone on, do we know?

3 MR. LEWIN: It does have a green light, Judge.

4 THE COURT: Okay.

5 (Court and the clerk confer.)

6 THE CLERK: Maybe lean in.

7 MR. LEWIN: I'll lead in, Judge.

8 THE COURT: I'm hearing it. Just for the record,
9 I'm hearing everything you're saying perfectly clearly.
10 Apparently it's not coming through entirely clearly on the
11 recording. We will look into the cause of that but, yes, if
12 you could just stay a little bit closer to the microphone I
13 think that would get us there.

14 MR. LEWIN: I will, Judge. I will. And if there's
15 a problem, please just interrupt again. I can move back if
16 that's more convenient for the court reporter.

17 Judge, the second interview in which Ibrahim
18 knowingly and intentionally chose to lie was about a month
19 later. It was also at his home. Agents once again did not
20 tell him about the subject matter of the investigation but
21 again asked him to list his social media accounts. He again
22 gave only his primary accounts and omitted the Samer account.

23 Finally, about five and a half months later at
24 Dulles Airport Ibrahim was returning for his last month of
25 study. He was, again, interviewed by federal agents. Again,

1 he was not informed about the subject matter of the
2 investigation but he was again asked to identify his social
3 media accounts and he, again, omitted a number of accounts,
4 including, importantly for this case, the Samer account.

5 Indeed in this interview Ibrahim was specifically
6 asked do you have any other accounts that you have not
7 previously given agents and he once again falsely stated that
8 he did not. He lied.

9 Judge, Ibrahim did not forget during these
10 interviews that he had these accounts. He did not
11 misunderstand what was being asked of him. He made the
12 decision to knowingly and intentionally lie to and mislead
13 investigators.

14 He did that first by not telling them about certain
15 accounts he had and second he did that by falsely claiming he
16 had no other accounts when, in fact, he did have other
17 accounts, including the Samer account.

18 So, Judge, I want to address first why? Why did
19 Ibrahim commit this crime of making false statements to
20 federal agents?

21 Judge, I'm going to give two reasons, but I think
22 it's important to state up front that I don't offer these
23 reasons as excuses.

24 What I mean there is we don't offer these reasons
25 to minimize his conduct, to explain away his conduct or to

1 justify his conduct. That's not the intent.

2 But, Judge, you are the human being that is
3 sentencing another human being potentially to a term of
4 additional incarceration and we assume that you would want to
5 know the motivation, why was it that Ibrahim made this
6 conscious decision not to just be truthful to the agents when
7 he was asked about these social media accounts.

8 So let me take his two reasons in turn. His first
9 reason was embarrassment. Your Honor has read these
10 messages. I've read these messages. These messages can be
11 read as hateful, harassing, mocking and even menacing. They
12 use crude and angry language and they are on deeply
13 controversial social, political and religious issues.

14 The reason -- the principal reason that Ibrahim set
15 up the Samer account in the first instance was that he wanted
16 to be able to say things anonymously that he would not want
17 attributed to him publicly.

18 In fact, Your Honor, we believe that if
19 theoretically Ibrahim's wife or his mother, who's sitting
20 here now, or even his father had seen these posts and had
21 said to Ibrahim did you write these posts, he would have said
22 no. He would have lied to his family too.

23 So when the federal agents came around asking him
24 about his social media accounts he made the decision
25 affirmatively, knowingly and intentionally not to tell them

1 about these accounts for fear of lifting the veil of
2 anonymity he thought he had constructed over these messages.

3 So that, Judge, was the first reason that was in
4 his mind when he chose to commit the federal crime that he
5 now stands convicted of.

6 Second, Ibrahim believed and made the unilateral
7 decision that the agents were really only interested in his
8 main social media accounts, meaning the accounts that he used
9 most frequently.

10 This is, of course, Judge, not a decision that was
11 Ibrahim's to make, not in any way, shape or form. But recall
12 that during these interviews, agents did not tell Ibrahim
13 that they were investigating his social media accounts, or
14 postings or harassing messages. In fact, they affirmatively
15 told him what they were principally looking at was issues
16 related to his F-1 visa, among other issues.

17 So he made a decision that would --

18 THE COURT: Among other specified issues or among
19 other unnamed?

20 MR. LEWIN: Well, Judge, I believe in the first
21 interview Ibrahim's impression was and what he was told was
22 that this related to his F-1 visa, his student visa, the visa
23 in which he was sort of present in the United States.

24 The second interview relates to allegedly, I guess,
25 extremist websites that were being visited from an IP

1 address. And that was the reason proffered by agents.

2 And in the third interview, again, all of this is
3 according to the complaint and our understanding from the
4 sentencing --

5 THE COURT: Is that IP address one of his IP
6 addresses?

7 MR. LEWIN: What was said and, again, you can ask
8 the government, was that there was an IP address in the home
9 that we being -- that was hitting on some sort of extremist
10 websites, thought it wasn't clear whether it was his IP
11 address who was visiting it. But that was the rationale
12 given during the second interview.

13 All I can do, Judge, is give the information that I
14 have, of course, from the complaint and from what Ibrahim
15 recalls.

16 And then the third interview, Judge, which was the
17 January, 2022 interview at Dulles Airport, the rationale
18 given was simply that there was an investigation being
19 conducted in conjunction with the Eastern District of New
20 York.

21 I think it's important now, Judge, to pause and say
22 something and to say it clearly. Ibrahim did not lie to
23 protect anyone else.

24 So first, Ibrahim sent these messages on his own.
25 No person, no government asked, demanded directed, suggested,

1 implied in anyway that Ibrahim should send these messages.

2 The life altering decision that Ibrahim made to
3 send each one of these messages was his decision and his
4 decision alone.

5 Similarly, no one, no person, no government asked,
6 suggested, demanded, implied or directed Ibrahim to lie to
7 the FBI when the FBI three different times asked him about
8 his social media accounts.

9 Once, again, Judge, that decision, that life
10 altering decision to lie to the FBI was his and his alone.

11 So I will just say this clearly, Judge. Ibrahim
12 Alhussayen was not acting as an agent of anyone, any
13 government. Not the Kingdom of Saudi Arabia or any other
14 government or any person. He was acting exclusively and
15 categorically on his own.

16 And I believe if Your Honor asks that the
17 government would acknowledge that it does not have evidence
18 that Ibrahim Alhussayen was acting as an agent to the Saudi
19 government.

20 THE COURT: Can you say a little bit more by way of
21 deep background, either now or later in your presentation,
22 about the circumstances that lead him to come to the United
23 States and study in Mississippi in the first place?

24 What is his Ph.D dissertation? He's interviewing
25 Saudi postal workers by questionnaire to ask them what they

1 think of the culture of the Saudi post office?

2 MR. LEWIN: Yes. So, Judge, I can talk about -- so
3 Ibrahim first came to the United States in I believe 2012 for
4 a master's degree in Kentucky in public administration.
5 After graduating from his master's, he proceeded on to his
6 doctoral degree at Jackson State in Mississippi, which was in
7 public administration.

8 And his research was a survey of the Saudi postal
9 service and the progress it made in reaching the goals of
10 Saudi's Vision 2030 program, which is sort of a general
11 modernization that the government of Saudi Arabia has
12 implemented. It has a number of different prongs, one of
13 which is to improve government services provided to Saudi
14 citizens.

15 Other prongs are to reduce its dependence on sort
16 of the energy sector and to modernize, I think, culturally.

17 But one aspect, one prong of Vision 2030 is the
18 improvement of government services, including the postal
19 service. And that's what his dissertation was in.

20 THE COURT: And his research consists of what?
21 Sending questionnaires to postal workers in Saudi Arabia?

22 MR. LEWIN: Judge, if I could have a minute to ask,
23 I will confess that I haven't dug deeply into the
24 dissertation topic, but if Your Honor gives me 20 seconds --

25 THE COURT: I mean, I ask because there's something

1 missing from the explanation. You know, he travels from
2 Saudi Arabia to the United States, away from his family.
3 He's being paid by the government of Saudi Arabia to do this,
4 or at least they're paying for his educational and living
5 expenses, and his research consists, as the papers seem to
6 indicate, of sending questionnaires to postal workers in
7 Saudi Arabia so as to understand their views about the
8 culture of the post office and how much the culture of the
9 post office has an impact on their ability to do their jobs.

10 So there may well be something missing from the
11 papers, but as the record stands, it seems to verge almost on
12 satire that somebody would travel here for that purpose.

13 MR. LEWIN: Well, Judge, I don't think that is the
14 purpose. I mean, I think -- to be clear. So first -- and I
15 don't -- because of this forum, there are aspects of our
16 submission that we put in under seal.

17 But I would direct Your Honor's attention to page 4
18 of our sentencing submission. It's the second full
19 paragraph. And it's the last sentence of the second full
20 paragraph, which appears on page 4 of our submission dated
21 November 4th.

22 THE COURT: Page 4 of 7.

23 MR. LEWIN: Correct, Judge.

24 THE COURT: Last sentence of the first full
25 paragraphs.

1 MR. LEWIN: Correct. It begins "It was only
2 after."

3 THE COURT: No, I see that, but that doesn't
4 explain -- I mean, that explains one discreet --

5 MR. LEWIN: So, Judge, let's be clear. That was a
6 significant animating factor in Ibrahim's decision not to
7 leave his family, but to come with his wife to the United
8 States, to receive a master's degree and then to continue
9 with doctoral studies in the United States. All of his
10 children were born while he was here studying in the United
11 States.

12 And, in fact, growing up, as Your Honor may have
13 seen, Ibrahim's father, who is here, also was involved in a
14 similar program whereby he came to the United States to
15 study.

