
No. _____

In the

Supreme Court of the United States

SOHIEL KABIR, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Appendix to Petition for a Writ of Certiorari

CUAUHTEMOC ORTEGA
Federal Public Defender
MARGARET A. FARRAND*
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012-4202
Telephone: (213) 894-2854
Facsimile: (213) 894-1221

Attorneys for Petitioner
**Counsel of Record*

APPENDIX INDEX

Page No(s).

Opinion, *United States v. Kabir*, 51 F.4th 820 (9th Cir. Oct. 24, 2022) 1a

Transcript of Sentencing Hearing, *United States v. Kabir*, Case No. 12-cr-00092-VAP-1 (C.D. Cal., June 7, 2021) 11a

51 F.4th 820

United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Sohiel Omar KABIR, Defendant-Appellant.

No. 21-50141

|

Argued and Submitted September

2, 2022 Pasadena, California

|

FILED OCTOBER 24, 2022

Synopsis

Background: After defendant was convicted of conspiracy to provide material support to foreign terrorist organization, conspiracy to receive military-type training from foreign terrorist organization, and conspiracy to kill federal officers, the United States District Court for the Central District of California, [Virginia A. Phillips, J., 2015 WL 631951](#), denied defendant's motion for acquittal or new trial, and he appealed. The Court of Appeals, [828 Fed.Appx. 396](#), affirmed in part, reversed in part, and remanded. On remand, the District Court, [Phillips, J.](#), resentenced defendant, and he appealed.

Holdings: The Court of Appeals, Smith, Circuit Judge, held that:

[1] district court did not abuse its discretion in concluding that defendant was organizer;

[2] district court adequately considered defendant's arguments before declining to exercise its discretion not to apply terrorism enhancement;

[3] any error on district court's part in finding that defendant had not expressed remorse did not rise to level of plain error; and

[4] district court did not commit plain error as result of its purported failure to adequately consider difference in circumstances between defendant's original sentencing and resentencing.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (10)

[1] **Criminal Law** 🔑 Application of guidelines

Criminal Law 🔑 Sentencing

Court of Appeals reviews district court's factual findings for clear error, and its application of Sentencing Guidelines to those facts for abuse of discretion.

[2] **Sentencing and Punishment** 🔑 Organizers, leaders, managerial role

To qualify as organizer or leader, for purposes of sentencing guidelines offense level increase, defendant must have exercised control over others. [U.S.S.G. § 3B1.1\(c\)](#).

[3] **Sentencing and Punishment** 🔑 Organizers, leaders, managerial role

Control, for purposes of two-level "organizer" or "leader" Sentencing Guidelines enhancement, requires more than mere facilitation, and even finding that defendant played central role in offense is insufficient; however, defendant need only have some control over his subordinate's actions, which includes organizational responsibility. [U.S.S.G. § 3B1.1\(c\)](#).

[4] **Sentencing and Punishment** 🔑 Organizers, leaders, managerial role

District court did not abuse its discretion in concluding that defendant convicted of conspiracy to provide material support to foreign terrorist organization and conspiracy to kill federal officers was organizer, thus warranting two-level sentencing enhancement, despite defendant's contention that he did nothing more than suggest what his co-conspirators do; defendant recruited his co-

conspirators and instructed them to “train and prepare for jihad,” and to “come on down” to Afghanistan, co-conspirators proceeded to train with assault rifles on firing ranges, practice their skills with paintball activities, and obtain passports to travel to Afghanistan, and defendant arranged for co-conspirators to join Taliban or al-Qaida in Afghanistan. U.S.S.G. § 3B1.1(c).

[5] **Criminal Law** 🔑 **Necessity of Objections in General**

“Plain error” is (1) error, (2) that is plain, and (3) that affects substantial rights, and if these three conditions are met, Court of Appeals may then exercise its discretion to grant relief if (4) error seriously affects fairness, integrity, or public reputation of judicial proceedings.

[6] **Sentencing and Punishment** 🔑 **Operation and effect of guidelines in general**

District court may vary from Sentencing Guidelines if it disagrees with them on policy grounds and Sentencing Commission fails to exercise its characteristic institutional role in their development, but there is no obligation for district court to do so; all that is required of district court faced with policy arguments is indication that it understood its authority to vary from Guidelines on these grounds before deciding not to do so.

[7] **Sentencing and Punishment** 🔑 **Terrorism**
Sentencing and Punishment 🔑 **Sufficiency**

District court adequately considered defendant's arguments before declining to exercise its discretion not to apply terrorism enhancement in sentencing him for conspiracy to provide material support to foreign terrorist organization and conspiracy to kill federal officers, even though it did not address specific arguments he made; district court recognized its discretion to vary based on policy disagreement, expressly disagreed with defendant's arguments that terrorism enhancement effectively created “separate offense” or “mandatory minimum”

sentence, then heard policy arguments for and against applying terrorism enhancement, interjecting at times to ask questions or comment on strength of defendant's arguments, and imposed below-Guidelines sentence. U.S.S.G. § 3A1.4.

[8] **Criminal Law** 🔑 **Sentencing and Punishment**

Any error on district court's part at sentencing in finding that defendant convicted of conspiracy to provide material support to foreign terrorist organization and conspiracy to kill federal officers had not expressed remorse did not rise to level of plain error; although defendant did express “regret” and “sorrow” for consequences of his actions on his family and apologized “to everybody involved directly and indirectly” in his crimes, he “blam[ed] his drug use, his bad friends, his bad choices, [and feeling that] he's misunderstood” for his actions, and there was no indication that district court's sentencing calculus would have meaningfully changed if it had not stated that defendant did not express remorse.

[9] **Criminal Law** 🔑 **Sentencing and Punishment**

To establish plain error at sentencing, defendant must demonstrate reasonable probability that he would have received different sentence if district court had not erred.

[10] **Criminal Law** 🔑 **Sentencing and Punishment**

District court did not commit plain error in resentencing defendant for conspiracy to provide material support to foreign terrorist organization and conspiracy to kill federal officers as result of its purported failure to adequately consider difference in circumstances between defendant's original sentencing and resentencing; district court incorporated statements made and first sentencing as to nature and circumstances of offense, discussed defendant's completion of educational programs in prison, his future goals, his purported efforts to be kind to other prisoners, and government's allegations that he was still involved in extremist activities while

incarcerated, and engaged substantively with defendant's claims of rehabilitation and found them lacking in persuasive force. 18 U.S.C.A. § 3553(a).

***822** Appeal from the United States District Court for the Central District of California, Virginia A. Phillips, Chief District Judge, Presiding, D.C. Nos. 5:12-cr-00092-VAP-1, 5:12-cr-00092-VAP

Attorneys and Law Firms

Margaret A. Farrand (argued), Assistant Federal Public Defender; Gia Kim, Deputy Federal Public Defender; Cuauhtemoc Ortega, Federal Public Defender; Federal Public Defender's Office, Los Angeles, California; for Defendant-Appellant.

Reema M. El-Amamy (argued), Assistant United States Attorney, Terrorism and Export Crimes Section; Bram M. Alden, Chief of Criminal Appeals Section and Assistant United States Attorney; Tracy L. Wilkinson, United States Attorney; United States Attorney's Office, Los Angeles, California; for Plaintiff-Appellee.

BEFORE: MILAN D. SMITH, JR. and RYAN D. NELSON, CIRCUIT JUDGES, and GERSHWIN A. DRAIN,* DISTRICT JUDGE.

OPINION

M. SMITH, Circuit Judge:

Defendant Sohail Omar Kabir was convicted on terrorism-related charges for his central role in a conspiracy to travel to Afghanistan and engage in armed conflict against American soldiers. He was originally ***823** sentenced to 300 months in prison, but had to be resentenced after we reversed two of his convictions. The district court resentenced him, again imposing a 300-month sentence. Kabir challenges this resentencing. He first contends that the district court erred in applying an enhancement to his sentence after finding that he was an “organizer” or “leader” of the criminal conspiracy pursuant to the United States Sentencing Guidelines, U.S. Sent'g Guidelines Manual (U.S. Sent'g Comm'n 2004) (Guidelines, or USSG). Kabir also argues that the district court's decision to impose an

additional terrorism enhancement under the Guidelines was inadequately justified, and that the district court committed other procedural errors in weighing the statutory sentencing factors. We have jurisdiction pursuant to 18 U.S.C. § 3742(a), and we affirm.

LEGAL BACKGROUND

When sentencing a criminal defendant, a district court must consider a number of statutory factors set forth in 18 U.S.C. § 3553(a), including the Guidelines. *See* 18 U.S.C. § 3553(a) (4); *United States v. Booker*, 543 U.S. 220, 259-60, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). The Guidelines provide a framework for sentencing decisions “based on the seriousness of a defendant's offense and his criminal history.” *Hughes v. United States*, — U.S. —, 138 S. Ct. 1765, 1772, 201 L.Ed.2d 72 (2018); *see generally* USSG § 1B1.1 (explaining how terms of imprisonment and other criminal punishments are determined under the Guidelines). “[T]he Guidelines are advisory only. But a district court still must consult those Guidelines and take them into account when sentencing.” *Hughes*, 138 S. Ct. at 1765 (cleaned up).

The Guidelines require the district court to calculate (1) a numerical “offense level” for the defendant that is higher or lower based on various aggravating or mitigating aspects of the crime the defendant has committed; and (2) a “criminal history category,” which is usually based primarily on the nature and number of the defendant's past criminal convictions. A higher offense level or a higher criminal history category translates into a more severe recommended sentence. *See* USSG ch. 5, pt. A (sentencing table).

