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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:19-cr-20693 - PAS

UNITED STATES OF AMERICA,

Miami, Florida

Plaintiff,

January 12, 2022

vs.

9:58 a.m. - 4:03 p.m.

PETER SOTIS and EMILIE VOISSEM,

Defendants.

Pages 1 to 148

SENTENCING
BEFORE THE HONORABLE
UNITED STATES DISTRICT JUDGE PATRICIA SEITZ

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STENOGRAPHICALLY REPORTED BY:

SHARON VELAZCO, RPR, FPR
Official Court Reporter
United States District Court
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— — —

1 (The following proceedings were had:)

2 THE COURTROOM DEPUTY: United States District Court is
3 now in session. The Honorable Patricia Seitz presiding.

4 THE COURT: Good morning, please have a seat. I
5 believe that everyone, both of the defendants are present, all
6 counsel are present, the probation officer is present, and this
7 is a continuation of the sentencing.

8 Mr. Udolf, will we need to have you over here with the
9 earphones today, or no?

10 MR. UDOLF: Judge, I have one hearing aid in today.
11 So, I am going -- I prefer to try to do it from here.

12 THE COURT: That's fine with me.

13 MR. UDOLF: That way I can spread out. Thank you.

14 THE COURT: Okay, where we were, does anyone remember
15 which one we were on?

16 PROBATION OFFICER: Your Honor, from my count it was
17 objections 38 and 39.

18 THE COURT: Okay. Thank you.

19 These are the paragraph with reference to the
20 statements that Mr. Robotka testified about with regard to
21 the --

22 MR. UDOLF: They are basically all factual disputes.
23 So -- we just ask the Court to note our objections. I realize
24 the jury has found contrary to that implicitly, but --

25 THE COURT: Well, we spent a lot of time before trial

1 on the issue of whether or not this was admissible. I let in
2 the threats, given the -- the overall evidence that showed that
3 Mr. Sotis was the 80 percent owner, and his personality was
4 such that he either charmed you to get you to do what he wanted
5 you to do, or else he was a very forceful personality and not
6 shy about the statements that he would make. So --

7 And we had a witness that was subject to
8 cross-examination about them. And those are an active -- and
9 accurate reflection of the testimony at trial.

10 So, those objections are overruled.

11 Paragraph 40.

12 MR. UDOLF: Judge, we have nothing to add to the
13 objection as noted.

14 THE COURT: Okay. I read the Government's response.
15 As I recall, the whole reference to the lawsuit came up on --
16 as a result of questions by you, on cross-examination. And so,
17 therefore, since there was that discussion at trial, that is an
18 accurate statement of the -- of the fact that it was
19 referenced. I did not permit the jury to hear the finding of
20 the Judge that Mr. Sotis was not credible, and that
21 Mr. Robotka's testimony was credible, I did not --

22 MR. UDOLF: That is correct.

23 THE COURT: -- let the jury hear that.

24 So, I will overrule those objections.

25 The next one, and paragraph 18, also refers to the same

1 thing.

2 MR. UDOLF: No, that refers to the civil lawsuit.

3 THE COURT: 41, it is now your objection 19 to
4 Paragraph 41.

5 MR. UDOLF: Well, I guess part of it is, Mr. Moss's
6 objection, place to make that objection, as an officer of the
7 Court, on general principle, I have a problem with the concept
8 of being able to consider. I recognize the law has not
9 advanced to my level of understanding.

10 But, I still feel it incumbent upon me to object. I
11 also felt it should be made clear that --

12 THE COURT: Maybe the better way to say it is that at
13 the debriefing, Special Agent Wagner testified that she -- is
14 there a problem?

15 At the debriefing, Special Agent Wagner testified that
16 at that debriefing, Ms. Voissem claimed that he never stated,
17 during their August 4th meeting, at Add Helium, about that.

18 MR. THAKUR: It was actually Special Agent Bollinger
19 who testified about the debriefing.

20 MR. MOSS: One correction, Judge. Agent Wagner was not
21 present at the debriefing. The case had been handed over to
22 Agent Bollinger by that time.

23 MR. THAKUR: Right.

24 MR. MOSS: So Agent Bollinger's testimony was quoting
25 what had been related to him by Agent Wagner.

1 THE COURT: So, are you objecting to that sentence in
2 Paragraph 41, Mr. Moss?

3 MR. MOSS: No, I am not objecting, just noting a
4 correction as to who testified.

5 THE COURT: So, you are not asking me to modify that
6 sentence, that sentence in any way?

7 MR. MOSS: Give me one second, Judge.

8 THE COURT: What paragraph 41 says, "on March 27, 2019,
9 Voissem was debriefed by the Government, and agents from the
10 Commerce Department and Homeland Security investigations. At
11 the debriefing, she falsely claimed that Special Agent Wagner
12 never stated during their August 4, 2016, meeting, at
13 Add Helium, that the rebreathers had to remain there and not to
14 be shipped while a license determination was pending."

15 MR. MOSS: I would certainly object to the addition of
16 the adverb "falsely." That is a conclusory statement that --
17 that I don't think belongs in that paragraph. We would object
18 to that. And would note that this was the conduct for which
19 she was ultimately acquitted.

20 THE COURT: Mr. Thakur?

21 MR. THAKUR: We could modify it by saying Special Agent
22 Bollinger, during trial, testified that at the debriefing, she
23 falsely claimed Special Agent Wagner misstated --

24 MR. MOSS: Without waiving the objection to the term
25 "falsely," that would be acceptable.

1 THE COURT: Because that is what he testified to.

2 Well, he testified that she stated that.

3 MR. MOSS: Right. That we would be satisfied with,
4 "she stated, period."

5 THE COURT: Okay. "At trial" -- can you amend it so it
6 says, "At trial, Agent Bollinger testified that at the
7 debriefing, Ms. Voissem stated that Special Agent Wagner never
8 stated, during their" -- the rest of the sentence. And just
9 remove the word "falsely."

10 Paragraph 43, the role enhancement.

11 MR. UDOLF: Judge, with respect to 20, we would
12 probably, as to the first sentence in our objections, we would
13 probably consider that in the interest of time together with
14 the objection that is noted in our Paragraph 25, which is the
15 PSI Paragraph 52, where the four-level enhancement is -- is
16 called for.

17 If the Court is inclined, so inclined to -- to have a
18 two-level enhancement, I don't think we are going to submit any
19 further argument as to that issue.

20 THE COURT: Okay. I know that the judge had assessed,
21 based upon her conversations with the Government, and the
22 counting of -- including the Zaghabs' involvement, as well Mr.
23 Bensadik.

24 MR. THAKUR: The Zaghabs and Mr. Robotka and
25 Mr. Bensadik, sort of the principal, unwitting participants in

1 the case. That would be in addition to the four knowing ones.

2 THE COURT: So the four knowing ones were Sotis,
3 Voissem, and the two Weslers?

4 MR. THAKUR: That's correct, your Honor.

5 THE COURT: And you are also saying that Robotka.

6 MR. THAKUR: That's correct, he was a unknowing
7 participant, given that he was present at the August 17th
8 conversation with Mr. Wagner, he was present at the August 24th
9 meeting with Special Agent Wagner, but his testimony was that
10 he was not aware that it had been shipped out, and, in fact, I
11 mean, Emilie Voissem confirmed she never told Robotka it had
12 been shipped out on August 9th.

13 MR. UDOLF: For reasons -- if I may, Judge, for the
14 reasons specified in our papers, under the rules of
15 participant, under the guidelines, advisory guidelines,
16 participant is listed as someone who is basically involved in
17 the criminal conduct.

18 THE COURT: That's what I understand the case law on
19 the interpretation of assessing role in determination of the
20 enhancements, that you count the number of people that were
21 knowingly involved, as opposed all of those unwitting
22 participants, and that is the reason why I determined that the
23 two-level enhancement is appropriate.

24 I do believe that he was the organizer and leader and
25 the decisionmaker here, and that he was, therefore, much more

1 culpable. I just, based upon the case law, did not feel that I
2 could get it to a four-level.

3 MR. THAKUR: We understand, Your Honor. The case law
4 that we cited in our supplemental notice would allow for the
5 unknowing participants to be accounted for, and otherwise
6 extensive criminal activity. In the case of United States
7 versus Zada, Z-A-D-A, which we noted in our supplemental notice
8 of authority, the Eleventh Circuit upheld an enhancement for
9 otherwise extensive criminal activity, where there were at
10 least two knowing participants and at least four other
11 unwitting participants, providing services that were essential
12 to the fraudulent scheme at Zada's, who was the defendant,
13 direction. And the Court noted that some other appellant
14 courts considered that to be an otherwise extensive operation
15 when there was the functional equivalent of knowing and
16 unknowing participants of at least five people.

17 THE COURT: But, it is usually more than a one-time
18 incident.

19 MR. THAKUR: Well, we would contend, particularly based
20 on United States versus Pegwe, which we also cited, which talks
21 about -- otherwise, extensive in scope, that you can consider
22 the full scope of concealment and misrepresentations. And
23 here, while the exports kind of took place over the course of
24 one month or so, from the time they were informed that there
25 were red flags with this until the time it was actually

1 exported, the concealment really continued for years. Both the
2 threats that happened months after the fact that Mr. Sotis told
3 Ms. Voissem to stall the meeting with the United States
4 Attorney's Office, the deletion of material provided in the
5 administrative subpoena.

6 So that's what we count as the extensive nature of
7 this, as well as the number of participants.

8 MR. UDOLF: If I may, Judge, with all due respect, this
9 didn't last over a month, a period of a month, it lasted five
10 days. There were called on August 5th that --

11 THE COURT: The whole event started in July.

12 MR. UDOLF: Yes.

13 THE COURT: And then over the course. So, it lasted
14 just shy of a month.

15 MR. UDOLF: Wagner didn't tell them that it may need a
16 license and they had -- in the light most favorable to the
17 verdict, he didn't tell them that they needed to hold it until
18 August 5th and it went out on August 9th.

19 So we are talking about a relatively short period of
20 time. We are talking about one transaction, basically, so it
21 was not even approaching extensive in scope planning of
22 preparation.

23 Moreover, the United States versus Zada, which they
24 cite, that was a ten-year conspiracy.

25 THE COURT: I can understand --

1 MR. UDOLF: Clearly extensive.

2 THE COURT: -- what Mr. Thakur is talking about, but
3 that, to me, falls within the justification for the obstruction
4 of justice, and I don't know that I can double-count those
5 activities, Mr. Thakur.

6 I agree that this is a troubling case in that not only
7 when I look at the email, we don't -- from Mr. Sotis saying, "I
8 don't want to have any problems with the Government," showing
9 that he clearly knew that this was a prohibited transaction,
10 but he was much more interested in profit over principle,
11 notwithstanding all of his protestations and the
12 representations that he is a devoted patriot. The profit was
13 more important than the principle.

14 And then to -- what has always surprised me about this
15 case is Ms. Voissem, after seeing the evidence of how Mr. Sotis
16 said to Mr. Robotka, "Our names are not on it, so why are you
17 worried, Voissem will take the fall."

18 And she went right along with it, and continued to not
19 wise up. But, it is troubling. Quite frankly, it is very,
20 very troubling to see the push for profit over the safety and
21 welfare of others.

22 But, I think that's the way our culture is now going,
23 isn't it? That's our new God, the dollar sign.

24 So, I will overrule the Government's objections to -- I
25 will find that a two-level enhancement, and I will ask the

1 probation officer to please amend the presentence investigation
2 report to reflect a two-level role enhancement, rather than the
3 four-level enhancement.

4 Okay, the next objection?

5 MR. UDOLF: I think we are still on 43, Judge.

6 THE COURT: What else is there to do about 43?

7 MR. UDOLF: Of course, we object to the statements made
8 by Robotka, on which it is obviously based, regarding threats,
9 and also regarding conduct of Ken Wessler.

10 THE COURT: Mr. Udolf, you have made those objections
11 before. You have been making them throughout. Let's just keep
12 a standing objection to your -- you have a standing objection
13 to all statements by Mr. Robotka and any reference to threats.

14 MR. UDOLF: Okay. Thank you, Judge. I won't be
15 objecting anymore.

16 THE COURT: We don't have to go through them anymore.

17 MR. UDOLF: I guess the same thing with respect to the
18 \$180,000 worth of diving equipment.

19 THE COURT: We have already changed that.

20 MR. UDOLF: We have not changed that in this paragraph.

21 THE COURT: Ms. Goulds, would you please change the 180
22 to the 112, or 113,000?

23 Any other aspects of 43?

24 MR. UDOLF: No, your Honor, not on behalf of Sotis.

25 THE COURT: Paragraph 44.

1 MR. UDOLF: I believe your Honor has already addressed
2 all these issues. So, I don't think it is necessary to rehash
3 them. Except to the extent there is a statement in this
4 paragraph that states that Ms. Voissem and Mr. Sotis were both
5 instructed by the Department of Commerce special agent that the
6 rebreathers were detained.

7 We object to that. As I said in our objection, it
8 should be clear by now, that Mr. Sotis was never part of that
9 conversation.

10 THE COURT: Mr. Thakur?

11 MR. THAKUR: Your Honor, the trial testimony was that
12 Shawn Robotka told Peter Sotis what the Department of Commerce
13 had conveyed. So I think, by that, it accurately conveys the
14 trial testimony. They were both instructed, whether directly
15 or indirectly.

16 MR. MOSS: The only thing I would like to add to that,
17 Judge, I would ask the second paragraph begin with, "The jury
18 found that Voissem assisted with the sale and shipping of the
19 four rebreathers."

20 THE COURT: I am sorry, which sentence are you
21 referring to?

22 MR. MOSS: The second sentence of Paragraph 44.

23 THE COURT: That was the testimony, wasn't be it, Mr.
24 Moss, that Voissem assisted with the -- with the --

25 MR. MOSS: Correct, that is what the jury found, I just

1 want the report to reflect that this was not a conclusionary
2 statement by probation, but the actual reflected the findings
3 of the jury in their verdict.

4 THE COURT: Okay. Mr. Thakur, do you have any problem
5 with that?

6 MR. THAKUR: No, we have no issue with that. I mean,
7 the first part of it that she hid the facts from the Zaghabs --

8 THE COURT: That is another sentence. He is on the
9 second sentence. He wants to add in there that -- precede the
10 second sentence in Paragraph 44 with, "The jury found."

11 MR. THAKUR: No objection to that.

12 THE COURT: Would you make that change, Ms. Goulds?
13 Thank you.

14 Any other changes to Paragraph 44.

15 MR. UDOLF: Not on behalf of Mr. Sotis.

16 MR. MOSS: None, from Ms. Voissem.

17 THE COURT: Okay. Paragraph 46.

18 MR. UDOLF: Based on what your Honor has already said
19 about Mr. Robotka and the objections we previously made, I
20 don't think it is necessary to rehash that, we simply would ask
21 the Court to note our objection.

