

NO. _____

In The
Supreme Court of the United States

MAALIK ALIM JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPENDIX

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22-2958-cr
United States v. Jones

**United States Court of Appeals
For the Second Circuit**

August Term 2023
Submitted: December 11, 2023
Decided: April 29, 2024

No. 22-2958-cr

UNITED STATES OF AMERICA

Appellee,

v.

MAALIK ALIM JONES

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of New York
No. 1:16-cr-19-1 , Gardephe, *Judge.*

Before: Walker, Park, Pérez, *Circuit Judges*.

Maalik Alim Jones, a United States citizen, pleaded guilty to terrorism-related charges based on his conduct in Kenya and Somalia assisting al-Shabaab, an Islamist military organization. The district court (Gardephe, J.) accepted his plea and sentenced him to 25 years of imprisonment. Jones now challenges his plea agreement and sentence, arguing that (1) a prior mandate of this Court precluded the government from charging him in a superseding indictment; (2) the language of his plea agreement is ambiguous and inapplicable to him; and (3) his sentence was based on erroneous factual findings and constitutionally impermissible factors—including collective punishment and the sectarian nature of al-Shabaab. We reject these arguments and **AFFIRM** the judgment of the district court.

Joshua L. Dratel, Law Offices of Dratel & Lewis, New York, NY, *for Defendant-Appellant*.

David William Denton, Jr., David M. Abramowicz, Assistant United States Attorneys, *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

PARK, *Circuit Judge*:

Maalik Alim Jones, a United States citizen, pleaded guilty to terrorism-related charges based on his conduct in Kenya and Somalia assisting al-Shabaab, an Islamist military organization. The district court accepted his plea and sentenced him to 25 years of imprisonment. Jones now challenges his plea agreement and sentence, arguing that (1) a prior mandate of this Court precluded the government from charging him in a superseding indictment; (2) the language of his plea agreement is ambiguous and inapplicable to him; and (3) his sentence was based on erroneous factual findings and constitutionally impermissible factors—including collective punishment and the sectarian nature of al-Shabaab. We reject these arguments and affirm the judgment of the district court.

I. BACKGROUND

A. Factual Background

Maalik Alim Jones is a United States citizen, born and raised in Baltimore, Maryland. In 2011, at twenty-six years old, he left the United States for Somalia where he joined the Islamic terrorist organization known as al-Shabaab. The United States Secretary of State had designated al-Shabaab as a foreign terrorist organization in February 2008; in 2012, al-Shabaab swore allegiance to and merged with al-Qaeda.

Jones became a member of a unit within al-Shabaab known as Jaysh Ayman, which has engaged in acts of terrorism against Kenya's civilian population. Jones received three months of training from al-

Shabaab, during which he learned how to operate an AK-47 assault rifle and rocket-propelled grenade. He fought Kenyan military forces in a battle in Afmadow, Somalia, near the Kenyan border, where he was wounded. After recovering, he returned to service with Jaysh Ayman and remained a member for about two more years, for a total of four years.

During that time, Jaysh Ayman committed numerous acts of terrorism, including a 2014 attack on the village of Mpeketoni, Kenya and a 2015 ambush on a Kenyan Defense Force base in Lamu County, Kenya. Al-Shabaab also carried out several other acts of terrorism, including a 2013 attack on Westgate shopping mall in Nairobi, Kenya. These attacks killed and wounded scores of civilians, including some Americans. Following the ambush in Lamu County, Kenyan authorities recovered electronic media from the body of a deceased al-Shabaab fighter and provided it to the FBI. The files included videos depicting Jones in the company of prominent al-Shabaab fighters, interacting with or embracing them, and walking around with a firearm. Jones defected from al-Shabaab, and in December 2015, was captured by Somali authorities.

B. Procedural History

In January 2016, Jones was indicted in U.S. District Court for the Southern District of New York in the first of a number of charging instruments. The Initial Indictment charged Jones with five counts: conspiracy to provide material support to al-Shabaab, in violation of 18 U.S.C. § 2339B (Count One); provision of material support to al-Shabaab, in violation of 18 U.S.C. § 2339B (Count Two); conspiracy to

receive military-type training from al-Shabaab, in violation of 18 U.S.C. §§ 371 and 2339D (Count Three); receipt of military-type training from al-Shabaab, in violation of 18 U.S.C. § 2339D (Count Four); and possessing, carrying, and using firearms during and in relation to the above offenses, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i)-(iii), (B)(i)-(ii), and 2 (Count Five).

In September 2017, Jones waived indictment and consented to the entry of a Superseding Information (the “S1 Information”). The S1 Information charged Jones with conspiracy to provide material support to al-Shabaab (Count One); conspiracy to receive military-type training from al-Shabaab (Count Two); and possessing, carrying, and using firearms during and in relation to Count One and Count Two (Count Three). Despite the entry of the S1 Information, the Initial Indictment remained pending.

Immediately after consenting to the entry of the S1 Information, Jones entered a plea agreement (the “First Plea Agreement”). Under the First Plea Agreement, Jones agreed to plead guilty to all three counts in the S1 Information. The Agreement also included the following term:

It is further agreed that should the convictions following the defendant’s pleas of guilty pursuant to this Agreement be vacated for *any reason*, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this

Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

Appellee's Br. Add. at 7 (emphasis added). Jones pleaded guilty under the First Plea Agreement.

In June 2018, the district court sentenced Jones for the charges identified by the First Plea Agreement. As relevant here, the district court sentenced Jones to consecutive terms of three years of imprisonment on Count One of the S1 Information; two years of imprisonment on Count Two; and 30 years of imprisonment on Count Three, for a total prison term of 35 years. The district court granted the government's motion to dismiss the five open counts of the Initial Indictment.

In June 2019, the Supreme Court held in *United States v. Davis* that 18 U.S.C. § 924(c)(3)(B) (interpreting "crime of violence")—on which Count Three of the S1 Information had been partly based—was unconstitutionally vague. *See* 139 S. Ct. 2319, 2336 (2019).

Jones then appealed his conviction on Count Three of the S1 Information to this Court. He argued that, under *Davis*, the offenses charged against him in Counts One and Two were no longer "crime[s] of violence" that could serve as predicates for the section 924(c)

offense charged in Count Three. *See* 18 U.S.C. § 924(c)(3). The government conceded this point and moved to vacate Jones's Count Three conviction. The government also sought dismissal of Jones's appeal as to his convictions on Counts One and Two, or in the alternative, summary affirmance of those convictions. Finally, the government asked this Court to "remand the case to the District Court for further proceedings, which may include resentencing on the remaining counts, . . . commencement of new charges, or reinstatement of charges dismissed pursuant to the Plea Agreement." Affirmation of Shawn G. Crowley at 10, *United States v. Jones*, No. 18-1752 (2d Cir. Oct. 18, 2019).

In February 2020, this Court vacated Jones's conviction on Count Three and remanded for resentencing on Counts One and Two of the S1 Information. *See United States v. Jones*, No. 18-1752, 2020 WL 9762456 (2d Cir. Feb. 14, 2020). The order stated:

Upon due consideration, it is hereby ORDERED that the motion is GRANTED with regard to Count Three, which is VACATED, and the case is REMANDED for resentencing on Counts One and Two. *See United States v. Davis*, 139 S. Ct. 2319 (2019); *United States v. Barrett*, 937 F.3d 126, 127 (2d Cir. 2019). The Government's motion to dismiss the appeal or for summary affirmance of the convictions on Counts One and Two is DENIED because Appellant has not appealed his convictions on those counts. *See United States v. Greer*, 285 F.3d 158, 170 (2d Cir. 2002).

Id. at *1. On remand, the district court denied the government's motion to reinstate the Initial Indictment. The district court reasoned that because this Court specifically limited its remand to resentencing on Counts One and Two, it had impliedly rejected the government's explicit request for a remand for possible resentencing or reinstatement of charges. The district court, however, did not preclude the government from seeking a superseding indictment.

In August 2021, the government filed a superseding indictment (the "S2 Indictment"), which charged Jones with the same offenses charged in Counts One through Four of the Initial Indictment. These were: conspiring to provide material support to al-Shabaab, in violation of 18 U.S.C. § 2339B (Count One); providing material support to al-Shabaab, also in violation of 18 U.S.C. § 2339B (Count Two); conspiring to receive military-type training from al-Shabaab, in violation of 18 U.S.C. §§ 371 and 2339D (Count Three); and receiving military-type training from al-Shabaab, in violation of 18 U.S.C. § 2339D (Count Four).

Jones moved to dismiss the S2 Indictment. He argued that (1) the entire Indictment violated this Court's mandate, and (2) Counts One and Three of the Indictment violated the Fifth Amendment's Double Jeopardy Clause because they were identical to Counts One and Two of the S1 Information, which remained intact and had supported Jones's previous convictions. The government opposed the motion. The district court granted Jones's motion to dismiss Counts One and Three of the S2 Indictment, holding that indictment on those charges violated the Double Jeopardy Clause. But the

district court rejected Jones's argument that the S2 Indictment violated this Court's mandate, and accordingly, denied Jones's motion to dismiss Counts Two and Four.

In June 2022, Jones waived indictment and consented to entry of a new superseding information (the "S3 Information"). Jones then entered a Second Plea Agreement, through which he pleaded guilty to two counts in the S3 Information: conspiracy to provide material support to al-Shabaab (Count One) and receipt of military-type training from al-Shabaab (Count Two). Count One of the S3 Information charged the same offense as in Count One of the S1 Information and carried a maximum prison term of 15 years. Count Two of the S3 Information replaced the conspiracy offense in Count Two of the S1 Information, which had carried a maximum prison term of five years, with a substantive offense that carried a fixed prison term of 10 years.

The Second Plea Agreement contained a standard waiver of Jones's right to appeal:

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241, of any sentence at or below the Stipulated Guidelines Sentence of 300 months' imprisonment, and (ii) that the Government will not appeal a sentence at the Stipulated Guidelines Sentence of 300 months' imprisonment.

App'x at 149.

The district court accepted Jones's guilty plea to Counts One and Two of the S3 Information. It sentenced Jones to 15 years of imprisonment on Count One and 10 years of imprisonment on Count Two consecutively, for a total of 25 years of imprisonment. The district court also vacated Jones's earlier guilty plea to the surviving counts of the S1 Information. Jones appealed.

II. DISCUSSION

Jones argues that this Court's mandate following our February 14, 2020 order precluded the government from charging him in the S2 Indictment and that the terms of the plea agreement were ambiguous and inapplicable to his circumstances. He also argues that the district court improperly imposed its sentence following the Second Plea Agreement based on erroneous factual findings and constitutionally impermissible factors—including the principle of collective punishment and the sectarian nature of al-Shabaab—and thus the appeal waiver of the plea agreement is unenforceable.