The parties dispute the proper application of two Guidelines provisions to the facts of this case. First, USSG § 3B1.1(c) provides that a defendant's offense level will be adjusted two levels upward if he “was an organizer, leader, manager, or supervisor” in a non-extensive criminal activity involving fewer than five participants. *Compare* USSG § 3B1.1(a)-(b) (providing greater increases for criminal activities involving “five or more participants” or that were “otherwise extensive”). Second, USSG § 3A1.4—which the parties refer to as a “terrorism enhancement”—provides for an upward adjustment of twelve levels if the offense committed was “a felony that involved, or was intended to promote, a federal crime of terrorism.” If the defendant has committed such an offense, this same Guidelines provision automatically places him in criminal history category VI, which is the highest

criminal history category that the Guidelines allow. [USSG § 3A1.4\(b\)](#).

FACTUAL BACKGROUND

Defendant is a naturalized U.S. citizen who was born in Kabul, Afghanistan. He served in the U.S. Air Force between 2000 and 2001. The government claims that from August 2010 through November 2012, Kabir and three others—Ralph Kenneth DeLeon, Miguel Alejandro Vidriales Santana, and Arifeen David Gojali “conspired to provide material support and resources ... to terrorists, including members *824 of the Taliban and Al-Qa’ida, in order to engage in violent jihad against, and to kill, American soldiers and personnel in Afghanistan and elsewhere.” Specifically, Kabir is alleged to have indoctrinated DeLeon and Santana with a militant Islamist¹ ideology through social media and other online content promoting radical views. He later travelled to Afghanistan via Germany, from where he continued to discuss violent jihad with DeLeon and Santana. In these communications, Kabir indicated that he had made connections with the Taliban and al-Qaida, and that he intended for all three men to join these groups.

In February 2012, the FBI sent a confidential source (CS) to meet with DeLeon and Santana. The CS learned of their plans to join Kabir in Afghanistan, as well as potential U.S. military sites that they were considering attacking. Santana and DeLeon made clear in their communications with the CS that based on their Islamist beliefs they intended to kill American and allied soldiers stationed overseas.

In September 2012, DeLeon recruited Gojali to the conspiracy. The CS recorded conversations with DeLeon, Santana, and Gojali in which the three men discussed their plans, including a conversation in which “DeLeon bragged about having recruited” four additional individuals. Kabir advised his compatriots of travel plans he had made for them, indicated that he had made arrangements for them to join al-Qaida and the Taliban, and urged them “to train and prepare for jihad.” Along these lines, DeLeon, Santana, and Gojali took several steps to prepare for their intended travel to Afghanistan, including physical exercise, paintball, and firearms practice with M16- and AK-47-style assault rifles and other weapons at shooting ranges in Los Angeles. In addition, DeLeon, Santana, and Gojali obtained valid passports permitting them to travel to Afghanistan.

In November 2012, Kabir told the other men that “he was leaving on a one-way mission,” implying later in the conversation that this “mission” might involve C4 explosives. At this point, the other men made concrete plans to join Kabir in Afghanistan, purchasing airline tickets and concocting a cover story that involved travelling through Mexico and Turkey. The FBI arrested DeLeon, Santana, and Gojali as they were driving to Mexico. Around the same time, U.S. military personnel captured Kabir in Afghanistan and turned him over to the FBI.

PROCEDURAL HISTORY

I. Kabir's Convictions and Original Appeal

Kabir and DeLeon were each eventually charged with five terrorism-related offenses, namely (1) conspiracy to provide material support to terrorists in violation of [18 U.S.C. § 2339A](#); (2) conspiracy to provide material support to a foreign terrorist organization in violation of [18 U.S.C. § 2339B](#); (3) conspiracy to kill, kidnap, and maim persons in a foreign country in violation of [18 U.S.C. §§ 956\(a\)\(1\), \(A\)\(2\)\(A\), & \(a\)\(2\)\(B\)](#); (4) conspiracy to commit an offense against the United States in violation of [18 U.S.C. § 371](#); and (5) conspiracy to commit murder in violation of [18 U.S.C. § 1117](#). The case proceeded to a 26-day jury trial. The jury found Kabir guilty on all counts other than count 3 (conspiracy to kill, kidnap, and maim).² The district court *825 later sentenced Kabir to an imprisonment term of 300 months (25 years).

On appeal, we reversed Kabir's convictions on counts 2 and 4 (conspiracy to provide material support to a terrorist organization and conspiracy to commit an offense against the United States), remanding with instructions to enter a judgment of acquittal on these counts. [United States v. Kabir](#), 828 F. App'x 396, 401 (9th Cir. 2020) (mem.) (affirming Kabir's other convictions). On remand, the district court set a resentencing hearing for Kabir. Kabir's resentencing is the focus of the present appeal.

II. Kabir's Resentencing and this Appeal

Before the resentencing hearing, the United States Probation Office prepared a new Presentence Report that recommended imposing a 420-month custodial sentence (35 years), followed by a lifetime of supervised release with several conditions. This recommendation was based in part on the Probation Office's determination that, under the Guidelines,

Kabir's offense level was 43 and his criminal history category was VI (the highest category).³ These determinations, in turn, resulted from: (1) a 2-point increase in Kabir's offense level based on the Probation Office's determination that he "was an organizer, leader, manager, or supervisor" in the terrorist conspiracy, USSG § 3B1.1(c); and (2) a 12-point increase in his offense level based on the conclusion that Kabir had committed "a felony that involved, or was intended to promote, a federal crime of terrorism," USSG § 3A1.4(a).⁴

At the resentencing hearing, the district court used the Guidelines as its "starting point" and calculated a Guidelines-recommended sentence of life in prison. It agreed that Kabir "was the organizer and leader" of the terrorist conspiracy, and rejected his policy arguments against applying the Guidelines' terrorism enhancements.

The district court also considered several factors outside the Guidelines, such as whether Kabir had shown remorse for his crimes. Kabir submitted a letter ahead of the resentencing hearing in which he discussed overcoming substance addiction while in prison, disputed claims by the government that he was still involved in Islamist activities and claimed that he was "not the same person" as he was before going to prison. Kabir also made a statement on his own behalf at the resentencing hearing that covered substantially similar ground. During its sentencing pronouncement, the district court discussed these statements and found that they "are fairly characterized as not expressing remorse. *826 In fact, the statement [Kabir made in court] today blaming his drug abuse, his bad friends, his bad choices, that he's misunderstood, nowhere is there a statement of remorse for his conduct."

Ultimately, the district court again imposed a prison sentence of 300 months plus a lifetime of supervised release. Kabir timely appealed his sentence. On appeal, he challenges the district court's Guidelines calculations, as well as: its application of the Guidelines' terrorism-related provisions; its finding that Kabir had not expressed remorse; and its alleged failure to consider a change in circumstances between the original sentencing and resentencing.

ANALYSIS

I. Whether Kabir was an "Organizer" or "Leader" in the Conspiracy

[1] Kabir first challenges the district court's finding that he qualified as an "organizer" or "leader" of a criminal venture pursuant to the Guidelines. USSG § 3B1.1(c). We review the district court's factual findings for clear error, and its application of the Guidelines to those facts for abuse of discretion. *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170 (9th Cir. 2017) (en banc).

[2] [3] [4] To qualify as an "organizer" or "leader," a defendant "must have exercised 'control over others.'" *United States v. Harris*, 999 F.3d 1233, 1235 (9th Cir. 2021) (quoting *United States v. Avila*, 95 F.3d 887, 892 (9th Cir. 1996)). "Control" requires more than mere "facilitation," and even a finding that the defendant "play[ed] a central role" in the offense is insufficient. *Id.* at 1236. However, the defendant need only have "some control" over his subordinate's actions, which includes organizational responsibility. *United States v. Smith*, 719 F.3d 1120, 1126 (9th Cir. 2013) (quoting *United States v. Whitney*, 673 F.3d 965, 975 (9th Cir. 2012)). The Commentary to USSG § 3B1.1 further explains that facts which may be indicative of "leader" status include

[T]he exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

USSG § 3B1.1(c) cmt. 4. Here, the district court reasonably concluded that Kabir had "the necessary influence and ability to coordinate the behavior of others so as to achieve [a] desired criminal result," meaning that he was an "organizer" within the meaning of USSG § 3B1.1(c). *United States v. Doe*, 778 F.3d 814, 826 (9th Cir. 2015). The district court found that Kabir told his co-conspirators "what to pack, how to pack, how to train, what guns to use when practicing, [and] what sorts of physical training to undertake."

Though Kabir attempts to characterize these directives as nothing more than suggestions, the record shows that his co-conspirators did what Kabir told them to do. For example,

Kabir instructed his co-conspirators to “train and prepare for jihad,” and to “come on down” to Afghanistan. Following this directive, the co-conspirators proceeded to, *inter alia*: train with assault rifles on firing ranges; practice their skills with paintball activities; and obtain passports to travel to Afghanistan. Deleon even withdrew from college, obtained a refund of his tuition money, and sold his car in order to raise money for travel.

*827 Kabir also arranged for his co-defendants to join the Taliban or al-Qaida⁵ in Afghanistan. Specifically, Kabir advised them of routes to travel to Kabul and arranged an apartment for the group to use when they arrived in Afghanistan. He reassured them that all of the arrangements for their arrival were taken care of, telling them, “everything’s set up for you guys out here. Now you just gotta come.” Kabir even told his co-conspirators that he already informed “the brothers” (members of Taliban/al-Qaida) about “you guys coming though.”

Finally, Kabir’s recruitment efforts are indicative of his playing a leadership or central organizational role in the conspiracy. *See* USSG § 3B1.1(c) cmt. 4 (stating that courts should consider a defendant’s “recruitment of accomplices,” in imposing enhancement). Kabir not only recruited Deleon and Santana, but approved Goljai’s membership in the group when Deleon apparently felt the need to consult with him about the fact.