22 THE COURT: Okay. Let's turn to Paragraph 46 and does
23 the Government want to add any details as far as the adjustment
24 for the obstruction of justice? To me, the primary concern has
25 been on the obstruction of justice, and on which I am basing

1 the two-level enhancement. It is not so much on the threats.
2 But, on the deliberate efforts to frustrate the investigation,
3 ranging from instructing people to not comply with the
4 subpoena, destroying documents, putting pressure, which it
5 doesn't look like it took too much, on Ms. Voissem to stall,
6 and other intentional efforts, instead of just coming forward
7 and saying, "Okay, I screwed up here."

8 But, again, it is a matter of profit over principle,
9 and what can I get away with?

10 So, do you want to make any argument as far as the
11 obstruction of justice.

12 MR. UDOLF: Based on the Court's concern regarding the
13 destruction of records or statements relative to that effect, I
14 would just add in addition to my previous voiced objections
15 about credibility issues, as to Mr. Robotka, we would point out
16 that the -- the evidence of obstruction by Mr. Wessler was the
17 same evidence that he was a co-conspirator, and it is a sort of
18 a bootstrap argument. And basically, the evidence that Mr.
19 Wessler not producing records and destroying the records,
20 whatever it was, I think, it was just he did not produce them,
21 but, the evidence in that came from Mr. Robotka. There was no
22 evidence prior to Mr. Robotka of Mr. Wessler having been a
23 co-conspirator.

24 THE COURT: So Mr. Sotis, personally, did not comply
25 with it? Somebody did not comply, because they ultimately

1 found the emails.

2 MR. UDOLF: I don't think there is any evidence that
3 Mr. Sotis was involved in the production of documents to the
4 Government, pursuant to their subpoena, other than the fact
5 that I think Mr. Robotka may have testified that he handed that
6 off to Mr. Wessler.

7 That would be the sole evidence that Mr. Wessler was a
8 co-conspirator.

9 MR. THAKUR: Your Honor, the statements by Mr. Robotka
10 were that Mr. Sotis was aware that Ken Wessler was withholding
11 these documents, was destroying documents relevant to the
12 investigation, and is borne out by the actual results of the
13 administrative subpoena, that not a single inculpatory email
14 involving Mr. Sotis was included there, whereas there were
15 numerous other emails included in the administrative subpoena
16 involving Emilie Voissem's communications with the Zaghabs
17 and --

18 THE COURT REPORTER: I am sorry, Mr. Thakur, slow down,
19 please. If you could please slow down.

20 Your Honor --

21 THE COURT: And pull the microphone --

22 MR. THAKUR: I have a two-way so I have the lavalier
23 here.

24 THE COURT: Start all over again for Ms. -- for Sharon.

25 MR. THAKUR: Sure, so Mr. Robotka's statements were

1 that Mr. Sotis admitted to him that he was aware that Ken
2 Wessler had withheld documents relevant to the investigation,
3 had destroyed documents by his statements, and this is
4 corroborated by the two agents who testified, who reviewed the
5 results of the administrative subpoena, and not a single
6 inculpatory email that was later discovered involving Mr. Sotis
7 was included in that administrative production, whereas there
8 was numerous other emails that were produced involving Emilie
9 Voissem's communication with the Zaghabas.

10 This points to a deliberate effort to shield Mr. Sotis
11 from this investigation.

12 MR. UDOLF: Judge, in response, you know, I have not
13 seen a transcript of the testimony of Robotka, perhaps counsel
14 has, but I don't recall the testimony being that Mr. Wessler
15 destroyed documents. I distinctly remember that Mr. Robotka
16 testified that he withheld documents as to Mr. Sotis.

17 THE COURT: Okay. Is that correct? Is there -- is
18 that similar to your recollection, Mr. Thakur?

19 MR. THAKUR: I think there was testimony -- there was
20 certainly testimony that Ken Wessler had deleted or withheld
21 documents by Mr. Robotka and as we attached the affidavit, the
22 sworn affidavit of Shawn Robotka from 2017, if you look at
23 Page 5, Paragraph 20, he explicitly notes that Peter Sotis told
24 Mr. Robotka, "I had Ken Wessler delete all the files on the
25 server, which we will blame on Emilie as a disgruntled

1 employee. Ken deleted all Osama payments so there is no link
2 to us."

3 Sotis then stated, "We can always throw them Ken for
4 destroying documents. What part of this don't you understand?"

5 MR. UDOLF: The affidavit is -- says what the affidavit
6 says. There are also a lot of very incorrect things in that
7 affidavit, as I pointed out at trial.

8 But, my point was I didn't recall Mr. Robotka
9 testifying that Mr. Wessler had destroyed documents. He may
10 have. I just don't remember. And I don't want to agree with
11 that without having seen the transcript.

12 But, if your Honor will, please, if I could move on to
13 the rest of my argument.

14 THE COURT: It does -- just based on some of the
15 statements of Ms. Voissem's witnesses yesterday and the letters
16 that she has written, it seems entirely consistent with
17 Mr. Sotis's approach to make sure nothing stuck to him, and to
18 get what he wanted when he wanted it.

19 MR. UDOLF: Well, I may have something, well, to say
20 about that later on. I don't know.

21 THE COURT: Okay.

22 MR. UDOLF: But in the meantime, Judge, with respect to
23 the obstruction enhancement based on the destruction of
24 documents, I will just cite to the Court the case that I cited
25 in my sentencing memorandum, United States versus Elker, where

1 the Court explained that a meaningful appellate review requires
2 the sentencing finding for enhancement for obstruction of
3 justice to explain what the defendant did, why that conduct
4 warranted the enhancement, and, most importantly, how that
5 conduct actually hindered the investigation or prosecution of
6 the offense.

7 As we have cited in our motion, it hasn't been shown
8 that, even if true, how a failure to produce any evidence would
9 have a material effect on the investigation and prosecution of
10 this case.

11 THE COURT: Mr. Thakur, do you want to respond to that
12 statement?

13 MR. THAKUR: Yes, your Honor. The delay in the
14 investigation caused by that, I think, is grounds alone to show
15 that it affected the investigation. This turned into a
16 multiyear investigation, whereas it could have been resolved
17 pretty quickly if they had complied with the administrative
18 subpoena, people weren't threatened, as Emilie Voissem's
19 testimony was that he tried to stall him, indeed, in this case.

20 So clearly, this was an intent on his part to delay and
21 obstruct this investigation.

22 THE COURT: And that goes back to the original plan.
23 "I don't want any more emails sent to me." That was the
24 instruction back in early August, or late -- late July.

25 MR. THAKUR: Yes, your Honor.

1 THE COURT: "With my name on it, having to do with it
2 this," and it is consistent with sort of the pattern and
3 practice, as testified to by Mr. Robotka and Ms. Voissem.

4 So, it appears to me that Mr. Sotis's principal, if you
5 fight it they have to prove it, and if you can frustrate it, so
6 that they have difficulty proving it, then that's how you get
7 away with it.

8 It is very effective, some people manage to pull that
9 off.

10 MR. UDOLF: Some presidents have pulled it off.

11 THE COURT: Yes.

12 Okay. Anything else as to the adjustment for, I think
13 that takes care of --

14 MR. UDOLF: 46?

15 THE COURT: -- 46 and 53.

16 MR. MOSS: Actually, Judge, there is one concern I have
17 about 46, not having Mr. Sotis's PSI, I don't know what that
18 paragraph says with regard to Mr. Sotis's instructions to Ms.
19 Voissem to stall the debriefing. But, but I do know that the
20 Government raised that issue in its sentencing memorandum. I
21 just want the record to reflect that whether or not she
22 received that instruction, she did not stall the debriefing, we
23 went forward on the date that was originally scheduled between
24 myself and Mr. Thakur. I just -- just so -- I just want the
25 record to reflect that if she was instructed to stall, she did

1 not do so.

2 MR. THAKUR: That is actually not in the PSI.

3 THE COURT: It is not in this PSI.

4 MR. MOSS: I wasn't certain of that, but it did appear
5 in one of the Government's documents, so in the event that it
6 was in Ms. Sotis's PSI, I mentioned it in an abundance of
7 caution.

8 THE COURT: Okay. I am adding it, because that was my
9 understanding of the -- my recollection of the testimony.

10 MR. THAKUR: Yes, your Honor.

11 THE COURT: That I recall Ms. Voissem saying that
12 Mr. Sotis, when she told him that there was a request, she said
13 -- he said, "Stall it as long as you can."

14 MR. MOSS: That was the testimony, correct.

15 THE COURT: Okay. And then there were other efforts to
16 keep on her good side, providing the financial support to her
17 business, and otherwise keeping her as his continuing aide
18 throughout the process.

19 My sense is that Mr. Sotis is -- I have not had the
20 privilege and pleasure, I have only met him through court, and
21 not for very -- had much interchange with him, but the sense
22 that I get from the people that have testified in the case and
23 that have testified on behalf of Ms. Voissem is that he is a
24 very charismatic, very dynamic, very knowledgeable person, but
25 he has a strong personality, and he wants it his way when he

1 wants it. And, he will do whatever it takes to achieve that
2 through the force of his personality or otherwise.

3 Okay. We are now on Paragraph 47.

4 MR. UDOLF: Judge, this is --

5 THE COURT: I didn't understand this objection at all.
6 I will share with you, simply that he did not -- Mr. Sotis has
7 never accepted responsibility. That's --

8 MR. UDOLF: This is a standard objection to the trial
9 penalty in general, Judge, and also the fact that we went to
10 trial was not for wanting to attempt to resolve this case,
11 however, we were unable to do so.

12 THE COURT: Pardon, I am sorry, what did you just say?

13 MR. UDOLF: Judge, I said we went to trial on this
14 case, the reason we went to trial is not due to the fact that
15 we were unable, despite our best efforts, to resolve this case,
16 without a trial.

17 THE COURT: Okay. But he has never accepted -- he has
18 never told -- he has never accepted responsibility, said,
19 "Okay, I did it."

20 MR. UDOLF: Well, your Honor has not heard from him
21 yet. But --

22 THE COURT: But this is sort of late in the game, isn't
23 it?

24 MR. UDOLF: No, he has not accepted responsibility by
25 pleading guilty, no, he has not.

1 THE COURT: And that's usually, when a Judge is looking
2 at the 3553(a) factors, that is one of the things that the
3 Judge has to take into consideration of has the person
4 recognized the wrong that they have done, the impact that it
5 has had on others, beyond just themselves and their immediate
6 family, because it does have a disastrous impact on their
7 immediate family, but as far as their responsibilities to the
8 common good.

9 MR. UDOLF: Generally speaking, that is true, Judge,
10 that is the best way it goes, but, he has not had an
11 opportunity to address the Court. He will address the Court.
12 And at least, I would ask your Honor to withhold the judgment
13 on that particular issue until the Court has had an opportunity
14 to hear from him.

15 THE COURT: I am happy to do that, but thus far, I
16 think you need to be aware of he is in a deep hole.

17 MR. UDOLF: I am getting that impression.

18 THE COURT: Okay.

19 So I'm overruling the objection to Paragraph 47, and we
20 have had our conversation about that.

21 Paragraph 48 and 49, you object to both of those in
22 their entirety?

23 MR. UDOLF: Correct.

24 THE COURT: Should we talk about the base offense
25 level?

1 MR. UDOLF: Judge, according to -- and I am not going
2 to argue about the fraud guideline at this point since your
3 Honor has stated that you believe that 2M5.2 is the appropriate
4 guideline. So, I will just address that.

5 There are two base levels provided for, before I get to
6 that, the caption, the title of that particular section is,
7 "Exportation of arms, munitions, or military equipment or
8 services without required validated export license," and the
9 base level, there are two base levels. One is a Level 26,
10 except as provided for in subdivision two below.

11 Subdivision two says, 14, "If the offense involved
12 only, A, non-fully automatic small arms, rifles, handguns or
13 shotguns, and the number of weapons did not exceed, two, B,
14 ammunition for non-fully automatic small arms, and the number
15 of rounds did not exceed 500 or, C, both."

16 But we also, in our papers, we have indicated that this
17 particular -- the application of one to this particular section
18 states that the president is authorized, through a licensing
19 administered by the Department of State -- keep in mind that
20 the criminal offense is governed by the licensing requirements
21 of the Department of Commerce. But, for purposes of this
22 guideline, it notes that the licensing system administered by
23 the State Department controls exports of defense articles and
24 defense services that he deems critical to the security or
25 foreign policy interest of the United States. The items

1 listed, subject to control, constitute the United States
2 Missions -- Munitions List, which is set out in the relevant
3 C.F.R.

4 That lists -- included in this list are such things as
5 military aircraft, helicopters, artillery shells, missiles,
6 rockets, bombs, vessels, war explosives, military and space
7 electronics and certain firearms. Nowhere does it talk about
8 any scuba equipment or rebreathers or anything that is
9 basically not capable of causing some sort of damage. All of
10 these things have one thing in common, and they involve
11 mechanisms for killing people by their very nature.

12 The base level offense assumes, and I am still reading
13 from the application, assumes that the offense conduct was
14 harmful, or had the potential to be harmful to a security or
15 foreign policy interest of the United States.

16 In the unusual case where defense conduct posed no such
17 risk, a downward departure may be warranted. In this
18 particular case, there is -- we believe that there was not a
19 risk to security or foreign policy interests in the United
20 States.

21 I mean, I have heard references -- all these things
22 that on the munitions list involve explosives. Judge, I have
23 heard references in the Government's papers and I heard the
24 Court mention yesterday Benghazi.

25 Ambassador Stevens, may he rest in peace and the three

1 brave Americans who perished along with him were not taken down
2 by rebreathers, they were killed by bullets and explosives and
3 that is the kind of thing that this statute -- this sentencing
4 guideline requires, and that's why we are saying that this
5 particular guideline really overstates the severity of this
6 offense.

7 You know, I will grant you, your Honor, that Mr. Sotis
8 was not a humble man, he is guilty of arrogance and thumbing
9 his nose at a United States Department of Commerce agent, that
10 is true, but we have to realistically look at the severity of
11 the offense, you know. There is not a substantial risk that
12 this sort of rebreathers were going to cause the greater
13 horrors that is imagined by the witnesses in this case and
14 that is contended by the Government. And, that is simply not
15 the case.

16 I mean, basically, he was selling rebreathers, and, if
17 there was a really serious danger about that, Judge, you know,
18 you inquired yesterday, Judge, why didn't they interview Mr.
19 Wessler? Well, I would imagine to say the reason why is
20 probably because he may not have backed up anything that Mr.
21 Robotka would have said.