"Findings of fact are reviewed for clear error, and legal conclusions . . . are reviewed de novo." *United States v. Strange*, 65 F.4th 86, 88-89 (2d Cir. 2023). "We review a criminal sentence for reasonableness, which 'amounts to review for abuse of discretion.'" *United States v. Kourani*, 6 F.4th 345, 356 (2d Cir. 2021) (quoting *United States v. Robinson*, 702 F.3d 22, 38 (2d Cir. 2012)). Moreover, we have held that a "defendant's knowing and voluntary waiver of his right to appeal a conviction and sentence within an agreed upon guideline range is enforceable." *United States v. Pearson*, 570 F.3d 480, 485 (2d Cir. 2009).

A. The Mandate Rule

Jones's challenges to his sentence are barred by the appeal waiver in the Second Plea Agreement. *See United States v. Burden*, 860 F.3d 45, 51 (2d Cir. 2017) ("We have long held that waivers of the right to appeal a sentence are presumptively enforceable." (cleaned up)). In the appeal waiver, Jones agreed that he "will not file a direct appeal . . . of any sentence at or below the Stipulated Guidelines Sentence of 300 months' imprisonment," which was the sentence Jones received. App'x at 149.

Moreover, Jones entered into the Second Plea Agreement knowingly and voluntarily. The district court explicitly discussed the Agreement, including the appeal waiver, with him during the plea proceeding, and Jones confirmed under oath that he understood it.

THE COURT: Did you discuss the plea agreement with your attorneys before you signed it?

THE DEFENDANT: Yes.

THE COURT: Did you fully understand all the terms in the plea agreement before you signed it?

THE DEFENDANT: Yes.

THE COURT: Does this plea agreement constitute your complete and total understanding of the entire agreement between you and the United States government as to these matters?

THE DEFENDANT: Yes.

THE COURT: Has anyone offered you any inducements or threatened you or forced you to plead guilty or to enter into this plea agreement?

THE DEFENDANT: No.

THE COURT: You should understand that in the plea agreement you are giving up your right to appeal your sentence or to challenge your sentence in any way or at any time so long as I sentence you to 25 years' imprisonment or less. Do you understand that?

THE DEFENDANT: Yes.

Appellee's Br. Add. at 29.

Jones argues that his challenge to this Court's mandate overrides the appeal waiver, rendering it unenforceable. This is incorrect. Whether a particular charge or sentence is consistent with a mandate of this Court does not raise the sort of jurisdictional question that can survive a guilty plea waiver. *See United States v. Garcia*, 339 F.3d 116, 117 (2d Cir. 2003) ("[A] defendant who knowingly and voluntarily enters a guilty plea waives all non-jurisdictional defects in the prior proceedings."); *United States v. Balde*, 943 F.3d 73, 89 (2d Cir. 2019) ("A *jurisdictional* argument—*i.e.* one that would survive waiver by a valid guilty plea—is one where a defendant demonstrates that the face of the indictment discloses that the count or counts to which he pleaded guilty failed to charge a federal offense." (quotation marks omitted)). We have said that a "waiver of appellate rights is unenforceable . . . when the sentence

was imposed based on constitutionally impermissible factors, . . . when the government breached the plea agreement, or when the sentencing court failed to enunciate any rationale for the defendant's sentence." *United States v. Gomez-Perez*, 215 F.3d 315, 319 (2d Cir. 2000) (citations omitted). A challenge to this Court's mandate, on the other hand, does not render an appeal waiver unenforceable.

In any event, the mandate at issue did not bar the government from filing a superseding indictment. Jones argues that the mandate allowed remand solely for resentencing on Counts One and Two of the S1 Information, and that the government was not allowed to reinstate the Initial Indictment or to file a superseding indictment. Jones also claims that the language in the First Plea Agreement allowing for reinstatement of prosecution after vacatur "for any reason" allowed the government to vacate charges and re-charge arbitrarily. He argues that the language nonetheless did not apply to his circumstances because he should not have been penalized for a change in law that he "neither initiated nor anticipated." Appellant's Br. at 17.

Jones's arguments are meritless. As described above, nothing in the language of the mandate expressly or impliedly precluded a superseding indictment. *See Yick Man Mui v. United States*, 614 F.3d 50, 53 (2d Cir. 2010) ("The mandate rule prevents re-litigation in the district court not only of matters expressly decided by the appellate court, but also precludes re-litigation of issues impliedly resolved by the appellate court's mandate."). This Court said nothing about the possible reinstatement of charges in its mandate, which left open the

possibility of a superseding indictment. While the reinstatement of dismissed charges requires the district court's approval, a superseding indictment does not. See *United States v. Williams*, 504 U.S. 36, 48 (1992) ("The grand jury requires no authorization from its constituting court to initiate an investigation, nor does the prosecutor require leave of court to seek a grand jury indictment." (citation omitted)).

Moreover, the First Plea Agreement unambiguously states that the government may bring new charges if a conviction is vacated "for any reason." Appellee's Br. Add. at 7. Allowing Jones to secure the benefits of the plea agreement while disclaiming its burdens would undermine the purpose of the plea-bargaining process. See *Pearson*, 570 F.3d at 485; *United States v. Salcido-Contreras*, 990 F.2d 51, 53 (2d Cir. 1993) ("In no circumstance . . . may a defendant, who has secured the benefits of a plea agreement and knowingly and voluntarily waived the right to appeal a certain sentence, then appeal the merits of a sentence conforming to the agreement. Such a remedy would render the plea bargaining process and the resulting agreement meaningless.").

Finally, we note that Jones was not made worse-off under the Second Plea Agreement than under the first. The charges under the Second Plea Agreement carried a maximum sentence of 25 years, ten years fewer than Jones's sentence of 35 years under the First Plea Agreement. The district court properly allowed the government to file the S2 Indictment.

B. Sentencing

Jones argues that the appeal waiver in the Second Plea Agreement is void because the district court relied on erroneous factual findings and constitutionally impermissible factors at sentencing. *See United States v. Doe*, 938 F.3d 15, 19 (2d Cir. 2019) (“[A] judge’s material misapprehension of fact . . . may constitute a denial of due process, especially when the defendant lacks an opportunity to reply.”); *Gomez-Perez*, 215 F.3d at 319 (recognizing that a waiver may be unenforceable “when [a] sentence [is] imposed based on constitutionally impermissible factors, such as ethnic, racial or other prohibited biases”).

We disagree. First, the district court did not ignore the record or base its decision on inaccurate information. Jones claims that the district court ignored the reasons Jones presented for his migration to Somalia, including evidence of racial and religious discrimination he had experienced in the United States. But the record is clear that the district court carefully considered Jones’s submissions and explanations. *See* App’x at 195 (establishing that the district court read the presentence report, defense submissions and exhibits, the government’s sentencing submission, and letters from the government and defense); *id.* at 237-38 (indicating that the district court had considered “information concerning Mr. Jones’[s] horrific childhood and the mental health issues he suffers from that are related to [his] experience”). Jones misconstrues the district court’s concern, which was not so much why he moved to Somalia, but rather “what led Mr. Jones to join al-Shabaab in the first place, why he chose

to fight for al-Shabaab over the next four years, and why the barbarity and brutal nature of al-Shabaab's activities [did not] convince him to leave that organization long before 2015." *Id.* at 238. The district court also gave Jones the opportunity to correct any factual errors at the end of the sentencing proceeding, and no objections were raised. *See Doe*, 938 F.3d at 19. We discern no clear error in the district court's findings.

Second, the district court did not impermissibly rely on the principle of "collective punishment." Jones contends that the district court considered him guilty by association, effectively holding him responsible for activities of al-Shabaab in which he did not participate. But Jones's conspiracy conviction sufficiently established his personal involvement in al-Shabaab's activities, which belies his claim that he was punished merely for being a member of the group. *See United States v. Farhane*, 634 F.3d 127, 138 (2d Cir. 2011) (recognizing that 18 U.S.C. § 2339B "prohibits the knowing provision of material support to a known terrorist organization," and "[p]roof of such provision (whether actual, attempted, or conspiratorial)," combined with the requisite mens rea, "is sufficient to satisfy the personal guilt requirement of due process"). Jones "agreed with others to provide [him]self as personnel to al Shabaab by traveling to Somalia for that purpose and attending an al Shabaab training camp." Appellee's Br. Add. at 30.

Nor did the district court impermissibly rely on the religiously motivated nature of al-Shabaab's attacks in imposing its sentence. To the contrary, the district court noted undisputed facts about the

sectarian nature of al-Shabaab's attacks and considered those facts in weighing the sentencing factors. *See* App'x at 231-32 (considering the fact that al-Shabaab "carries out its terrorist acts in a highly sectarian way"; that "Christians were singled out for slaughter" at the attacks on Westgate Mall and Garissa University College; and that "a Christian village in Mpeketoni, Kenya" was attacked by a Jaysh Ayman unit). This was entirely appropriate. *See, e.g.*, 18 U.S.C. § 3553(a)(1) ("The court, in determining the particular sentence to be imposed, shall consider . . . the nature and circumstances of the offense and the history and characteristics of the defendant."); *id.* § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.").

Moreover, consideration of racial or religious motivations of a crime is distinct from improper consideration of a defendant's race or religion alone, and thus is not improper when imposing a sentence. *See, e.g., Barclay v. Florida*, 463 U.S. 939, 949 (1983) ("The United States Constitution does not prohibit a trial judge from taking into account the elements of racial hatred in this murder."); *In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 552 F.3d 93, 151, 152-54 (2d Cir. 2008) (validating the application of "the hate crime [sentencing] enhancement" which "applies if the defendant intentionally selected any victim on the basis of" "actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation") (cleaned up). In short, the district court did not abuse its discretion in

considering the extraordinarily violent and sectarian nature of al-Shabaab's terrorism at Jones's sentencing.

We see no constitutional deficiencies in the district court's sentencing, and Jones's challenges are barred by the appeal waiver.

III. CONCLUSION

We have considered Jones's remaining arguments and find them to be without merit. Accordingly, we affirm the judgment of the district court.

MANDATE

1:16-cr-00019-PGG-1

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of April, two thousand twenty-four.

Before: John M. Walker, Jr.,
Michael H. Park,
Myrna Pérez,
Circuit Judges.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/20/2024

United States of America,

Appellee,

v.

Maalik Alim Jones,

Defendant - Appellant.



JUDGMENT

Docket No. 22-2958

The appeal in the above captioned case from a judgment of the United States District Court for the Southern District of New York was submitted on the district court's record and the parties' briefs.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the judgment of the district court is AFFIRMED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




MANDATE ISSUED ON 06/20/2024

A19

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

Maalik Alim Jones

JUDGMENT IN A CRIMINAL CASE

Case Number: (S3) 16 CR 19 (PGG)

USM Number: 92483-054

Joshua L. Dratel / Peter E. Brill

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 2☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2339B	Conspiracy to Provide Material Support to a Terrorist Organization	5/31/2015	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☒ Count(s) all open counts ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/3/2022

Date of Imposition of Judgment

Signature of Judge



Hon. Paul G. Gardephe, U.S.D.J.

Name and Title of Judge

Date

Nov. 7, 2022

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1A

Judgment—Page 2 of 8

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2339D	Receipt of Military-Type Training from a Terrorist Organization	12/31/2015	1

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
25 years' imprisonment (15 years' imprisonment on Count One and 10 years' imprisonment on Count Two, with those terms to run consecutively).