The district court’s finding that these facts in the aggregate proved that Kabir was a “leader” or “organizer” has ample support in the record.

Kabir relies heavily on *United States v. Harris*, 999 F.3d 1233, 1235 (9th Cir. 2021), to argue that the actions noted amounted only to facilitation, not leadership or organization. *Harris*, however, is readily distinguishable. The defendant in *Harris* pleaded guilty to abusing the daughter of his girlfriend, in which abuse the latter also participated. 999 F.3d at 1235. The government argued that the defendant influenced or controlled his girlfriend’s actions because the girlfriend photographed the abuse and, with the defendant’s help, made lists of people the couple wanted to have sex with (including the daughter). *See id.* at 1235-36. We held that USSG § 3B1.1(c) did not apply because there was no evidence that the defendant “directed” his girlfriend to take the photographs or make the lists, and because “[m]aking a list is most analogous to making a suggestion.” *Id.* at 1236.

The facts here are easily distinguishable from those in *Harris*. Most importantly, because only two people were involved in the crime, we expressly refused to consider whether the defendant had “organizational authority,” *id.* at 1235 n.1, focusing exclusively on whether the defendant had a “leadership” role, *id.* at 1236. That alone is enough to distinguish *Harris* in light of Kabir’s significant organizational role. Moreover, Kabir did far more than help the defendants make lists; he instructed them in all aspects of their conspiracy to commit terrorist acts abroad, and he made concrete arrangements for them to travel to Afghanistan to fight against American soldiers.

Our opinion in *United States v. Doe* presents a closer analogy. The defendant in *Doe* was sentenced for his involvement in an illegal drug trafficking conspiracy. 778 F.3d at 817–21. We upheld the district court’s finding that the defendant was an “organizer” pursuant to USSG § 3B1.1(c) because of his “efforts to coordinate the procurement and the distribution of drugs from numerous suppliers, and his role in coordinating the activities of the other participants to the extent necessary to complete the transaction.” *Id.* at 826 (citation and internal quotation marks omitted). We *828 discussed specific transactions in which the defendant “put the deal together by negotiating the type, quantity, and price of drugs for each transaction, and then ensured the drugs, money, and participants arrived when and where needed.” *Id.* (calling the defendant “the driving force behind the success” of these transactions). Kabir was similarly “the driving force” behind his group’s efforts, coordinating the group’s training and travel plans as well as providing ideological guidance.

We conclude that the district court did not err in finding that Kabir was a leader or organizer within the meaning of USSG § 3B1.1(c).

II. Kabir’s Remaining Claims of Procedural Error

[5] Kabir also raises three claims of procedural error, arguing that the district court erred (1) in its application of the Guidelines’ terrorism-related provisions; (2) in finding that Kabir had not expressed remorse; and (3) in not adequately considering the difference in circumstances between Kabir’s original sentencing and resentencing. The parties agree that the plain error standard applies, because Kabir did not raise his procedural objections before the district court.⁶ *See United States v. Wankine*, 543 F.3d 546, 551 (9th Cir. 2008). “Plain error is (1) error, (2) that is plain, and (3) that affects substantial rights. If these three conditions are met, we may

then exercise our discretion to grant relief if [(4)] the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (cleaned up).

A. The Terrorism Enhancement

[6] Kabir contends that the district court erred when it rejected his policy challenges to USSG § 3A1.4’s “terrorism enhancement.” “A district court may vary from the Guidelines if it disagrees with them on policy grounds and the Sentencing Commission fails to exercise its characteristic institutional role in their development. There is, however, no *obligation* for a district court to do so.” *United States v. Carper*, 659 F.3d 923, 925 (9th Cir. 2011) (cleaned up) (emphasis added); see also *Kimbrough v. United States*, 552 U.S. 85, 91, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007) (stating that a district judge may disagree with a Guideline on policy grounds); *United States v. Mitchell*, 624 F.3d 1023, 1030 (9th Cir. 2010) (“No judge is *required* to sentence at a variance with a Guideline, but every judge is at liberty to do so.” (quoting *United States v. Corner*, 598 F.3d 411, 416 (7th Cir. 2010))). All that is required of a district court faced with policy arguments is an indication that it understood its authority to vary from the Guidelines on these grounds before deciding not to do so. See *United States v. Henderson*, 649 F.3d 955, 964 (9th Cir. 2011); see, e.g., *United States v. Pape*, 601 F.3d 743, 749 (7th Cir. 2010) (affirming sentence where “the district court was aware of its discretion to vary based on disagreement[s] with the Guidelines,” but chose not to do so).

Kabir concedes that the district court “recognized its discretion to vary based on *829 a policy disagreement,” but contends that the district court failed to consider the specific arguments he made or adequately explain its reasons for rejecting them. Kabir misreads the record. At the outset of the resentencing hearing, the district court indicated that it had considered the policy arguments made in Kabir’s sentencing memorandum, and then tentatively declined to accept them. In doing so, it expressly disagreed with Kabir’s arguments that the terrorism enhancement effectively creates “a separate offense” or “a mandatory minimum” sentence. The district court then heard policy arguments for and against applying the terrorism enhancement, interjecting at times to ask questions or comment on the strength of Kabir’s arguments. After considering these arguments, the district court declined to withdraw the terrorism enhancement, though it still imposed a below-Guidelines sentence of 300 months in prison.

[7] Considering these aspects of the record together, it is clear that the district court considered Kabir’s arguments

carefully and simply found them unpersuasive. Under these circumstances, the district court was not required to provide a more extensive explanation of its choice to adhere to the Guidelines. See, e.g., *United States v. Daniels*, 541 F.3d 915, 922 (9th Cir. 2008) (“No lengthy explanation” of a sentencing decision that follows the Guidelines “is necessary if the record makes clear that the sentencing judge considered the evidence and arguments.” (cleaned up)); *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1053–54 (9th Cir. 2009) (“[A] sentencing judge does not abuse his discretion when he listens to the defendant’s arguments and then simply finds the circumstances insufficient to warrant a sentence lower than the Guidelines range.” (cleaned up)); *Pape*, 601 F.3d at 748–49 (holding that it was sufficient that the district court considered and then “implicitly declined” to adopt defendant’s policy disagreements with the Guidelines). Moreover, the fact that the district court still imposed a below-Guidelines sentence is suggestive of its reasonableness. See *United States v. Montoya*, 48 F.4th 1028, 1038 (9th Cir. 2022) (“[A] below-Guidelines sentence will usually be reasonable” (citing *United States v. Bendtzen*, 542 F.3d 722, 728 (9th Cir. 2008))). Consequently, the district court did not plainly (or otherwise) err on this issue.

B. Expression of Remorse

[8] Next, Kabir argues that the district court erred in its finding that he had not expressed remorse. A review of the record, however, shows that whether Kabir’s statements amounted to remorse is debatable. On one hand, Kabir did express “regret” and “sorrow” for the consequences of his actions on his family (though not his co-conspirators or potential victims) in his sentencing letter. He also concluded his allocution by saying “to everybody involved directly and indirectly” in his crimes—a group that presumably included his co-conspirators—that “I apologize from the bottom of my heart.” On the other hand, the district court’s explanation for its finding—that Kabir’s statements “blam[ed] his drug use, his bad friends, his bad choices, [and the feeling that] he’s misunderstood” for his actions—is well-supported by the record. As a result, any error on the part of the district court does not rise to the level of plain error. See, e.g., *Puckett v. United States*, 556 U.S. 129, 135, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009) (an error is not plain if it is “subject to reasonable dispute”).⁷

*830 [9] Moreover, even if the district court erred, Kabir’s substantial rights were not violated. To make such a showing, Kabir was required to demonstrate “a reasonable probability

that he would have received a different sentence if the district court had not erred.” *United States v. Joseph*, 716 F.3d 1273, 1280 (9th Cir. 2013) (cleaned up). Here, the district court explicitly discussed Kabir’s arguments that he had deserted the path of religious extremism and found them unpersuasive. For example, the court cited evidence that Kabir had “sought out other prisoners convicted of serious terrorism charges.” The court also noted that Kabir already had access to social services and a stable family background before he committed his crimes. See 18 U.S.C. § 3553(a) (requiring consideration of a defendant’s “history and characteristics”). Ultimately, the district court found other statutory sentencing factors, such as deterrence and the seriousness of the offense, to be more important in this case. See 18 U.S.C. § 3553(a) (sentencing factors). There is no indication that the district court’s sentencing calculus would meaningfully change if it had not stated that Kabir did not express remorse. Therefore, reversal is not warranted on this issue.

C. Changed Circumstances

Finally, Kabir argues that the district court failed to adequately consider the difference in circumstances between Kabir’s original sentencing and resentencing. Kabir’s argument once again relies on a mischaracterization of the record. It is apparent that the district court *did* take into account developments since its original sentence. In discussing Kabir’s “history and characteristics,” 18 U.S.C. § 3553(a)(1), for example, the district court discussed Kabir’s completion of educational programs in prison, Kabir’s future goals, Kabir’s purported efforts to be kind to other prisoners, and the government’s allegations that Kabir was still involved in extremist activities while incarcerated. As previously discussed, the district court also engaged substantively with Kabir’s claims of rehabilitation and found them lacking

in persuasive force. That the court began its discussion by “incorporat[ing] into the record the statements that were made at the first sentencing in this case as to the nature and circumstances of the offense,” is unsurprising and immaterial, as a number of the relevant sentencing factors were unchanged between Kabir’s first and second sentencings.⁸

[10] More importantly, Kabir fails to present an error that was “clear or obvious,” affected his “substantial rights,” or implicated “the fairness [and] integrity of judicial proceedings.” *Puckett*, 556 U.S. at 135, 129 S.Ct. 1423. Kabir contends that *831 our prior reversal of his convictions for conspiring to join al-Qaida fundamentally altered the relevant sentencing considerations. But all this means is that there was legally insufficient evidence that Kabir and his group had conspired to join al-Qaida specifically, as opposed to the Taliban. See *Kabir*, 828 F. App’x at 398-99. At sentencing, the district court’s substantive focus was on Kabir’s plan to “engage in violent jihad against and to kill American soldiers and personnel in Afghanistan and elsewhere,” not his specific group affiliation.⁹ As a result, any error in this regard was not plain, did not affect Kabir’s substantial rights, and did not malign the integrity of judicial proceedings.