22 But, the important, more important question should be,
23 why didn't they even bother to interview, not charge, but
24 bother to interview Osama Bensadik, if this was really a
25 danger, if this really posed a national security threat, you

1 know what poses a national security threat, Judge, when
2 somebody incites somebody to riot and 500 people go down to the
3 United States Capital and take it over and four people die as a
4 result, and many of those people, many of those people got
5 misdemeanor sentences, like six months in jail.

6 So, my argument is, this sentencing statute, or
7 guideline, is completely without perspective and has no sense
8 of proportionality. I will concede that Mr. Sotis exercised
9 bad judgment. I think after you hear from him today, he will
10 own up to that.

11 But, as his attorney, I don't think he could say this,
12 but I could say this, I think this is more of a technical
13 violation, and in terms of the commerce list, because it also
14 provided for civil penalties. There are real threats to this
15 country, Judge, that are posed by real people in this country.

16 The rebreathers in question in this case happened on
17 one sale, and if it was so doggone serious, why in the Sam Hill
18 didn't they bother to go out an interview, because he is not in
19 Libya, he is living in Virginia, why didn't they interview the
20 guy who was buying this stuff? I mean, that begs the question.

21 This case is -- the recommendation of the Government
22 from ten to 13 years for this offense is -- is absurd, and it
23 does discredit to the court of this, of this jurisdiction. And
24 I think the Court ought to consider that.

25 I think, at a minimum, this case ought to be reduced to

1 14, a 14, but I think it should -- the court should vary well
2 below that, because what he did, what he did in terms of
3 disrespecting or disregarding a United States officer, ought
4 not be tolerated, and something -- and a punishment already
5 should be imposed, not -- already has been imposed as I noted
6 in my sentencing memo, the collateral guidelines, I mean, the
7 collateral consequence to this man have been tremendous, but
8 clearly, you know, they have gotten his attention, he has been
9 living with this case since 2016. And he is looking at a
10 Government that is asking to put him in jail for ten to
11 30 years in the height of COVID because he thumbed his nose at
12 an agent. I don't think he needs to be deterred much more than
13 that.

14 Now, in terms of general deterrence, I think the word
15 is already out. He has lost his business, he is trashed all
16 over the internet for this thing, and -- and if there is any
17 doubt at all about the lack of perspective of the Government in
18 this case, if you look at the things that they are asking,
19 pointing out to the Court in term of 3553(a), they say that he
20 is -- while it is true he had no crimes committed in the last
21 15 years, it has been 30 years, 30 years, that that conviction
22 of robbery when he was in his 20s.

23 And you know what, will you hear -- you have seen
24 probably already one of the letters of Mr. -- is it Floyd --
25 who talks about how Peter Sotis took his son diving and told

1 him the story of how he had gotten in trouble in his youth and
2 how that really impacted the kid and made a difference in this
3 kid's life.

4 People do put their lives together and correct their
5 mistakes. But that was not enough. They had to go back to
6 when he was 19 years old, Judge, in 1980-something, for a
7 conviction for possession of marijuana in Rhode Island, in
8 which, by the way, he was found to be smoking a joint in a
9 parking lot of a nightclub. I would venture to say probably in
10 most all of the United States of America that would not even be
11 a crime. Yet, and they should be embarrassed having raised
12 that.

13 Now, listen, Mr. Thakur is very thorough. He has not
14 missed an opportunity to catch -- he has made the most of the
15 least amount of evidence I have ever seen in a federal case.
16 He is a very good lawyer. But I think he has overstated -- I
17 shouldn't made that personal. He is a fine lawyer -- but I
18 think the Government's position is really overstating it. And
19 lacks perspective.

20 Your Honor, I didn't mean to go on a rant about this
21 now, but I think that this guideline, as it applies to
22 Mr. Sotis, is really off the charts, and cries out for a
23 substantial variance.

24 THE COURT: I think the -- this is why I find this case
25 so troubling, Mr. Udolf, as you all have gathered since the

1 first time we have talked earlier this week, and my -- and
2 after I heard the testimony of Mr. Chapman, it was, yesterday,
3 I am troubled by the base offense level here, given -- and when
4 I look at the application note two, that in determining a
5 sentence within the applicable guideline range the Court may
6 consider the degree to which the violation threatened a
7 security or foreign policy interest in the -- of the United
8 States, I have no evidence as to that. I have evidence that it
9 could be, because it was a dual use and the military would use
10 it, and based upon the testimony that I had yesterday, for
11 training purposes.

12 Okay. So, four rebreathers that could possibly be used
13 for -- by the military to train, and then, and the tie to that
14 has been all legitimate speculation based upon world events, it
15 could then lead to somebody going under a cruise ship and
16 blowing up a -- and killing sort of like the pilots flying into
17 the World Trade Center, look at all those people were trained
18 by companies that gave flight training, and never suspecting
19 that training somebody to go in the long range plan of creating
20 mayhem and -- but, now our -- since we are more aware of the
21 darker angels of ourselves and that we need to be much more
22 careful if we are going to be responsible.

23 So, the question that I have been struggling with is,
24 okay, if I start out with a 26, I believe that if I am looking
25 at application note two, there has got to be -- I have to take

1 those things into consideration because I do think that the 26
2 is too high as a base offense level. It just is not consistent
3 with the nature of this offense.

4 This offense was an arrogant placing of profit over
5 principle, and responsibility of an individual to the greater
6 common good and respect for authority. But, I think we
7 undermine the whole principle of fair justice with a sentence
8 that is 121 months for this offense.

9 We lived through how many years of trying to grapple
10 with the ridiculous sentencing guidelines that we made
11 mandatory and impacted that on communities. Somebody would
12 smuggle in, you know, an internal carrier, and so they went to
13 jail for life, and somebody who was trafficking in tons and
14 tons, could come in and get a deal, and ended up in the Witness
15 Protection Program.

16 That's the concern that I have.

17 And, unfortunately, I need help from counsel as to what
18 is the right downward departure, given an evaluation of the
19 extent, the degree to which the violation threatened a security
20 or foreign interest of the United States, the volume of
21 commerce, four rebreathers on one occasion, the extent of
22 planning or sophistication, we have seen the whole event was
23 planned over a period of, the most generous, under a month,
24 except for the stalling afterwards, and the efforts to thwart
25 the investigation, that that does trouble me, Mr. Udolf. That

1 just shows me this is somebody I am not willing to take a
2 gamble on that I can rely that he will be an upstanding, law
3 abiding citizen in the future.

4 You don't have to respond, I am just sharing with you
5 my concern, because I have a responsibility for the community.

6 MR. UDOLF: Of course, I understand, Judge, and I will
7 address that.

8 THE COURT: And whether there were multiple
9 occurrences. There were not multiple occurrences, so -- so how
10 can I send somebody to jail for 121 months on this, in good
11 conscience, that is why they pay me the big bucks. I don't
12 mean to be facetious. It is somewhat of a -- I take that back.

13 So, I plan on departing downward from the Level 26. I
14 accept that the law requires me to find a guideline section,
15 and this is apparently the one that applies. But, I am also
16 looking at the application notes and realizing that I need to
17 calibrate this so that it truly reflects a threat to the
18 security or foreign policy interests of the United States, the
19 volume of commerce involved, the extent of planning or
20 sophistication, and whether there were multiple occurrences.

21 The last sentence says, "Where such factors were
22 present in an extreme form, a departure from the guidelines may
23 be warranted."

24 I read that both in extreme form to depart upward or to
25 depart downward.

1 I just cannot believe that the sentencing guideline --
2 the Sentencing Commission would want me to apply a Level 26
3 here.

4 So, Mr. Thakur, it is in your -- we can take a little
5 break so you can form, put together your thoughts, but I am
6 going to accept the Probation Office's recommendation that this
7 is the right offense level, but then I am going to depart
8 downward. The question is examining those factors, what is the
9 appropriate departure downward?

10 I initially came up with a thought that I would go down
11 to 24, four or five levels. I don't know that this is
12 adequate, after listening to Mr. Chapman's testimony yesterday.

13 MR. THAKUR: Your Honor, can I respond?

14 THE COURT: Yes.

15 MR. THAKUR: So, I mean in terms of what the Sentencing
16 Commission was contemplating, I think one critical fact that
17 counsel neglected to mention when he was talking about U.S.
18 munitions, is the fact that both 2M5.1 and 2M5.2, both of which
19 I think are applicable here, specifically mention 50 U.S.C.
20 1705. That is the International Emergency Economic Powers Act.
21 IEEPA, that is precisely what was charged and what the
22 defendants were convicted of in this case.

23 That is clearly administered by the Department of
24 Commerce, not the Department of State. No item that is
25 controlled by the Department of Commerce is purely munitions,

1 is purely military. All of it is dual use to the extent that
2 it is on the Commerce Control List. So that is what the
3 Sentencing Commission was looking at when it came up with
4 Level 26.

5 The cases that we have looked at that the defense has
6 cited involve cases where there is no indication that it was
7 dual use. The Court noted in those cases, and the Government
8 conceded, that there was no national security concern because
9 it was not dual use. Specifically, I am looking at United
10 States versus Behroozian, which Mr. Moss cited, Southern
11 District of Ohio case, that involved oil and natural gas
12 products, which the Government conceded had no military use,
13 and really wasn't a dual use in that case.

14 Here, by contrast --

15 THE COURT: That is interesting, because military uses
16 gasoline to run their tanks, to move troops, their jeeps. So,
17 if that has no military use, then why did they rebreathers
18 have --

19 MR. THAKUR: I think in that case it had to do with
20 specific contracts at issue for those products that the
21 Government said those particular contracts did not have to do
22 with military.

23 I think I would point to the Court, to, as we mentioned
24 in our sentencing memorandum, United States versus Singer, a
25 case in this district upheld by the Eleventh Circuit, it

1 involved an IEEPA violation, dual use product that was computer
2 modems going to Cuba, clearly that is not purely military in
3 any sense, it was a one-time attempted export to Cuba.

4 In that case, there wasn't any evidence at trial that
5 the defendant was specifically warned that there were terrorism
6 concerns with that shipment, unlike in this case, and there,
7 the Judge applied 2M5.2, did not depart downward, and went to
8 the Eleventh Circuit and the Eleventh Circuit was fine with the
9 sentence.

10 THE COURT: That was Judge Moore?

11 MR. THAKUR: That was Judge Moore, yeah.

12 THE COURT: I am not Judge Moore.

13 MR. THAKUR: But I think in looking at other cases from
14 around the country and the cases they have cited, courts really
15 look to national security concern is where there is -- you can
16 have, for instance, when there is complete embargoes to a
17 country like Cuba, Iran, North Korea, sending office supplies
18 or a paper clip could be a violation of that statute. And
19 clearly, that has no military application. It would be a
20 violation of law, but that is the kind of case that maybe the
21 Sentencing Commission was contemplating that there is really no
22 national security concern.

23 In all these other cases where there is dual use, and
24 certainly where there is cases like this, where the defendants
25 were actually warned about its dual use and had an idea of it

1 and then tried to conceal it later on, that really is the
2 heartland of this sentencing guideline. And I think there is
3 no way to distinguish it from Singer, a one off case such as
4 this.

5 But, unlike all those other cases that the defense
6 cites, most of those cases, almost all of those cases were
7 guilty pleas, they accepted responsibility for it, and they
8 didn't have that level of concealment and obstruction that
9 occurred at the time of the offense and continued years after
10 the fact, and that, to me, shows a real need for specific
11 deterrence, certainly in the case of Mr. Sotis.

12 I think if the Court were concerned about his
13 codefendant and how she figures in relation to Mr. Sotis, a
14 variance might be appropriate for her. But, in terms of the
15 conduct and its concern of national security, I don't think a
16 departure is warranted. I do think it is well within what the
17 Sentencing Commission was thinking about.

18 And, in terms of extremity of the case, I think they
19 were thinking if this involves something far more serious
20 during wartime, if it was involved in an attack, if there was
21 nuclear or other similar type of weapons that were concerned,
22 that would warrant an upward departure, but, this kind of case
23 falls within the middle of the guidelines of what the
24 Sentencing Commission was thinking about. You know, there is a
25 case when there is actually no national security concern, where

1 it was a one-off case where the defendants were in technical
2 violation of the law, such as a complete embargo, then it might
3 be warranted to have much less of a departure. But, here, as I
4 said, I really think --

5 THE COURT: You mean much greater departure?

6 MR. THAKUR: Well, I obviously advocate for departure
7 in this case. But, to the extent the Court, in its discretion,
8 wants a downward departure, I don't think much of one is
9 warranted here.

10 MR. UDOLF: Judge, if I may respond.

11 THE COURT: Um-hmm.

12 MR. UDOLF: First of all, the --

13 THE COURT: The what?

14 MR. UDOLF: -- Government's reliance on United States
15 versus Singer, putting aside for a second that your Honor is
16 not Judge Moore.

17 THE COURT: And I don't mean to disparage Judge Moore
18 at all. It was just --

19 MR. UDOLF: I was just joking.

20 THE COURT: I mean, he has -- he has a United States
21 attorney's background and view.

22 MR. UDOLF: We are talking about the country of Cuba in
23 which there has been an embargo for, what, I think since 1960,
24 '62, if I am not mistaken, and an embargo is a different
25 situation.

1 Number two, the devices that were being shipped in that
2 case were encryption devices, encryption devices to a place in
3 Cuba, which is no friend to 65 percent of our populus here in
4 Miami, is not a good thing and it is not surprising to me that
5 Judge Moore imposed a 78-month sentence in that case.

6 Similarly, the other case they cite is United States
7 versus Wexia Mann, which involved export of military aircraft
8 and engines, a military drone and related technical data to
9 China without a license. The last I heard, China was most --
10 our most fearsome competitor in the world and not a friendly
11 power to the United States.

12 And, there, the Court sentenced the defendant to
13 50 months, less than half of what the Government is
14 recommending in this case.

15 The -- with respect to the --

16 THE COURT: Are you saying that Libya is the friend of
17 the United States?

18 MR. UDOLF: No, I am not suggesting that. I am not
19 suggesting that at all.

20 But it is probably a better place since Kadafa is no
21 longer with us.

22 Finally, with reference to the Behroozian case, where
23 they said, where counsel said it only involved oil and natural
24 gas products. Yeah, but, the issue in that case was it was
25 going to Iran, who is -- who is not a friend of the United

1 States either.

2 THE COURT: And it is on the terrorism list.

3 MR. UDOLF: What is that?

4 THE COURT: It is on the --

5 MR. UDOLF: That's right, it's on the terrorism.

6 So, I mean, those cases are clearly extraneous.

7 MR. THAKUR: Your Honor, I would make a correction.

8 The Singer case did not involve encryption. I -- actually
9 Special Agent Tina Core, who was the case agent on that case,
10 and it involved computer modems, so that is incorrect. They
11 controlled for national security reasons, just as rebreathers
12 were controlled for national security reasons in this case.