☒ The court makes the following recommendations to the Bureau of Prisons:
It is recommended that Defendant (1) be designated to FCI Cumberland; (2) be considered for the Bureau of Prisons' de-radicalization program; and (3) be considered for the Bureau of Prisons' RDAP program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three years' supervised release on each of Counts One and Two, with those terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)

SPECIAL CONDITIONS OF SUPERVISION

Mr. Jones will submit his person, and any property, residence, vehicle, papers, computer, other electronic communication or data storage devices, cloud storage or media, and effects to a search by any U.S. Probation Officer where there is a reasonable suspicion that a violation of the conditions of supervised release may be found. Failure to submit to a search may be grounds for revocation. Mr. Jones will warn any other occupants that the premises may be subject to search pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

Mr. Jones will participate in an outpatient mental health treatment program approved by the U.S. Probation Office. The Court authorizes the release of the pre-sentence report and any available psychological and psychiatric evaluations and reports to the health care provider.

Mr. Jones will not associate in person, through the mail, by electronic means, or by telephone with any individual who has an affiliation with any terrorist group or organization.

Mr. Jones will be supervised by the district of his residence.

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	0.00	\$ _____	0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Maalik Alim Jones
CASE NUMBER: (S3) 16 CR 19 (PGG)**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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Sentencing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 19 (PGG)

5 MAALIK ALIM JONES,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 3, 2022
3:00 p.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 DAVID W. DENTON, JR.

Assistant United States Attorney

18 PETER E. BRILL

19 JOSHUA L. DRATEL

Attorneys for Defendant

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1 (Case called)

2 MR. DENTON: Good afternoon, your Honor. David Denton
3 for the government.

4 MR. BRILL: Peter Brill on behalf of Mr. Jones. I'm
5 joined by?

6 MR. DRATEL: Joshua Dratel, your Honor. Good
7 afternoon. Mr. Jones is seated between us.

8 THE COURT: Who is going to be speaking on behalf of
9 Mr. Jones today?

10 MR. BRILL: I think we're going to split the
11 presentation.

12 THE COURT: Okay.

13 MR. DRATEL: Your Honor, also just because with the
14 masks and the microphone, may we remain seated?

15 THE COURT: Of course.

16 MR. DRATEL: Thank you, your Honor.

17 THE COURT: Of course.

18 In preparation for sentencing, I have read the
19 presentence report dated August 25, 2022. I've read defense
20 submissions dated October 17 and October 21, 2022, along with
21 all of the exhibits attached to those submissions. I've also
22 read the government's October 27, 2022, sentencing submission.
23 And I've read letters from the government and the defense dated
24 November 2, 2022.

25 And in preparation for today's proceeding, I also

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1 reviewed the transcript of the defendant's May 29, 2018,
2 sentencing, citing docket no. 88, as well as the parties'
3 submissions filed in connection with that proceeding.

4 Mr. Dratel or Mr. Brill, have you read the presentence
5 report, its recommendation, and discussed it with Mr. Jones?

6 MR. DRATEL: Yes, we have, your Honor.

7 THE COURT: Mr. Jones, have you read the presentence
8 report, its recommendation, and discussed it with your
9 attorneys?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Defense counsel has made a number of
12 objections to the August 25, 2022, presentence report. In
13 light of rulings I made at Mr. Jones' previous sentencing,
14 citing defendant's brief, docket no. 202 at page 4, the defense
15 argues that rulings I made at the May 2018 sentencing
16 constitute law of the case. *Id.*

17 I don't believe the law of the case doctrine has any
18 application here. Today's proceeding is not a resentencing.
19 It is a sentencing based on a new guilty plea to a different
20 charging instrument, and both sides have presented new briefing
21 and new factual material to the Court.

22 Having said that, where the factual record has not
23 changed as to a particular issue, there is no reason for me to
24 change my analysis. But I will now walk through the paragraphs
25 that the defense has challenged in the presentence report.

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1 Beginning with paragraph 33.

2 Paragraph 33 discusses that Thomas Evans, a British
3 national, who, like Mr. Jones, joined al-Shabaab in 2011. The
4 two trained and fought together for al-Shabaab. The defendant
5 objects to the following sentence in paragraph 33, and I quote:
6 "Following [Evans's] death, Jones called Evans's mother in the
7 United Kingdom to inform her that Evans had been killed [during
8 al-Shabaab's battle with Kenyan forces in Lamu, Kenya.]"

9 Defendant made the same objection at the May 29, 2018,
10 sentencing and I discussed the matter at some length at that
11 time. Citing the sentencing transcript, docket no. 88, pages
12 4-10.

13 As to the evidentiary significance of the alleged call
14 to Evans's mother, I said the following: "I don't regard it
15 with consequence from a sentencing perspective whether
16 [Mr. Jones] called the mother or not. It is potentially of
17 sentencing significance that he was knowledgeable of the [Lamu]
18 attack and you told me that you don't challenge that he knew
19 about the attack. Am I correct?" *Id.* at page 10.

20 After defense counsel answered in the affirmative, I
21 stated that I would "not rely for purposes of sentencing that
22 Mr. Jones called the mother of Thomas Evans. Setting that
23 aside, I will consider for purposes of sentencing that
24 Mr. Jones knew about the attack on Kenyan forces in Lamu." *Id.*

25 Defense counsel then clarified that his position was

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1 "that Mr. Jones knew about [the Lamu attack] after the fact,
2 not in preparation for that specific attack." And I
3 acknowledged that at the time. *Id.*

4 In the government's sentencing brief, concerning the
5 sentencing that brings us here today, the government stated
6 that it was "prepared to make a supplemental submission of the
7 phone record exhibits that support the factual conclusion in
8 the [presentence report concerning Jones' alleged call to
9 Jones' mother.]" Citing the government's October 27, 2022,
10 sentencing brief at page 9, note 4.

11 Based on that representation, as well as multiple
12 earlier government representations that it had evidence
13 supporting its assertion that Jones had called Evans's mother,
14 see May 29, 2018, sentencing transcript, docket no. 88, page 5,
15 and the government's May 22, 2018, sentencing brief, docket no.
16 86 at page 9, I issued an order on October 31, 2022, directing
17 the government to make a supplemental submission concerning
18 this issue. Citing docket no. 206.

19 In its November 2, 2022 submission, the government
20 concedes that there are no phone records demonstrating that
21 Mr. Jones called Evans's mother to report Evans's death, and it
22 appears clear from the attached FBI 302 report of an interview
23 of Evans's mother that while she received a call from Somalia
24 after Evans's death, the person who called spoke to her in a
25 foreign language that she did not understand. If Mr. Jones had

1 called Evans's mother, presumably he would have spoken to her
2 in English. Citing government's November 2, 2022 letter.

3 It is disturbing to me that, despite at least three
4 representations from the government that there was evidence
5 that Jones contacted Evans's mother, as it turns out, there is
6 no evidence that Jones contacted Evans's mother about Evans's
7 death.

8 Mr. DeFilippis, who represented the government at the
9 May 29, 2018 sentencing, crafted an entire argument that was
10 premised on a misrepresentation that Jones had called Evans's
11 mother.

12 This is what he said at the time. "I would note as to
13 the Lamu attack he did play a critical role after the attack in
14 calling the mother of a deceased fighter notifying her, which
15 may seem in a sense innocuous, but for terrorist groups like
16 al-Shabaab, it's actually a very important function that the
17 families of fighters and so-called martyrs be notified. It's
18 what sort of gives them the comfort that when they go and fight
19 to die, that their families will be notified. So it's not a
20 trivial act that he did that." Citing May 28, 2018 sentencing
21 transcript, docket no. 88 at page 5.

22 In any event, the defendant's objection to the last
23 sentence of paragraph 33 of the presentence report is
24 sustained, and that sentence will be struck from the
25 presentence report.

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1 The defendant also renews his objection to paragraph
2 16 through 20, 26 and 34, which he contends "attribute to [him]
3 activity that is not part of his offense conduct." Citing the
4 defendant's brief docket no. 202 at page 4.

5 Jones objects to these paragraphs to the extent they
6 discuss al-Shabaab's acts of terrorism that he say he was not
7 involved in. *Id.*

8 At the 2018 sentencing I addressed the issue as
9 follows. "I can't make a finding on whether Mr. Jones was
10 involved in other acts of violence, other than the
11 [August 2013] attack on the Kenyan military [at Afmadow in
12 southern Somalia]." Citing the May 29, 2018 sentencing
13 transcript, docket no. 88 at page 40.

14 There is no new information that bears on this issue.
15 Accordingly, my ruling is the same.

16 But let me say that to the extent the defense argues
17 that the paragraphs discussing al-Shabaab's acts of terrorism
18 are irrelevant, and should be struck from the presentence
19 report, that application is denied.

20 Al-Shabaab, both shortly before and during the
21 defendant's membership in the organization, engaged in a number
22 of horrific and spectacular acts of terrorism that received
23 wide international attention in the media. It is highly
24 relevant to me that the defendant sought out and chose to join
25 such a terrorist organization, and that he chose to remain a

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1 fighter in that terrorist organization for more than four
2 years.

3 Accordingly, although there is no evidence that the
4 defendant participated in, for example, the vicious attack on
5 the Westgate Shopping Mall in Nairobi on September 21, 2013,
6 the fact that he remain a fighter in al-Shabaab after that
7 horrific event is a fact that I will take into consideration in
8 determining his sentence.

9 Finally, the defendant objects to the following
10 statement, paragraph 35, which addresses his December 7, 2015,
11 arrest in the Somalian port city of about a Baraawe by Somalian
12 authorities. "It was believed that his purpose in seeking a
13 boat for passage to northern Somalia was his intended defection
14 to ISIS." Citing defendant's brief, docket no. 202, at page 4.

15 Jones denied at the 2018 sentencing and denies now
16 that he defected from al-Shabaab in order to join ISIS. Given
17 that factual dispute, I stated at the 2018 sentencing that I
18 "make no finding as to whether Mr. Jones intended to join
19 ISIS." Citing the May 29, 2018, transcript, docket no. 88 at
20 page 40.

21 Neither side has submitted additional evidence bearing
22 on this issue. Accordingly, my ruling is the same. And
23 Mr. Jones' alleged intent to join ISIS after defecting from
24 al-Shabaab will have no bearing on the sentence I impose.

25 Does defense counsel have any additional objections to

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1 the factual portions of the presentence report?

2 MR. DRATEL: No, your Honor.

3 THE COURT: Does the government have any objections to
4 the factual portions of the presentence report?

5 MR. DENTON: No, your Honor.

6 THE COURT: Except as I have otherwise indicated, I
7 adopt the findings of fact set forth in the 2022 presentence
8 report. Although I am not required to impose sentence in
9 accordance with the sentencing guidelines, I am required to
10 consider the applicable guidelines in imposing sentence.