16 Ibrahim's goals here for coming to the United
17 States were one, what's set forth in that paragraph, Judge,
18 but also to advance his education. He spent years working on
19 a master's program and a doctoral dissertation. A real
20 doctoral dissertation --

21 THE COURT: That's the part I'm interested in
22 hearing more specifics about, if they can be mustered.

23 MR. LEWIN: And if you can -- with apologies, just
24 --

25 THE COURT: No, no. Take your time.

1 MR. LEWIN: -- perhaps give me -- is it that Your
2 Honor would like to know a little more about the specifics of
3 the dissertation, what was studied and --

4 THE COURT: How does the research work, what is he
5 studying and what is his aspiration on return to Saudi Arabia
6 in terms of how he would put this education to use.

7 MR. LEWIN: Sure. I can address the last part,
8 which is to say his aspiration upon his return to Saudi
9 Arabia -- not only his aspiration, but his obligation is to
10 return to the Saudi government and continue his service in
11 the Saudi Royal Court or the Saudi government.

12 When the government of Saudi Arabia agrees to pay
13 for a part of a person's education, as they do for hundreds,
14 if not thousands of students every year here in the United
15 States, Saudi government employees who come to study not just
16 in the United States, but in the United Kingdom and
17 elsewhere, they have an obligation when they return to
18 continue to work for the government.

19 And that is what Ibrahim's aspiration is. It is to
20 return to the Saudi Royal Court and to continue at a higher
21 level, because he now will advance because of his multiple
22 graduate level degrees to a higher level inside the court to
23 work as an administrator within the court.

24 He's not sure what he's going to be doing, but that
25 is what he aspires to. The extent to which -- well, first of

1 all, Judge, the extent to which anyone's dissertation
2 necessarily relates to the practical work they do upon
3 receiving their dissertation I think is an open question, but
4 that is his obligation and his aspiration, to return to Saudi
5 Arabia to work in the Royal Court, or to work in the
6 government as an administrator with increasing levels of
7 responsibility.

8 With respect to what -- a little more detail about
9 the type of research that was done in the dissertation, I
10 have to consult with Ibrahim and I'm happy to do that.

11 THE COURT: Please. And also to note during what
12 time period his wife was in the U.S. How long she's here
13 with him.

14 MR. LEWIN: From beginning until end. She got --
15 Judge, let me be precise. There may have been times when
16 Ibrahim was here and his wife was back. But generally
17 speaking they moved here together. They had their daughters
18 here together and she left on June 27th on the flight that he
19 was -- that he did not board because he was arrested.

20 THE COURT: Okay. Thank you.

21 MR. LEWIN: Thanks, Judge.

22 (Pause.)

23 THE COURT: You're back here.

24 MR. LEWIN: Just for a moment, Judge.

25 THE COURT: Sure.

1 MR. LEWIN: Because my instinct is to the extent
2 Your Honor has follow up questions I think Ibrahim may be
3 able to answer them rather than me get it and then convey it
4 to you.

5 THE COURT: Whatever you prefer is fine with me.

6 MR. LEWIN: That's fine. So let me try. I'll give
7 a little bit.

8 So first, Ibrahim's dissertation was supervised by
9 a Jackson State University professor named Johnny Gillian,
10 who advised him on this methodology.

11 His methodology was twofold, Judge. First, he
12 conducted ten interviews of postal workers in Saudi Arabia,
13 like actual in-person interviews.

14 Second, he conducted a survey of postal workers in
15 Saudi Arabia. Apparently they -- I don't know how many they
16 sent out but they received 86 survey responses back and they
17 used only 84 of them. If Your Honor wants to know why they
18 only used 84, I can ask, or Your Honor can certainly ask
19 directly.

20 Essentially, the dissertation related to basically
21 ways in which organizational culture within the Saudi postal
22 service could sort of improve job performance and help the
23 Saudi postal service achieve increased performance goals
24 pursuant to and consistent with Vision 2030.

25 There were four dimensions of Ibrahim's conclusion.

1 So he write a dissertation, he uses these two methodologies,
2 the ten interviews and 84 survey results to make essentially
3 -- to identify four dimensions in which change could be made.

4 The first was -- and, again, if Your Honor has
5 follows ups, I think it might make sense to address them
6 directly to Ibrahim and I'm comfortable with him answering
7 the court, to the extent that's what the court wishes.

8 The first relates to managing change within the
9 organization. The second relates to achieving and presumable
10 documenting goals. The third is coordinating team work and
11 the fourth is decision making, Judge. Improving decision
12 making within the postal service of Saudi Arabia.

13 THE COURT: Okay.

14 MR. LEWIN: I think to the extent this is not
15 clear, Your Honor should blame that on me as opposed to
16 Ibrahim, because I just have not dug into the substance of
17 his dissertation.

18 But he did receive his -- he passed -- he passed
19 his exams. He received his dissertation from Jackson State
20 this May.

21 THE COURT: Okay.

22 MR. LEWIN: If Your Honor has follows up's,
23 certainly --

24 THE COURT: Not at this point. Thank you.

25 MR. LEWIN: Thanks, Judge.

1 So, Judge, where I left off was -- and I do want to
2 be clear about it, Ibrahim's decision making here was
3 entirely his own. His posts were his own. His decision to
4 lie was his own.

5 I think perhaps most importantly, Judge, I'm going
6 to turn to what we would submit to Your Honor, respectfully,
7 are the mitigating factors here.

8 There's a temptation, because this is the first
9 time other than our conference, for the court to sort of
10 start --

11 THE COURT: Just so we don't necessarily end of the
12 aggravating factors -- I understand you wanting to take on
13 the aggravating factors first and the mitigators second, why
14 is he -- well, do you dispute that he was actually asking for
15 a meeting with one of the recipients of these hostile
16 messages and do you dispute that he also sent a photo of an
17 elderly relative to one of those recipients as well, and
18 those may possibly be the same recipient.

19 MR. LEWIN: I believe they're different recipients,
20 Judge.

21 THE COURT: Okay.

22 MR. LEWIN: With respect to the meeting, it was
23 never Ibrahim's intent to meet with the person to whom he
24 sent that -- let me just --

25 THE COURT: Why is he asking for a meeting?

1 MR. LEWIN: Judge, just let me pull up my notes.
2 But the short answer to that is Ibrahim is trying to provoke
3 these people. Ibrahim is trying to --

4 THE COURT: Well, that's not what the -- the
5 meeting request said I've got information that could be
6 helpful to you.

7 MR. LEWIN: Correct.

8 THE COURT: And I need to see you in person to
9 deliver it. I'm paraphrasing here.

10 MR. LEWIN: Yeah.

11 THE COURT: What's going on there?

12 MR. LEWIN: Judge, these messages are, as I said,
13 an attempt to -- essentially to provoke.

14 What he's looking to do is essentially lift their
15 hopes. Perhaps they have information and then lower them. He
16 never had any expectation or desire to meet with them. These
17 were not serious. These were ways to provoke people into
18 responding, into perhaps lifting their expectations and then
19 seeing what their reaction would be.

20 None of that's admirable, Judge, but it was part of 21 --

22 THE COURT: It's quite a coincidence that he's
23 talking to a person who's, if I understand the facts
24 correctly, and please correct me if I don't, talking to a
25 person who's essentially on the move because of a history of

1 having been threatened and asking this woman for her physical
2 location.

3 MR. LEWIN: Yes. Judge, with respect to this
4 recipient, the messages that Ibrahim sent offered information
5 relevant to a public legal case in which that recipient had
6 been accused of defamation. He offered to show that
7 recipient information in person. Ibrahim never had --

8 THE COURT: Yes, but even you would agree that
9 that's not his true purpose for seeking to meet with this
10 person.

11 MR. LEWIN: Well, Judge, certainly it was not his
12 purpose to meet with this person. He didn't have any
13 information. He wasn't living anywhere near the person. He
14 wasn't trying to get information about where this person
15 actually lived with any intent of meeting her, of entrapping
16 her.

17 He wanted to provoke her to see what her reaction
18 would be. He wanted to maybe raise her hopes and shut them
19 down. Judge, that's not admirable. That's harassing and
20 certainly is menacing, but it was not a serious attempt. It
21 was not a serious attempt to meet with her.

22 He had nothing to offer her, Judge. He did not
23 actually have that information.

24 THE COURT: Okay. And what about the photo of the
25 elderly relative.

1 MR. LEWIN: Just give me one moment, Judge. I
2 believe I know the answer, but I want to confirm it.

3 THE COURT: Please.

4 MR. LEWIN: Thank you.

5 (Pause.)

6 THE COURT: And just for context on my prior
7 question about why he's asking one of the recipients about
8 her whereabouts, he's also sending text messages to people
9 saying I will know where you are and get you.

10 But your position is he actually doesn't want to
11 know where people are or to get them.

12 MR. LEWIN: Yes, Judge. To be clear, that's
13 correct. Again, what I am not saying is that these are
14 appropriate messages, these are laudable messages. These are
15 harassing and menacing messages. That was the intention
16 behind these messages to harass people.

17 I mean, for lack of a better term, Judge, to mess
18 with them.

19 THE COURT: Well, that seems pretty euphemistic to
20 me, but please continue.

21 MR. LEWIN: Yes, Judge.

22 And with respect to the photo, there is no factual
23 dispute that he sent the photo. The photo was of the
24 recipient's grandfather. This is part of a well known family
25 where the mother is a well known journalist. He sent that

1 photo and it's the same thing.

2 THE COURT: The same thing. He wants to get this
3 recipient's hopes up and then deflate them after the fact?

4 MR. LEWIN: Yes. I think provoke, harass, menace.
5 Express disagreement in a way that's not only not fruitful
6 but that's inappropriate though, again, to the extent Your
7 Honor wants to discuss it, we don't think it's criminal.

8 Judge, I should just add that we don't doubt that
9 these messages had an affect on their recipients. I think
10 when you hear from Ibrahim I think you will hear him say -- I
11 know you will hear him say, Judge, that he has now come to
12 realize the impact that his messages have had on other
13 people, the same thing that I think he will tell you, he did
14 not actually appreciate before.