13 THE COURT: Okay. Anything else on this particular
14 point?

15 MR. UDOLF: No, Judge. The -- the only thing I would
16 add to what we have said, the lowest level that is provided for
17 in the guidelines for a minimum amount of firearms or deadly
18 weapons is 14. I certainly think that the guidelines should
19 not be above a Level 14 -- should be above a level -- I think
20 at a minimum, it should be a Level 14. We would suggest, we
21 would suggest a lower range than that.

22 By the way, one thing I neglected to point out to the
23 Court, Judge, they said that the cases cited in our sentencing
24 memorandum all dealt with people that were guilty. That is
25 true, but, just look at the first case, United States versus

1 Sevilla, he got a three point reduction for acceptance of
2 responsibility. But he got a 14 point variance for -- and the
3 Court imposed probation, for the unlawful sale of hydraulic
4 testing machines to Iran. So --

5 THE COURT: A Federal what --

6 MR. UDOLF: A hydraulic testing machine to Iran. He
7 got a 14 point variance.

8 THE COURT: Remind me which court that in, Ohio?

9 MR. UDOLF: I'm sorry?

10 THE COURT: Remind me which court that was in, which
11 district.

12 MR. UDOLF: That was an Eleventh Circuit case. I don't
13 know what district court.

14 MR. THAKUR: That was not an Eleventh Circuit case. It
15 was District of Illinois.

16 THE COURT: I thought it was in the midwest.

17 MR. UDOLF: I'm sorry, your Honor, I was reading the
18 one below. He is right, it the Northern District. My
19 apologies.

20 THE COURT: Chicago.

21 MR. UDOLF: And again, that was going to Iran.

22 THE COURT: Shall we proceed with the rest, then I am
23 going to continue to think about this.

24 We will take a little break shortly. I would like to
25 get through the rest of the objections so if we can move to the

1 -- I think we have gone over the role. We have gone over the
2 obstruction of justice issue, correct?

3 MR. UDOLF: Correct, Judge.

4 THE COURT: And is there any other -- what are the
5 other objections you have?

6 MR. UDOLF: The only other objection we noted in our
7 objections was to 57, Paragraph 57. We suggested that the
8 total offense level should have been 14, not 32.

9 THE COURT: Okay.

10 MR. UDOLF: I think we should just leave that open for
11 now.

12 THE COURT: Okay. We have been going for almost an
13 hour and a half. Let us take a ten-minute break, and we will
14 come back and we will announce what the base offense level will
15 be, and we will calculate the guidelines and then we can
16 proceed with allocution and any witnesses that he would you
17 like. All right?

18 THE COURTROOM DEPUTY: All rise.

19 (Whereupon, there was a recess, from 11:19 A.M. until
20 11:40 A.M., after which the following proceedings were had:)

21 THE COURTROOM DEPUTY: Court is back in session.

22 THE COURT: I apologize for taking more than ten
23 minutes.

24 Okay. Please have a seat, everyone.

25 Both defendants and all counsel are present, and the

1 probation officer is present.

2 Upon reflection and after considering all of the
3 arguments of counsel, the Court will begin with a total
4 offense, base offense level of a 26, but will depart downward
5 to a Level 21. The reason for the departure is the Court
6 recognizes that this -- the rebreathers dual use and can be
7 used for military purposes, and that Mr. Sotis is very
8 knowledgeable about its use, but having said that, there was no
9 evidence at trial as to the degree to which this -- this
10 violation threatened a specific security or foreign policy
11 interest of the United States, with the exception of the fact
12 that it is a law, and we have an interest in upholding the law.

13 Secondly, it is, at best, an indirect threat to the
14 security or foreign policy interest, and I don't say that
15 lightly, because in this day of use of all sorts of non-dual
16 use equipment to carry out acts of terrorism, without any
17 evidence to show a specific -- for the Court to evaluate the
18 degree to which the violation threatened the security or
19 foreign policy interests of the United States with some kind of
20 specificity, the Court needs to recognize in the downward
21 departure that aspect.

22 Additionally, that looking at the volume of commerce
23 involved, I am looking at four rebreathers, it was --
24 Add Helium did not actively recruit a marketing scheme to sell
25 them though Libya, it sort of came to them. Granted, they had

1 dreams of promoting the business and so they wanted to take
2 care of them, in the hopes of future business, but, it was
3 primarily the evidence, at best, showed it was a hope of future
4 business.

5 As far as the extent of planning or sophistication, I
6 think we can see, based on the evidence at trial, which was the
7 specific emails, this was, at best a -- I want to make the
8 sale, make it happen, and I think, at best, an ad hoc planning,
9 just a decision of, "I want to make the sale, so make it
10 happen, and I am going to dump it on somebody else, and let
11 them take the problem, and I will just take the money."

12 So, I think we have to recognize that that profit
13 motive is -- can blind people, at the risk of other's safety,
14 so it needs to be recognized. But, here, given the evidence of
15 the extent of planning or sophistication here, it is, at best,
16 an ad hoc planning.

17 As far as whether there were multiple occurrences, this
18 is a one time, there was, as I said before, no proactive
19 marketing, and other than the hope that the people had of
20 future deals, it wasn't as if there was a contract in existence
21 for a continuing sale of rebreathers.

22 So based on a total level of 21, plus the Court's
23 rulings on the obstruction of justice, the two-level
24 enhancement and the role in the offense of two-level
25 enhancement, that brings the total offense level to a Level 25,

1 which provides a guideline range of 57 to 71 months for
2 Mr. Sotis.

3 We can now turn to asking all of the parties, Mr. Udolf
4 and Mr. Thakur, to note your objections to the Court's
5 calculation of the guidelines, for the base total offense
6 level, and the criminal history category is one.

7 Any objections?

8 MR. THAKUR: Yes, your Honor, we would object to the
9 downward departure.

10 THE COURT: Okay.

11 MR. UDOLF: Yes, your Honor, we would object to the
12 downward departure of to Level 21, five points. And I would
13 refer to -- may I, if I may refer to my sentencing memo, we
14 listed one of the considerations is disparity issues in the
15 case, I listed 12 cases in which it was more related type cases
16 involving application of U.S. sentencing guidelines 2M5 series.

17 The case first case was the Sevilla case. Of course,
18 we know that the guideline starts at Level 26. The Court, in
19 that case, granted a 12 point variance, and imposed -- and this
20 was one of those cases that Mr. Thakur noted, they pled guilty.
21 They got a three-level reduction for that, but also the Court
22 granted a 12 point variance and imposed a sentence of
23 probation.

24 THE COURT: It is a departure, not a variance.

25 MR. UDOLF: Right. You are right.

1 THE COURT: Adjustments, departures, variances. Magic
2 words.

3 MR. UDOLF: But, in the Sevilla case, that involved --

4 THE COURT: Remind me of what district it is in?

5 MR. UDOLF: Again, that is in Northern District of
6 Illinois. And it involved the unlawful sale of hydraulic
7 testing equipment to Iran which is the subject of embargo, but
8 the Court imposed a probationary sentence in that case.

9 THE COURT: And so it varied downward from the
10 Level 12.

11 MR. UDOLF: That's right.

12 THE COURT: Because if it found -- it found the base
13 offense level is Level 12 --

14 MR. UDOLF: I think also they had a two point
15 acceptance of responsibility, so it was Level 10, so Court
16 imposed a probationary sentence in that case. And, if you will
17 notice from reading these 12 cases --

18 THE COURT: Level 10, the Court had to vary downward,
19 because a total offense level of ten requires a term of
20 imprisonment of six to 12 months. And you can do a split
21 sentence, but you cannot impose probation.

22 MR. UDOLF: I just know -- I have the case in front of
23 me. But I don't know how the Court arrived at that
24 calculation, but they did, impose probation.

25 If you notice, the 12 cases that that I cite are in

1 reverse order in terms of severity of punishment. But I call
2 to the Court's attention, because many of these cases, with the
3 exception of a few, with the exception of, I guess the last
4 three, all these cases are below the minimum sentence called
5 for in the guidelines that the Court is suggesting it impose in
6 this case, and clearly there have been more severe.

7 This case, the Sevilla case, involves exported goods to
8 Iran. The Alexander case is an Eleventh Circuit case that
9 involved conspiring for violate the International Emergency
10 Economic Powers Act for the planned sale of industrial water
11 jet cutting machines to Iran, and there the 11th Circuit upheld
12 and 18-month sentence, and the United States versus Eiding --

13 THE COURT: But that was where they also pled guilty,
14 correct?

15 MR. UDOLF: I will tell you in a second, Judge. I
16 pulled all these cases last night, and --

17 THE COURT: I appreciate that. It is hard to keep
18 track of all of it unless they're right there in front of you.
19 I thank you, Mr. Udolf.

20 MR. UDOLF: Sorry?

21 THE COURT: I thank you.

22 MR. UDOLF: You are quite welcome.

23 THE COURT: The only nicer thing would be is if when
24 you make a copy for yourself, you make a copy for me so we both
25 had the same one in front of us.

1 MR. UDOLF: No, there was a jury trial, Judge.

2 THE COURT: There was a jury trial.

3 MR. UDOLF: Jury trial and the Court imposed an
4 18-month sentence in that case.

5 The Eiding case was a district court case in the state
6 of Georgia, involved shipping F-14 fighter jet parts to Iran,
7 the Court there imposed a 30-month sentence. And in that case
8 the defendant did plead guilty.

9 THE COURT: And how did the Court calculate the
10 guidelines?

11 MR. UDOLF: Sorry?

12 THE COURT: How did the Court calculate the guidelines,
13 because that is the difficulty?

14 MR. UDOLF: Well, that is not indicated in the document
15 I have. I only have the J&C for some reason. I have all of
16 other decisions in the other cases, but for some reason I only
17 have that one.

18 In the United States versus Banki, the fourth case we
19 have, which is a 2011 Second Circuit opinion, that was an IEEPA
20 violation regarding transfer of money to and from Iran. The
21 guideline range was 63 to 78 months, and a 30 month sentence
22 was imposed.

23 You see, let me see if I can find --

24 THE COURT: So bottom line of your objection is that I
25 should have departed downward more because --

1 MR. UDOLF: That's correct.

2 THE COURT: Because in contrast to these cases, which
3 were violations of IEEPA, with a known terrorist --

4 MR. UDOLF: Correct.

5 THE COURT: -- or a country on the terrorist watch
6 list.

7 MR. UDOLF: Right. And, by the way, the Banki case was
8 a jury trial, also, in which a 30 month sentence was imposed.

9 United States versus Francois, that was an Eleventh
10 Circuit case, 2016, that was a firearms trafficking case,
11 involving sending guns to Haiti and the Court imposed a -- a --
12 I think it was a 36 months sentence.

13 THE COURT: How many guns to Haiti?

14 MR. UDOLF: In this particular -- there were several,
15 he had been involved in this conduct for some time, but
16 apparently, this particular shipment involved four
17 semiautomatic pistols.

18 THE COURT: So your additional argument is that that
19 case, although not to a country on the terrorism list, at least
20 had to do with the sale of this importation or exporting of
21 weapons?

22 MR. UDOLF: Yes.

23 THE COURT: And it was a longstanding one.

24 MR. UDOLF: Correct.

25 THE COURT: And is there discussion of how the Court

1 calculated the guidelines?

2 MR. UDOLF: I didn't see that.

3 THE COURT: I didn't see it, either.

4 MR. UDOLF: Well, they did -- they did utilize 2M5.2
5 though.

6 THE COURT: Give me the cite of that again.

7 MR. UDOLF: Sorry?

8 THE COURT: Give me -- would you give me the cite of
9 that?

10 MR. UDOLF: Sure. United States versus Francois.

11 THE COURT: Just give me the case cite.

12 MR. UDOLF: I have 661 Fed.Appx. 587.

13 THE COURT: Do you have it?

14 THE COURTROOM DEPUTY: I will print it for you.

15 MR. UDOLF: Shall I continue, Judge?

16 THE COURT: Yes.

17 MR. UDOLF: The next case we have is United States
18 versus Reyes, smuggling firearms case outside the United
19 States. The court imposed a 41-month sentence.

20 THE COURT: And did it say how the court arrived at
21 that sentence?

22 MR. UDOLF: Basically, the Court applied the guideline
23 in 2M5.2(a)(1). At the time of this offense, apparently, it
24 was a base level offense of 22.

25 THE COURT: It has since been enhanced?

1 MR. UDOLF: I suppose it has been.

2 THE COURT: What was the year of that?

3 MR. UDOLF: This was 2001.

4 THE COURT: Oh, probably before 9/11.

5 MR. UDOLF: I tried to look that up and find out if
6 maybe counsel knows, if the section has been enhanced. But I
7 originally thought that is where your Honor got the Level 22,
8 that it announced earlier yesterday. Because I had never seen
9 it anywhere else.

10 THE COURT: In the Francois case, the defendant pled
11 guilty.

12 MR. UDOLF: Sorry.

13 THE COURT: In the Francois case, the defendant pled
14 guilty.

15 MR. UDOLF: I think he did. This opinion was written
16 very strangely. It says -- all it says is agents arrested Mr.
17 Francois the next day, he admitted packing the cargo, denied
18 knowing the hidden guns, later admitted his involvement,
19 accepted his responsibility and expressed regret. I assume
20 that means pled guilty but it doesn't say that.

21 THE COURT: Well, it says, "Background: The defendant
22 pled guilty, and the Court applied the 25 -- 2M5.2. They did
23 not consider whether or not a downward departure would have
24 been appropriate under Application Note No. 1," which is the
25 application -- is not the application note I am using, I am

1 using Application Note 2, and then it goes on to say that the
2 record suggests that he never asked for a departure under
3 application number -- No. 1. He requested a downward variance
4 through an analogy to 2K2.1, which the District Court granted,
5 which is how the Court got from the guideline range with the
6 plea of guilty, and the reduction for the acceptance of
7 responsibility, and I presume there was no obstruction of
8 justice or role issues. And then -- and then the Court --

9 MR. UDOLF: There doesn't appear to be, Judge.

10 THE COURT: And then the Court granted his motion for
11 variance downward to the 30 months.

12 MR. UDOLF: Yes, Judge.

13 THE COURT: Excuse me, 36 months.

14 MR. UDOLF: Well, the Court, I don't know what it
15 reduced it by but the Court imposed 36-month sentence, yes.

16 THE COURT: But remember, right, but remember, I can't
17 pick a number out of the air. I have to -- I have a --

18 MR. UDOLF: I could provide you with a number, Judge, I
19 just wanted to lay the groundwork first by showing what other
20 courts' sentences, what courts have imposed, and then from
21 there, I guess I will make my argument.