Consequently, Kabir has failed to demonstrate a plain error warranting reversal with respect to his remaining claims of procedural error.

AFFIRMED.

All Citations

51 F.4th 820, 2022 Daily Journal D.A.R. 11,030

Footnotes

- * The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.
- 1 This term—as opposed to terms such as “Islamic” or “Muslim” that refer generally to Islam as a religion—indicates a connection with a radical political ideology based on fundamentalist forms of Islam. See, e.g., *Islamist*, dictionary.com/browse/islamist.
- 2 DeLeon was found guilty on counts 1, 3, and 5.

- 3 The Probation Office considered Kabir's offenses together because they involved the same conduct. See [USSG § 3D1.2\(b\)](#). Kabir was assigned a base offense level of 33 pursuant to two Guidelines provisions governing conspiracy to commit murder and aiding and abetting. See [USSG §§ 2A1.5, 2X2.1](#). These aspects of the sentence level calculation are undisputed. It is also undisputed that, following the ordinary Guidelines method of calculating Kabir's criminal history category based on his past criminal behavior, Kabir would have been placed in criminal history category V. The recommended sentence for an offender with an offense level of 33 and a criminal history category of V is between 210 and 262 months in prison. [USSG ch. 5, pt. A](#). But as explained *infra*, the PSR included a 14-point increase from two sentencing enhancements. This resulted in Kabir's receiving an offense level calculation of 47, but the Guidelines provide for a maximum offense level of 43. See [USSG ch. 5, pt. A](#), note 2 ("An offense level of more than 43 is to be treated as an offense level of 43.").
- 4 The latter terrorism enhancement also resulted in Kabir's criminal history category being increased from V to VI. See [USSG § 3A1.4\(b\)](#).
- 5 Our previous decision in this case held that the evidence indicated "Kabir was open to joining either organization," and that Kabir left it to the group to decide which organization they preferred. [Kabir](#), 828 F. App'x at 399. Though both options were discussed, the group's plans to join the Taliban were more concrete than any plans to join al-Qaida. See *id.*
- 6 Although Kabir applies the plain error standard throughout his brief, it is possible that the harmless error standard actually applies to his arguments concerning application of the terrorism enhancement because Kabir did contest its applicability before the district court. We are, however, bound by the parties' framing of the issues. See [United States v. Sineneng-Smith](#), — U.S. —, 140 S. Ct. 1575, 1579, 206 L.Ed.2d 866 (2020). Moreover, as discussed *infra*, it is immaterial whether the harmless error or plain standard applies to Kabir's argument on this point because he has failed to demonstrate any error at all.
- 7 Regardless, even if it was technically incorrect to say that Kabir's statements were not "fairly characterized" as expressing any remorse, such an error did not affect "the fairness, integrity, or public reputation of judicial proceedings." [Waknine](#), 543 F.3d at 551. Again, while Kabir said many times at his resentencing hearing that he had made a "mistake" and was now reformed, these statements were all made in the context of blaming his background for his actions. Apart from the generalized, one-sentence apology quoted above, nowhere did Kabir say anything resembling a feeling of regret for planning to kill American soldiers or upending the lives of his compatriots by recruiting them into a terrorist conspiracy. Even assuming the district court misused the term "remorse" (as opposed to a similar term like "responsibility") the thrust of its comment—that Kabir had failed to take full responsibility for his actions and express a sincere form of regret—is supported by the record.
- 8 These include factors such as "the nature and circumstances of the offense," "the seriousness of the offense," the need to "afford adequate deterrence to criminal conduct," and the relevant Guidelines provisions. 18 U.S.C. § 3553(a).
- 9 Though the district court mentioned the group's plans to join both "the Taliban and al-Qaida," Kabir provides no explanation as to why he might have received a more lenient sentence had the district court concluded (for example) that he intended to kill American soldiers only while flying the Taliban's flag, rather than al-Qaida's. Though Kabir notes that only al-Qaida was designated by the State Department as a foreign terrorist organization at relevant times, the district court did not mention Kabir's affiliation with such an organization as an aggravating factor when imposing its below-Guidelines sentence. More importantly, while there are important differences between them, the fact remains that both groups were engaged in a violent conflict with the United States when Kabir left for Afghanistan. In fact, we reversed Kabir's al-Qaida-specific convictions

in part because he seemed ambivalent as to which organization would better further his plans to attack U.S. military personnel. See [Kabir](#), 828 F. App'x at 398-99.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
Plaintiff,) CASE NO.
) CR 12-00092-VAP-1
vs.)
)
SOHIEL OMAR KABIR,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF RESENTENCING

MONDAY, JUNE 7, 2021

10:00 A.M.

LOS ANGELES, CALIFORNIA

MAREA WOOLRICH, CSR 12698, CCRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST FIRST STREET, SUITE 4311
LOS ANGELES, CALIFORNIA 90012
mareawoolrich@aol.com

APPEARANCES OF COUNSEL:

FOR PLAINTIFF:

OFFICE OF THE UNITED STATES ATTORNEY
BY: CHRIS GRIGG
Assistant United States Attorney
312 North Spring Street
Los Angeles, CA 90012

FOR DEFENDANT:

FEDERAL PUBLIC DEFENDER'S OFFICE
BY: ANGELA VIRAMONTES
Deputy Federal Public Defender
3801 University Avenue, Suite 700
Riverside, CA 92501

1 LOS ANGELES, CALIFORNIA; MONDAY, JUNE 7, 2021

2 10:00 A.M.

3 -oOo-

4
5 THE COURTROOM DEPUTY: Calling Item 2,
6 ED CR 12-00092-VAP-1, United States of America versus
7 Sohiel Omar Kabir.

8 THE COURT: Can you tell the family members they are
9 permitted to come in if they are --

10 THE COURTROOM DEPUTY: I'll bring them in.

11 MR. GRIGG: Good morning, Your Honor. Chris Grigg
12 for the United States. With me at counsel table is FBI Special
13 Agent Randy Plotkin.

14 THE COURT: Thank you. Good morning.

15 MS. VIRAMONTES: Good morning, Your Honor. Angela
16 Viramontes on behalf of Sohiel Kabir who is present in custody.
17 Your Honor, is it your preference at this time that
18 we stay seated or that we stand at the lectern? I'm never
19 sure what --

20 THE COURT: At the lectern when you are speaking.
21 But you can remain seated until -- I'm going to go through my
22 tentative ruling. You can remain seated at the table until
23 then. And when you are speaking at the lectern, it's up to you
24 whether you keep your mask on or not.

25 MS. VIRAMONTES: Thank you, Your Honor.

1 THE COURT: This matter is on the Court's calendar
2 for resentencing following the mandate from the Ninth Circuit
3 Court of Appeal.

4 The presentence report -- well, in addition to the
5 presentence reports which were initially disclosed for the
6 resentencing, there was a presentence report issued on
7 March 8th, 2021, with an addendum on June 2nd.

8 Miss Viramontes, have you reviewed those with your
9 client?

10 MS. VIRAMONTES: Yes, Your Honor.

11 THE COURT: Mr. Kabir, have you seen the updated
12 presentence reports in your case?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you discussed them with your
15 lawyer?

16 THE DEFENDANT: Yes.

17 THE COURT: Thank you.

18 All right. In addition to the presentence reports,
19 the updated presentence reports, I have reviewed the
20 government's sentencing -- well, both sides filed their
21 sentencing memoranda on May 17th, 2021, and the government
22 filed a reply on June 1st. The defendant also submitted a
23 sentencing -- a new sentencing letter on June the 2nd, 2021.

24 Is this everything the parties have submitted for
25 the resentencing?

1 MR. GRIGG: As far as the government is aware, yes,
2 Your Honor.

3 MS. VIRAMONTES: Yes, Your Honor.

4 THE COURT: All right. Does either side have any
5 objections to the presentence report other than what you set
6 forth in the papers?

7 MR. GRIGG: Nothing from the United States,
8 Your Honor.

9 MS. VIRAMONTES: No, Your Honor.

10 THE COURT: All right. The defense raised various
11 objections to the updated presentence report. First, the
12 defense objects to the 12-level adjustment for terrorism under
13 United States Sentencing Guideline 3.11.4(a) on the basis that
14 the enhancement is not based on empirical data and national
15 experience, that it creates a separate offense, and that it's
16 overly broad and unreliable, that it creates, in effect, a
17 mandatory minimum and it artificially inflates the defendant's
18 criminal history.

19 As I believe I just stated, there's no objection
20 from the defense that it does not apply because under the terms
21 of the sentencing guidelines, it does apply. Rather, the
22 argument is that the Court should not apply it based on a
23 policy disagreement, and I decline to do that. I find it does
24 apply. It does not create a separate offense.

25 And as to the argument that it creates a mandatory

1 minimum, I would reject that argument. And as to the argument
2 that it artificially inflates the defendant's criminal history,
3 he's already in Criminal History Category 5. Application of
4 this adjustment means he's in Criminal History Category 6. And
5 there's a separate objection that Criminal History Category 6
6 overstates the seriousness of his past criminal history and
7 likelihood of recidivism which I will address in more detail.