15 The anonymity of the internet, I think as Your
16 Honor perhaps has seen, allows people to say things that they
17 would never say in person, horrible things. The level of
18 discourse on the internet is staggering and, unfortunately,
19 Ibrahim's messages fit right in.

20 But at the end of the day, Judge, and we can talk
21 about this, while Your Honor certainly is permitted both by
22 statute, 3661, and by the guidelines, to consider all of this
23 as relevant conduct, and we have no objection to Your Honor
24 considering it, it should be considered within the parameters
25 of what this is, which is a charged false statement case.

1 The government has not criminally charged Ibrahim for sending
2 these messages.

3 And one thing I'd flag, Judge, is that in many 1001
4 cases, 1001 cases are brought when the underlying facts are
5 disturbing.

6 We gave a few examples in our sentencing submission
7 to DEA agents, a BOP employee, the SSCI, or Senate Select
8 Committee on Intelligence, director of security, a lawyer at
9 Skadden Arps.

10 Often in 1001 cases the underlying conduct, the
11 conduct that gives rise to the interview in which the person
12 who is then convicted commits the crime of 1001 is often bad
13 conduct, but not always chargeable.

14 And so there is a concern here that as to the
15 extent that Your Honor looks at these messages, which were
16 not charged and fairly considered as relevant conduct, but
17 looks at these messages as really substantial aggravating
18 factors, there really is a risk of having an unwarranted
19 sentencing disparity between defendants found guilty of
20 similar conduct, which is --

21 THE COURT: What was the lie in the *Skadden* case?
22 It's about whether they had been engaged by Ukraine to write
23 the report they wrote?

24 MR. LEWIN: No. That is, I believe, the *Greg Craig*
25 case and I don't remember -- it's Alex Vandertwine, and I

1 don't remember what his specific lie was. But these are real
2 lies and real cases of real significance.

3 THE COURT: Okay.

4 MR. LEWIN: Your Honor, may I proceed?

5 THE COURT: Yes. Please. Sorry.

6 MR. LEWIN: No. Thank you, Judge.

7 I really -- I do think it's critical to focus on
8 what I'll describe as the mitigating factors. And as I
9 started saying, Judge, there is a temptation to assume that
10 nothing has come before or to understand as an intellectual
11 matter that something has come before today but not truly
12 appreciate what's come before and the consequences. And so my
13 goal briefly is to lay out what has come before.

14 Some of the consequences I'll describe are ones
15 that every convicted defendant faces prior to sentencing,
16 Judge, admittedly.

17 Others are not. Others are somewhat unique to
18 Ibrahim's circumstances and to this case.

19 So first I want to describe what I would describe
20 as the consequences that he's already face and then I want to
21 describe his attempts to atone for what he did.

22 So first, Judge, with respect to consequences I'll
23 address three things. Jail, bail and immigration.

24 Ibrahim has, as Your Honor noted, spent more than a
25 month, 35 days in jail, in conditions that were particularly

1 challenging and in many ways, frankly, are atypical for
2 pretrial detention of a defendant.

3 About ten of his 35 days were in solitary
4 confinement, more than half of his time in pretrial detention
5 --

6 THE COURT: Why is he in solitary?

7 MR. LEWIN: Because often, Judge, especially with
8 COVID, when inmates are brought in -- this was --again,
9 Judge, he was arrested on June 27th. He was released on
10 August 1st. They were put in solitary confinement for health
11 reasons to isolate them from other inmates.

12 In addition, in some facilities -- remember every
13 facility he was held --

14 THE COURT: Okay. But you mean solitary confinement
15 like special housing unit solitary confinement or you mean
16 just now allowed to interact in common areas?

17 MR. LEWIN: So the SHU is its own thing, but I'm
18 not sure there's a binary there, Judge. He was held in
19 solitary confinement where he was not able to interact with
20 other human beings. He was being held in his own cell and he
21 was not able to interact with other human beings.

22 Not only not able to act within the jails, Judge --
23 and remember, each one of these, and I'm going to go through
24 them just briefly --

25 THE COURT: Where -- he's at MDC or -- he's partly

1 in jail in Virginia I know, but is any of this time spent in
2 federal custody?

3 MR. LEWIN: Very briefly, Judge. For about ten
4 days initially he's held in the Alexandria County Virginia
5 Detention Facility.

6 For that entire ten-day period he had no contact
7 with his family. So he was arrested. His family got on an
8 airplane and went home, his wife and children.

9 He was jailed and for this entire ten-day period
10 between June 27th and I believe July 7th he was
11 incommunicado. He had one visitor, Judge, and that was me.
12 And I was there for three hours.

13 After that ten-day period he was moved from
14 Alexandria, Virginia, to the Northern Neck Regional Jail in
15 Warsaw, Virginia, which is in Central Eastern Virginia. It's
16 a county jail. He was held there for nine days and had
17 virtually no contact with his family.

18 Then he was moved from Warsaw Virginia to Grady
19 County, Oklahoma. He was held in Grady County, Oklahoma for
20 about ten days, some of that -- I think only about three of
21 those days was he able to communicate with his family.

22 He was then moved finally into federal custody on
23 or about the 27th of July. That's a Wednesday, Judge. He
24 arrived at the MDC in Brooklyn on a Wednesday night.
25 He was not able to talk to anyone Wednesday night or

1 Thursday.

2 On Friday I first spoke to him. So this is Friday
3 now, the 29th, and he was only presented and released on bail
4 on Monday, which is the 1st. So he spent Wednesday, Thursday
5 and Friday at the MDC in Brooklyn?

6 THE COURT: Why is that? Was he not supposed to be
7 presented within 24 hours of arrival in Brooklyn?

8 MR. LEWIN: Judge, I don't fault anyone for this.
9 I think this related to COVID protocols. It related to
10 testing. And it related to solitary. But the real life
11 impact was that Ibrahim was held from Wednesday night until
12 Monday before he was presented and released on bail at the
13 MDC.

14 THE COURT: Okay. I mean, I understand it's not
15 necessarily relevant to our purpose here today, but if there
16 was an extended violation of his legal rights, or even a BOP
17 protocol associated with that delay between arrival at the
18 MDC and presentment at an arraignment here, I would be
19 interested to know about it.

20 MR. LEWIN: So, Judge, I don't want to -- I don't
21 know --

22 THE COURT: I don't want to hijack this -- I don't
23 want to move this off course, but --

24 MR. LEWIN: But I do think it's important to say
25 one thing with respect to the prosecutors, who are both in

1 this courtroom and were involved in that case, they were
2 diligently and in good faith doing the same thing I was,
3 which was trying to find Ibrahim.

4 THE COURT: I'm not talking about the U.S.
5 Attorney's Office here.

6 MR. LEWIN: I know. But I still think, Judge,
7 since it came up, that throughout that period of time, quite
8 frankly, we were on the same team in trying to identify him
9 and get him into court to be presented quickly. Whether
10 something happened at BOP or not, we don't have a position
11 on. But I will say that he was held from Wednesday night
12 until Monday. And, again, was not able to speak to me until
13 Friday.

14 Judge, this 35 days is somewhat unique. Look, not
15 all defendants, but most defendants, are held in one place.
16 Most defendants are able to have visitors. Most defendants
17 are able to have phone calls with their family. They're able
18 to have legal visits. Most defendants in pretrial detention
19 have a general sense of when they will be presented and
20 offered the opportunity for bail. Ibrahim had none of this.
21 Ibrahim's family had none of this. There were days and
22 sometimes more than a week where nobody knew where Ibrahim
23 was.

24 THE COURT: What about consular notification, did
25 that -- did that occur?

1 MR. LEWIN: Consular notification was made while he
2 was in Alexandria.

3 THE COURT: Okay.

4 MR. LEWIN: But, Judge, I do think this is relevant
5 as Your Honor is considering what -- what, if any, additional
6 penalties to impose to consider this was not just 35 days in
7 jail. This was, quite frankly, a unique period of 35 days,
8 made unique both by his inability to talk to people, his
9 inability to have visitors, his status in solitary
10 confinement and, quite frankly, his inability to meet with
11 either his lawyer or his family for much of that time.

12 I want to shift now, Judge, to talk about the
13 period of time since his release.

14 He's been released for about four months of bail.
15 We'd submit respectfully that his period of bail, his period
16 out on bail, this four months, is actually quite unlike that
17 of most defendants.

18 So, first, the last time Ibrahim saw his wife or
19 his daughters was on June 27th when he was, frankly, led away
20 and arrested in front of them.

21 Ibrahim's father has come here and been with him
22 here in New York since he was released on bail on the 1st.
23 And his mother, who has come in recent days, traveled to be
24 with him during this extraordinarily stressful time leading
25 up to sentencing.

1 I'll note that his mother, Ms. (indiscernible), has
2 numerous health issues including diabetes and a cardiac
3 condition that make travel and, frankly, these proceedings
4 particularly difficult.

5 Other than that, Judge, for the last four months,
6 since August 1st, Ibrahim has not had one single in-person
7 social interaction. He doesn't have a single friend in New
8 York. He doesn't have a family member other than his parents
9 who've been here with him in New York. He doesn't have a
10 professional colleague in New York. He's not been able to
11 work. He has had neither social nor professional
12 opportunities at all. He's been in a city in which he has no
13 connections waiting to go through this process. Again, he's
14 out. He's not incarcerated.

15 This is not a sob story, but it is truly a unique
16 experience when compared to most defendants who when given
17 bail are able to resume at least certain aspects of their
18 personal or professional lives and Ibrahim had none for over
19 -- and we can address this to the extent Your Honor wants to
20 address a fine -- on housing alone, over this four-month
21 period, his family has personally spent more than \$30,000 on
22 various short-term housing, sometimes as short as a week, in
23 both Manhattan or Brooklyn.