22 But I think an appropriate sentence would be based on
23 comparison to these cases.

24 THE COURT: Okay.

25 MR. THAKUR: Your Honor, in answer to your question, we

1 figured out there was an amendment in November 2001 to 2M5.2
2 increased from 22 to 26.

3 THE COURT: And at that I presume that that was as a
4 result of 9/11.

5 MR. THAKUR: I assume, as well.

6 THE COURT: Okay.

7 MR. UDOLF: Then the Reyes case, that involved, again,
8 smuggling firearms outside the United States. In this
9 particular case --

10 THE COURT: You need to look at the following things:
11 One, did the defendant plead guilty, and then the second issue
12 is, was there a departure down from -- did they apply the
13 2M5.2.

14 MR. UDOLF: The defendant went to trial on the Reyes
15 case.

16 THE COURT: Okay. Now, in the sentencing, did the
17 Court apply 2M5.2?

18 Give me the cite to Reyes and my law clerk can look it
19 up. Did you find it?

20 MR. UDOLF: Yes, I found it, and the Court did apply
21 2M5.2.

22 THE COURT: Did the Court depart downward in arriving
23 at the base offense level or did it stick with the 26 and then
24 applying the 3553(a) factors, varied downward, or was there a
25 minor role or anything like that that could impact on how you

1 calculate the guidelines? The bottom line --

2 MR. UDOLF: Judge, it doesn't reference here whether
3 there were other variances made or departures made, it appears
4 he was sentenced on a Level 22.

5 THE COURT: So that must have also been prior to -- is
6 this the Reyes case --

7 MR. UDOLF: Yes, this is also the case where the level
8 was 22.

9 THE COURT: Okay.

10 MR. UDOLF: Vasquez case, next cited in our papers is
11 an Eleventh Circuit case. The defendant pled guilty, one count
12 of smuggling firearms outside the United States. That involved
13 six semi-automatic pistols with ammunition inside of a
14 55-gallon drum within a cargo container. These were shipped to
15 the Dominican Republic. The Court imposed a sentence of
16 46 months in that case, and applied sentencing guideline
17 2M5.2(a)(1). The probation department credited Mr. Vasquez a
18 three-level reduction for acceptance, resulting in a Level 23,
19 and his calculated guideline range was between 46 and
20 57 months. The court imposed a sentence in that case of
21 46 months. So there was no variance in that case.

22 THE COURT: Okay. And was it the top of the
23 guidelines?

24 MR. UDOLF: Sorry?

25 THE COURT: Was it the top of the guidelines? Did the

1 Judge sentence him at the top of the guidelines?

2 MR. UDOLF: Yes, it was at the bottom of the
3 guidelines.

4 THE COURT: 46 is the bottom of the guidelines?

5 MR. UDOLF: That was a Level 23.

6 THE COURT: Yes. Okay.

7 MR. UDOLF: The next case we have is -- I don't seem to
8 have the Perez case. I have the -- Amirnazmi case, that is
9 where the defendant was charged with conspiring to violate the
10 International Emergency Economic Powers Act by selling
11 industrial software to a state-owned Iranian company along with
12 direct dealings with the president of Iran. The Court, in that
13 case, imposed a 48-month sentence. There was a trial in that
14 case.

15 I apologize, I hadn't read the entire case, it's around
16 40 pages long.

17 THE COURT: Give me the cite to the one that you --

18 MR. UDOLF: It is 645 F.3d 564.

19 Judge, I don't see the computation. I don't know if
20 that was the basis for the appeal. I just know that was the
21 sentence that was imposed.

22 THE COURT: Then if there is no discussion of a
23 sentence that was imposed, then it is not quite helpful to me.

24 MR. UDOLF: I will withdraw that.

25 The next is a case of United States versus Nhu Nguyen.

1 Mr. Nguyen was found guilty by a jury of violating the export
2 control laws by providing militarily useful technology to the
3 People's Republic of China without the required license. He
4 was sentenced to 60 months in prison.

5 THE COURT: Remind me, what did you just say they sold?
6 Technology, okay.

7 MR. UDOLF: I'm sorry?

8 THE COURT: Technology, and received a 60-month.

9 MR. UDOLF: Right, and it was the People's Republic of
10 China. And apparently he did not --

11 THE COURT: Did they use the 2M5.2?

12 MR. UDOLF: It does not say, Judge. So I understand
13 you would not consider that helpful to you. I would just point
14 it out as an example of the kind of sentences imposed, the
15 60-month sentence.

16 The other two cases involve shipment of goods to China,
17 the United States versus Peqwe, a violation of export control
18 laws by exporting electronic warfare components to China, the
19 Court imposed there a 60-month sentence.

20 You know what, Judge, the other one I have is the Hanna
21 case, which I believe the Government may have also cited this
22 case, but that was a case that involved violation of the
23 International Emergency Economic Powers Act by shipping
24 telecommunication and navigation equipment to Iraq with the
25 national security enhancement pursuant to USSG 2S1.1, which is

1 not probably analogous so this situation. But, the Court
2 imposed a sentence of 72 months in that case. So --

3 THE COURT: That's within the range of what I have
4 calculated here, isn't it?

5 MR. UDOLF: Sorry?

6 THE COURT: The last three that you have discussed are
7 all sentences within the range of -- of the base -- of the
8 total offense level that I have calculated that for Mr. Sotis
9 it is a Level 25, and that provides a guideline range of 57 to
10 71 months, and those last three cases are all within that
11 range.

12 MR. UDOLF: Right, and all those case, those cases
13 dealt with shipments to China or Iraq. Clearly, there are
14 several cases that have -- where the courts have meted out
15 extremely milder sentences than would be contemplated by the
16 guidelines that was proposed, and we would ask the Court to
17 consider a variance of -- to bring Mr. Sotis down to at least a
18 Level 18, which would be the range of 27 to 33 months.

19 THE COURT: And what is the basis for that, simply in
20 disparity of sentencing argument?

21 MR. UDOLF: Right, the basis of it is that the
22 guidelines overstate the egregiousness of the conduct, and the
23 seriousness of the conduct, and is more balanced and would
24 produce -- more likely to produce a sentence that is just, but
25 not greater than necessary, and based on facts in this case.

1 THE COURT: Okay. Any response to that, Mr. Thakur?

2 MR. THAKUR: Your Honor, I think we have noted in our
3 responses that were controlled -- for national security
4 reasons, just a few months before these items were shipped, the
5 President of the United States had a specific order saying that
6 there was a national security emergency with respect to Libya.
7 The defendants understood this, they were specifically warned
8 multiple, in multiple ways that they specifically knew there
9 was a terrorism concern in this shipment. Mr. Sotis himself
10 acknowledged even when he was confronted later on after it
11 shipped that you knew that this could be used for dangerous
12 purposes.

13 The testimony by the defense's witness is consistent
14 with what we filed by James Marsh from the Defense Technologies
15 Security Administration, talking about how this could be used
16 in a military way.

17 That distinguishes a number of the cases that Mr. Moss
18 had cited and Mr. Sotis had cited -- Mr. Udolf, where there was
19 no dual use.

20 That first case, Sevilla from the Northern District of
21 Illinois, the Court specifically noted that it was not dual
22 use, it had no military purpose. So, I think you have to take
23 into account, not only the Government's testimony, the reasons
24 for the control, that was it national security and
25 antiterrorism reasons for control, Michael Tu, the Government

1 expert, testified as to that, but also their knowledge of it,
2 that unlike most of these other cases, I don't know a single
3 other case where the defendants were warned in this fashion
4 that there was terrorism concerns and they proceeded with the
5 shipment, despite multiple people telling them, "Do not do
6 this."

7 So, none of these cases that the defense cites are
8 analogous in that respect to the egregiousness and willfulness
9 exhibit ed in this case.

10 MR. UDOLF: Judge, if I might respond, there was one
11 person who told them about that, that was Mr. Wagner. There --
12 basically --

13 THE COURT: Well, you admit that they --

14 MR. UDOLF: It was flagged as an issue by the shipper.

15 THE COURT: But, Mr. -- the record shows that the
16 parties were aware of the presidential notice, it was later
17 decided that that really wasn't applicable, but it did -- it
18 caused enough that Mr. Sotis did not want to have a problem
19 with violating the law, and that's why he sort of put it in the
20 lap of the people --

21 MR. UDOLF: I would point out, though, that would be a
22 recognition of the fact that he didn't have criminal intent.

23 Listen, we don't want to do anything that is going to
24 violate the law, period. And, you know, the fact that there
25 is --

1 THE COURT: That's --

2 MR. UDOLF: I probably should make an argument.

3 THE COURT: Let's move on, because I am going to say
4 that I appreciate very much your argument on the disparity, but
5 I do not feel that I should depart downward any further than I
6 already have. In fact, I think this discussion has helped me
7 feel more comfortable with the departure that I have come up
8 with thus far.

9 MR. UDOLF: I certainly didn't intend that, Judge, but
10 I will move on. If your Honor would allow, I will call my
11 first witness.

12 THE COURT: Yes, you may.

13 MR. UDOLF: Mr. Chapman, would you come forward,
14 please.

15 THE COURT: How many witnesses are you going to have?

16 MR. UDOLF: Two. Two.

17 THE COURT: Two? Okay.

18 THE COURTROOM DEPUTY: Do you want him to have a seat
19 in the witness stand?

20 THE COURT: It is probably easier and Mr. Chapman is
21 familiar with this seat, we can have him, or are you just
22 simply going to be -- is he going to be testifying or is he
23 just simply --

24 MR. UDOLF: No, your Honor, he's just going to make a
25 statement.

1 THE COURT: Okay. Then he can stand right there. And
2 you can take off the mask so that the court reporter can hear
3 you better.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Chapman, this is probably not the
6 education you wanted in how the sentencing guidelines are
7 applied. Usually, judges are able to do sentence in half an
8 hour, on occasion, there may be two hours, if special requests
9 with an unusual situation, but I thank you for your patience in
10 coming back.

11 THE WITNESS: Thank you for the opportunity to speak,
12 your Honor.

13 MR. UDOLF: State your name.

14 THE WITNESS: My name is Chauncey Brewster Chapman III.

15 MR. UDOLF: Spell your last name.

16 THE WITNESS: C-H-A-P, as in Paul, M-A-N.

17 MR. UDOLF: Go ahead.

18 THE WITNESS: I met Peter initially in the mid-2000s.

19 Peter stood out because he had raised the first
20 rebreather and only retail dive center and we had been working
21 on rebreathers since 1994. And year to year I knew more about
22 Peter's success from brief encounters at trade shows and his
23 competency, his acumen and his following grew every year.

24 In 2009, we brought -- the company I worked for brought
25 Peter to California to -- for a seminar and a conference

1 regarding the marketing of rebreathers, because obviously he
2 was the successful guy doing it.

3 In 2010 we held, I and another instructor, held
4 training sessions for our new rebreather. In other words, we
5 couldn't just release it to the market, we had to build a
6 cadre of instructors and instructor trainers to ensure people
7 who were using the unit were competent, qualified and safe.

8 THE COURT: Which company were you working for?

9 THE WITNESS: I worked for American Underwater Products
10 in San Leandro, California.

11 THE COURT: Okay.

12 THE WITNESS: Peter was one of the candidates for
13 instructor trainer, and Peter pulled me aside and apologized
14 for a comment he was going to make when he told me that we had
15 designed a very simple rebreather and I appreciated that
16 comment because one of my criteria in design is safety and
17 simplicity, complexity leads to failure. And we, I think, were
18 very successful in building a very, very good unit.

19 In 2010, I attended Innerspace, which was an industry
20 rebreather event, Peter was there, he had a group of people who
21 were going through training, and we continued to attend
22 Innerspace year after year.

23 In 2011, I went, my wife came with me, she was diving
24 with rebreather also by this time, and we took a class from
25 Peter where we learned how to safely and simply plan dives well

1 beyond the range of recreational diving, dives to 200 feet,
2 instead of becoming taboo, became the regular. We have done
3 tons of them based on the training that Peter gave us.

4 In '21, Claudia also was there, my wife met Claudia at
5 that time, I met Claudia at that time. In 2015 --

6 MR. UDOLF: Claudia is Mrs. Sotis.

7 THE WITNESS: Mrs. Sotis. Mrs. Sotis at the time, and
8 in subsequent years we would dive with Peter and dive with
9 Claudia at Innerspace.

10 In 2015 we moved to --

11 THE COURT: Innerspace is the --

12 THE WITNESS: Innerspace is the industry event in Grand
13 Cayman.

14 THE COURT: And about how many people come to that?

15 THE WITNESS: Oh, when it was small, 20; when it got
16 big, 50. It became a real magnet. And what was --I don't know
17 if you have ever been a cat show, but what was kind of
18 interesting was that --

19 THE COURT: Cats, cat like in animal cats.

20 THE WITNESS: Kitty cats. Kitty cats, yes. Where you
21 have 2,000 kitty cats and they are all behaving themselves.

22 At the Innerspace events, my competitors would show up.
23 Other manufacturers, other designers show up and where, in the
24 field they would not say nice things about each other, at the
25 show, everybody was very well behaved, and it was an open book.

1 It was a great time to talk to somebody about what they were
2 doing, where their training was taking, what we felt they
3 needed to do to improve rebreather safety. There was lots and
4 lots of seminar given. It a real building event for rebreather
5 safety and rebreather adaptation in the diving community.

6 In 2015, we escaped California and moved to Florida.
7 And once we got here, Peter's dive shop was in the next town,
8 and that became our support facility for our rebreather diving
9 out of Fort Lauderdale, out of --

10 THE COURT: Did you retire or --

11 THE WITNESS: I tried to. I left my previous company
12 because, primarily because of California. And it was -- the
13 company was having troubles, I -- on my way, literally out of
14 the door on my way home, I got a call from a competitor asking
15 if I could help them with some of things I would do for my
16 company, primarily dealing with European regulations and
17 restraints of trade, and how to comply with their requirements,
18 quality systems with some design issues, and I continued to act
19 as a consultant to the industry, until today. I have got a
20 couple of clients that I am working on right now.

21 THE COURT: So, now you are functioning as the expert
22 as opposed to --

23 THE WITNESS: I am functioning as an expert.

24 THE COURT: -- as opposed to working 9:00 to 5:00.

25 THE WITNESS: Subject matter expert.

1 So, after, it was -- now with Claudia and Peter and I
2 in basically the same town, we were able to get together
3 socially, we did some local diving, we had wine and food on
4 every couple of weeks. We went with Peter and his groups to
5 Red Sea, which was an amazing time, down to Cayman Brac and
6 down to Grand Cayman on occasions.