8 And that's the next argument that the defense makes.
9 This argument is somewhat internally contradictory. The
10 defense points out that four of the points that resulted in the
11 defendant's placement in Criminal History Category 5 are for
12 driving on a suspended license. At the same time, the defense
13 relies on the defendant's self-reported epilepsy and seizure
14 disorder as a grounds for the Court to show mercy.

15 But there's a very serious danger that's presented
16 by one who is driving an automobile when he has a seizure
17 disorder. So more than in some cases, I would say here that
18 the driving on a suspended license in the defendant's condition
19 is quite serious.

20 The defense objects that there should not be a
21 two-level adjustment for being an organizer or a leader under
22 Guideline Section 3B1.1(c). In preparing for this hearing, I
23 went back and I read not the entire trial transcript but large
24 portions of it to make sure that my memory was correct about
25 the defendant's role in this case. And I think it's

1 unquestionably true that this defendant was the organizer and
2 leader, perhaps, along with Mr. DeLeon, his codefendant.

3 Mr. Kabir initially recruited the others. He
4 was the one who introduced them to the violent videos of
5 Anwar al-Awlaki. He urged the others to join him in
6 Afghanistan. He gave them advice about training, what to
7 bring. He is the person who introduced Santana and DeLeon to
8 the teachings of al-Awlaki.

9 In fact, it's significant that both Santana and
10 DeLeon complained that the leaders at their mosque disapproved
11 of al-Awlaki's teachings. Mr. DeLeon testified that -- or I'm
12 sorry. It was not that he testified to this, but in the
13 recorded conversations between the defendants, Mr. DeLeon is on
14 record as saying that Kabir was the Amir and that DeLeon was
15 the acting Amir in the United States. But when they rejoined
16 him in Afghanistan, Kabir was again -- would again be the Amir.
17 He was the role model. He was the hero for Santana and DeLeon.
18 And DeLeon described him as mujahid walking the streets of
19 Los Angeles.

20 Mr. Kabir instructed the others about routes to take
21 to Afghanistan, not to come directly. And, of course, they
22 were apprehended on their way to take a flight out of Mexico.
23 It was sort of a roundabout route. He told them what to pack,
24 how to pack, how to train, what guns to use when practicing,
25 what sorts of physical training to undertake. So he clearly

1 was an organizer or leader. So I would overrule that
2 objection.

3 I would adopt the factual recitations in the
4 guideline calculations. The Court considers the guidelines as
5 a starting point but doesn't presume that a guideline
6 sentence is reasonable. It is one factor among others under
7 18 United States Code Section 3553 that the Court considers in
8 arriving at an appropriate sentence.

9 Here, of course, we are only talking about Counts 2
10 and 5. The guideline range on Count 5 is a life sentence.
11 On -- let's see. On Count 1 it's 180 months and plus one year
12 to life supervised release on Count 1 and a two- to five-year
13 period of supervised release on Count 5. It's a fine ranging
14 between \$25,000 and \$250,000. That is based on an offense
15 level of 43.

16 Counts 1 and 5 are grouped together because
17 they are part of a common scheme or plan under Guideline
18 Section 3D1.2(b). Both counts produce the same total offense
19 level in any event. The base offense level is 33 under
20 Guideline Section 2X2.1 because of the underlying offense which
21 is a conspiracy to kill, kidnap, or maim and killing,
22 attempting to kill, or conspiring to kill.

23 Because the offense conduct charged in Count 1 is
24 conspiracy to commit murder, it's the most applicable guideline
25 section under Guideline Section -- under 2A1.5.

1 Then 12 levels are added under Guideline Section
2 3A1.4(a) because the felony that was involved or was intended
3 was intended to promote a federal crime of terrorism that
4 automatically increases the defense criminal history level to
5 6. And then an additional two levels because this defendant
6 along with DeLeon were the organizers and leaders in the
7 offense under Guideline Section 3B1.1C. So that would yield an
8 offense level of 47, but it's capped at level 43.

9 Going back to the arguments that were made by the
10 defense as to the 12 levels added, because this is a terrorism
11 offense, even if -- as the government points out, even if you
12 did not add those 12 levels under 3A1.4, the offense level
13 would be 35. And at a Criminal History Category of 6, it would
14 be 292 to 365 months. At Criminal History Category 5, it would
15 be 235 months to 293 months. But, of course, I did overrule
16 the objection to the adjustment for a crime of terrorism.

17 The defendant's Criminal History Category is 6. The
18 government points out that the defendant has suffered various
19 disciplinary charges since he's been in custody but those -- of
20 course, they are not counted for purposes of the criminal
21 history, and the defendant is in Criminal History Category 6 in
22 any event. But I believe that the last such disciplinary
23 charge that was pointed to was back in 2014. So nothing
24 recent.

25 The defendant's sentencing request is a sentence of

1 15 years and 5 years of supervised release. The government's
2 sentencing request is a sentence of 25 years or 300 months with
3 a lifetime period of supervised release.

4 So the Court now turns to the 3553(a) factors.
5 Starting with the nature and circumstances of the offense and
6 of course I can -- I will incorporate into the record the
7 statements that were made at the first sentencing in this case
8 as to the nature and circumstances of the offense.

9 But beginning in 2010, this defendant conspired with
10 codefendants to provide material support and resources to
11 terrorists including themselves and members of the Taliban and
12 al-Qaeda to engage in violent jihad against and to kill
13 American soldiers and personnel in Afghanistan and elsewhere.

14 Mr. Kabir influenced his codefendants. He
15 introduced them to radical violent doctrines by posting content
16 online. I believe he posted himself between 50 and 60 messages
17 from himself and others urging violent conduct against the
18 military and Americans.

19 He traveled from the United States to Germany and
20 then to Afghanistan and continued while he was out of the
21 country to communicate with his codefendants. He told them
22 that they would join the Taliban and then al-Qaeda when they
23 joined him in Afghanistan. He discussed the teaching of
24 Anwar al-Awlaki at length. All four of the defendants
25 continued to have telephone conversations where they discussed

1 their plans to travel to Afghanistan to commit violent jihad.

2 The history and characteristics of the defendant:

3 He is now 43 years old. He immigrated to the United States
4 with his family in childhood, has two older brothers. His
5 parents worked hard in the United States to survive and to
6 support their children and eventually successful small business
7 owners.

8 The defense argues that the defendant suffered from
9 what it initially called a chaotic early childhood with health
10 problems. There was chaos in the sense that they were
11 immigrants at a very violent and turbulent time in Afghanistan.
12 But now the defense takes the position that Mr. Kabir was the
13 product of a, quote, stable and happy family. That's, again,
14 somewhat contradictory.

15 His brother testified at trial that Mr. Kabir
16 frequently came up with ideas but had no follow-through, that
17 he was completely unmotivated. So that's somewhat in contrast
18 to what the defense is now arguing about his plans for the
19 future.

20 And to the extent that the defense is arguing for a
21 lower sentence because he has a stable and supportive family,
22 first of all, that's not really an argument in mitigation
23 because, of course, many defendants who come before the Court
24 have not had the advantage of a supportive family. But
25 moreover, he had the same family at the time that he was

1 conspiring to commit violent crimes. So I suppose just --
2 that's just not a persuasive argument.

3 At this time the defendant is arguing that he has
4 changed after nine years in prison. And as evidence of that,
5 he points to the educational programs he's completed and his
6 statements about what his goals are and how he displays
7 kindness to other prisoners and shares resources with them.

8 The government has produced evidence that he sought
9 out other prisoners convicted of serious terrorism charges.
10 They provided one or two photographs. The defendant in his
11 letter to the Court submits that it's not that he was seeking
12 out others convicted of serious crimes such as the photograph
13 of him with one of the World Trade Center bombers and John
14 Walker Landon. I can't remember who the third person is. But
15 that he was simply seeking out others of his faith.

16 The argument that 15 years is enough to deter him
17 from re-offending because, of course, one of the 3553(a)
18 factors is a need for deterrence -- that's one -- it is one
19 factor. But there's other also many other factors including
20 the seriousness of the offense.

21 The defense argues that rather than incarceration,
22 the defendant is in need of services. And the problem I have
23 with that argument is that he's never been in a position where
24 services weren't available to him either because of his
25 family's resources or because of his status as a veteran after

1 serving a short time in the military before he was discharged
2 because of an unrelated automobile accident. So he hasn't
3 suffered from resources that prevented him from getting
4 services.

5 The need for the sentence to reflect the seriousness
6 of the offense, promote respect for the law and provide just
7 punishment. The defense argues that he did not intend to
8 engage in jihad in Afghanistan. That's contradicted by the
9 evidence at trial where, among others things, he posted between
10 50 and 60 videos advocating violent jihad against the West.

11 He discussed with the codefendants including Santana
12 that he intended to go to Afghanistan to engage in violent
13 conduct and specifically told the others that he was going to
14 go to Afghanistan first to figure out their living situation
15 and gather information so that they could join the Taliban or
16 eventually al-Qaeda.

17 As to a sentence that deters this kind of criminal
18 conduct, of course I've addressed that briefly. It applies to
19 not only specific deterrence with this defendant but general
20 deterrence. And the crimes with which the defendant stands
21 convicted are among the most serious, a conspiracy to commit
22 murder.

23 The need to protect the public from further crimes
24 of the defendant. The defense argues here that the -- as I
25 said earlier, that the defendant has changed during his

1 nine years incarceration and that he has matured as shown by
2 his conduct in prison.

3 Looking at the conduct for which the defendant was
4 convicted, what is especially troubling is he lured the younger
5 men, his codefendants, into this plot. He inspired them with
6 dreams of jihad. He introduced them to al-Awlaki's version of
7 radical jihad against the West.