11 Mr. Jones pled guilty to a two-count superseding
12 information. Count One charges that he conspired to provide
13 material support to a foreign terrorist organization, that
14 being al-Shabaab, in violation of 18, United States Code,
15 Section 2339B.

16 At the time of Mr. Jones' offense conduct, that count
17 had a statutory maximum of 15 years' imprisonment.

18 Count Two charges Mr. Jones with receiving military
19 type training from al-Shabaab in violation of 18, United States
20 Code, Section 2339D. Citing the S3 information, docket no.
21 190. That count has a statutory maximum of 10 years'
22 imprisonment.

23 The base offense level for Count One is 26. Because
24 the offense involved provision of firearms or other materials
25 supportive resources with the intent, knowledge, or reason to

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1 believe they were to be used to commit or assist in the
2 commission of violent acts, two levels are added. Because the
3 offense is a felony that involves a federal crime of terrorism,
4 12 levels are added. Accordingly, the total offense level for
5 Count One is 40.

6 The calculations for Count Two are the same. Because
7 Count One and Count Two involve the same victims and two or
8 more acts or transactions connected by a common criminal
9 objective or constituting part of a common scheme and a plan,
10 they are grouped together. Because these groups, because these
11 counts are grouped together under Section 3D1.2(b), the offense
12 level for the group is the highest offense level of the counts
13 in the group. Accordingly, the offense level for the group is
14 a level of 40. Mr. Jones' offense level is reduced by three
15 level for his acceptance of responsibility, resulting in a
16 total offense level of 37.

17 As to criminal history, Mr. Jones has a conviction for
18 assault in the second degree for which he received a sentence
19 of probation. He received one criminal history point for that
20 conviction, and ordinarily would be assigned criminal history
21 category I. But because Counts One and Two involve a federal
22 crime of terrorism, he automatically is assigned criminal
23 history category VI.

24 Offense level 37, criminal history category of VI,
25 results in a guidelines range of 30 years to life imprisonment.

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1 Because the sentence with the highest statutory maximum, which
2 here is Count One, carries a maximum sentence or carried a
3 maximum sentence of 15 years at the time of the offense
4 conduct, is less than the total punishment prescribed by the
5 guidelines, the guidelines say that the sentence on Counts One
6 and Two should run consecutively, citing Section 5G1.2(d) of
7 the sentencing guidelines.

8 Moreover, because the statutory maximum sentences for
9 Counts One and Two, when run consecutively, amount to 25 years'
10 imprisonment, a term that is less than the guidelines range of
11 30 years to life, the applicable guidelines range is the
12 statutory maximum sentence of 25 years' imprisonment.

13 Does defense counsel have any objections to the
14 accuracy of the guidelines calculations as I've reported them?

15 MR. DRATEL: No, your Honor.

16 THE COURT: Does the government have any objections to
17 the accuracy of the guidelines calculations as I have reported
18 them?

19 MR. DENTON: No, your Honor.

20 THE COURT: Based on my independent evaluation of the
21 sentencing guidelines, I find that the offense level is 37, the
22 criminal history category is VI, and the applicable guideline
23 sentence is 25 years' imprisonment.

24 I'll now hear from defense counsel as to an
25 appropriate sentence.

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1 MR. BRILL: I'm going to do an overview introduction
2 and I'll defer to Mr. Dratel for additional comments.

3 Your Honor, both defense counsel and Mr. Jones
4 acknowledge the extraordinarily serious nature of Mr. Jones'
5 crime. We ask this Court not only to acknowledge what we
6 believe it already had in its original sentence, but also to
7 take into account the individual who sits before the Court
8 today, not the one who stood before you years before.

9 We have had among all of us multiple conversations
10 about how the Court will view him and what approach the Court
11 may take to this sentencing. I don't believe we're very far
12 from the mark when we discussed the Court could view this in
13 one of two ways. One, the Court could adopt the probation and
14 the government's view that this is the same individual who was
15 here years before, and could simply sentence him as if he were
16 being sentenced at that time. Or two, that the Court could
17 take some opportunity at this point to reevaluate its earlier
18 sentencing decision based upon the man he is today.

19 We believe that it a rare opportunity when the Court
20 gets the option to reevaluate its own sentence from years
21 before to determine if that sentencing decision was
22 appropriate. And based upon current circumstances, we
23 respectfully submit that Mr. Jones has provided the Court with
24 a clear indication of the man he is today, that he is different
25 in significant ways from the man he was then.

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1 Mr. Jones takes responsibility for his actions, sees
2 the error in his ways, has remorse for what he had done. He's
3 taken advantage of the opportunities that he has had while he's
4 been incarcerated, certainly not while he was at the MCC, but
5 since he hasn't been, and has a very different attitude and
6 very different outlook I think both upon his past actions and
7 upon his future life prospects.

8 The question I guess that the Court has to face, and
9 what we would suggest our approach to that is the Court could
10 simply look at this sentence from the same perspective. That
11 is, the guidelines range is the appropriate starting point,
12 which we understand, and where to go from there.

13 One question the Court had at the previous sentence
14 was why shouldn't I give Mr. Jones 50 years. And the Court
15 clearly even believed at that point that there were some
16 positive aspects to Mr. Jones that merited the sentence lower
17 than that and lower than what was --

18 THE COURT: What happened was, the government asked
19 for 50 years. That was the government's request. That was the
20 guidelines. And they asked for a guideline sentence of 50
21 years' imprisonment. And I rejected that recommendation and
22 explained in some detail why I thought 50 years was excessive
23 under the circumstances of this case. And actually, most of my
24 comments at sentencing were directed to the issue of whether a
25 50-year sentence was appropriate under the circumstances, given

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1 the government's request for that period of imprisonment.

2 But go ahead, Mr. Brill.

3 MR. BRILL: Thank you, your Honor.

4 So just to reiterate, and I will defer to Mr. Dratel
5 then. If the Court is now starting at a significantly lower
6 guideline sentence, we would respectfully ask the Court to
7 apply a similar analysis to what it applied back then, and take
8 this as its starting point as opposed to what it had do back
9 then with the 50-year analysis.

10 MR. DRATEL: Thank you, your Honor. And I won't
11 repeat in detail at all what we submitted because it was
12 lengthy and I know the Court has read it and there is no need
13 to reiterate it. But I will highlight some of the points,
14 integrate our response to some of the government's arguments as
15 they relate to the points we made.

16 Just in terms of what we presented and we wanted to
17 take those issues head on, which is, as Mr. Brill said,
18 starting at 25 when he got 35 before, why should he get less
19 than 25. And we think we have provided some compelling points.
20 And also, the Court asked pertinent questions at the initial
21 sentencing that I think we fortunately had the opportunity to
22 explore since then. And one of the questions was what
23 distinguished Mr. Jones from his siblings in the context of his
24 alienation and his departure from the United States.

25 The first factor is the record that Mr. Jones has

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1 accumulated since the Court sentenced him four and a half years
2 ago is an unusual circumstance when a Court doesn't have to
3 entirely project into the future about a defendant's adjustment
4 to rehabilitation and maturation.

5 Here, we have a manifestation of it by Mr. Jones very
6 positively. He's expressed his remorse. I think that he --
7 that his maturation and self-awareness that are exhibited not
8 only in his letter to the Court, but also his responses in the
9 presentence report that are recorded by the probation office,
10 and also what's in Dr. Rasmussen's report and to a lesser
11 extent Dr. Krellman's report. Mr. Krellman did not do a
12 recitation in the same way in his report. It is also
13 important, and this came from Mr. Jones himself to us very
14 recently, that he asked that we request from the Court that the
15 Court recommend in the judgment, and I'll repeat this at the
16 very end, obviously, when the Court has imposed sentence, but,
17 that he be recommended for the Bureau of Prisons
18 deradicalization program. There is question about eligibility
19 and where it's available, but he wants to be in that. And he's
20 ask asking the Court to recommend that to the Bureau of
21 Prisons. He also would like a recommendation for the drug
22 rehabilitation for RDAP, even if he is not eligible.

23 The eligibility issue, when I say eligibility, I guess
24 technically he's eligible, he just doesn't get credit. You can
25 enroll in these programs even if you're not eligible for credit

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1 for them. So in that regard, he would like that as well.

2 And with respect to his background, so, we have that
3 first issue is what the Court can see as a progress report and
4 extrapolate that into the future as to how much time is
5 necessary to achieve the objectives of sentencing and still
6 impose a sentence that's sufficient, but not greater than
7 necessary, to achieve those goals.

8 And the second part is his background, and I think
9 that the reports, and particularly obviously the Rasmussen
10 report which was detailed, but also Dr. Krellman's report.
11 They are under seal and I think there are people here and it's
12 going to be a public transcript so I want to keep that, but the
13 Court's familiar, the Court knows what I am talking about. And
14 one of which we weren't even aware until the second forensic
15 report, Dr. Krellman's report.

16 And that's scarring and it's traumatic, and it has an
17 impact on every day that Mr. Jones remains incarcerated, in the
18 sense of how Dr. Rasmussen and Dr. Krellman presented in terms
19 of his post-traumatic stress disorder and the impact that has
20 on him.

21 The government misapprehends what the purpose of these
22 reports were. We are not trying to negate an element of the
23 offense. There is no argument that there is a mental disease
24 or defect that negates intent or knowledge or any element of
25 the offense. And it's not designed to provide any kind of

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1 diagnosis like that.

2 It's really about providing the context and the
3 background and answer the Court's question about why was he
4 different from his siblings. Why was he so alienated. Why was
5 he attracted to Somalia and al-Shabaab.

6 I think the materials as a whole answer that question
7 quite effectively, and he's suffering as a result of events and
8 dynamics not of his making.

9 What's of his making is why he's here, obviously. He
10 broke the law, he's been punished so far, he will get
11 additional punishment as the Court sees appropriate. But the
12 rest of it is not of his making, and it aggravates his
13 suffering, the prolonged prison aggravates his suffering, even
14 down the road. Even if the Court imposes additional
15 imprisonment, the actual length of that has an impact on him
16 and his suffering for things that he just doesn't have any
17 blame for.

18 It's almost in the government's papers, I read it and
19 perhaps I was not being charitable, but that the government
20 almost would have the Court punish Mr. Jones because of his
21 childhood trauma by suggesting somehow it interferes with
22 rehabilitation or his ability to distinguish right from wrong.
23 It's quite clear from the letters, it's quite clear from all
24 materials we've presented to the Court, I don't think that's an
25 issue and I think that's a straw man in many respects, and it

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1 is not the purpose of those forensic reports.

2 His progress thus far is the clearest example and
3 exhibit for the Court. There were issues that were created
4 that affect Mr. Jones, that affected him in terms of ostracism,
5 alienation, abuse at home and outside, physical and otherwise.
6 The government's position seems to be like everything after
7 that is his responsibility alone, and I would say that his
8 responsibility is for his conduct here. But for the suffering
9 that he endures in prison because of what he went through is
10 something we all bear responsibility for, and it has to be
11 taken into account in sentencing.