7 Over the years, I found Peter to be smart, honorable
8 dependable and an honest person. While very accomplished, he
9 presented with humility which is uncommon in diving. I am used
10 to people bending my ear telling me how important they are and
11 how much they have accomplished, and Peter just did it and
12 stood up and helped other people be successful.

13 He has a strong personality. Peter is a strong horse.
14 And -- he raised a business his way. And it is appropriate
15 that in his business, he would want people to do the job his
16 way. It is his business, his success. And to that point, I
17 implemented -- is your Honor familiar with ISO-9000?

18 THE COURT: No.

19 THE WITNESS: It is an international management
20 standard that is held in very high regard outside of the United
21 States, but not so much in the United States.

22 Peter wanted to have that shine put on his company, and
23 I had implemented, ISO-9000 in American Underwater Products and
24 maintained in our facilities in the U.S. and Asia for 20-odd
25 years, and it would adapt very well over to a dive center

1 where you would be able to organize your business processes,
2 document your business processes, and use a do inspect, plan,
3 do cycle to foster continuous improvement and improved customer
4 satisfaction. And Mr. Robotka was to be my personal contact,
5 and it kind of -- the project fell flat, based on his lack of
6 participation.

7 Over the time, Peter told me about his incarceration,
8 and if I could just kind of summarize what he said, in two
9 words, it is scared straight. He didn't ever want to go back.
10 He committed himself to straightening up, flying right,
11 contributing to his community, and luckily, the community chose
12 to contribute to his diving. Peter had developed some very,
13 very, very important ways to train people how to dive
14 rebreathers safely and ensured that information was widely
15 communicated.

16 So the question arises, how did an individual focused
17 on staying out of jail who had positively impacted so many
18 people end up here being sentence for violating U.S. commerce
19 regulations and I have got a couple of points.

20 In 2010, I was tasked with working with state congress
21 to find out what restrictions were going to be applied to our
22 rebreathers in the American Underwater Products, and I found
23 that it was just confusing. It took months, the people I
24 talked to, at state and commerce, were very helpful about but
25 it was very difficult to cycle through the process of getting

1 adjudication, to make -- to -- for the state department to
2 agree that the recreational rebreather was not -- did not
3 belong on the industry's list and to get handed over to
4 commerce.

5 THE COURT: Apparently, it was handed over to commerce.

6 THE WITNESS: Yes, our case was handed over to
7 commerce, and as a result of Peter's case, I was called by two
8 of the U.S. based U.S. manufacturers, KISS Rebreathers and Dive
9 Rite asking me what's going on, how do we avoid this, what do
10 we need to do to not have this happen to us? And I was able to
11 point them in the right direction, I pointed them to the state
12 and they both ended up with commerce and reported back to me
13 that it was controlled by commerce and state wasn't interested
14 in rebreathers anymore.

15 So, just a little bit history. In 1970, the first
16 nonmilitary rebreathers were produced, and 50 years later,
17 manufacturing has evolved and proliferated. Today rebreathers
18 are manufactured in most first world countries. There are, I
19 don't know, six brands on the market made in England, Croatia,
20 Poland, France, Germany, Spain, Italy, Canada. They are
21 available worldwide for purchase, everywhere.

22 The cost has come down and the quality of the builds
23 has improved due to manufacturing technologies, et cetera.
24 While not common as open circuit systems, they are a large and
25 growing user base.

1 The popularity and availability of rebreathers may have
2 created an illusion that rebreathers were just another market
3 item like a tennis racket.

4 As Peter was charged with violating commerce
5 regulations, I was contacted by the two U.S. manufacturers, and
6 beyond restrictions there is really available information, the
7 information isn't readily available.

8 If you -- unless you go after it, you don't know that
9 rebreathers are considered something that you shouldn't be
10 shipping without permission.

11 THE COURT: And once you go after it, and you find that
12 out, what is that incumbent upon you to do?

13 THE WITNESS: Well, but unless you know that, like I
14 said, they are common, it is a ubiquitous commodity product, at
15 this point, there is very little difference between one
16 rebreather and the other, although there are differences.

17 THE COURT: But my comment is directed to your comment
18 that it is difficult to find out that they are -- have
19 restrictions, but once you find out they have restrictions,
20 what are you required to do?

21 THE WITNESS: There is -- well, bottom line for us back
22 in 2010, you should call the Commerce Department and talk to
23 them, because there was a changing list of countries, and a
24 register of, I think three or five areas of people that got
25 classified in arms proliferation, nuclear, I don't remember

1 what the other ones were, and based on what that list said, you
2 would either be shipping to a country that merely required a
3 document, or, you would be shipping to go a country that
4 required special permit from commerce.

5 THE COURT: Okay. But so you knew you had to go get
6 the permit?

7 THE WITNESS: Yes. First, you had to know you needed
8 it to do that. And --

9 THE COURT: But, in this case, the evidence showed that
10 they knew that they --

11 THE WITNESS: Commerce, we had a situation with the
12 sale in Venezuela where commerce, Homeland Security and the FBI
13 came to our conference to inform us they would prefer we did
14 not follow through with that shipment, and we -- they said that
15 with emphasis and we complied.

16 THE COURT: Okay, unfortunately, that did not happen
17 here.

18 THE WITNESS: No, and one of the things that I have not
19 seen here, and I did not see in my previous contact was, and I
20 can't find, it doesn't -- not to be flip, I can't find the
21 punishment for noncompliance. I would think that if Mr. Sotis
22 had been informed of the consequences of noncompliance, he
23 would have reversed the sale immediately.

24 But, Mr. Sotis had people saying, it might not be a
25 good idea to sell them, we might like you to do that, but --

1 THE COURT: But you followed through to find out the
2 identifications and the ramifications and, unfortunately --

3 THE WITNESS: I had three people in my conference room
4 with bulletproof vests, badges and guns, they spoke very
5 loudly, but they spoke softly.

6 THE COURT: But --

7 THE WITNESS: I don't know what Peter's contact were.

8 THE COURT: But it is unfortunate that you were not in
9 the room with him at the time, it might have -- things might
10 have happened differently.

11 THE WITNESS: They might have.

12 THE COURT: All right.

13 THE WITNESS: Also, I believe that Peter would never
14 knowingly do anything to compromise the security of the United
15 States. Your Honor, I want to ask you to have mercy on Peter.
16 I know that he is deeply sorry for the results of his actions,
17 and he is ashamed of what he has -- has done.

18 Thank you very much for letting me speak.

19 THE COURT: Thank you very much, Mr. Chapman.

20 Okay.

21 MR. UDOLF: Claudia --

22 THE COURT: Are we changing the little cover?

23 We are -- as part of our COVID protocol, we try to keep
24 people safe.

25 THE WITNESS: I appreciate that.

1 THE COURT: The good news is --

2 THE WITNESS: I am vaccinated, your Honor.

3 THE COURT: Pardon?

4 THE WITNESS: I am vaccinated. May I take off my mask?

5 THE COURT: You may do at that as it helps the court
6 reporter hear you.

7 MR. UDOLF: State your name, please.

8 THE WITNESS: My name is Claudia Sotis. I am the wife
9 of Mr. Peter Sotis.

10 At first, your Honor, I would like to thank you for
11 allowing me to address you today.

12 This has been quite a journey, it has been very
13 difficult for, as you acknowledged earlier, for also the family
14 members and friends, but I can guarantee you it has been
15 extremely difficult for Peter.

16 And I also agreed with something else that you said, I
17 personally find my husband extremely charming and charismatic.
18 So, I do, but there are other things that were said during
19 trial, yesterday and today, that shed a very negative light on
20 him and I would like to provide your Honor with a different
21 picture of Mr. Peter Sotis.

22 I spend quite a bit of time at Add Helium, even though
23 I am a physician, but I did that because I submerged myself in
24 the knowledge of dive physiology and dive pathophysiology. And
25 I was training through seminars, some of Peter's clients, and

1 the instructors and staff on how to more safely dive with the
2 consideration and knowledge, what our bodies actually go
3 through when we submerge ourself and then when we come back up.

4 As I said, I gave seminars to his clients. I wrote
5 newsletters for the company. We were diving a lot together.
6 Not just Peter and I, but part of his staff.

7 And, I didn't consider the employees of Add Helium
8 Peter's employees. They were more like our friends. We would
9 do things outside together, we would spend time together. If
10 anyone needed help, something as mundane as help painting the
11 house, we will pitch in and we will come and paint the house or
12 move you out, something like that. So we were kind of a close
13 bunch of people hanging out.

14 Never during that time did I observe Peter being angry,
15 belligerent, coercive, controlling, condescending or
16 manipulative. Peter was kind. When things -- people make
17 mistakes. When one of his employees screwed up, pardon the
18 language, they were reprimanded in front of everybody. It was
19 done, okay, so this happened, let's focus on the mistake that
20 was made and what can we learn from that.

21 Peter always had an open door policy. Anybody with any
22 issues or concern could walk into Peter's office and nobody
23 came out of that office crying because he yelled at them or did
24 something like that.

25 Peter, however, did have certain -- he was receptive to

1 suggestions, but if the suggestions didn't -- if he deemed the
2 suggestion not good ones, he wouldn't follow them, and it was
3 like, no, I'm sorry, but you need to do it my way. And that is
4 what a boss and a company owner is expected to do, in my
5 opinion.

6 So, some people -- a lot of people actually who started
7 working for Peter came from other dive shops or dive boats
8 because the reputation in the dive business was if you worked
9 for Add Helium, it is a great place to work, you are
10 appreciated, you get paid well, you are also being mentored,
11 and you have an opportunity to make something out of yourself.
12 The mentoring was done by Peter. Peter was mentored after he
13 came out of prison 30 years ago.

14 And, he felt that he needed to pay back, he wanted to
15 be the one who can lift others up just like he had experienced
16 mentors who lifted him up. And that was what he wanted to do.
17 And that is what he did.

18 So, he promoted and supported the staff and the growth
19 of those individuals.

20 I am sorry, your Honor, I had all these notes and now
21 it is like -- I would like to speak a little bit about what it
22 is like to be married to Peter.

23 Peter is a man of strong moral character. I am a
24 former military officer. I served my country, I had one tour
25 in Iraq, I still serve my country, your Honor. I am proud

1 being able to provide care for our veterans at the West Palm
2 Beach VA Hospital.

3 Peter was never able to serve because he was
4 incarcerated, but he tried to give back to our country in other
5 ways. And, I can guarantee you this, your Honor, I would have
6 never married this man if I thought that he would willfully aid
7 terrorists.

8 I am strong and an accomplished woman. That is how I
9 see myself. Over the years, I have attracted men who were
10 attracted to strong and attractive and accomplished women, but
11 then I found that they tried to put me down. They were
12 threatened by me, in other ways. Peter never did that. Peter
13 is the one who said, "She is my better half." And that's how
14 he introduced me to others, and that's how he made me feel. We
15 were a team together, your Honor. He always said, "Oh, you are
16 so much more smarter than I am." He didn't try to put me down
17 because of my intellect. He tried to support it. He tried to
18 find ways where I could even express it. That's why he wanted
19 me to write all these articles and educate people at
20 Add Helium.

21 Peter is someone --

22 THE COURT: Do you need some water?

23 THE WITNESS: Peter is somebody I can rely on. We were
24 a dive team. We were exploring caves at great depths that
25 nobody has ever been before, that is quite risky. I know he

1 would never abandon me in an emergency situation, number one,
2 but what I was afraid of is that if I get, say, trapped under a
3 boulder, and he couldn't get me out, that instead of saving
4 himself, he would stay with me. He would have died. He would
5 have never abandon me. He would rather be dead, too. So --

6 He was very committed. He was not a coward. He stood
7 by me. And he stands by others, too. Peter is a proud man.

8 He is a strong personality. I agree. He totally is.

9 But, he is a kind person, a person who wants to help,
10 who is generous, who came out of prison and decided he wants to
11 make something out of his life. He is -- he is devastated over
12 what happened. He lost everything. He lost his company, our
13 life savings, his reputation, he lost friends. It has been
14 heart-wrenching for me to watch what he has gone through. The
15 man has suffered for the last four or five years, tremendously.

16 When I said he is a proud man what I am also mean to
17 point out is that after he lost everything and he has become
18 more and more dependent on me, it really hurt him. He felt --
19 he is the one who extends, he is the one that wants to be the
20 giver and not the taker mand he had no choice but to take and
21 accept my offerings, if you will, and I keep telling him,
22 "Honey, we are a couple, if one of us falls, the other one is
23 there to pick up. And we are in this together, you have fallen
24 and I help pick you up. It is okay." But I know it hurts him.
25 It is extremely embarrassing to him.

1 It is humiliating to him.

2 Please don't throw my husband in jail.

3 Please consider that both him and Emilie have suffered
4 already a lot.

5 Please give Peter an opportunity to rebuild himself
6 again, and not -- he can't rebuild when he is in jail. Neither
7 of them can.

8 I am begging -- I am begging you for your mercy.

9 THE COURT: Dr. Sotis, what do I do with the man that
10 you obviously adore and love?

11 THE WITNESS: I'm sorry, ma'am, your Honor?

12 THE COURT: What do I do on behalf of the community in
13 --there were choices made and there are consequences when one
14 makes choices in life, as you well know as a doctor. And, the
15 evidence, in this case -- you sat through part of the trial, or
16 most of the trial.

17 THE WITNESS: Yes, ma'am. Yes, your Honor.

18 THE COURT: And you remember the testimony of the
19 couple from New Jersey. The impact that all of this has had on
20 them because Peter didn't want the problem and so he just
21 dumped it on them without educating them.

22 And then that same man that you love and adore and I
23 can -- he is a very lucky man, he is extraordinarily lucky to
24 have for you his wife, and I know he realizes that. But then
25 he, in order to save himself, is willing to let Ms. Voissem

1 take the fall.

2 That -- that is inconsistent with the man that you have
3 just described for me. And that is the difficulty that I have
4 in fashioning this sentence that is one that ultimately
5 protects the public. You see an extraordinarily wonderful
6 human being that you are blessed to be a partner of.

7 But, sometimes he is no different than any of us. We
8 make choices that negatively impact other people. And, in
9 tough situations, sometimes we show our true character.

10 THE WITNESS: If I may say, respond to one thing, Peter
11 would have never done this if he were truly understanding the
12 consequences, and he is devastated that Emilie is sitting right
13 there, too. Emilie, she is our friend, and that's not what you
14 want happening to a friend. I know that he did not consider or
15 understand the consequences of his decision.