8 And it seems entirely likely to me based on all the
9 evidence at trial that, if they had not met him in the hookah
10 bar in Ontario or Pomona, their lives would not have been
11 affected with lengthy terms of incarceration. He was really
12 the person who came up with this plot and urged the others to
13 participate in it throughout the whole length of the
14 conspiracy.

15 So even if he was, in the words of some of his
16 family members who testified at trial, unmotivated and
17 disorganized, so even if he would not have carried out those
18 plans himself, he certainly motivated the others to do his
19 bidding.

20 And finally, the need to avoid unwarranted
21 sentencing disparity. As the first sentencing in this case as
22 well as for resentencing, the defense has submitted a great
23 deal of information about other cases. And I've considered the
24 sentences that were imposed in the cases that the defense
25 refers to.

1 Some of the cases that the defense relies on are
2 cases where the defendant pled guilty, and they aren't really
3 comparable. In this case the defendant went to trial.

4 The defense points out that the defendant was a
5 refugee, came from a chaotic situation in Afghanistan to the
6 United States which is certainly a factor that could be
7 mitigating. But on the other hand, his family sought and
8 received asylum in the United States where he had access to a
9 free public education. He had parents who worked hard to
10 provide him with a middle class life.

11 He had -- he was the youngest sibling. He had
12 advantages that his older siblings did not have. But his whole
13 family obtained citizenship in the United States. His family
14 members, his brothers and his parents, were refugees and
15 immigrants who despite the hardships they suffered of exile
16 from their homeland, came to the United States, worked hard,
17 made contributions to this country.

18 But Mr. Kabir took another path where he -- and he
19 does have lingering effects from the automobile accident he was
20 in that caused him to separate from the military. But
21 nevertheless, he didn't have stable employment but rather ended
22 up spending his time and energy in planning for violent jihad
23 and recruiting others.

24 So my intended sentence is a sentence of 300 months
25 in custody, a lifetime period of supervised release.

1 Miss Viramontes?

2 MS. VIRAMONTES: Thank you, Your Honor.

3 Thank you, Your Honor. In terms of the arguments
4 that the defense made about the terrorism enhancement, much of
5 that information is also relevant to what is the just
6 punishment here.

7 And not to belabor the point, Your Honor, but the
8 studies that the defense cited discuss the very low recidivism
9 rates. And the defense believes that is an important point
10 because that goes to a person's criminal history whether they
11 are likely to recidivate as well as the deterrence factor.

12 What the studies found that the defense cited, one
13 of which was a U.S. military publication, was that the
14 recidivism rate was roughly 6.5 percent. And in that study,
15 the pool of cases that they looked at were people who had been
16 convicted of plotting an attack. And there what they found was
17 the recidivism rate was 6.5 percent.

18 And the other study that the defense cited that was
19 a study from the Hague, the rate was even lower, 1.6 percent.
20 And of the four offenders who did recidivate upon release, one
21 recidivated by violating the plea agreement by using the
22 Internet. Another committed fraud by illegally buying food
23 with food stamps. The third was convicted of forgery, and
24 fourth committed a parole violation due to drug possession.

25 In that study they also cite a 2016 United States

1 Sentencing Commission report that found within eight years of
2 release, half of offenders were rearrested, a third
3 reconvicted, and a fourth reincarcerated.

4 And yesterday, Your Honor, I found another
5 study from the Center -- the Combatting Terrorism Center at
6 West Point. Overblown, Exploring the Gap Between the Fear of
7 Terrorist Recidivism and Evidence. And in that study in the
8 military publication, it also found looking at 557 jihadi
9 terrorists in Belgium, that five percent reengaged in terrorist
10 attacks.

11 The defense points the Court to these studies for
12 the purpose of pointing out to the Court that the recidivism
13 likelihood is not greater in terrorism cases than in regular
14 cases. And the defense position is that Mr. Kabir is not
15 deserving of a greater sentence based on that reason.

16 The defense would also point out, Your Honor, that
17 the cases that the government largely relied on don't address
18 the lack of empirical data, that the Courts cite each other for
19 the proposition that there are unique difficulties in deterring
20 and rehabilitating persons convicted of terrorism offenses.
21 And that's just simply not borne out by the recent studies
22 looking at this phenomena, Your Honor.

23 THE COURT: Well, let me ask a question. And that
24 is you have to -- you have to consider whether those studies
25 deal with persons who have received the -- who have committed

1 the most serious conduct and received lengthy sentences because
2 there couldn't really be a study of recidivism rates amongst
3 those who have gotten life sentences or 25-year sentences. So
4 that's one point.

5 Also, the government -- and I'm not suggesting that
6 anecdotal evidence is superior in any way to the sorts of
7 studies that you've cited, but I think it is a valid point the
8 government makes that this Court has already dealt with at
9 least one person who was in prison on terrorism charges,
10 Mr. Kurbanov, who recidivated by attacking the warden at the
11 prison and slicing him open in a most serious wound.

12 So those are two factors or two points that weigh
13 against the argument you are making about the studies that
14 you've submitted.

15 MS. VIRAMONTES: Yes, Your Honor. And certainly the
16 anecdotal evidence that the government cited is disturbing.

17 The defense's argument here, Your Honor, is that the
18 United States Sentencing Commission found that, you know, half
19 of offenders rearrested, a third reconvicted, a fourth
20 reincarcerated.

21 And the argument that the United States Sentencing
22 Commission seemed to rely on in creating the terrorism
23 enhancement was that terrorism -- persons convicted of
24 terrorism offenses were somehow different, that they were more
25 dangerous. So they deserved a much more harsher sentence. And

1 that doesn't seem to be bore out by the evidence as more people
2 are released from prison after serving these sentences.

3 The defense is by no means trying to argue to the
4 Court that there's no risk of recidivism. That's just simply a
5 silly argument to make. But the defense's position is that
6 this belief that there needs to be a much more draconian
7 sentence is not bore out by the empirical data.

8 And I would point out that the study, the
9 Examination of Jihadi Recidivism Rates in the United States,
10 looked at 189 individuals. And those individuals all had
11 convictions that involved attack plotting rather than all
12 jihadi offenders which is what the authors of the study the
13 Terrorism Recidivism study did.

14 And then finally, Your Honor, in terms of
15 Mr. Kabir's post-sentencing conduct, the Court has the benefit
16 of seeing him seven years later. His last disciplinary conduct
17 actually predates the trial in this case. It was May of 2014.
18 And trial was in August and September of 2014.

19 The government points to three incidents over
20 roughly the last seven years --

21 THE COURT: Well, Miss Viramontes, excuse me for
22 interrupting you. But I'm persuaded that those incidents are
23 too remote in time to really have an effect on my analysis of
24 the 3553(a) factors.

25 MS. VIRAMONTES: Thank you, Your Honor.

1 What I also think is important here, Your Honor, is
2 what he has said in his own words about the changes that he has
3 made. I do think the family support is important because they
4 are aware of what has gone on. They sat through the trial.
5 They've been supporters of him over the last seven years. And
6 they are aware of the facts of the case. They are aware that
7 he's incarcerated, and they still want to support him, and they
8 still want to see him change when he is released.

9 And I think that's important when he is released,
10 that they are not going to enable him, that they are aware of
11 the difficulties and challenges he will face and he has faced.
12 And that having a supportive family is sort of a protective
13 function when someone is released from custody.

14 He has 14 family members here in court today
15 including his mother, his brother, numerous aunts, a
16 sister-in-law, and many cousins. And they would like the Court
17 to know that they believe Mr. Kabir has changed. And they will
18 support him in the future whenever he is released.

19 And I believe, Your Honor, Mr. Kabir would like to
20 read his letter to the Court. It was important for him that
21 the Court hear him speak today. Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Kabir, you have the right to speak at this time.

24 THE DEFENDANT: First of all, I would like to say
25 good morning to everybody and thank my family for coming and

1 showing support.

2 You know, these last ten -- nine years, ten years
3 have been real hard, and I wouldn't even wish it upon my enemy.
4 I know before I got incarcerated, I had no goals in life. I
5 had no motivation. So I was real depressed. So, you know, I
6 turned to drugs and hanging around with the wrong crowd. And
7 that was a big factor in the decisions I made in my life.

8 Technically I was giving up on life. And, you know,
9 coming into prison my first two -- two-plus years, I did in
10 solitary confinement. And, you know, that gave me a lot of
11 time right there not only from recovering from my injuries but
12 to reflect on everything in my life.

13 And I was a big disappointment to my family. So,
14 you know, being outside and making mistakes, I know my family
15 had my back. So I didn't take nothing serious. I know I could
16 run to them for anything.

17 But coming to prison was a blessing because my whole
18 intention before this was -- my whole intention was to change
19 for the better. I was tired of being a disappointment for so
20 long, being unhappy for so long. Not worth living.

21 So these last nine years being in prison I have a
22 lot of self-reflection. You have to, as they say, man up. You
23 had to learn along the way. And it was hard. Psychologically
24 it was very difficult in prison, from the living conditions to
25 everything.

1 But I knew I needed that because I used to walk
2 around with a false sense of pride. I used to judge people. I
3 had a lot of hatred in my heart for a lot of people, even
4 myself. I'd wake up miserable. I'd go to sleep miserable.
5 Everything I tried to contain or tried to control it by doing
6 drugs.

7 I'm not here to make excuses. But I'm just here to
8 let you know this was -- what was going on in my personal life.
9 I know I made a lot of bad decisions. I was around a lot of
10 bad people.

11 So even being in prison I didn't learn right away.
12 I had to go through what I had to go through to chip away at a
13 heart that was already hardened. So I needed to -- I needed to
14 go through it in order for it to break off so that it could
15 become soft again, so I could work on myself these last nine
16 years.