12 Another misunderstanding of the reports is when the
13 government says, well, Dr. Rasmussen says that Mr. Jones
14 doesn't exhibit the same kind of antisocial affect that many
15 people of his background do. The government says look at his
16 offense, but of course the offense is there. We're
17 acknowledging the offense. But what Dr. Rasmussen is saying is
18 people who come from that kind of background have a whole
19 constellation of antisocial activity over a very long period of
20 time that affects all their relationships and everything else,
21 and it's not there for Mr. Jones. It's not there in his
22 background, it's not there in his presentation through their
23 discussions. Certainly not present in the context of his
24 record while incarcerated.

25 The government's cites some cases, I think actually

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1 they support our position. One is the *Lutchman* case from the
2 Western District. That involved a plot to attack a restaurant
3 in Rochester with machetes. The Court noted here Mr. Jones
4 never targeted Americans and never targeted civilians. The
5 Court noted that in the initial sentencing.

6 The *Lutchman* case and judge said that the mental
7 health issue cuts both ways. At the end of the sentencing the
8 defendant got up and pledged allegiance to ISIS in the
9 courtroom publicly. So, it's a very different kind of case. I
10 don't want to endorse the concept that someone's mental health
11 issues are solved by jail and that's the answer, that more jail
12 is the appropriate response. But the Court doesn't have to
13 decide that in this case, because that's not an issue here.

14 Same thing with *Encarnacion*, Judge Abram's case.
15 Judge Abrams was concerned about dangerousness in the context
16 of the defendant's mental health in the context of supervision.
17 In other words, how will we guarantee that he's taking
18 medication, that he gets the proper monitoring and supervision.
19 And still, still Judge Abrams did not give him the maximum.
20 She gave him 15 years. Five years less than the maximum he was
21 facing. So that's not in the government's presentation. Judge
22 Abrams, despite all of that, found room to accommodate the
23 problems of mental illness and mental health conditions. And
24 I'm not saying Mr. Jones has a mental illness, but the mental
25 health conditions are factors at sentencing, a mitigating

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1 factor.

2 The government at some point says Mr. Jones betrayed
3 his family, ignoring entirely the extraordinary family support
4 that his siblings have written the Court about. And they are
5 there for him. They have been there for him. He has children.
6 They are caring for his children, waiting for him to again
7 resume that role.

8 In that context, and again, I will repeat this at the
9 end, which is he asks the Court to recommend, since we are in
10 essentially a sentencing as opposed to a resentencing, not just
11 return him, but that he be designated to FCI Cumberland which
12 is Maryland and the closest facility to his family. That will
13 enable visitation and his contact with his family and his
14 children.

15 Another factor. The 35 months at MDC since the
16 remand. During the whole pandemic and other ongoing perpetual
17 crises at MDC. I don't know even if I can express what it has
18 been like hearing from clients on a not just routine, but just
19 agonizing basis. What it means to be there. What it has meant
20 to be there since March 2020. This is not normal. It is a
21 crisis.

22 And the dental treatment that's described, it sounds
23 like a Victor Hugo or Dickens novel. It doesn't seem real in
24 prison that's the condition, that they let his teeth
25 deteriorate so they can just pull them.

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1 The government ignores entirely in its submission
2 anything about the two years that Mr. Jones spent on 10 South
3 and the reports from Dr. Rasmussen in particular but also
4 Dr. Krellman go into that in some depth to explain the impact
5 of that, that is ongoing in terms of the suffering that caused.
6 That's torture under U.N. standards. We can't do anything
7 about it now. It's too far down the road. But we can do
8 something about it in the future in the context of Mr. Jones'
9 sentence.

10 With respect to COVID-19, even since we wrote the
11 letter three weeks ago, there have been developments, reports
12 almost daily that are issued by professional medical
13 researchers and physicians and public health officials that
14 discover, unfortunately, new ominous effects of the virus.
15 Effect on organ function, brain, heart, lung, the long-term
16 effects of these issues are unknown, but, at best it's neutral.
17 It's probably bad for people who get it, and he's going to be
18 in an exposed environment still. The prison system is just --
19 you know, the government says, well, everybody has to deal with
20 COVID-19. But not like incarcerated individuals. And even we
21 didn't put that in our papers. I think it's just a given. The
22 evidence from Johns Hopkins and even government studies that
23 were done in 2021, it's five times -- five times the chance of
24 getting it in prison, and the fatality rate is about five times
25 what it would be for a person outside of prison. It's not like

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1 everyone else.

2 There are specific dangers that inmates face in the
3 context of health, and it's not just about the environment
4 there, which is close, which is poorly ventilated. There is
5 also the lack of medical care and the lack generally of care
6 about whether inmates get sick or stay sick. The solution
7 isn't test people and treat them. It's just quarantine
8 everyone until people stop having symptoms. And when they have
9 symptoms that are long term, you just ignore them.

10 And the government says, well, everybody had this
11 experience, and it's true. And judges in this courthouse have
12 routinely since factored that into sentences that were much
13 lower than they would otherwise give. Judge Oetken has made it
14 a one-for-one or time and a half or one for one. And this is
15 two years ago he took that position. He's endured another two
16 years of that since then.

17 Judge Buchwald, I had a case with Judge Buchwald a
18 year ago. This was a defendant with four or five convictions,
19 mostly misdemeanors, but like a IV criminal history.
20 Guidelines about 87 months. She gave him 40 months. She said
21 I would give you 60 if not for the pandemic at the MDC. Again,
22 he endured another year of that.

23 The government cites a case, Pinto Thomas. It is a
24 Judge Rakoff case where he says I am not going to reduce the
25 sentence for the pandemic. Sorry. April 13 of 2020. Within

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1 another three to four months Judge Rakoff was in the vanguard
2 publishing opinions, giving reduced sentences or granting
3 compassionate relief, including for two defendants who got life
4 without parole for a torture murder in a capital trial. The
5 jury came back with a life without parole verdict, and he
6 converted into those 35 and 30 years by the summer of 2020.
7 That's the *Rodriguez* case which the government cites. We cite
8 it too. But even the government cites that one. Quinones is
9 the other defendant. So to cite an opinion from April 2020 for
10 a proposition that a judge said COVID-19 is not a basis to
11 reduce a sentence does not reflect the reality of what's
12 happening. Does not reflect the reality of what courts in this
13 district and the Eastern District have done regularly with
14 respect to the Bureau of Prisons as a whole. There has been
15 some attention to it, which is good. But in the short term, we
16 know that it's going to get worse before it gets better.
17 Resources are not there. It's just a mess. And the Court
18 can't solve it.

19 Once this is done, the Court is not going to have
20 control over what happens to Mr. Jones, to his health care,
21 with all of these other things. The ECFs that we all get in
22 all these cases for years are replete with judges saying I
23 don't have control over that. I'm sorry. I can't help you.

24 We don't expect the government to be sensitive to the
25 inhumane conditions created by the pandemic and the MDC and the

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1 inmates' suffering as a consequence of that, because I've just
2 been doing this too long to expect that. But it's our
3 responsibility to bring it to the Court's attention and I
4 submit it is the Court's responsibility to factor it into
5 sentencing, just as courts have done in virtually every
6 situation in this courthouse since. And even before the
7 pandemic with respect to MCC and MDC.

8 With respect to disparity. The government doesn't
9 address at all the guidelines analysis. The fact that what the
10 government is asking for in this case is more than what
11 murderers get nationally, significantly more than what
12 murderers get in this district. That's a factor in terms of
13 disparity.

14 And the government contradicts itself. It talks
15 about, well, we should look at nationwide disparity, and then
16 it wants to exclude an entire category of cases, the January 6
17 cases, because it's from another district. That's part of the
18 United States. It is very much a part of this system and the
19 way the public views the system.

20 That conduct was essentially an armed militia seeking
21 to overthrow the United States government by force and
22 violence. We know that now, even if we didn't know it a year
23 or two years ago. All of the information that have come out
24 makes it quite clear as to what was going on there.

25 In terms of dangerousness, and a threat to national

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1 security, I don't think Mr. Jones is -- to the United States, I
2 don't think Mr. Jones' conduct is comparable at all.

3 Recently, since we broke we wrote our letter, Judge
4 Berman Jackson in the D.C. District sentenced a defendant to 90
5 months, for assault on a Capitol police officer. Grabbed him
6 around the neck, yelled "I got one," dragged him down the
7 steps, to the crowd that beat him and chased him. Judge Berman
8 Jackson described it as one of the most serious January 6 cases
9 she's handled. Someone with a criminal history category of V,
10 who was apparently on probation or some form of supervision
11 when this occurred, got 90 months. That's less than the
12 government even asked for. The government asked for 96. He
13 got 90. That's seven and a half years.

14 If one of the objectives of sentencing is instilling
15 public confidence in the system, that it's fair, that it's
16 equitable, that justice is blind, I don't know what an
17 objective observer would look at this type of case, and look at
18 those cases, and ask themselves, is it just race and religion
19 that makes a difference in how defendants are treated?

20 The government cites cases, and we said in our initial
21 memo and I still hold this as true, cherry-picking cases doesn't
22 make sense. There are apples, there are oranges. The point of
23 a database, the point of a sample size that not only includes
24 about 1,000 terrorism cases since 9/11 in the system, that
25 includes hundreds of January 6 cases, this is a reasonable

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1 sample size from which to judge. And means and medians make
2 sense there if you are going to have uniformity in the context
3 of sentencing. That's what the guidelines were supposed to do,
4 auger that for the whole system.

5 So it's not about averaging. It's about a reasonable
6 sentence that is not disparate from other sentences. That not
7 only treats Mr. Jones fairly, but vindicates the system as one
8 that is fair and equitable for all.

9 The government says that some of the database
10 information is a decade old. So is Mr. Jones' offense is a
11 decade old too.

12 The government cites a litany of cases, and most of
13 those cases max out at 15 years, not 25. So when they say the
14 statutory maximum, they got 15 years, because the government
15 offered them pleas of 15 years. So, they were significantly
16 lower than what Mr. Jones is facing.

17 And some of the specific cases are worth mentioning.
18 *Pugh* we talked about in our letter. And the fact that he got
19 180 months less than he received the first time when he went
20 back on remand from the Second Circuit.

21 But also, at *Pugh's* resentencing, turned out that it
22 came up that he had been offered a single material support
23 count of 15 year max. Turned it down, went to trial. Got
24 convicted.

25 The *Ceasar* case, which was remanded, Judge Weinstein

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1 gave a sentence of 46 months. We are not asking for 46 months.
2 Mr. Jones has already served that twice that in functional
3 terms when you back in the good time. Her sentence was
4 87 percent below the bottom of her guidelines range. We're
5 nowhere near that.

6 And some of the benchmark cases, Lynne Stewart got 10
7 years. She got 28 months the first time. We all know why the
8 case was remanded. She got 10 years. I did that case, I did
9 the sentencing, I did the appeal. I know exactly what happened
10 in that case.