24 And when you factor in travel expenses, that number
25 increases substantially, travel expenses for Ibrahim's father

1 and mother to be here.

2 Again, Your Honor, as with the duration of his time
3 spent in pretrial detention, where we ask you to consider the
4 nature of that 35 days, we also ask you to consider the
5 nature of his essentially four months on bail and how it
6 differs from many defendants that Your Honor may sentence and
7 the bail that they experience.

8 THE COURT: What are his release conditions?

9 MR. LEWIN: Well, first let me note, Judge, that he
10 has scrupulously followed all of the conditions of his
11 pretrial release, which include travel restrictions, his
12 travel has been restricted to the City of New York and the
13 Eastern District of New York, but my belief is that he has
14 never left Manhattan or Brooklyn.

15 He has GPS monitoring. He's had an ankle bracelet
16 the entire time. He has been forbidden to be on social media
17 or his email, so he has not even had contact with use of his
18 email. He's had contact with family, which was permitted by
19 Pretrial Services that's supervising him. But those are the
20 principle conditions of his pretrial release, Judge.

21 THE COURT: Okay. But not home detention or
22 curfew?

23 MR. LEWIN: He did not have a curfew. He also had
24 nothing to do during that time period.

25 THE COURT: Okay.

1 MR. LEWIN: Judge, third, I said I'd like to
2 address immigration. Many defendants obviously face
3 collateral immigration consequences as a result of a
4 conviction and Ibrahim is one of them.

5 So, first, as Your Honor has already observed,
6 Ibrahim's conviction will result in his immediate removal and
7 likely permanent bar from ever reentering the United States.

8 Ibrahim has spent about 17 years of his life
9 between childhood and his recent studies in the United
10 States. So he's 42 now and he's spent about 17 of his 42
11 years living in the United States. And so that's not an
12 insignificant collateral consequence, a permanent bar, but
13 it's also admittedly, Judge, not uncommon. This happens.

14 It's a collateral consequence that people face if
15 they choose to violate the law of the United States of
16 America and they're not citizens. So I get that.

17 I think more importantly there's a second
18 consequence and a third consequence.

19 The second is that all three of his young daughters
20 are U.S. Citizens. Should any one of them decide in the
21 future that they want to move here temporarily, for example,
22 to study as Ibrahim did, as Ibrahim's other family members,
23 as Ibrahim's father did, he will not be able to visit them.
24 Should they choose to move here more permanently, he will
25 never, likely never, be able to visit them. That's not an

1 insignificant consequence for a man who has three U.S.
2 citizen daughters under the age five years old.

3 I think Ibrahim's immigration status and imminent
4 removal could have a more immediate effect on him as a direct
5 result of Your Honor's sentencing decision.

6 As I know Your Honor knows, removal, deportation,
7 operates differently depending on whether Ibrahim is
8 sentenced on one hand to time served, which is what we
9 believe is the only just sentence, or is sentenced to even a
10 day in prison.

11 If Ibrahim is sentenced to time served, he has two
12 weeks to self remove. Self removal means he has to buy a
13 plane ticket and fly home with his parents.

14 Frankly, Judge, we expect, and we've spoken to the
15 prosecutor, who's been great, the passport is arriving
16 tomorrow. We expect him to leave in substantially less than
17 two weeks if Your Honor sentences him to what we submit is
18 the appropriate sentence of time served.

19 THE COURT: When you say the passport is arriving
20 tomorrow, you mean being returned?

21 MR. LEWIN: To the prosecutor, not to us.

22 THE COURT: Okay.

23 MR. LEWIN: To the prosecutor in the event that
24 Your Honor sentences him to a sentence (inaudible).

25 THE COURT: Who has it now though? The clerk's

1 office?

2 MR. LEWIN: It's my understanding, and I'll let Ms.
3 Winik address it, that the FBI --

4 THE COURT: Okay.

5 MR. LEWIN: -- and probably WFO in Washington, DC
6 likely had it until very recently.

7 THE COURT: Okay.

8 MR. LEWIN: But the point I want to make is if Your
9 Honor, and I think Your Honor understands this, but if Your
10 Honor sentences Ibrahim to time served, he will self deport.
11 He will get on a plane and he will leave this country and he
12 will likely never return no matter what his daughters choose
13 to do.

14 If Your Honor, on the other hand, sentences Ibrahim
15 to even a day of additional prison time, he cannot self
16 remove. Rather, on completion of his sentence, he will be
17 transferred into ICE immigration custody.

18 So I assume, and won't go into any detail, that
19 Your Honor is familiar with the conditions of immigration
20 custody, both overcrowding and the under resourced nature of
21 ICE detention custody.

22 But more importantly, Ibrahim is likely to spend
23 substantial additional time incarcerated pending deportation
24 if Your Honor sentences him to even an additional one day in
25 prison. The data, the most recent data, we could find is of

1 2019 where countrywide individuals were held in ICE custody
2 for an average of 55 days. I don't think it's improved since
3 2019. So the average nationwide of ICE custody is 50 to 5
4 days.

5 But more importantly, and more directly, of the ten
6 immigration facilities that have the longest periods of
7 detention, of the ten facilities, ICE immigration facilities,
8 most of which are country jails on contract, four of them are
9 in New York City. The New York City metropolitan area I
10 should say. The four of them, Orange County, New York, Essex
11 County, New Jersey, Bergen County, New Jersey and Hudson
12 County.

13 Orange County, New York is 107 days on average. So
14 that's how long people on average spend in ICE detention.
15 The lowest is Hudson County, New Jersey which is 88 days.

16 So, Judge, if Your Honor determines to sentence
17 Ibrahim to even a day of additional time in prison, it could
18 likely keep him incarcerated for between two and four
19 additional months in already overcrowded ICE immigration
20 detention centers.

21 So, Judge, just briefly to sum up, and then I'll
22 move on to his attempts to atone or make right what he did.

23 He's already experienced substantial consequences,
24 jail, bail and immigration, and will continue to face
25 substantial consequences for his conduct. Many of those

1 consequences, though admittedly not all, are somewhat unique
2 to Ibrahim.

3 So now I'll turn briefly to what Ibrahim did to
4 atone or attempt to essentially make up for his conduct.

5 So, first, Judge, he immediately, through counsel,
6 made attempts to cooperate with the Government and plead
7 guilty.

8 We, as his lawyers, raised the desire for and
9 willingness to discuss a quick resolution that would include
10 a guilty plea beginning in mid July. So, Judge, that was
11 about two weeks before he even arrived in the MDC in Brooklyn
12 at the end of July. We first started, based on our
13 conversations with Ibrahim, engaging in conversations with
14 the Government about resolution.

15 By early August, quite literally days after his
16 arrival in EDNY, we conveyed our willingness for Ibrahim to
17 sit for interviews and answer questions. Days later, by mid
18 August, we had agreed that Ibrahim would sit -- would, in
19 fact, sit for an interview as part of resolution to this
20 matter.

21 Here, Judge, I just want to pause for a moment and
22 make clear that this was never an attempt to affirmatively
23 cooperate and get a 5K1.1 letter. This is not a case of
24 failed cooperation. That was not what was discussed with the
25 Government at any point in time. This is not failed

1 cooperation.

2 The discussion was reaching a resolution pursuant
3 to which Ibrahim comes in and answers questions about his
4 conduct, and ultimately that's exactly what he did. About
5 his conduct, about his relationships. He spent about four
6 and a half hours in the first interview and two and a half
7 hours in the second interview in early September providing
8 information to the Government.

9 THE COURT: But to the extent you're comfortable
10 doing so, I wonder if you could say more about what you mean.
11 You said he wasn't seeking to cooperate in the 5K sense of
12 the word cooperation, but you did start by saying that he
13 decided immediately to plead guilty and cooperate.

14 And what does cooperation mean in this context?
15 The Government even was fairly oblique on that subject.

16 MR. LEWIN: I think I hopefully can clarify this
17 for Your Honor.

18 What cooperation means is that the Government had
19 concerns. They were concerned about whether Ibrahim was
20 acting as an agent of a foreign government. They had
21 concerns about how many other messages were out there. They
22 had concerns about some of his relationships with other
23 people, whether he was taking direction from other people.

24 And so we engaged in discussions in which I think
25 it was clear -- and, again, if Ms. Winik wants to

1 characterize this differently, that's really fine -- but I
2 think it was agreed that they wanted to get some assurances.
3 They wanted to understand some of the facts better directly
4 from Ibrahim.

5 We did an attorney proffer and they wanted to hear
6 from him about his relationships, about whether he was taking
7 direction from anyone else on these subjects.

8 And essentially the negotiations were if he comes
9 in and you determine him to be truthful about all -- about
10 material matters that we would at least conceptually reach
11 the agreement that we, in fact, reached, Judge, which is a
12 plea agreement with the guidelines, the appropriate
13 guidelines, of zero to six months and an acknowledgment that
14 a sentence of time served, given his cooperation, given --

15 THE COURT: You keep saying cooperation, but the
16 cooperation essentially boils down to him sitting down with
17 the Government to tell them that he's not guilty of more
18 serious offences --

19 MR. LEWIN: But as Your Honor knows --

20 THE COURT: -- or working for other people.

21 MR. LEWIN: I apologize.

22 THE COURT: No, go ahead.

23 MR. LEWIN: I apologize.

24 THE COURT: No.

25 MR. LEWIN: As Your Honor knows, in national

1 security cases, just sitting down with the Government and
2 answering questions, the Government getting that information,
3 understanding what happened, understanding what didn't
4 happen, being able to ask unlimited questions, is actually
5 extraordinarily significant. This is not --

6 THE COURT: I'm not -- sorry to cut you off. I
7 agree that it has significance. I'm not saying it has no
8 significance. I'm just saying it's not what we typically
9 think of as cooperation.