16 So, going towards a situation, whether because you
17 don't have the information or because you are arrogant, because
18 you are in denial, you don't see what is going to happen,
19 hindsight is 20/20. They did not understand what this will
20 result into.

21 THE COURT: And they didn't make an effort to find out,
22 and they just dumped it into the Zaghabs' lap, knowing that
23 there were red flags.

24 THE WITNESS: But the Zaghabs also knew there were red
25 flags, your Honor, the Zaghabs were told there were red flags

1 and the Zaghab's are the ones who also ignored it, yet the
2 Zaghab's were not indicted.

3 I know I shouldn't be argumentative, I am so sorry, I
4 don't -- I really appreciate your -- your.

5 THE COURT: Unfortunately, the Zaghab's are not here.

6 THE WITNESS: Yes, your Honor, thank you for allowing
7 me to address you.

8 THE COURT: I appreciate that very much. Thank you.

9 MR. UDOLF: Judge, I don't know if you want to hear
10 from me first or Mr. Sotis, whatever your pleasure is.

11 THE COURT: How much time do you think because I am
12 looking at the clock. It is now ten of one. I have a -- a
13 scheduled conference at 2:00, and if I need to change that and
14 everyone needs to eat, and I want to -- of course, I want to
15 finish this today.

16 MR. UDOLF: I don't anticipate speaking more than five
17 minutes, Judge, and I don't anticipate Mr. Sotis speaking more
18 than five minutes.

19 THE COURT: Okay. Then what we will do is we will do
20 that, and then let's break for lunch, I have learned that the
21 they close the restaurant down here, so if you didn't bring
22 your lunch, if I don't get you out and downstairs by one
23 o'clock, you won't get fed.

24 MR. UDOLF: I am used to not eating lunch when I did am
25 here.

1 THE COURT: I would like to thank Dr. Sotis for coming
2 and speaking.

3 MR. UDOLF: I think -- I think I am going to ask
4 Mr. Sotis to speak first, before I speak.

5 THE COURT: Okay. Is that the same cover?

6 THE CLERK: I changed it.

7 THE COURT: Thank you. Although they are a family unit
8 so I don't think it matters.

9 We need to change it when Mr. --

10 MR. UDOLF: For the record, this is Peter Sotis for the
11 court reporter.

12 THE COURT: Okay. Yes, Mr. Sotis?

13 DEFENDANT SOTIS: Good afternoon, your Honor.

14 Your Honor, you don't know me, and you have not heard
15 from me until today. And I hope you will realize that imposing
16 sentence the decisions that I made in 2016 brought me to this
17 place, does not represent who I am.

18 I am grateful to all my friends and family who believed
19 in me and supported me throughout this entire ordeal, and it
20 has been quite an ordeal. I am really sorry if I let them
21 down.

22 I have spent the last 30 years trying to do something
23 constructive. It was my intention to build something creative,
24 bringing a source of adventure and joy to many people, myself
25 included, I took great pride in sharing my passion and

1 experience with like-minded people.

2 I am especially happy that I was able to employ so many
3 good people who shared my passion for this sport of rebreather
4 diving. Whatever I may have done to result in being before
5 your Honor today, it was never my intention to put the security
6 of my country or to compromise the foreign policy interests of
7 the United States. Never.

8 While I believed that I did not deserve the punishment
9 being sought by the Government, I therefore chose to go to
10 trial. I now recognize that my personal choice to allow the
11 rebreathers to be picked up by the buyer for shipment to Libya
12 has put me in the position I find myself today.

13 As a result of that choice, I have lost my reputation,
14 the ability to pursue the profession, sport and business that I
15 spent years building.

16 For this, I am filled with regret.

17 But, it was not until --

18 THE COURT: Do you need some water, Mr. Sotis?

19 THE WITNESS: I am okay. It was not until I heard -- I
20 read Emilie Voissem's letter to the Court that I truly came to
21 appreciate the personal harm I had caused to another as a
22 result of what I perceived to be a relatively insignificant
23 event at the time.

24 Throughout the years of the investigation, since the
25 indictment, I felt tremendous guilt for having caused Emilie to

1 be included in this as a defendant in the case. I truly
2 regarded her as family. I loved and valued her friendship.

3 We have not been able to talk since we were indicted in
4 October of 2019. Seeing her in court during the trial every
5 day filled me with regret, for having made a decision that
6 resulted in her being sitting there.

7 But, until last Friday, I did not realize just how much
8 my thoughtlessness and arrogance has cost her. For that, I am
9 especially sorry.

10 I will spend the rest of my days trying to make amends
11 for having contributed to her being named as a defendant in
12 this case.

13 Obviously, if I had to it to do over, I would not have
14 authorized the items to leave the premises, not a chance.

15 I am truly sorry that my decision has brought Emilie
16 and I before the Court today. It was never my intention to
17 commit a crime, or have anyone else do so.

18 Thank you for hearing me today.

19 THE COURT: Thank you very much, Mr. Sotis.

20 MR. UDOLF: Judge, if -- if I could address the Court
21 when we reconvene so I can just put some concise thoughts
22 together for five minutes.

23 THE COURT: Okay. Can we come back at 1:30?

24 MR. UDOLF: 1:30.

25 THE COURT: Give everyone enough time to get some

1 lunch.

2 MR. UDOLF: Probably not. But it is not necessary from
3 my point of view.

4 THE COURT: If you don't feed people, they get cranky.

5 (Whereupon, there was a recess taken from 12:55 P.M.
6 until 1:47 P.M., after which the following proceedings were
7 had:)

8 THE COURTROOM DEPUTY: All rise.

9 THE COURT: Okay. Yes, Mr. Udolf. All counsel are
10 present, both defendants are present. Please have a seat.

11 Mr. Udolf?

12 MR. UDOLF: Thank you, your Honor.

13 THE COURT: I apologize, I hope you got the word to
14 give you a little more time, that I realized when your food got
15 up you probably didn't have a chance to eat.

16 MR. UDOLF: Shall I proceed?

17 THE COURT: Yes, please.

18 MR. UDOLF: Before I begin, Judge, I want to thank the
19 Court for having indulged me. I really had not intended to
20 take up so much time. This is actually the only -- the second
21 time I have actually had to do a sentencing having lost a
22 criminal trial in federal court in my career.

23 THE COURT: That is a great track record.

24 MR. UDOLF: I am sure that is no comfort to Mr. Sotis,
25 but I thank the Court because I felt like it was incumbent upon

1 me to throw in the kitchen sink and object and preserve any
2 issues for appeal. I apologize to the people and the Court
3 that had to wait for me to finish that process.

4 THE COURT: I think the sentencing hearing reflects the
5 tenacious defense that you have undertaken on behalf of
6 Mr. Sotis's behalf. I have not had quite the same kind of
7 tenacity, except for a much more famous defendant, and that was
8 a Mr. Magudo. I don't know that you all want to be in that
9 same category. You have been around long enough to know --

10 MR. UDOLF: Yes, I remember it well.

11 One thing before I begin, Judge, one of the things that
12 you raised with some of our -- Mr. Sotis's witnesses were the
13 issue of profit over principle. I just want to point out to
14 the Court that these goods were already paid for well before
15 July of 2016. The -- whatever profit was made in that case had
16 been made. And so, I mean, much more than a crime of profit, I
17 truly and sincerely believe this was a crime of simple
18 arrogance and, as I said earlier to your Honor, and I truly
19 believe that that's what happened in this case, the defendant
20 thumbed his nose at the Department of Commerce agent. The
21 question is -- and he made that choice, and was that choice so
22 egregious to put this man in a penitentiary for multiple years.

23 THE COURT: He is not eligible for penitentiary.

24 MR. UDOLF: Penitentiary?

25 THE COURT: Right, the range we are in is -- would be a

1 -- he might even get minimum security.

2 MR. UDOLF: Well, I --

3 THE COURT: There is a difference between --

4 MR. UDOLF: I started out my life as a state
5 prosecutor, Judge, we always referred to prison as
6 penitentiary. Thank you for disabusing me of that notion.

7 I don't think it is necessary to put this man away for
8 a number of years for ignoring the instructions of law from
9 this -- that's really what this case is about. Not seriously a
10 danger to the United States or the security of the United
11 States. It was thumbing his nose at a law enforcement officer.
12 And should he be made an example of for that? The answer is,
13 clearly, yes, yes, but the punishment should fit the crime and
14 the guidelines just don't do that.

15 The truth is that, neither one of these folks,
16 Mr. Sotis or Emilie Voissem, had really any appreciation for
17 the gravity of what -- of what their consequences were,
18 vis-à-vis the criminal justice system. I didn't, and I have
19 been doing this for 43 years, Judge, and if I had known, and I
20 had really believed that Mr. Sotis was going to be looking at
21 between 10 and 13 years for this, you could rest assured I
22 would have stood on his throat to make him plead guilty in this
23 case. If I didn't have any appreciation of it, certainly, he
24 didn't. And I think that's -- that's what you have seen in
25 this case.

1 I mean, we all know that it is wrong to murder, we
2 don't need a law to tell us that it is wrong to steal. But
3 when you are disregarding a federal officer to anticipate that
4 by doing so you might be looking at multiple years in prison is
5 virtually unthinkable.

6 I just -- I have always detested the Federal Sentencing
7 Guidelines since I was a lawyer, Judge. When I first came to
8 the U.S. Attorney's Office in the mid-'80s, we didn't have
9 that. I would go before Judge Davis who I was assigned to, and
10 he would just tell me, "Udolf, just work this case out," and I
11 would work it out, and basically, we didn't have all these
12 rules, I have to jump through all these rules, and now we have
13 to go through a statute that says, "Well, you are looking at
14 26 years unless you can make an adjust for 14 years, or we
15 could use this other statute but we have to tie to all these
16 regulations. The judge -- a judge can't just look at a case
17 and look at their own moral compass and say, "Look, this is
18 where I realistically think this ought to be."

19 This man should not have to go for jail for multiple
20 years. The conduct does not justify it over the course of a
21 few days, and I would urge the Court to reconsider its ruling
22 regarding the variance, and at least consider moving -- giving
23 him a variance so he is looking at a base offense level of 14.

24 But, that said, the other thing I wanted to actually
25 bring to the Court's attention is if a lengthy prison sentence,

1 whatever kind of facility Mr. Sotis would be sent to, is the
2 current state of health of the criminal justice system.

3 As of Monday of last -- of this past week,
4 January 10th, there were 16 federal facilities in the area, in
5 the southeast region, starting with FDC Miami, all the way up
6 to FCI, Yazoo City. There were three different levels at those
7 facilities under the COVID operational levels, green, yellow
8 and red with red resulted in lock-downs, limit to no
9 visitation, limited to no programming, and this is the
10 information as of Monday morning.

11 All 16 of those facilities, FDC Miami, FSP Atlanta, FCI
12 Bennettsville, FCC Coleman, HVO Estille, Jesup, Mariana, Sally
13 McRae, FCI Miami, FPC Montgomery, FPC Pensacola, FCI Talladega,
14 FCI --

15 THE COURT: Mr. Udolf, I anticipate you're going to be
16 asking for a camp.

17 MR. UDOLF: Sorry.

18 THE COURT: Am I correct in anticipating that you are
19 going to be asking for designations to the camp in Miami?

20 MR. UDOLF: No, I am asking the Court to consider the
21 fact that a prison sentence in these COVID days are going to be
22 unusually cruel and onerous for inmates than in years past.
23 That is the only reason I bring that up.

24 THE COURT: I am quite aware of that, based on the
25 number of motions for compassionate release that we have

1 received.

2 MR. UDOLF: All right. And further, with respect to
3 punishment I would just -- I have already made this argument,
4 but I would say that a lengthy prison sentence will not promote
5 respect for the law, but as the courts have noted, can lead to
6 derision of the law.

7 As to Mr. Sotis as a person, I have known him now for
8 over two years. I have to say, honestly, I have become very
9 fond of him and his family. I sincerely believe that he is not
10 a risk to the family. I mean, this was not even in the same
11 gestalt or genre or universe of the offense that he was
12 convicted of as a young man, that is disobeying a police
13 officer or a sworn officer. Whatever -- whatever arrogance he
14 may have -- he may have had as a quality of his character, has
15 long since dissipated. I think the person you see in front of
16 you has been truly humbled, and it is very sad for -- to have
17 to watch that process over the past two years, it makes me
18 often think that, especially at moments like this, that I
19 should seek some other kind of work, maybe selling fish tackle
20 or something, but I have had a lot of sleepless nights over
21 this case, Judge.

22 I truly believe that this man does not deserve a
23 lengthy prison sentence, and that is basically all I would say
24 as to him, although I know that he would want me to urge your
25 Honor not to punish Emilie for whatever bad decisions that he

1 made.

2 He has told me in heartfelt terms that in his view,
3 whatever happened in this case was his call, not hers.

4 THE COURT: But he was willing to throw her under the
5 bus.

6 MR. UDOLF: What's that?

7 THE COURT: He was willing to throw her and Ken Wessler
8 under the bus.

9 MR. UDOLF: According to Mr. Robotka, Judge, and I am
10 not going to go there at this point, that is not productive.
11 But, Judge, I will go to my grave thinking that never happened.

12 THE COURT: Okay.

13 MR. UDOLF: And truly believing that, and in
14 conclusion, Judge I would urge you to impose a just sentence,
15 but one that is sufficient but not greater than necessary to
16 further the sentencing of provisions of 3553(a).

17 THE COURT: Okay. Thank you very much, Mr. Udolf.

18 The Government gets an opportunity to say its piece.

19 Mr. Thakur, you can sit there or you can come to the
20 podium, whichever you are most comfortable with.

21 MR. THAKUR: I will probably stand from him.

22 THE COURT: If you are going to stand from there, do me
23 a favor, since you don't have a lavalliere on --

24 MR. THAKUR: I do have a lavalliere. Can you hear me?

25 THE COURT: Not very well. Move the lavalliere up

1 close to your mouth.

2 MR. THAKUR: Is this better, your Honor.

3 THE COURT: It is better. Not perfect, but better.

4 MR. THAKUR: Okay. Your Honor, in terms of Mr. Sotis
5 understanding the consequences, I think there are a couple of
6 moments that were talked about during trial, haven't been
7 mentioned as much during sentencing that show he was fully
8 aware of what was happening.

9 August 4th was obviously the meeting with Special Agent
10 Wagner. And the context of that meeting was, as multiple
11 people testified, this was the largest order, one of the
12 largest orders, if not the largest order, that had Add Helium
13 ever had experienced to CODI group.