11 Cherry picking cases doesn't work because there is too
12 many variables and they mean different things.

13 The *Mumuni* case that the Second Circuit remanded
14 because Judge Brodie imposed a sentence of 17 years on remand,
15 and they said, and that was an 80 percent reduction from the
16 guidelines level. The circuit said that in *Ceasar*, the circuit
17 points that out 87 percent *Ceasar*, 80 percent in *Mumuni*. In
18 resentencing, Judge Brodie gave him 25 years, which is still
19 75 percent below that guideline level. It's instructive. In
20 *Mumuni*, the defendant recruited another person to go to ISIS in
21 Syria. He himself was planning to travel to Syria to join
22 ISIS. He plotted domestic attacks here in the United States on
23 law enforcement. He had a confrontation with law enforcement
24 on the highway where the agents were forced to flee in their
25 car, rather than get attacked by him. When the FBI came to

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1 arrest him in his parents' home, he attacked them with a knife.
2 He also reached for an M4 rifle to try to grab it and attack
3 the agents during his arrest.

4 The government relies on general deterrence. I would
5 submit that it doesn't even apply here in a resentencing, in a
6 de novo sentencing where we've already had a sentence. It's
7 sui generis in so many respects. But also the government
8 doesn't present any data or research or any source of support
9 for why general deterrence would be effective here. The
10 government has its litany of all these long sentences that have
11 occurred over time. Why would this case be effective in
12 general deterrence, when 22 years of cases have gone before it.
13 Has a single case -- and conversely, how does a single case
14 override the deterrent factor of 1,000 other cases.

15 If the guidelines are an attempt at uniformity, where
16 does general deterrence fit in there -- the Court noted it in
17 the first sentencing, what's the deterrent, what's the
18 incremental deterrent impact of more versus less. There is
19 none of that. It is maybe very different for the Court than
20 another judge, and that's a disparity. That's built into the
21 concept of general deterrence. And there are other reasons to
22 eliminate it here. But that's for the reasons I already
23 stated, but that's another factor.

24 And I would also say why should he do time for
25 somebody who hasn't committed a crime yet, who may never commit

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1 a crime, some hypothetical person in the future who this is
2 going to reach somehow. He should do their time? That's not
3 fair.

4 There is no basis here to conclude that a 25-year
5 sentence achieves general deterrence and a sentencing is
6 significantly below that does not. Especially when you look at
7 all of the sentences that even the government cites where
8 everybody got 15 years or less. And the numbers that are
9 irrefutable in terms of the full range of these 1,000 cases.

10 I always at sentencing, if I would put myself in the
11 position of a Court, the hardest part would be to say what's it
12 going to be like in the future. What's necessary. If I knew
13 that five years was necessary, I wouldn't give seven. If I
14 knew that 10 years was necessary, I wouldn't give 12.

15 Here, we have an opportunity created by the last four
16 and a half years to do justice in that regard, and to give a
17 sentence that's sufficient, but not greater than necessary, and
18 certainly significantly lower than the statutory maximum.

19 Thank you, your Honor.

20 THE COURT: Mr. Jones, is there anything you wish to
21 say before the Court imposes sentence?

22 THE DEFENDANT: Yes, your Honor. Please excuse the
23 note that I'm reading from. I would have liked to memorize it,
24 but there are certain things I just want, that are more
25 important for me to say.

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1 So, first of all, I want to thank you and thank the
2 Court, once again, for giving me this opportunity to apologize
3 and express my regret and remorse and for putting everyone
4 through this ordeal.

5 I know that words have little weight without action
6 behind them. It is for this reason that, given the
7 opportunity, I will strive my best to make it up to my
8 community, my family and my children, who have stood by me
9 despite my shortcomings.

10 To be more specific, what I did amounts to laying with
11 the dogs and not only getting fleas, but getting bit as well.

12 To add to that, I have to live with the fact that I
13 cannot hold my daughter's hand walking down the street.

14 I also have to live with the fact that the painful
15 reality of prison life and the uncertainty of ever coming home
16 safely to my family. Prison is humbling, and it has humbled
17 me.

18 It has humbled me to the extent that there is nothing
19 conceivable in the world that I'll allow to land me back here,
20 given a second chance.

21 Thank you.

22 THE COURT: I'll hear from the government.

23 MR. DENTON: Thank you, your Honor.

24 Let me start by getting down to brass tacks. The
25 Court is correct, this is not a resentencing, it is a

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1 sentencing on the defendant's new guilty plea. But nothing
2 about the defendant's conduct that was the subject of the
3 original sentencing has changed.

4 I would submit, and can talk about this, that very
5 little about the 3553(a) factors, which are what should
6 actually guide the Court's sentencing, not the free association
7 of what the Court should attempt to vindicate here, has
8 meaningfully changed.

9 The Court found that the defendant's conduct and the
10 analysis of those factors before warranted a 35-year sentence.
11 No matter what happens here today, because of the decision in
12 *Davis* that brought this case back around, the defendant is
13 going to get less time than that 35 years. So to the extent
14 that there is any merit to the various purported deltas that
15 Mr. Dratel has cited, they're already baked into the plea
16 agreement and to the maximum sentence that the defendant even
17 can receive.

18 As we noted in our sentencing submission, almost
19 completely absent from any of the defense submissions,
20 including their expert reports, is any discussion of Mr. Jones'
21 conduct. And it bears some discussion that al-Shabaab is not
22 just another terrorist organization. Nor is what he did just
23 joining a chatroom and saying extremist things and expressing
24 desires. He's one of the very few people to successfully
25 travel overseas from the United States, leave America behind,

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1 and join one of the most violent terrorist organizations in the
2 world.

3 And he didn't just join al-Shabaab. He joined Jaysh
4 Ayman, one of its most violent units, during a period of time
5 when Jaysh Ayman was engaged in some particularly heinous
6 conduct. It is true that there is no direct evidence that the
7 defendant himself participated in the Mpeketoni attack, the
8 gruesome details of which have been put before the Court now on
9 multiple occasions. But he was part of the unit at the time.
10 He did participate in a battle. He was wounded in the battle.
11 But that wasn't enough to get him to leave. He went back, he
12 went back to fighting after his recovery period.

13 So, under those circumstances, the first factor that
14 the Court should consider, and must consider, is the
15 seriousness of the offense, and the need for the punishment
16 that the Court imposes to provide adequate punishment for the
17 offense and reflect the seriousness of it and promote respect
18 for the law.

19 In that context, to the extent there is a delta from
20 2018, one of the things that we noted in our sentencing
21 submission is al-Shabaab has only become more violent, and has
22 only done more to increase its efforts to recruit foreign
23 fighters to come and join the organization.

24 And so while Mr. Dratel poo-poos the notion of general
25 deterrence, the defendant himself says the biggest thing that's

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1 changed his mind is the time he's spent in jail. There is good
2 reason here for the Court to factor that in, in assessing the
3 appropriate term of sentence.

4 I think with respect to the various reports, one of
5 the things that is notably missing is there is no grappling
6 with the four years the defendant spent overseas as a fighter
7 for a terrorist organization. There is a lot of discussion
8 about his childhood, which was admittedly troublesome, was
9 something that factored into the charging decisions and
10 disposition discussions in this case, and that factored into
11 the Court's original 35-year sentence.

12 But I think that the Court should rightly be wary of
13 giving too much credence to a psychological report that places
14 enormous emphasis on the time spent in BOP custody as somehow
15 hugely traumatic, but does not discuss at all the defendant's
16 participation in battle. His military training and fighting on
17 behalf of the terrorist organization. To the extent that it
18 just simply doesn't engage with either of the offense conduct,
19 or frankly, a significant chunk of the defendant's adult life,
20 there is not much to credit there.

21 And again, I think to the extent that the Court is
22 assessing the impact of the defendant's childhood, it is
23 relevant. But the conclusion that the various reports came to
24 is the defendant does not suffer from the sort of inexorable
25 pull of antisocial behavior that does afflict people. But in

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1 fact still retains the ability to make good choices, despite
2 that. Purports to be making good choices now. But doesn't
3 engage with the voluntary sequence of decisions involved in
4 traveling to join al-Shabaab, fighting on behalf of al-Shabaab,
5 despite knowing what he did and what his unit in particular
6 did. And again, going back to it after being wounded, is a
7 sort of telling thing. It's not like that was the traumatic
8 experience that really shook him up. He decided to go back to
9 fighting.

10 And so when we assess the defendant's conduct from
11 that regard, I think it is difficult to credit the suggestion
12 that somehow the Court needs to go further than the discount
13 already baked into the circumstances that bring us here in
14 providing him with some kind of benefit.

15 Mr. Dratel devoted an enormous amount of his
16 submission and his time here talking about disparities. As
17 Mr. Dratel points out, he's been doing this for a long time so
18 he knows the Court's obligation to consider disparities is
19 limited by the law to similarly situated cases. The January 6
20 cases, murder cases, other forms of cases are simply not a
21 relevant comparator.

22 And I think there's a little bit of inconsistency in
23 that when it comes down to looking at other cases charged under
24 similar statutes, etc., Mr. Dratel wants to parse the facts of
25 those cases, but simply wants to sort of throw out whole other

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1 categories that he thinks are appropriate comparators. They're
2 plainly not.

3 As far as the specific cases, one of the things that
4 is telling about the sort of list that the government put in
5 there, which is not cherrypicking but is dozens long, and
6 recent, is that, as I noted, there are very few people who have
7 succeeded as Mr. Jones did. Most of these cases involve people
8 who are talking online, making plans to join terrorist
9 organizations, expressing desires to provide themselves as
10 support for terrorist organizations. But only rarely have the
11 ability to realize those lethal ambitions.

12 The defendant is far worse than them. He not only got
13 there, again, he joined, he trained, he fought, he fought with
14 a particular unit, during a time when it was involved in
15 particularly heinous conduct.

16 So I think that's where facts matter and the
17 comparators that we cited are in fact relevant.

18 So I think at the end of the day, your Honor, as I
19 said, to get down to brass tacks, the Court determined that a
20 35-year sentence was appropriate for this conduct the last time
21 around. The Court had before it information about the problems
22 of the defendant's childhood. There was extensive discussion
23 at his previous sentencing about his time in 10 South under
24 SAMs. There is very little else that is relevant to the actual
25 3553(a) factors here that has changed. Yet by virtue of a

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1 change of the law, the defendant will receive a significantly
2 lower sentence than that.

3 The guidelines in this case prescribe a sentence
4 because of the statutory maximums. That is the appropriate
5 sentence that the Court should give, it is frankly the only
6 appropriate sentence that incorporates all of the 3553(a)
7 factors, which the Court must consider now just as much as
8 before, and the significance I would simply note of a number of
9 the cases that we cite about the sort of remands of sentences,
10 is that the Second Circuit has cautioned against
11 overemphasizing the characteristics of the individual in
12 terrorism sentencing cases at the cost of the seriousness of
13 the offense. So I think that drove the Court's determination
14 the first time, with appropriate consideration of all of the
15 other factors, and should drive it here as well.