10 MR. LEWIN: So may I should -- fair -- I should say
11 lower case C cooperation. What I mean is a willingness to
12 come in, to sit for, in this case, approximately seven hours
13 of questioning and to answer every question. Questions about
14 relationships, about other people, about his activities,
15 about his background, about why he sent these messages, about
16 the people to whom he sent these messages.

17 So when I say cooperation, to speak colloquially, I
18 mean lower case C cooperation. I mean providing information
19 that the FBI wants and the Eastern District of New York U.S.
20 Attorney's Office wanted to get information about. Some of
21 that related to this case.

22 Frankly, Judge, I won't go into detail because,
23 again, some of this was submitted under seal, but some of
24 that related to other cases and he answered those questions.
25 And ultimately the Government essentially agreed to the

1 bargain that we struck, which is what we are here on today,
2 which is a guilty plea to a count of 1001.

3 THE COURT: Understood.

4 MR. LEWIN: I will -- I will not try to summarize
5 Ibrahim's remorse. He has -- will, in his own words, sort of
6 describe it for you.

7 But I think it's fair to say that he is genuinely
8 remorseful, particularly for the effect that his words had on
9 other people.

10 I think the recognition of which perhaps wasn't
11 clear to him, as it isn't clear to many people who
12 anonymously fling things out into the social media universe
13 without thinking about it and do so over a long period of
14 time. Again, I'll let him speak for himself.

15 Judge, for all these reasons, a sentence of time
16 served is, we believe, the only, the only just and
17 appropriate sentence.

18 We're all familiar with the 3553(a) factors. I
19 won't go through them. I'll make five brief points which
20 I've already hit.

21 First, Ibrahim's guidelines are an offense level 4
22 which is firmly inside the zero to six-month range. Indeed,
23 Judge, you could double his offense level and he would still
24 be in the zero to six-month range.

25 The Government has agreed that a sentence of time

1 served may well be appropriate.

2 Second, Ibrahim has no prior convictions. And this
3 conduct, while undoubtedly and painfully serious, is actually
4 aberrational in a life that was otherwise well lived and
5 will, I assure you, in the future be well lived.

6 He stands before you as a person who has already
7 experienced, and who will in the future experience,
8 substantial consequences for his conduct, including that he's
9 already served more than a month in multiple jails around the
10 country, four months on bail but unable to work, socialize or
11 be with his family.

12 He will, in the future, be forever barred likely
13 from re-entering this country, even though his three U.S.
14 Citizen daughters are citizens of the United States and could
15 well choose to live here briefly or permanently.

16 Judge, these consequences that he has already faced
17 adequately, and I would say even powerfully reflect, both the
18 seriousness of the offense that Ibrahim committed and clearly
19 promote both specific deterrence, which the government has
20 acknowledged it does not believe Ibrahim will ever, ever
21 commit this conduct again, and general deterrence.

22 This has been well covered in the media and people
23 know that these sorts of lies and this sort of conduct is
24 simply not tolerated by the Government.

25 Fourth, Ibrahim has taken substantial steps since

1 being charged to take responsibility, including quickly
2 conveying a willingness to enter a guilty plea and sitting
3 for six hours of interviews or seven hours of interviews with
4 the government.

5 And we think, respectfully, Judge, that a sentence
6 of time served, which would be more than a month in jail,
7 would be consistent with other sentences and would avoid
8 unwarranted sentencing disparities.

9 So, in sum, Ibrahim has learned his lesson. Anyone
10 who is watching has no doubt about how serious the United
11 States government takes this conduct. Time served is a just
12 sentence and we urge Your Honor to impose that sentence and
13 to permit Ibrahim to return home and try to restart his life
14 with his wife and his young daughters.

15 THE COURT: Thank you.

16 MR. LEWIN: Thank you, Judge.

17 THE COURT: For the government?

18 MS. WINIK: Your Honor, is it okay if I stay seated
19 to speak into the microphone?

20 THE COURT: It is.

21 MS. WINIK: Your Honor, the government respectfully
22 submits that a guideline sentence here, which includes also
23 the sentence of the 35 days the defendant already spent in
24 custody, and his agreement to be removed from the country
25 immediately following any sentence is sufficient, but not

1 greater than necessary to serve the goals of sentencing here.

2 As the Government sentencing submission lays out,
3 and a victim we'll hear from later will explain, as well as
4 the victim impact statement, a second victim included in the
5 Government's submission, the defendant's conduct was
6 incredibly serious and has significant real effects on real
7 people's lives. The victim will speak about it better than I
8 can today.

9 But in addition to the two victims the Court will
10 hear from, there's numerous other victims who did not want to
11 speak in court today, but who the Government met with. Many
12 of these victims are mostly women who escaped persecution by
13 the Saudi government and fled for what they believed was a
14 better life outside Saudi Arabia, in a place where they could
15 advocate openly for human rights and equality.

16 But despite escaping the Saudi government, they
17 were continuously threatened and harassed by the defendant
18 who was receiving his education in the United States paid for
19 by the Saudi government.

20 The defendant knew his threats were wrong, which is
21 why he repeatedly lied to the FBI about it. These are
22 serious conduct and should be sentenced seriously.

23 The Government believes, however, that the
24 consequences of this criminal conviction and the defendant's
25 agreement to be removed from the United States has

1 specifically deterred the defendant from future online
2 harassment.

3 And I want to talk briefly about the Court's
4 question at our last status conference about whether the
5 defendant acted on behalf of a foreign government that came
6 up earlier today.

7 Nine, five, one, which is acting as an agent of a
8 foreign government, requires -- is a very technical charge
9 that requires an agreement to act subject to the direction
10 and control of a foreign government.

11 As the Government complaint explained in its
12 sentencing submission, the defendant worked for the Saudi
13 government before coming to the United States. The Saudi
14 government paid for his education. The defendant's father is
15 high up in the Saudi government. And the defendant will be
16 employed by the Saudi government when he returns to Saudi
17 Arabia in a position yet to be fully determined by the Saudi
18 government.

19 The Government isn't prepared to argue or present
20 evidence that the defendant acted at the direction of a Saudi
21 government official when he threatened the dissidents in this
22 case and harassed them online or when he lied to the FBI, but
23 we've pointed out the defendant's strong connection to the
24 Saudi government since it's directly relevant to the charges
25 here.

1 The defendant's connection to the Saudi government
2 makes his threats to dissidents that more significant and
3 that more real.

4 When the defendant --

5 THE COURT: Does it even matter if he's acting
6 specifically at the direction of a, you know, "Handler or
7 supervisor" in the Saudi government?

8 And the reason I ask that is because let's say we
9 all took it as a given for purposes of argument that he was
10 working on behalf of the Saudi government to harass
11 dissidents who were criticizing the Saudi government's
12 policies, it's not apparent to me what he might do
13 differently under those circumstances.

14 MS. WINIK: Your Honor, I agree with you. I think
15 the question is you had asked earlier do we have evidence
16 that could support a charge of 951 or acting at the direction
17 of, and the answer is we don't, Your Honor. What we do have
18 is someone with very strong Saudi ties engaging in this
19 conduct, which is why we've laid it out for the Court in our
20 complaint and in the sentencing submission.

21 So when the defendant says to a dissident I'm going
22 to teach you a lesson or do you think you'll be safe here,
23 it's not just someone sitting on a couch in their basement
24 texting that. It's somebody with incredibly strong Saudi
25 government ties texting that.

1 So we just want to -- I just wanted to provide the
2 Court with the explanation that you asked for at the last
3 status conference.

4 THE COURT: While we're on the subject of other
5 crimes that the Government might have considered for one
6 reason or another, what about anything in Title 18 that
7 relates to the transmission of threats of violence by
8 internet communications?

9 MS. WINIK: I don't want to provide a not-full
10 answer. I will say that a lot of the defendant's victims
11 were out of venue, so not within the Eastern District of New
12 York.

13 THE COURT: Okay. But at least one of them was in
14 the Eastern District of New York?

15 MS. WINIK: Yes, Your Honor. And we'll hear from
16 that victim today.

17 But that was the thought process into the
18 Government's charging decision at that time.

19 THE COURT: Okay.

20 MS. WINIK: But when we're talking about the
21 sentencing factors here, I believe the Court should consider
22 the seriousness of the offense, his conduct over a long
23 period of time, but also the purposes of sentencing. And at
24 least some of those purposes in terms of specific deterrence
25 have been met the Government believes in this case.

1 Unless the Court has further questions for the
2 Government, I'd like to give the opportunity to one of the
3 victims to speak.

4 THE COURT: Please.

5 (Pause.)

6 MS. al-MAYOUF:: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MS. al-MAYOUF: My name is Danah al-Mayouf. I'm
9 referred to in this indictment as Victim 5.

10 I have a platform in social media and I believed I
11 can use it to advocate for women's rights and freedom of
12 belief in Saudi Arabia.

13 I have used Twitter, Instagram and my YouTube
14 channel as a tool to translate politically banned books in
15 the kingdom.

16 I used to work in customer service jobs, including
17 grocery store cashier, bank teller, and technical and
18 customer support. In this line of work, I did deal with
19 people directly most of the time. I also did some
20 photography on the side in hopes of making it a full-time job
21 when I built a client base.

22 As an activist, I'm subjected to kidnap, rape and
23 death threats but what I believe are agents who work for the
24 Saudi government.

25 Because my jobs required me meet in person with

1 strangers, I'm constantly fearful and extremely cautious when
2 these interactions occur. In 2017, I was stopped before by
3 someone who is pro the Saudi government, which made me stop
4 meeting potential clients in person.

5 I thought it would be over, but with Ibrahim
6 sending messages, using the account he had from the FBI to
7 ask to meet me in person, while he was threatening and
8 verbally abusing other girls with the same account, it made
9 me realize that I am not safe, and stalking -- and the
10 stalking and luring attempt would never stop until I'm either
11 dead or kidnapped.