17 And where I'm at today, I could say I'm happy with
18 myself at who I became because of what I went through. I know
19 all that stuff that I'm in prison for -- I know it reflects --
20 it looks real bad upon me and my family. My family is not like
21 that, and I'm not like that. I'm just misunderstood.

22 I remember a scholar a long time ago, he had some
23 issues. And people were talking bad about him. And then when
24 his name got cleared, everybody came to him and apologized to
25 him. And he said, look, I don't need to know your situation

1 what you did that affected me, but I already forgive you for
2 everything. It doesn't matter what it was because, he said, I
3 don't want God to punish you because of me. So that weighed
4 heavy on me reflecting on my past and looking at everything.

5 And the day I woke up and I realized whatever
6 happened to me in my life, all the -- whatever I felt towards
7 anybody at all, I removed it from my heart, and I felt honestly
8 instantly like a great burden was taken off my shoulders. And
9 after that, that felt so good. I carry that with me as a
10 reminder every single day.

11 And I wake up, even though I'm in a prison
12 environment that I don't wish upon anybody, I could actually
13 say I wake up with a smile on my face. I wake up happy because
14 I'm back to being who I should have been from the beginning
15 before I made all the bad choices I made and got affected by
16 drug use and my surroundings and environment.

17 My parents taught me a lot better than this from the
18 beginning, but it was me caught up in this environment, like I
19 said, with bad friends and just being rebellious in nature that
20 I went against even what they taught me. I even went to the
21 point of stealing their car, you know, for various reasons, for
22 the wrong reasons regardless of what it was. And until this
23 day I'm ashamed of that.

24 But at that time being under the influence of drugs,
25 just not using it as an excuse but saying it's a factor, I

1 wasn't in the right state of mind. My heart was hardened. So
2 all I can say now presently currently speaking, I'm not who I
3 was when I came in. I don't plan on ever being like that
4 again. I'm not an extremist. I don't believe in that. My
5 religion doesn't teach that. I'm just a Muslim. That's it.
6 Nothing more, nothing less.

7 The picture that they brought up, I was put in a
8 special prison with people with those similar charges. And you
9 treat everybody how you want to be treated. And that's how I
10 treated them. A rule goes in prison that you don't ask people
11 their charges of what they are in there for. You don't look
12 them up or anything any of those things. You treat everybody
13 accordingly so that everybody could function together and be
14 civilized or control it as much as you can.

15 So I know everybody makes mistakes in life, and I
16 made plenty. I can't even count them. But I just try to learn
17 from them.

18 And tomorrow, if God willing I make it, I plan on
19 being better than I am now. And today I'm planning on being
20 better than I was yesterday. And I'll continue striving and
21 working on myself for the rest of my life.

22 I want to have opportunity now to start a family.
23 You know, I have family support. They even offered me jobs,
24 the stability. Something I didn't -- I don't even recall if I
25 had that opportunity back then because my mind wasn't even

1 focused. I didn't even care about any of that stuff. I just
2 wanted everything to end.

3 So, you know, I ask Your Honor to please show me
4 compassion. I'm willing to comply with everything, probation
5 department requests of me, every -- I feel prison shouldn't be
6 a punishment but should be rehabilitation, as much time as a
7 person needs change their ways. I honestly feel that way, and
8 I'm not saying this because I'm standing right here.

9 I've seen in the prison there's a lot of people that
10 have mental -- real serious mental issues that shouldn't even
11 be in prison. And there's other people that do belong there
12 and should stay in there and shouldn't come out. And there's
13 other people that they just made a bad choice like myself and,
14 you know, they learned from their mistakes and God willing they
15 come out.

16 You know, to everybody involved directly and
17 indirectly, I apologize from the bottom of my heart. I know I
18 was supposed to be here and read the letter, but I had to speak
19 from my heart because it's more sincere. And I just hope you
20 show me mercy and give me a chance to prove what I'm saying and
21 not let it just be lip service because before it was and now
22 it's not. Thank you.

23 THE COURT: Thank you.

24 Mr. Grigg?

25 MR. GRIGG: Thank you, Your Honor.

1 In preparing for today's hearing, as the Court has
2 done, the government has gone back and looked over the records
3 from the beginning of this case up until the present. And
4 rather than recount the hundreds of exhibits, the weeks of
5 trial testimony that describe Mr. Kabir's actions quoting his
6 own words and quoting his own deeds and those of his
7 co-conspirators, I would direct the Court's attention to just
8 one exhibit.

9 And pardon me for being old fashioned in this new
10 setting, but I actually have paper copies if the Court would
11 like to have them. I have copies for counsel and the clerk.
12 Perhaps I could --

13 THE COURT: Could you put them on the ELMO?

14 MR. GRIGG: I probably can, yes, Your Honor.

15 But my point is I'm happy to submit them. But if
16 the Court would allow me to condense my comments, I can do that
17 with or without the benefit of projecting them if the Court
18 wants and then submit the copies. I'm sure it's something with
19 which the Court is already familiar with. But as the Court
20 pleases. Whichever --

21 THE COURT: You may argue, and then you can
22 distribute the copies if that's what you prefer.

23 MR. GRIGG: Okay. Great. I will just provide a
24 copy to defense counsel right now since she's close by. And I
25 will put my mask on and hand up the copies to the clerk.

1 THE COURT: Was this a trial exhibit?

2 MR. GRIGG: It was, Your Honor. It's Exhibit
3 526(a). And according to the Court's order, Docket 680, it was
4 admitted into evidence -- well, the underlying recording was
5 admitted into evidence on August 20, 2014. And I'm really
6 going to talk about the second page only of this exhibit.

7 This is an October 20, 2014 recording of a
8 conversation between Mr. Kabir and Mr. Santana. And for the
9 Court's recollection, this was about four weeks before the
10 arrests in this case.

11 THE COURT: October 20th, 2012.

12 MR. GRIGG: That's correct, Your Honor. And it was
13 admitted into evidence in August of 2014.

14 THE COURT: Go ahead.

15 MR. GRIGG: On page 2 of this recording and this
16 transcript, Mr. Kabir tells Mr. Santana that he has met someone
17 with, "connects to AQ" referring to al-Qaeda. And as the
18 Court recalls, this is after the August 2012 recording in which
19 Mr. Kabir tells Mr. DeLeon and Mr. Santana and the person who
20 we've all come to know as the CHS, Mr. Hamad, that he had made
21 contacts with the students and the professors.

22 So this is a couple of months after that
23 conversation and mere weeks before the codefendants get in
24 their car and attempt to drive to Mexico. So, again, Mr. Kabir
25 in his own words is telling his co-schemers that he has

1 connections with someone who has connections with al-Qaeda.

2 This conversation, Your Honor, involves Mr. Santana
3 informing Mr. Kabir of how the co-conspirators are going to
4 exit the United States to avoid detection at the airports by
5 driving over the land border to Mexico. And Mr. Kabir directs
6 Mr. Santana to go to the consulate in Mexico because Mr. Kabir
7 has learned that the codefendants will need visas to enter
8 Afghanistan.

9 And this one page sort of brings into focus some of
10 what the Court has heard today about -- and, quite frankly, the
11 detailed statements Mr. Kabir made in his recent letter to the
12 Court which he summed up and expanded on just now.

13 But in this letter -- in this conversation -- sorry.
14 In Mr. Kabir's own words, he tells his co-conspirators -- he
15 directs them to go to the consulate and, "pull tricks"
16 and "bullshit them to get information out of them" because
17 Mr. Santana has asked how hard is it to sneak somebody into
18 Afghanistan.

19 The problem here, of course, is this is a
20 willingness to deceive and a willingness to manipulate and a
21 willingness to direct others to do the same to get what one
22 wants. It is but one of many examples that call into question
23 the difference which is the classic difference in every
24 sentencing between a defendant who is engaged in the offense
25 conduct and a defendant who appears before the Court for

1 sentencing.

2 Part of why this one page brings together a lot of
3 these issues is because, as the Court has heard, Mr. Kabir has
4 represented that he is in the process of changing who he was.
5 He claims he has already changed.

6 The government has pointed out that in recorded
7 conversations from prison with one of his brothers, he
8 describes his support for the leaders of Isis. And not just as
9 Mr. Kabir would have the Court believe, playing devil's
10 advocate, where he says in his letter to the Court he was just
11 trying to get under his brother's skin essentially. But he
12 argues directly with his brother who says the entire world
13 disagrees with you, not just Muslims in the West. Not just --
14 but also Muslims in the East.

15 When Mr. Kabir pushes back, it's not just to goad
16 his brother. He says, "I have seen the proof, and it's pretty
17 clear. And the people who say otherwise," in essence -- this
18 is in the exhibits to the government's sentencing position
19 paper for the November 2019 phone call. Mr. Kabir says, "I've
20 seen the proof, and the people who say otherwise are lying.
21 Just like at my trial. The government was lying. All of those
22 witnesses who testified against me were lying."

23 And the problem, of course, Your Honor, is the trial
24 evidence and all of the evidence in this case, the exhibits,
25 the recordings, the extensive written publications online, it's

1 not the government speaking. Those are defendant's own words.
2 The evidence in the case is about the defendant's own actions.

3 And in this hearing, the defendant makes the
4 understandable argument that he is a different person, he is
5 new. We understand why that information is being put forward
6 before the Court. But this record makes it very difficult for
7 anyone to accept at face value those representations.

8 The Court is also being asked to disproportionately
9 allocate weight among the sentencing factors in this case by
10 focusing on recidivism rates and specifically the factor that
11 the Court recited, the need to deter -- or sorry. To protect
12 the public from further offenses by the defendant.

13 But the Court is being induced to disproportionately
14 weigh that to the exclusion of all of the remaining sentencing
15 factors. And even if the Court were to consider the studies
16 that counsel has put forward as flawed as they are and even if
17 the Court were to consider the sentencing disparity arguments
18 that counsel has put forward which the Court has already
19 distinguished -- the Court distinguished at the last sentencing
20 hearing that a lot of those cases are not similarly situated.