16 MR. DRATEL: If I may just.

17 THE COURT: Go ahead.

18 MR. DRATEL: One is Mr. Jones actually did leave
19 voluntarily. He was on his way out of Somalia when he was
20 apprehended. Two, the government confuses specific deterrence
21 and general deterrence. Mr. Jones' prison sentence and its
22 impact on him is specific deterrence and it's achieved in that
23 regard.

24 And the last point is I think an important one in this
25 context. I think it needs to be rejected that the notion that

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1 because the government offered a 25-year cap, that the
2 government gets to set the sentence. It is the Court that sets
3 the sentence. Not the government.

4 THE COURT: In deciding on an appropriate sentence, I
5 have considered all of the factors listed in Title 18, United
6 States Code, Section 3553(a), including the nature and
7 circumstances of Mr. Jones' offenses, his personal history and
8 characteristics, the need for the sentence imposed to reflect
9 the seriousness of his offenses, the need to promote respect
10 for the law, to provide just punishment, and to afford adequate
11 deterrence.

12 Beginning with the nature and circumstances of the
13 offenses, Mr. Jones is a United States citizen born and raised
14 in Maryland, and lived there until 2011. In July 2011, when he
15 was nearly 27 years old, Mr. Jones left the United States and
16 his wife and family, and traveled to Somalia where he joined
17 the Islamic terrorist organization known as al-Shabaab. Jones
18 became a member of a specialized fighting unit of al-Shabaab
19 known as Jaysh Ayman. That unit of al-Shabaab carries out
20 commando attacks and raids on military and civilian targets in
21 Kenya. Jones received three months of training from
22 al-Shabaab. During the training he was taught how to use an
23 AK-47 assault rifle and how to operate a rocket propelled
24 grenade or RPG.

25 He then participated in a military operation against

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1 Kenyan government military and he remained a member of the
2 Jaysh Ayman force for more than four years.

3 As to al-Shabaab, that organization uses act of
4 violence to undermine the Somali government, to terrorize the
5 Somali population, and as part of an effort to force the
6 withdrawal of foreign troops from Somalia. Al-Shabaab
7 routinely assassinates civilians and journalists, and commonly
8 murders completely innocent men, women and children in
9 committing its act of terror.

10 In 2008, the State Department designated al-Shabaab a
11 foreign terrorist organization. In response, al-Shabaab
12 announced a campaign of violence against the United States. In
13 2012, the leader of al-Shabaab swore allegiance to al Qaeda.

14 If there is a more vicious terrorist group than
15 al-Shabaab, I don't know what it is.

16 On July 12, 2010, about a year before Mr. Jones joined
17 al-Shabaab, the group claimed responsibility for suicide
18 bombings in Kampala, Uganda, that killed 74 people, including
19 an American citizen.

20 On September 21, 2013, al-Shabaab operatives attacked
21 a luxury shopping mall in Nairobi, Kenya, called the Westgate
22 Mall. Al-Shabaab operatives murdered 67 completely innocent
23 men, women and children, and injured 175 others, including a
24 number of Americans.

25 Al-Shabaab also carries out its terrorist acts in a

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1 highly sectarian way. In connection with the Westgate Mall
2 massacre, Christians were singled out for slaughter.

3 On June 15, 2014, the Jaysh Ayman unit of al-Shabaab
4 attacked a Christian village in Mpeketoni, Kenya. They killed
5 approximately 53 completely innocent men, women and children,
6 some by shooting them, others by slitting their throats.
7 During the attack, Jaysh Ayman fighters hijacked a van, raided
8 a police station, and burned hotels, restaurants, and
9 government offices. Two days later, they returned and burned
10 more houses in the same village and killed 15 more people.

11 On April 2, 2015, al-Shabaab launched an attack on
12 Garissa University College in Garissa, Kenya. Al-Shabaab
13 killed 148 people and injured another 79. The victims were
14 largely completely innocent students. Once again, Christians
15 were singled out for slaughter.

16 These horrific massacres attracted worldwide
17 attention. While there is no evidence that Mr. Jones was
18 personally involved in committing any of these atrocities, it
19 is inconceivable that he was not aware of them, given their
20 notoriety, and the fact that al-Shabaab publicly claimed
21 responsibility for them.

22 The government has proffered several videos that were
23 obtained from electronic media found on the body of a deceased
24 al-Shabaab fighter who participated in the attack on Kenyan
25 troops on June 14, 2015, in Lamu, Kenya. Two of the videos

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1 show Mr. Jones with prominent al-Shabaab fighters, including
2 other members of Jaysh Ayman. One video shows him holding an
3 AK-47 assault rifle.

4 We also know that in August 2013, Mr. Jones fought
5 Kenyan military forces in a battle in Afmadow, a town in
6 Somalia near the border with Kenya. Mr. Jones says he was
7 wounded and taken to a hospital. After his release from the
8 hospital, he returned to service with Jaysh Ayman.

9 Beyond that, the record before me reveals little about
10 what else the defendant did with Jaysh Ayman. While I don't
11 know what other al-Shabaab actions Mr. Jones may have
12 participated in during the four years he spent with that
13 terrorist organization, it is a fair inference, as I have said,
14 that he was aware of the attacks and massacres I have
15 mentioned. It is also a fair inference that he approved of
16 these attacks and massacres, because he stayed with the
17 organization for more than four years, until he believed that
18 his own life was at risk from al-Shabaab.

19 There is also evidence that Mr. Jones spoke with
20 relatives during his four years with al-Shabaab. He told his
21 brother he was happy in Somalia. He never told his family he
22 wanted to leave al-Shabaab or that he disapproved of their
23 terrorist activities.

24 On December 7, 2015, Somali authorities captured
25 Mr. Jones in the Somali port city of Baraawe located on the

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1 Indian Ocean. He was barefoot and malnourished and appeared to
2 be on the run from al-Shabaab from which he had defected.

3 As to Mr. Jones' personal history and characteristics,
4 he's now 38 years old. He was born and raised in Baltimore.
5 His father was the principal of an Islamic school. As I found
6 back in 2018, Mr. Jones had a truly horrific childhood. His
7 father had 10 children with his first wife, and then abandoned
8 the family in favor of a second family that he started with
9 another woman. Although Mr. Jones' father abandoned Mr. Jones'
10 family, he forbid Mr. Jones' mother from applying for welfare.
11 As a result, Mr. Jones and his siblings commonly lacked food
12 and other necessities. Electricity and heat were frequently
13 shut off for months at a time, including during the winter.
14 The family was without running water for a year. The home was
15 overrun with mice and rats.

16 When Mr. Jones' father was at home, which was rarely,
17 he physically abused Mr. Jones, punching him and bashing his
18 head into walls and desks. Mr. Jones also suffered other forms
19 of abuse that are discussed in the sealed filings.

20 Mr. Jones entered into two arranged marriages, both of
21 which failed. Mr. Jones has had two children with his second
22 wife, and reports that his daughter from that relationship has
23 been subjected to abuse. Over the past year, his children have
24 been residing with Mr. Jones' brother.

25 As to substance abuse, Mr. Jones has abused alcohol,

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1 marijuana, oxycodone, and PCP in the past when he was a young
2 man, but says he has not engaged in any substance abuse for
3 more than a decade.

4 As to Mr. Jones' education, he attended and graduated
5 from the Islamic Community School in Baltimore. He briefly
6 attended Baltimore Community College. He obtained a commercial
7 driver's license in 2004, and he has earned certificates
8 related to outdoor electrical systems when he worked for a
9 power company. Since he was detained in connection with the
10 instant offenses, he has obtained six certificates in
11 connection with Bureau of Prisons forces. He's also completed
12 a number of sessions of group therapy during his incarceration.

13 As to employment, Mr. Jones worked steadily until he
14 left for Somalia in 2011. He worked as a trucker from 2006 to
15 2011. From 2004 to 2006, he worked for an electrical
16 subcontractor doing electrical and wiring work. Before that,
17 he worked two years at a Walmart stocking shelves. And before
18 that, he worked at a grocery store in Baltimore.

19 As to medical condition, Mr. Jones suffers from
20 arthritis in his shoulders and his knees. He has experienced
21 frequent headaches during his period in custody and underwent a
22 CAT scan or an MRI at some point between 2016 and 2018.
23 Mr. Jones reports that "something was found in his head" but he
24 was told that it was not malignant. The defendant also reports
25 deteriorating dental health as a result of his incarceration.

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1 As to mental health, the defendant was diagnosed with
2 major depressive episode with psychotic features in June 2016
3 while in solitary confinement at the MCC. In an August 18,
4 2022, report a neuropsychologist retained by defense counsel
5 states that Jones suffers from post-traumatic stress disorder
6 as well as major depressive disorder.

7 His criminal history, as I noted, Mr. Jones has a
8 conviction for second degree assault for which he received a
9 sentence of probation. While in pretrial detention, Mr. Jones
10 spent about two years in solitary confinement at the MCC.
11 After his designation, he was subjected to frequent lockdowns.
12 He's had only two disciplinary infractions during his nearly
13 seven years in custody, both infractions related to phone use.
14 He appears to have made a good adjustment to incarceration.

15 To summarize, the guidelines recommend an aggregate
16 sentence of 25 years' imprisonment which is the statutory
17 maximum. The probation department has recommended a sentence
18 of 25 years' imprisonment. The government seeks a sentence of
19 25 years' imprisonment. Defense counsel seeks a sentence
20 "substantially below the statutory maximum" of 25 years'
21 imprisonment, and has asked me to consider a sentence of time
22 served, which would amount to about six years and 10 months.

23 With all this in mind, I will now address what I
24 consider the most meaningful aspects of the sentencing record,
25 describe the sentence I intend to impose, and then ask the

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1 parties if there is anything further they wish to say.

2 At the May 29, 2018 sentencing, I commented that
3 "there is not much in the record about the whys and wherefores
4 of how someone who grew up in Baltimore, Maryland, woke up one
5 day, and decided to join al-Shabaab." Citing the May 29, 2018,
6 sentencing transcript, docket no. 88 at page 39.

7 While defense counsel in connection with the instant
8 sentencing has submitted more than 100 pages of material in
9 connection with today's proceeding, counsel's submission does
10 not grapple in any way with how a nearly 27-year-old man who
11 grew up in Maryland, who had a family and a job, woke up one
12 day and decided to join one of the most vicious terrorist
13 organizations in the world.

14 Nor does counsel or the neuropsychologist address what
15 the defendant did when he arrived in Somalia. Nor does the
16 neuropsychologist assist the Court in understanding why
17 Mr. Jones joined al-Shabaab, why he decided to fight for that
18 vicious terrorist organization, and why he stayed with
19 al-Shabaab over a more than four-year period.

20 These are vital questions that the defense and its
21 expert do not address.

22 This is not to say that the information concerning
23 Mr. Jones' horrific childhood and the mental health issues he
24 suffers from that are related to that experience is not
25 important. Of course it's important. I carefully considered

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1 the information about these matters at the first sentencing,
2 and I have carefully considered the expanded record that
3 defense counsel has arranged for in connection with today's
4 proceeding.