12 For every Saudi dissident and activist, the
13 Khashoggi murder in October 2018 was a threat you are next.

14 It was in December 2019, when Ibrahim's luring
15 attempt happened. He claimed he has information that could
16 help me make -- that could help make me win what I believe is
17 a frivolous lawsuit filed against me which I suspect is
18 funded by the Saudi government to put me through mental and
19 financial anguish. So I wanted to meet him in person so bad,
20 but I also -- but I was also scared for my safety.

21 I eventually decided not to go after consulting my
22 lawyer and instead I reported it to the FBI. Had I met him
23 then, I don't know if I would be here today making this
24 statement.

25 This constant fear for my life and safety, and the

1 stresses that I deal with daily, exacerbated my anxiety and
2 triggered my OCD which is impacting my life greatly. I'm
3 always looking over my shoulder. I have nightmares, the same
4 exact nightmares are shared by many Saudi woman who live
5 abroad and are scared for their lives because they oppose the
6 Saudi government.

7 I still don't feel safe. I don't turn on the AC or
8 the heater while I am alone in the bedroom so I can be aware
9 of all the sounds in my surrounding. Any sound near the
10 door, like the sound of our neighbor unlocking his door,
11 terrifies me. All this is happening while I am on American
12 soil.

13 Ibrahim claims the Saudi government did not order
14 him to make these statements and he made them out of love and
15 dedication to his country and its leadership.

16 I want Ibrahim to reflect on what loving your
17 country is. Does he love his country more by verbally
18 abusing, threatening, and luring victims of that oppressive
19 leadership, suppressing the freedom of speech and targeting
20 activists, or do I love my country any less by wanting the
21 best for its people and wanting leaders to be held
22 accountable.

23 Government change and new leadership takes over,
24 but the lands and the people will not. We activists choose
25 to fight for our country and our people and not for the

1 oppressors in the government who are only looking after their
2 personal interests.

3 I don't want what happened to me to ever happen
4 again to me or to anyone else. Protect us by protecting our
5 freedom of speech. Thank you.

6 THE COURT: Thank you. Thank you.

7 MS. WINIK: Thank you. I have nothing further,
8 Your Honor.

9 THE COURT: And no second person?

10 MS. WINIK: Just the letter that was attached to
11 the Government's --

12 THE COURT: All right. I'm happy to hear from Mr.
13 Alhussayen now and also happy to take a five-minute break if
14 you would prefer that beforehand.

15 MR. LEWIN: Can we take a five-minute break, Judge,
16 and then allow --

17 THE COURT: Let's take a five-minute break and then
18 I think we'll push through after that.

19 MR. LEWIN: Great. Thank you.

20 THE COURT: Thank you.

21 (Recess from 4:34 p.m. until 4:39 p.m.)

22 THE COURT: Are we all here? Okay.

23 I have a quick question for the Government before
24 we proceed to hear from the defendant.

25 Do you know if Instagram is available in Saudi

1 Arabia?

2 MS. WINIK: My understanding, Your Honor, is that
3 it is just because I know the defendant informed the
4 Government that he posted on Instagram from Saudi Arabia, but
5 that's the basis of my knowledge.

6 THE COURT: Okay. Is there, to ask a more general
7 question, any reason why a campaign of harassment like this
8 one could be conducted more effectively from U.S. soil than
9 from Saudi Arabia?

10 MS. WINIK: Your Honor, I can speculate. I don't
11 know if my answer --

12 THE COURT: I can speculate too. Yeah. Maybe
13 other users can see the location of the person who's
14 messaging them or maybe they can't.

15 MS. WINIK: Just from my own personal knowledge of
16 Instagram, I don't believe, unless you tap a photograph
17 saying in a certain location.

18 THE COURT: Okay.

19 MS. WINIK: I mean, I certainly think that while we
20 have a broad news world where you can access news from
21 anywhere, you're certainly, you know, able to more easily
22 access American-based or English-based news from the U.S.
23 But, again, I'd just be speculating.

24 THE COURT: Okay. All right. Thank you.

25 Mr. Alhussayen?

1 THE DEFENDANT: Yes, Your Honor.

2 Your Honor, I stand before deeply humbled and
3 embarrassed by my actions that I have led me here today.

4 I want it to be clear, I am totally and solely
5 responsible for my conduct. No one asked, direct, or even
6 suggest that I take these actions. I did this all by myself.

7 As you know, I lied to federal agents three
8 different times about my social media accounts. Each time I
9 did not disclose all of the accounts that I controlled,
10 including with the user name samer16419.

11 I did this because I was embarrassed. I was
12 embarrassed about the content and language that I had used in
13 messages sent from the accounts. The messages are not
14 appropriate and they are certainly not appropriate for
15 someone as educated as I'm lucky enough to be.

16 I also did not know why the agents were interested
17 in my social media and thought it would be enough to give
18 them the accounts that I used most -- that I used most often.
19 This was wrong. Lying to the FBI is a serious crime and I
20 will never do it again.

21 As for the Samer account, I set up this account to
22 post my political views. I sent messages to people who I
23 disagreed with about Saudi politics and social issues.

24 Your Honor, I would like to say that I love my
25 country and support my country, but I now know clearly that

1 this is not the way or the method of expressing that love and
2 support.

3 I still disagree with these individuals, but the
4 way I disagreed with them was wrong. I sent messages that
5 mocked them and with a controversial language because I
6 wanted to provoke them. I wanted to get a reaction. I did
7 not -- I did not intend to hurt them, but I should have known
8 better. I should have known that my words could hurt, could
9 be threatened, could make people scared.

10 I know that they did and I want to speak directly
11 to those who I hurt. I'm deeply sorry and ask for
12 forgiveness.

13 I lastly want to say to my family I feel an immense
14 amount of guilt for what they have had to experience. My
15 wife and children were confused and scared when I was
16 arrested at the airport.

17 After they couldn't speak to me for weeks, and even
18 after my release, they have to live without me for over four
19 months. My children still do not know why I'm not home. I
20 have not been there for them and that is my fault. I'm
21 ashamed by what I have done to them.

22 Your Honor, I want to be a good role model to my
23 children. The actions that led me here, lying to the FBI,
24 sending these type of messages, are not how I want them to
25 know me.

1 You can be certain that nothing like this will ever
2 happen again. I promise to work every day for the rest of my
3 life to grow into the best person that I can be. Thank you,
4 Your Honor.

5 THE COURT: Thank you.

6 Okay. Okay. So as is my obligation, I've spent a
7 fair amount of time considering the relevant factors set out
8 by the United States Congress at 18 U.S. Code, Section
9 3553(a). Those include the advisory sentencing guidelines
10 range and a number of other factors that I'll mention
11 momentarily. I've considered them to ensure that I impose a
12 sentence that is sufficient, but not greater than necessary,
13 to comply with the purposes of sentencing, as is my
14 obligation in every case, sufficient, but not greater than
15 necessary.

16 The purposes of sentencing under federal law
17 includes the need for the sentence to reflect the seriousness
18 of the crime, to promote respect for the law, to provide just
19 punishment for the offense, and to deter criminal conduct
20 both by this defendant and also to deter others who might
21 seek to engage in this type of crime in the future.

22 I've also considered, as is my obligation, the
23 nature and circumstances of this offense and the history and
24 characteristics of this defendant.

25 My practice at sentencing is to talk about what I

1 see as the aggravating factors in a given case. Those are
2 the factors that would call for a higher sentence all things
3 being equal, and then to discuss the mitigating factors,
4 which are those that would call for a lower sentence, all
5 things being equal.

6 The Government opened by calling this case
7 incredibly serious. I agree with that characterization.

8 Mr. Alhussayen has been convicted of violating 18
9 U.S.C., Section 1001, which is a crime that is not typically
10 thought of as being among being credibly serious statutes in
11 Title 18.

12 But in this case, Mr. Alhussayen lied repeatedly
13 over an extended period of time, so we're not talking about a
14 momentary or reflexive denial by somebody who's put on the
15 spot in a way they don't expect to be and the crime is over
16 essentially as soon as it begins.

17 Here we have a series of meetings, again, over a
18 period of months, a period of many months, in which the
19 defendant lies repeatedly.

20 He's a well-educated man. He comes from means and
21 a high stratum of Saudi society. He's a former government
22 employee, as the complaint indicates. And he's sending
23 messages that I don't want to be euphemistic about here.

24 We have, to some degree, skirted the nature of the
25 threatening messages themselves, talked about how people get

1 overheated on the internet, which is surely true. Everybody
2 gets overheated inappropriately from time to time in their
3 lives and says things that they later regret, but that's not
4 what we're talking about here.

5 And at the risk of introducing some vulgarity into
6 this proceeding, I want to just acknowledge some of the
7 messages that are set forth in the Government's sentencing
8 submission.

9 And the purpose of me doing this is to leave
10 absolutely no doubt in the minds of everyone here today that
11 this is not just a question of overheated or inappropriate
12 rhetoric or of making statements that one realizes later were
13 inappropriate.

14 This is a coordinated campaign to put the
15 recipients of these messages in fear, including in fear of
16 violence.

17 So on July 15th of this year, Mr. Alhussayen says
18 to Victim No. 4, do you think you're going to be safe here?

19 On September 18th, he tells Victim No. 5 that he is
20 going to, quote, "Kick your ass."

21 And next message, next day, I'm going to teach you
22 a lesson. Same day, we will discipline you. Same day, soon
23 I will know where you are and get you, bitch. Same day,
24 fine, go ahead and make fun of me. Let me see how smart you
25 are when we get our hands on you. Same day, you'll see,

1 bitch, who is going to do as he pleases. Same day, I swear I
2 will not let you be. Same day, see what happened to Amal al-
3 Asmari. Same day, MBS will wipe you off the face of the
4 earth. You will see.