21 But there are a couple of cases that the Court can
22 look to that are directly similarly situated. In this case the
23 defendant is asking for a sentence lower than what this Court
24 sentenced Mr. DeLeon to serve. That is a fundamental disparity
25 and a gross weighting of the factors that is not borne out by

1 this record.

2 As the Court will recall, it sentenced Mr. DeLeon to
3 20 years, Mr. Santana who pleaded guilty to a lesser term and
4 Mr. Gojali to a lesser term. But here defendant is asking for
5 a sentence below even his own codefendants in his own case.

6 The Court can also look to other examples including
7 United States versus Badawi and Elhuzayel which is a case tried
8 and prosecuted before Judge Carter in CR -- I believe
9 technically it's SA CR 15-00060-DOC which involved a material
10 support trial for two defendants conspiring to send one of them
11 overseas to join Isis. In that case Judge Carter imposed
12 30-year sentences. So higher sentences than Mr. Kabir received
13 in this case.

14 The problem that the court has is it's being asked
15 to weigh disproportionately one factor to the derogation of the
16 others. My sense is that the Court understands and has laid
17 forward -- laid out all of its assessments of the various
18 factors. And the government would submit that the record fully
19 supports the findings and the tentative that the Court has laid
20 out and would ask the Court to impose the same sentence it
21 initially indicated.

22 And if the Court has any particular questions, I'm
23 happy to address them.

24 THE COURT: Thank you.

25 Did you have anything else, Miss Viramontes?

1 MS. VIRAMONTES: Your Honor, the defense's
2 understanding is that Mr. DeLeon is going to be resentenced as
3 well. I would just point that out. And once again,
4 Your Honor, there have not been any reports from SIS within the
5 prison that Mr. Kabir has been involved with terrorist
6 activities or --

7 THE COURT: Well, I'm not aware of a resentencing as
8 to Mr. DeLeon. I believe his appeal is still pending.

9 MR. GRIGG: That's correct, Your Honor.

10 MS. VIRAMONTES: If that is the government's
11 position, then the defense will accept that. My understanding
12 is that there have been conversations that have led our office
13 to believe that Mr. DeLeon will be resentenced and matters that
14 I am hesitant to discuss without proceedings being under seal,
15 Your Honor.

16 THE COURT: Well, I checked the docket, of course,
17 many times during the last week or so. There's no indication
18 on the docket.

19 MR. GRIGG: Your Honor, I would like to just be
20 clear so that the Court understands. Counsel's point is not
21 entirely off base. But what counsel is preferring to, perhaps,
22 is that Mr. Kabir's appellate counsel has contacted the
23 government. The appeal is still pending. Mr. DeLeon has not
24 filed his opening brief yet.

25 And to the extent that the parties are even

1 discussing whether the appeal can be resolved or not, quite
2 frankly, I don't think that has any merit here because the
3 Court imposed the judgment it imposed upon Mr. DeLeon and
4 hasn't had occasion to revisit it yet.

5 THE COURT: All right.

6 Go ahead, Miss Viramontes, you may --

7 MS. VIRAMONTES: Nothing further, Your Honor.

8 THE COURT: All right. Thank you.

9 The defendant may stand at the lectern, please, for
10 imposition of sentence.

11 I think I've set forth in detail the basis for my
12 resentencing decision. I would just add that the statement
13 that Mr. Kabir made today as well as what -- the sentencing
14 letter that he submitted, what is striking is that I think they
15 are fairly characterized as not expressing remorse. In fact,
16 the statement today blaming his drug use, his bad friends, his
17 bad choices, that he's misunderstood, nowhere is there a
18 statement of remorse for his conduct.

19 And in one particular area, I guess I find that
20 troubling. And that is although I imposed sentence on the
21 other three defendants in this case as I believe I said a
22 few moments ago, it's clear to me that if they had not met
23 Mr. Kabir, there would have been no occasion for me to sentence
24 them.

25 He was not only the leader and the organizer and the

1 planner, but it was his conduct and his recruitment of the
2 other defendants who are serving or have served prison time.
3 If they had not met him, their lives would have been vastly
4 better.

5 All right. The Court has considered the sentencing
6 factors set forth at 18 United States Code Section 3553(a) as
7 well as the advisory sentencing guidelines and hereby imposes
8 sentence as follows: And this is a variance from the advisory
9 range.

10 It's ordered that the defendant shall pay to the
11 United States a special assessment of \$200 due immediately.
12 Any unpaid balance shall be due during the period of
13 imprisonment at the rate of not less than \$25 per quarter
14 pursuant to the BOP's Inmate Financial Responsibility Program.

15 Pursuant to Guideline Section 5E1.2(a), all fines
16 are waived as the Court finds the defendant has established
17 that he is unable to pay a fine.

18 Pursuant to the Sentencing Reform Act of 1984, it's
19 the judgment of the Court that the defendant, Sohriel Omar
20 Kabir, is hereby committed on Counts 1 and 5 of the second
21 superseding indictment to the custody of the Bureau of Prisons
22 for a term of 300 months consisting of 180 months on Count 1
23 and 300 months on Count 5 to be served concurrently.

24 The Court recommends that the Bureau of Prisons
25 conduct a mental health evaluation of the defendant and provide

1 all necessary treatment.

2 Upon release from imprisonment, the defendant shall
3 be placed on supervised release for a life term consisting of a
4 life term on Counts 1 and 5 of the second superseding
5 indictment. All terms to run -- oh, I'm sorry. It's a life
6 term on Count 1 and five years on Count 5. All terms to run
7 concurrently under the following terms and conditions:

8 The defendant shall comply with the rules and
9 regulations of the U.S. Probation and Pretrial Services office
10 and second amended General Order 20-04.

11 He shall refrain from any unlawful use of a
12 controlled substance. He shall submit to one drug test within
13 15 days of release from imprisonment and at least two periodic
14 drug tests thereafter not to exceed eight tests per month as
15 directed by probation.

16 He shall participate in an outpatient substance
17 abuse treatment and counseling program that includes
18 urinalysis, breath and sweat patch testing as directed by
19 probation.

20 He shall abstain from using alcohol and illicit
21 drugs and from abusing prescription medications during the
22 period of supervision.

23 During the course of supervision, the probation
24 officer with the agreement of the defendant and defense counsel
25 may place the defendant in a residential drug treatment program

1 approved by the U.S. Probation Office for treatment of narcotic
2 addiction or drug dependency which may include counseling and
3 testing to determine if the defendant has reverted to the use
4 of drugs.

5 The defendant shall reside in the treatment program
6 until discharged by the probation officer and the program
7 director.

8 The defendant shall participate in mental health
9 treatment which may include evaluation and counseling until
10 discharged from the treatment by the treatment provider with
11 the approval of probation. As directed by probation, he shall
12 pay all or part of the cost of treating his drug dependency and
13 psychological or psychiatric disorders during the period of
14 supervision pursuant to 18 United States Code Section 3672.
15 And the defendant shall provide payment and proof of payment as
16 directed by probation.

17 During the period of supervision, the defendant
18 shall pay the special assessment in accordance with this
19 judgment's orders regarding such payment.

20 When not employed or excused from the probation
21 officer for schooling, training or other acceptable reasons, he
22 shall perform 20 hours of community service per week as
23 directed by probation. He shall cooperate in the collection of
24 a DNA sample from the defendant.

25 He shall not associate with anyone known to him to

1 be a member of al-Qaeda, the Taliban or any affiliated
2 organization or others known to him to be participants in
3 al-Qaeda, the Taliban or any affiliated organizations' criminal
4 activities with the exception of any family members.

5 He may not wear, display, use or possess any
6 insignias, emblems, badges, buttons, caps, hats, jackets, shoes
7 or other clothing that he knows evidence affiliation with
8 al-Qaeda, the Taliban or any affiliated organization and may
9 not display any signs or gestures that he knows evidence
10 affiliation with al-Qaeda, the Taliban or any affiliated
11 organization.

12 As directed by the probation officer, he shall not
13 be present in any area known to him to be a location where
14 members of al-Qaeda, the Taliban or any affiliated organization
15 meet or assemble.

16 He shall submit his person, property, house,
17 residence, vehicle, papers, computers, cell phones, other
18 electronic communications or data storage devices or media,
19 e-mail accounts, social media accounts, cloud storage accounts
20 or other areas under his control to a search conducted by a
21 United States probation officer or law enforcement officer.
22 Failure to submit to a search may be grounds for revocation.

23 The defendant shall warn any other occupants that
24 the premises may be subject to searches pursuant to this
25 condition. Any search pursuant to this condition will be

1 conducted at a reasonable time and in a reasonable manner upon
2 reasonable suspicion that the defendant has violated a
3 condition of his supervision and the areas to be searched
4 contain evidence of this violation.

5 Mr. Kabir, you, again, have the right to appeal the
6 Court's decision as to your sentence. Defendant may appeal by
7 filing a notice of appeal with the clerk. You may ask that any
8 notice of appeal can be filed without paying the fees usually
9 required, and you have 14 days or two weeks from today's date
10 to file your notice of appeal or you lose the right to appeal.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Anything further from either
14 side?

15 MR. GRIGG: No. Thank you, Your Honor.

16 MS. VIRAMONTES: No, Your Honor. Thank you.

17 THE COURT: All right. Thank you.

18 (At 11:05 a.m. the proceedings adjourned.)
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, MAREA WOOLRICH, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 10TH DAY OF JULY, 2021.

/S/ MAREA WOOLRICH

MAREA WOOLRICH, CSR NO. 12698, CCRR
FEDERAL OFFICIAL COURT REPORTER