5 But given the terrorism crimes that the defendant pled
6 guilty to, the most important issues in my mind are what led
7 Mr. Jones to join al-Shabaab in the first place, why he chose
8 to fight for al-Shabaab over the next four years, and why
9 didn't the barbarity and brutal nature of al-Shabaab's
10 activities convince him to leave that organization long before
11 2015.

12 On these critical questions, the defense has little to
13 say, but these are the questions and issues that matter most to
14 me.

15 In May 2018, I sentenced the defendant to an aggregate
16 sentence of 35 years' imprisonment. His guidelines range was
17 50 years' imprisonment, and the government asked me to impose a
18 50-year sentence. Citing the May 22, 2018, government
19 sentencing brief, docket no. 86 at page 22.

20 I rejected that recommendation and explained why.
21 Mr. Jones was not a leader of al-Shabaab. The Court had little
22 information about what activities he had actually engaged in on
23 behalf of al-Shabaab. There was no evidence that Jones had
24 ever engaged in attacks on civilians or that his conduct
25 presented a risk of harm to Americans. And I concluded that

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1 there was no reason to believe that it was necessary for Jones
2 to die in jail in order to protect the community or to achieve
3 the other goals of sentencing. Citing the May 29, 2018,
4 sentencing transcript, docket no. 88, pages 45-46.

5 I went on to impose a sentence of 35 years'
6 imprisonment, however, which was five years more than the
7 mandatory minimum of 30 years' imprisonment. That 35-year
8 sentence reflected my view at the time as to what sentence was
9 appropriate for the terrorism and firearms offenses that
10 Mr. Jones had committed.

11 As a result of the plea agreement in this case, I am
12 no longer authorized to impose a sentence of 35 years. The
13 maximum lawful sentence here is 25 years' imprisonment.

14 As defense counsel says in their brief, and as was
15 repeated today, given that I imposed a 35-year sentence on
16 Mr. Jones back in 2018, why isn't the statutory maximum of 25
17 years' imprisonment the proper sentence today. Citing the
18 October 13, 2022, defense brief at page 2.

19 Defense counsel offers the following answers.
20 Mr. Jones' largely compliant behavior while in custody. The
21 new information concerning his background, character and
22 psychological condition. The terrible conditions in which he
23 has been held. Alleged sentencing disparities. His automatic
24 placement in criminal history category VI as a result of the
25 nature of his crimes. And the Section 3553(a) factors

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1 considered as a whole.

2 None of these factors are persuasive to me.
3 Particularly in the absence of any effort to grapple with the
4 criminal conduct that Mr. Jones engaged in and the nature of
5 the terrorist organization he chose to join and fight with for
6 more than four years.

7 A terrorist organization that is famous for
8 indiscriminately killing women and children and other
9 completely innocent people.

10 As to the factors cited by defense counsel, following
11 the rules in prison is what is expected. There is nothing
12 inherently compelling about someone who has largely been
13 compliant while in custody.

14 As to the new information concerning Mr. Jones'
15 background, character and psychological condition, I was aware
16 of Mr. Jones' horrific childhood, including the abuse he
17 suffered, when I sentenced him the first time. I was also
18 aware of his failed marriages, his substance abuse, his
19 education, his employment history, his criminal record, his
20 good behavior while in custody, and the two years he spent in
21 solitary confinement.

22 The new submissions expands on several of these areas,
23 including the abuse that Mr. Jones has suffered as well as the
24 effect on his psychological and mental health. The new
25 information also addresses the effects of the COVID pandemic on

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1 Mr. Jones.

2 As to mental health, I do believe that he suffers from
3 post-traumatic stress disorder, major depressive disorder, and
4 anxiety as a result of the terrible experiences he endured in
5 his childhood, including acts of violence committed against him
6 by his father, and others in the community. I'm also aware
7 that his incarceration, including the two years of solitary
8 confinement in the MCC, have aggravated Mr. Jones' mental
9 health issues and retriggered the trauma he suffered as a
10 child.

11 While I have considered all of the new mental health
12 information in formulating my sentence, none of it helps me
13 understand why Mr. Jones chose to leave his home and family in
14 2011 and join al-Shabaab. Nor does it help me understand why
15 he fought for this terrorist organization over the next four
16 years.

17 As to Mr. Jones' expressions of remorse, the first
18 step towards remorse is the difficult but necessary grappling
19 with and coming to terms with what you have done, the crimes
20 you have committed. Here, Mr. Jones took the extraordinary
21 step of leaving America and traveling to Somalia to join a
22 vicious terrorist organization, and then staying with that
23 organization for four years, while that organization repeatedly
24 massacred innocent men, women and children, by the most vicious
25 means imaginable.

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1 Given these circumstances, true remorse requires more
2 than generic expressions of regret and a realization that
3 prison is terrible.

4 As to the COVID-19 pandemic, its effect on inmates,
5 including Mr. Jones, has been terrible. Undoubtedly, there
6 will be future waves of infection, and, undoubtedly, our
7 inmates in prison are at greater risk from those future waves
8 of infection than those of us who are not incarcerated.

9 But vaccination and boosters are likely to ameliorate
10 the effects from the virus, both in the prisons and in the
11 larger community.

12 There certainly are cases in which the effects of the
13 pandemic justify a lesser sentence. But each case has to be
14 considered on its own merits. Given the nature of Mr. Jones'
15 crimes, the effects of the pandemic, both past and future, do
16 not justify leniency.

17 None of the other factors cited by defense counsel are
18 persuasive to me.

19 As to alleged sentencing disparities, the offense of
20 conviction, of course, is not the only aspect to consider.
21 Here, I have a defendant who actually left America to join and
22 fight with a vicious terrorist organization located overseas.
23 Someone who chose to stay with that group for more than four
24 years. A group that has effectively declared war on America.
25 Those are the circumstances here. And they justify a much

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1 longer sentence than that imposed on defendants who never left
2 America to fight for a terrorist organization overseas.

3 As to the automatic designation to criminal history
4 category VI, that reflects a policy determination that
5 terrorism is by nature a particularly horrific crime, worthy of
6 the most significant punishment.

7 I have no quarrel with that determination.

8 Finally, I have exhaustively considered the Section
9 3553(a) factors as a whole. I did that in May of 2018, and I
10 did it in preparation for today.

11 In my estimation, the proper sentence here is the
12 maximum statutory sentence of 25 years' imprisonment. And that
13 is the sentence I intend to impose.

14 As to supervised release, I intend to impose an
15 aggregate sentence of three years on the following conditions:
16 Mr. Jones will not commit another federal, state or local
17 crime. He will not illegally possess a controlled substance.
18 He will refrain from any unlawful use of a controlled
19 substance. He will submit to one drug test within 15 days of
20 release from incarceration, and at least two periodic drug
21 tests thereafter. Mr. Jones will cooperate in the collection
22 of DNA as directed by the probation officer.

23 I intend to impose the standard conditions of
24 supervised release as set forth in the presentence report.

25 I intend to impose the following special conditions of

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1 supervised release: Mr. Jones will submit his person, and any
2 property, residence, vehicle, papers, other property under his
3 control to a search by any U.S. probation officer where there
4 is a reasonable suspicion of that a violation of the conditions
5 of supervised release may be found. Failure to submit to a
6 search may be grounds for revocation. Mr. Jones will warn any
7 other occupants that the premises may be subject to search
8 pursuant to this condition. Any search shall be conducted at a
9 reasonable time and in a reasonable manner.

10 Mr. Jones will participate in an outpatient mental
11 health treatment program approved by the U.S. probation office.
12 I authorize the release of any available psychological and
13 psychiatric evaluations and reports to the health care
14 provider.

15 Mr. Jones will not associate in person, through the
16 mail, through electronic mail, or telephone, with any
17 individual with an affiliation to any terrorist group or
18 organization.

19 Mr. Jones will be supervised by the district of his
20 residence.

21 At the May 2018 sentencing proceeding, I imposed a
22 computer monitoring condition. I now see no basis for imposing
23 that restriction. I have no evidence before me suggesting that
24 the defendant used a computer in connection with his offenses.

25 I do not intend to impose a fine because I find the

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1 defendant lacks the ability to pay a fine. I am required to
2 impose a \$200 special assessment.

3 Does defense counsel wish to say anything further?

4 MR. DRATEL: One moment, your Honor.

5 No, your Honor.

6 THE COURT: Mr. Jones, anything further you wish to
7 say?

8 THE DEFENDANT: No.

9 THE COURT: Mr. Denton, anything else from the
10 government?

11 MR. DENTON: Your Honor, the government would move to
12 dismiss the open counts of the underlying indictment.

13 THE COURT: That motion is granted.

14 MR. DRATEL: Your Honor, I don't know if you want me
15 to do it now or after the Court imposes sentence with respect
16 to the requests that I alluded to before.

17 THE COURT: Yes. I'll give you a moment to address
18 that in just a second.

19 MR. DRATEL: Sure.

20 THE COURT: Mr. Jones, for the reasons I just stated,
21 it is the judgment of this Court you be sentenced to 15 years'
22 imprisonment on Count One and 10 years' imprisonment on Count
23 Two with those terms to run consecutively.

24 You are sentenced to three years' supervised release
25 on each of Counts One and Two with those terms to run

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1 concurrently.

2 Your terms of supervised release will be subject to
3 the mandatory, standard, and special conditions of supervised
4 release I just mentioned. You are ordered to pay a special
5 assessment of \$200.

6 Now, Mr. Dratel, I do understand that you want me to
7 recommend to the Bureau of Prisons that Mr. Jones be designated
8 to FCI Cumberland so that he may maintain ties with his family
9 during his period of incarceration. Is that correct?

10 MR. DRATEL: That's correct, your Honor.

11 THE COURT: I make that recommendation to the Bureau
12 of Prisons.

13 I also recommend that to the Bureau of Prisons that
14 Mr. Jones be considered for entry into their deradicalization
15 program as well as their RDAP program, given his prior drug
16 use.

17 Are there other recommendations you wish me to make,
18 Mr. Dratel?

19 MR. DRATEL: No, your Honor. Thank you.

20 THE COURT: Mr. Jones, I now am required to advise you
21 of your appeal rights. You can appeal your conviction if you
22 believe that your guilty plea was unlawful or involuntary or if
23 there was some other fundamental defect in today's proceedings
24 that was not waived by your guilty plea. You also have a
25 statutory right to appeal your sentence under certain

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1 circumstances. With few exceptions, any notice of appeal must
2 be filed within 14 days of judgment being entered in your case.
3 Judgment will likely be entered tomorrow. Your attorneys will
4 discuss with you whether or not you wish to file a notice of
5 appeal. If you are not able to pay the costs of an appeal, you
6 may apply for leave to appeal in forma pauperis. If you
7 request, the clerk of court will prepare and file a notice of
8 appeal on your behalf.

9 Mr. Denton, is there anything else from the
10 government?

11 MR. DENTON: No, your Honor.

12 THE COURT: Mr. Dratel, Mr. Brill, anything else for
13 the defense?

14 MR. DRATEL: No, your Honor.

15 THE COURT: Thank you. We are adjourned.

16 (Adjourned)