5 Next message, I will teach you a lesson. Next
6 message, you will face the same fate as Amal al-Asmari. And
7 remember what I said, be careful and do not cross your
8 boundaries. This is the last time I see you do this.

9 In 2019, the defendant sends Victim No. 6 the
10 messages attempting to set up a meeting and indicating that
11 he knew where Victim No. 6 was located.

12 So this conduct went on for an extended period of
13 time.

14 I mentioned in the colloquy with the lawyers here
15 what I see as two of the most serious interactions, one where
16 Mr. Alhussayen is asking for a face-to-face meeting with one
17 of the recipients of these messages, and another in which he
18 sends a photograph of an elderly relative to that victim. I
19 don't think there's any reasonable way to understand that
20 message other than as threatening the safety of the
21 recipient's family member.

22 And as everybody here has indicated, especially the
23 Government, the fact that Mr. Alhussayen lied to the FBI on
24 multiple occasions about the ownership of the account in
25 question is of course an indication that he understood the

1 severity of his conduct.

2 There's some dispute back and forth about whether
3 the defendant lied to the Government or was less than
4 forthcoming to the Government about the whereabouts of
5 another phone that he held. I understand we're not perhaps
6 going to get to the bottom of that question here today and so
7 I will not rely on it for purposes of the sentence I impose
8 here.

9 What I will say, Mr. Alhussayen, is that this
10 conduct I don't think it's an exaggeration to say actually
11 undermines a key pillar of the American promise. This
12 country is welcoming to immigrants. Perhaps if you look at
13 the numbers, more welcoming of immigrants than any other
14 country in the world year in and year out.

15 And one key part of the welcome package is the
16 message that you will be able to speak your mind freely in
17 this country. I say that exact phrase on a regular basis to
18 new citizens who are being naturalized in this very building.
19 And I don't have to tell anybody here that given the freedoms
20 of speech, communication and travel in this country, the
21 United States has long been viewed as a safe harbor of sorts
22 for dissidents fleeing repression in other places.

23 When foreign nationals harass dissidents in their
24 home countries, that's one thing. But it's another thing
25 entirely to travel here and threaten people for their

1 political and social views while standing on U.S. soil. And
2 that to me is the key part of my obligation today.

3 I mentioned the Court's obligations at sentencing,
4 and to my mind one of the key factors is the general
5 deterrence factor, specific deterrence means the aspiration
6 that the sentence that I impose here will deter you, Mr.
7 Alhussayen, from engaging in this type of conduct again in
8 the future.

9 Your attorneys have been extremely eloquent on your
10 behalf, and I think make a persuasive case that the risk of
11 you personally engaging in this type of conduct again in the
12 future is low given what you've been through in this court
13 case, but we're seeing a substantial frequency, a substantial
14 number of incidents of campaigns of harassment carried out by
15 foreign nationals on U.S. soil in recent years.

16 There were Southern District indictments in the
17 last several months I believe alleging that the Republic of
18 Iran targeted a Brooklyn journalist among other people.

19 There are multiple criminal charges that have been
20 brought this year and in the last several years arising out
21 of efforts by the People's Republic of China in this district
22 and elsewhere to harass dissidents.

23 And this is happening often enough apparently that
24 the FBI has actually attached a name to the practice, that
25 name being Transnational Repression.

1 This is extremely, extremely serious conduct, and
2 it is incumbent on me, I think, that the sentence I impose
3 today sends a message that crimes committed in the course of
4 such harassment will be taken seriously.

5 So those are the aggravating factors.

6 On the mitigating side of the spectrum, I do think
7 it's somewhat meaningful that Mr. Alhussayen agreed
8 immediately to plead guilty to the 1001 violation.

9 I think it is somewhat meaningful, as I indicated
10 earlier, that he agreed to meet and speak with the Government
11 about the conduct at issue, although the Government has taken
12 the position, as I've mentioned, that he lied at least one of
13 those proffer sessions about the whereabouts of an electronic
14 device that the Government wanted to put its hands on. Point
15 one.

16 And more generally and more importantly, point two,
17 you know, I'm not suggesting anybody should cooperate against
18 other people that they don't have a basis to cooperate
19 against, but I will say I think it stretches the word
20 cooperation beyond its usual boundaries in this courthouse to
21 say that the defendant even attempted to cooperate against
22 other people, as I understand the record.

23 Again, all that having been said, it is meaningful
24 and it will affect in Mr. Alhussayen's favor the sentence
25 that I impose today that he agreed expeditiously to plead

1 guilty, that he consented to removal, and so forth.

2 And I do believe it's meaningful that he has spent
3 34 days in jail so far. The picture that Mr. Lewin paints of
4 that time in jail indicates that that 34 or 35, depending on
5 how we count, days were maybe the equivalent of substantially
6 more time in better circumstances.

7 So those are the factors that would favor a lower
8 sentence in this case.

9 The United States Sentencing Guidelines provide a
10 range of imprisonment, as I mentioned before, of zero to six
11 months. The plea agreement calls for a range of imprisonment
12 between zero to six months. And Mr. Alhussayen has already
13 served, if we give him the benefit of the doubt on that extra
14 day, 35 days in pretrial detention.

15 The defense is asking on that basis for a sentence
16 of time served.

17 I don't believe, however, that a sentence of time
18 served would be sufficient to convey the message that I think
19 is required for general deterrence, as I mentioned earlier,
20 and I don't believe a sentence of time served would be
21 sufficient to recognize the severity of the offense conduct
22 at issue here.

23 It's a little bit -- well, let me say that
24 differently.

25 The Government, I think, has already accounted for

1 many of what I'm describing as the mitigating factors in the
2 -- in extending the plea offer that they extended here.

3 I think to say that a sentence of time served is
4 appropriate would go too far for me.

5 And so after assessing the particular facts of this
6 case, and in light of the relevant Section 3553(a) factors, I
7 sentence Mr. Alhussayen to 60 days, 6-0 days, in the custody
8 of the Federal Bureau of Prisons.

9 I also will order that upon release from
10 imprisonment Mr. Alhussayen shall be on supervised release
11 for a term of one year and I'll impose certain special
12 conditions to go with that term of supervised release in a
13 moment.

14 But I want to be clear, and we will be clear in the
15 judgment, that I am not directing that the term of supervised
16 release be served in the United States. And my imposition of
17 a term of supervised release should not function to impede or
18 delay what would otherwise be the expeditious removal or
19 deportation of the defendant.

20 In terms of special conditions, number one, Mr.
21 Alhussayen may not reenter the United States illegally. And
22 number two, Mr. Alhussayen shall cooperate with and abide by
23 all instructions of the immigration authorities.

24 I find that these conditions are reasonably related
25 to the nature and circumstances of the offense, the history

1 and characteristics of the defendant, the need to afford
2 adequate deterrence, the need to protect the public from
3 further crimes of the defendant, and the need to provide
4 correctional treatment in the most effective manner.
5 Forfeiture is not applicable in this case.

6 In terms of a fine, does defense want to be heard
7 on the subject of Mr. Alhussayen's ability to pay a fine?
8 And if you do want to be heard, would you mind pulling the
9 microphone a bit closer to you.

10 MR. LEWIN: I stood only to ask if I could have a
11 minute to consult with my client?

12 THE COURT: Yeah. Please.

13 (Pause.)

14 THE COURT: And just to give everybody a preview of
15 the question that will come shortly, I will have questions
16 for the Government about whether you have a view on Mr.
17 Alhussayen's continuation on bail or his remand? And if the
18 former, whether you would seek any change to the conditions
19 of his release. But we'll get there when we get there.

20 (Pause.)

21 MR. LEWIN: Judge, with respect to a fine, we'd
22 only point out that Ibrahim is a student, has been a student
23 for the last ten years. His family has already spent -- he
24 has not spent -- his family has spent an additional over
25 \$30,000 simply on housing costs alone.

1 We think that Your Honor has imposed a significant
2 sentence of incarceration that clearly sends a message. And
3 a fine for a student who's been a student for ten years would
4 have a significant impact and is not necessary here
5 particularly in light of the out-of-pocket costs that his
6 family has already incurred.

7 And, Judge, if I might, with respect, may I address
8 the second point Your Honor made just in advance?

9 We would -- I believe we've discussed this and
10 asked that Ibrahim be permitted to self surrender by the end
11 of this week. I believe we have agreement on that, but we'll
12 let Ms. Winik describe that.

13 THE COURT: To self surrender to the marshals, to
14 the MDC? Where would you --

15 MR. LEWIN: Wherever he's directed to self
16 surrender, he will self surrender, Judge. And we'd just ask
17 for him -- he will probably surrender before then, but to
18 have a day or two to get his affairs in order before he
19 serves his sentence.

20 THE COURT: Okay. And my question for the
21 Government will be just whether that works logistically
22 speaking?

23 I doubt that the Bureau of Prisons would be in a
24 position to designate him to a particular facility by the end
25 of this week. And so whatever I'm going to order, it has to

1 be something that works --

2 MR. LEWIN: Of course, Judge.

3 THE COURT: -- with the system we have. But we'll
4 take that question up in a bit.

5 MR. LEWIN: Yes, Judge.

6 THE COURT: On the subject of a fine, you know, I
7 don't believe I'm in a position to make a finding that the
8 defendant lacks the ability to pay a fine.

9 He, I understand, has been a student, but by all
10 indications, including from the defense, he will be gainfully
11 employed when he returns to Saudi Arabia working for the
12 Saudi government, and so I will impose a fine that is at or
13 about the mid point of the guidelines fine range here of
14 \$4,000 U.S. dollars.

15 Restitution is not applicable in this case. Is
16 that correct?

17 MS. WINIK: Yes, Your Honor.

18 THE COURT: Okay. I also must by law impose a
19 special assessment of \$100 and I do that now.

20 I find this sentence is sufficient, but not greater
21 than necessary, again, to comply with the purposes of
22 sentencing.

23 Let me turn next to the removal order.

24 So I've reviewed the Government's proposed order of
25 removal. As I mentioned earlier, the Government has

1 submitted documentation showing that its application was made
2 both with the concurrence of immigration and customs
3 enforcement and also on consent of Mr. Alhussayen himself.

4 Maybe I can just ask the Government to, just for
5 the sake of the record, describe the basis, the statutory
6 basis, for the judicial removal order at this point.

7 MS. WINIK: Yes, Your Honor.

8 Before I do that, if you don't mind going back for
9 a moment.

10 THE COURT: Please.

11 MS. WINIK: Could a condition of the supervised
12 release be for the defendant to not contact any of the
13 victims that are listed in Attachment A of his plea agreement
14 for the one year of his supervised release?

15 THE COURT: Does defense want to be hard on that
16 condition?

17 MR. LEWIN: No, Judge.

18 THE COURT: Okay. Then, yes, I will also make a
19 special condition of the defendant's release, supervised
20 release, that he not contact any of the victims named.

21 I'm sorry. Tell me where this list of victims
22 appears?

23 MS. WINIK: It's attached to the plea agreement,
24 Attachment A of the plea agreement.

25 THE COURT: Listed in Attachment A of the plea

1 agreement.

2 And that attachment contains actual names?

3 MS. WINIK: Yes, Your Honor.

4 THE COURT: Okay. So there's not going to be any5 --

6 MS. WINIK: I can check.

7 THE COURT: I just want to make clear -- I want the
8 record to be clear --

9 MS. WINIK: Your Honor, names --

10 THE COURT: -- that Mr. Alhussayen knows exactly
11 who he's not supposed to be contacting.

12 MS. WINIK: Names and Instagram handles.

13 MR. LEWIN: And, Judge, for the record, we've
14 reviewed the list. He's aware of the list. He's aware of
15 his obligation both pursuant to the plea agreement and
16 pursuant to Your Honor's special condition just imposed that
17 he may not contact these people.

18 THE COURT: Okay. So, yes, I order that condition
19 as well I think for obvious reasons given the nature of the
20 conduct we've been discussing for the last couple of hours
21 now. And the judgment will reflect that as well.

22 Did the Government want to say a word or two about
23 the statutory basis for the judicial order of removal?

24 MS. WINIK: Yes.

25 According to Section 237(a)(2)(A)(I), which was

1 amended by 8 U.S.C., Section 1227(a)(2)(A)(I), the defendant
2 has been convicted of a crime involving moral turpitude
3 committed within five years after the admission for which a
4 sentence of one year longer may be imposed.

5 The defendant is not a citizen of the United
6 States. And upon his agreement has agreed to be removed from
7 the United States after his term of imprisonment.

8 THE COURT: Does the defense agree with that
9 characterization?

10 MR. LEWIN: We do, Judge.

11 THE COURT: Okay. And, Mr. Lewin, let me just ask
12 you for the sake of the record, have you had an adequate
13 opportunity to discuss the plea statement that your client
14 signed with him in advance of his having signed it?

15 MR. LEWIN: Yes, Judge. We're talking about the
16 judicial order of removal, correct?

17 THE COURT: I'm referring to something that I see
18 described --

19 MR. LEWIN: Defendant's plea statement in support
20 of judicial removal, we have, Judge.

21 THE COURT: -- yes, as a plea statement by the
22 defendant.

23 MR. LEWIN: We've discussed it. We've had it
24 translated. I believe he understands it and signed it
25 knowingly.

1 THE COURT: Okay.

2 Mr. Alhussayen, do you have any questions about the
3 plea statement that you signed?

4 THE DEFENDANT: No, Your Honor. I don't have.

5 THE COURT: Can you confirm that that is, in fact,
6 your signature on the plea statement?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And did you have an adequate
9 opportunity to discuss that with your attorney before you
10 signed it?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And you understood the rights you would
13 be giving up when you signed it?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Okay. And you've said you have no
16 other questions about the plea statement or the proposed
17 order of removal at this time, is that correct?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. So based on the submissions and
20 stipulations of the parties, I do so order the order of
21 judicial removal pursuant to 8 U.S. Code, Section 1228.

22 As previously stated, but let me just state it
23 again for the sake of completeness, the term of supervised
24 release does not need to be served in the United States and
25 should not delay Mr. Alhussayen's removal to Saudi Arabia

1 following the term of imprisonment that I have imposed.

2 Are there any underlying charging instruments that
3 need to be dismissed here? I don't think so.

4 MS. WINIK: No, Your Honor. There was just a
5 complaint.

6 THE COURT: Okay. Any further discussion to be had
7 about other matters, pending requests to seal anything or
8 otherwise?

9 MS. WINIK: Not at this time, Your Honor.

10 I would ask for one moment to confer with defense
11 counsel about surrender.

12 THE COURT: Please.

13 (Pause.)

14 MS. WINIK: Your Honor, the Government consents to
15 having the defendant self surrender by Friday.

16 In terms of logistics of where he'd go, I don't
17 know the answer to that, but I will find that out, confirm
18 with defense counsel, and if the Court would like an update,
19 I can provide the Court that as well.

20 THE COURT: I would like an update and in a way
21 that even more importantly puts the defendant on notice that
22 where he's supposed to be.

23 I think it's the case, from maybe remote
24 experience, that with the sentence this short, the defendant
25 would typically be serving it at the MDC, but I don't know

1 that for an absolute fact.

2 And so, yes, if the Government would, let's say by
3 end of day tomorrow, file a letter on the docket just
4 indicating where it is the defendant will be surrendering to
5 I think that will help. And the letter can even say that
6 you've spoken to defense counsel about that and that they
7 have the same understanding.

8 We'll get the judgment out as quickly as possible
9 because it may be that even MDC needs to see the judgment
10 before they can confirm.

11 Maybe a letter should be due by 2 p.m. on Thursday
12 just to make sure we've sufficient time for the judgment to
13 percolate through the system.

14 MS. WINIK: Yes, Your Honor.

15 MR. LEWIN: And, Judge, we've, I think, worked well
16 together and will continue to work in terms of the self
17 surrender.

18 It's my sense also that because a sentence of 60
19 days that Your Honor has imposed, especially in light of the
20 35 days already served, is almost certainly going to be
21 served, because it's a shorter period, that whatever that
22 difference is between the 35 days served is almost certainly
23 going to be served at the MDC in Brooklyn.

24 Whether or not the defendant reports to the
25 marshals and they then transport him to the MDC or in the

1 alternative he reports directly to the MDC, I just don't know
2 the answer to, but we can work on it. And whatever
3 understanding I have will come from Ms. Winik on that.

4 THE COURT: You agree?

5 MS. WINIK: That's correct, Your Honor.

6 THE COURT: Okay. All right.

7 Mr. Alhussayen, you may appeal your conviction if
8 you believe that your guilty plea was somehow unlawful or
9 involuntary or if there's some other fundamental defect in
10 the proceedings that was not waived by your guilty plea.

11 And under some circumstances a defendant also has
12 the right to appeal his or her sentence. Any notice of
13 appeal must be filed within 14 days of the entry of a
14 judgment or within 14 days of the filing of a notice of
15 appeal by the Government, whichever comes later.

16 If requested, the clerk will prepare and file a
17 notice of appeal on your behalf. And if you cannot afford to
18 pay the cost of an appeal or for appellate counsel, you will
19 have the right to apply for leave to appeal *in forma*
20 *pauperis*, which means you can apply to have the Court waive
21 the filing fee. On appeal, you may also apply for court-
22 appointed counsel.

23 What is the Government's position with respect to
24 the terms of Mr. Alhussayen's release? Is that what?

25 MS. WINIK: The Government recommends that we keep

1 the same conditions in place until he surrenders on Friday.

2 THE COURT: Okay. Okay. All right.

3 Anything else from the Government's perspective
4 that you believe we should take up today?

5 MS. WINIK: No. Thank you, Your Honor.

6 THE COURT: Anything else from the defense
7 perspective?

8 MR. LEWIN: No, Judge. Thank you.

9 THE COURT: I don't believe I've ordered yet the
10 sealing of the Government's sentencing submissions. I think
11 I put out an order saying that the defense motion to seal
12 their sentencing submission is granted. I think the
13 reasoning behind that order applies with at least equal force
14 to the redactions in the Government's sentencing submission.

15 There is still a version of your sentencing
16 submission on the docket here today and so I will order that
17 sealed.

18 Mr. Alhussayen, I say in every sentencing that
19 nobody should be defined in life only by the mistakes they've
20 made. You've articulated candidly here today that you made
21 mistakes and feel remorse for what you've done.

22 And that articulation, along with the very high-
23 quality arguments from your counsel on your behalf, have a
24 lot to do with where this sentence on this case ended up
25 today, along with the Government's position, obviously, which

1 I think could have gone a number of ways, perhaps differently
2 than the way it actually went.

3 So, again, I wish you good luck in your future. I
4 encourage you to see this -- you may have been hoping for a
5 lighter sentence here today, but I would encourage you to see
6 this sentence as a generous one given all the circumstances
7 here.

8 You are obviously a person of academic talent and
9 somebody who's been a contributing member to your family and
10 community in Saudi Arabia and I hope going forward that you
11 use all of your talents in life to be a force for good and
12 harmony among people, somebody who's trying to make the world
13 a better place instead of a worse place.

14 With that, we'll be adjourned.

15 (Proceedings adjourned at 5:21 p.m.)

16 I, CHRISTINE FIORE, Certified Electronic Court Reporter
17 and Transcriber, certify that the foregoing is a correct
18 transcript from the official electronic sound recording of
19 the proceedings in the above-entitled matter.

20
21 

22 _____ December 1, 2022

23 Christine Fiore, CERT

24 Transcriber

25