14 This was also, undisputed, the first time that a
15 federal agent was coming to the offices of Add Helium.
16 Mr. Sotis was aware of that. He had obviously, over email,
17 discussed with Emilie Voissem the fact that Commerce had been
18 contacted, and yet, he intentionally decided not to be there.

19 He was insulating himself from the consequences of this
20 case since the very beginning, and then hoping he wouldn't be
21 caught, but once he was caught, on August 24th, with Special
22 Agent Wagner telling him, "You have violated the law," what was
23 his first reaction? It was anger at the thought that these
24 items would be brought back from Libya, anger at the federal
25 agent for doing his job on that. That, to me, tells everything

1 you need to know about Mr. Sotis.

2 He knew what he was doing throughout and this wasn't a
3 classic one-off case where someone has a singular lapse of
4 judgment that is an otherwise unblemished record. And I am not
5 talking just his prior history, I am a talking about within
6 this case, he had multiple points of decisions on how he would
7 conduct himself, and not only concealed evidence, he threatened
8 others, he cajoled others, he essentially tried to bribe Emilie
9 Voissem through all these financial incentives so she wouldn't
10 cooperate against him over the course of several years.

11 That takes us well beyond what other cases cited by the
12 defense in this case. These items are highly specialized
13 equipment, not any dive shop on Miami Beach would offer these
14 \$10,000 apiece pieces of diving equipment that offers deep
15 concerns for the United States Government, that they were aware
16 of, in writing, where Emilie Voissem is telling Peter Sotis
17 there are terrorism concerns with this shipment, and then
18 confirmed through, not just Special Agent Wagner, but who she
19 spoke with at the Department of Commerce, even before the
20 shipments telling them that it is a volatile situation in
21 Libya, and he proceeded.

22 So, I think, if you look at the totality of the
23 circumstances, that he had the violent criminal history that
24 can count in terms of looking at his overall conduct, and his
25 conduct in this case, I think justifies a sentence at the high

1 end of guideline range that has been computed.

2 THE COURT: Okay.

3 Is there anything else for the Court to consider before
4 I announce my decision?

5 MR. UDOLF: No, your Honor.

6 MR. THAKUR: No, your Honor.

7 THE COURT: I appreciate all of the parties'
8 contributions, I appreciate all of the family members and
9 friends coming to speak.

10 As everyone has recognized, this is a difficult case,
11 and there is obviously two diametric views of the case. The
12 jury had an opportunity to listen to all of the evidence in the
13 case, and they really have no dog in this fight. Their job was
14 simply to listen to the evidence, follow the instructions on
15 the law and return a verdict. And, they found that Mr. Sotis
16 intentionally intended to violate, and knowingly, violate the
17 law.

18 I take that as a true assessment of what of the facts
19 are. I know that Mr. Sotis, Mr. Udolf and the family members,
20 they know Mr. Sotis as a husband, a long-time friend, and we
21 always tend to give our friends the benefits of the doubt.

22 We come back to what the evidence showed in the case,
23 that I and the jury had an opportunity to view.

24 Based on that, and I came in here this morning,
25 anticipating sentencing at the high end of the guidelines. I

1 do know that I have a responsibility under the 3553(a) factors
2 to impose a sentence that takes into consideration protection
3 of the public, deterrence, both individually and general
4 deterrence, as well as avoiding disparity in sentencings. The
5 defendant has done a very good job bringing all of the other
6 sentences under this guideline to my attention, and I
7 appreciate that very much. That did help me in varying
8 downward to the level that I came up with as I already said,
9 that it helped me.

10 But, the Court is concerned that I cannot overlook the
11 evidence, as on one hand I recognize that Mr. Sotis, for the
12 last 30 years, has attempted to maintain a law-abiding life.
13 Since he was, according to one witness, scared straight.

14 Unfortunately, none of us are saints. And, we each
15 have our sides that when under stress or when under difficult
16 situations, or when we feel entitled to something, we sometimes
17 make choices that better judgment would have caused caution.
18 In this case, I do think that what we see here, Mr. Sotis, and
19 I am speaking directly to you, is that you have many, many
20 gifts, sir, as recognized in your success. You have a passion
21 for an area that you have developed. You have contributed that
22 to the community. You have contributed that to the larger, not
23 only the recreational community, but for understanding better
24 how to do this. I understand that you have helped others and
25 mentored others, all of these things are positives.

1 What the evidence showed in this case, though, is with
2 all of those incredible gifts and talents and positive things
3 that you have, at the core, there has not yet been that self-
4 discipline of your own sense of, it is my way or the highway,
5 it is subtly conveyed, you have a strong personality, I gather
6 from the various testimonies. You may not even realize what
7 you are doing, I mean, or the impact that you are having.

8 But, it is that, combined with a failure of having at
9 your core a sense of compliance, of willing to defer and
10 respect the law, even when you don't agree with it.

11 And, they were beautiful words that you said, I
12 anticipated that Mr. Udolf helped review them before you shared
13 them with me this morning. But, I still did not see a true
14 contriteness of heart. It is -- and when I saw -- listened to
15 the evidence, and it was sort of thinking of Ms. Voissem's
16 daughter's comments yesterday, I think she has a great insight
17 into her mother in some aspects, and probably an insight into
18 the personalities involved and how it impacts. But the bottom
19 line is, is that the law is there to protect all of us. And,
20 it is sort of like me saying, well, I am in a car, and I am
21 rushing to the hospital to take somebody, but I am going to run
22 a red light because it is -- you know, I have made the
23 decision, and then there is an awful car accident and
24 consequences. Each one of us has a responsibility, and
25 unfortunately, our culture is such nowadays that we rush, rush,

1 rush, rush, and we do not take time to reflect and think in
2 advance what our responsibilities are to others.

3 I don't know what you do for feeding the spirit, other
4 than diving, but -- and I am sorry that we are meeting under
5 these circumstances.

6 I do believe that having looked at the disparity, I am
7 trying to take in all of the aspects, but I cannot ignore the
8 fact that we are here because of the choice that you made and
9 the direction that you gave to somebody who did not have the
10 backbone or probably was so -- I will speak to Ms. Voissem
11 later when we speak -- and the consequences, as I listened to
12 the testimony of the impact that this had on the Zaghabs, you
13 know, all of our actions have consequences. And that's why it
14 is so incredibly important to have at our core the first
15 question: Is it right?

16 Is it honest?

17 Is it true?

18 I have, like Mr. Udolf, not gotten much sleep over this
19 sentencing either. But, that's not your problem, that's my
20 problem.

21 The concern that I have is that after hearing
22 everything here today and applying the 3553(a) factors, I
23 should not sentence at the high end of the guidelines.

24 I will sentence at the low end of the guidelines of
25 57 months.

1 I had considered varying downward, based to 40 months,
2 but I did not have any factors that I could take into
3 consideration to vary downward, given the evidence in the case.

4 So, the Court has considered the statements of all of
5 the parties and the presentence report which contains the
6 advisory guidelines and the statutory factors set forth in 18
7 U.S.C. Section 3553(a). A sentence at the low end of the guide
8 -- of the advisory guideline range that have determined will
9 provide just punishment and adequate deterrence to the criminal
10 conduct, and, given the cases that were cited to me this
11 morning, it is within that range so I feel comfortable,
12 although it is somewhat in the higher range, the low range
13 would have been the 40, and if should have gone to that, then I
14 hope the Court of Appeals will tell me that.

15 It is the finding of the Court that the defendant is
16 not able to pay a fine. Therefore, it is the judgment of the
17 Court that the defendant, Peter Sotis, is committed to the
18 Bureau of Prisons to be imprisoned for 57 months. The sentence
19 consists of 57 months as to Count 1, 57 months as to Count 2
20 and 57 months as to Court 3 of the indictments, all such terms
21 to be served concurrently.

22 Upon release from imprisonment, the defendant will be
23 placed on supervised release for a term of three years as to
24 each Counts 1, 2, and 3 of the indictment.

25 All such terms shall run concurrently.

1 Within 72 hours of release from the custody of the
2 Bureau of Prisons, Mr. Sotis must report in person to the
3 Probation Office in the district in which he is released.

4 While you are on supervised release, you shall comply
5 with the mandatory and standard conditions of supervised
6 release, which include not committing any crimes, being
7 prohibited from possessing a firearm or other dangerous device,
8 and not unlawfully possessing a controlled substance and
9 cooperating in the collection of DNA. The defendant shall also
10 comply with the following special conditions:

11 Ms. Goulds, what association restriction?

12 I saw that in the presentence investigation report.

13 PROBATION OFFICER: (Inaudible).

14 THE COURT REPORTER: I'm sorry?

15 THE COURT: As to association restriction with
16 codefendant?

17 PROBATION OFFICER: Yes, your Honor.

18 THE COURT: The employment requirement, the no-new-debt
19 restriction, the financial disclosure requirement and I am not
20 imposing a fine, and there is no restitution, correct?

21 PROBATION OFFICER: Correct.

22 THE COURT: It is further ordered that Mr. Sotis shall
23 pay immediately to the United States a special assessment of
24 \$100 each as to Counts 1, 2, and 3, for a total of \$300.

25 The total sentence then is 57 months imprisonment,

1 three years of supervised release, and \$300 special assessment.

2 Also, as I understand, the parties have made an
3 agreement that this judgment will include the forfeiture of the
4 defendant's right, title and interest in the four rebreathers,
5 that is the identified property in the forfeiture, correct?

6 MR. THAKUR: Yes, your Honor.

7 THE COURT: Is hereby ordered. The United States shall
8 submit the proposed order of forfeiture within three days of
9 this hearing.

10 Mr. Sotis, now that sentence has been imposed, do you
11 or your counsel object to the Court's finding of fact or the
12 manner in which the sentence was pronounced?

13 MR. UDOLF: Judge, we only object to the Judge's
14 finding that he was not contrite as a result of hearing his
15 statement.

16 THE COURT: Okay. I don't know what is in his heart.
17 I can only look at what it came across.

18 MR. UDOLF: Well, I read the statement before it was
19 read and I discussed it with him. In my view, he was extremely
20 contrite.

21 THE COURT: I do believe that he is sorry for what he
22 put Ms. Voissem through. But, I don't believe, it didn't -- I
23 did not hear, "I am truly sorry that I made this decision and I
24 was at fault."

25 He recognized that he made the decision and it had

1 impact, but there was not -- and he is sorry for the impact.

2 And I am sure that Ms. Voissem appreciates that.

3 MR. UDOLF: He is also contemplating appealing the
4 case, Judge, and that influences wording of his statement. I
5 hope your Honor would understand that.

6 THE COURT: Those are choices that one makes,
7 Mr. Sotis, again.

8 MR. UDOLF: Well, in this case it was a choice that his
9 attorney made, Judge.

10 THE COURT: Okay. Then -- I won't be here for the
11 2255, Mr. -- so any other objections?

12 MR. UDOLF: No, your Honor.

13 THE COURT: I am sure the Government has objections.

14 MR. THAKUR: We preserve our objections for the
15 downward departure.

16 THE COURT: Okay.

17 MR. UDOLF: I just -- I guess I should say, subject to
18 the objections that we made previously --

19 THE COURT: Yes.

20 MR. UDOLF: -- we have no other objection.

21 THE COURT: You have standing objections, remember, Mr.
22 Udolf.

23 And, Mr. Sotis I would like to thank you for selecting
24 Mr. Udolf, he is absolutely a pleasure and I -- I appreciate
25 somebody who is as persistent and tenacious as he is, making

1 sure that every single rock is turned over and identified, it
2 makes for a long proceeding, but we now have a record, and if
3 the Court of Appeals will -- this is one which I am happy if
4 the Court of Appeals tells me I was wrong.

5 MR. UDOLF: Me, too, Judge.

6 THE COURT: But, it is the best that I can do, and I am
7 merely human.

8 What is the parties' position on a surrender? Is he on
9 remand?

10 MR. THAKUR: Your Honor, we defer to the Court.

11 MR. UDOLF: Judge, he has appeared throughout these
12 proceeding the last two years, the Court even authorized to him
13 to travel to Mexico, he returned, he came to face trial. The
14 Court also -- he came to court today fully expecting to get ten
15 to 13 years, and he still showed up. I don't think he is
16 serious risk of flight. I ask he be allowed to surrender upon
17 designation.

18 THE COURT: That is my preference, given the COVID
19 situation, and again, his track record of appearance, it is
20 also the -- if he shows up, it helps his security
21 classification. These are the things that I always look at in
22 trying to fashion the end result of the impact, recognizing
23 what I have to do as a judge, and I presume that you are
24 requesting the camp at -- here in Miami-Dade?

25 MR. UDOLF: Yes.

1 THE COURT: Or would you prefer to be up in Coleman?

2 MR. UDOLF: Miami, Judge.

3 THE COURT: Okay. I anticipate, since you have shown
4 up, that if you show up again, my only concern is the Bureau of
5 Prisons looks at the event 30 years ago, if that's going to
6 impact on his ability to be in the camp. But I am going to
7 recommend the camp.

8 MR. UDOLF: Thank you, your Honor.

9 THE COURT: Okay.

10 Mr. Sotis, I am very sorry, as I said before, we have
11 to meet under these circumstances. You are very, very, very
12 blessed to have the wife that you do, and I know that you will
13 continue to cherish her and she will be there for you. And, I
14 am glad that she is a strong woman. My -- you both are in my
15 prayers, in fact, every single defendant, it is my daily
16 prayer, each morning, so I hope that, as part of this, you
17 continue to mentor in positive ways and help other people grow
18 and become the better versions of themselves. You have shown
19 that you can do that. Also work on yourself.

20 Okay.

21 DEFENDANT SOTIS: Thank you, your Honor.

22 MR. UDOLF: Thank you for your time, your Honor.

23 THE COURT: Okay.

24 Mr. Goulds, do you want to give me both the statement
25 and the reasons at the end?

1 PROBATION OFFICER: Yes.

2 THE COURT: Okay, Mr. Moss and Ms. Voissem, do you want
3 to move up closer or do you want to stay back there?

4 MR. MOSS: We are fine where we are, Judge. I will be
5 coming to the podium.

6 Judge, we can begin by addressing the objections that I
7 filed in document entry 132 for the most part I believe we have
8 already addressed the objections that are set forth in
9 connection with the objections that were filed by Mr. Sotis.

10 So --

11 THE COURT: I think we have covered all of them. Is
12 there any one that we have not?

13 MR. MOSS: Yes, there is, Judge, there is Paragraph 48,
14 on Page 2. That should have been deleted. I had indicated --
15 this was an origin that will draft in which I made a note to
16 myself to research whether or not a two-level reduction for
17 acceptance was not precluded, but then after reviewing the
18 appropriate application note, I realized that it did not apply.
19 So we will strike that particular objection, and we will
20 re-assert the objection in Paragraph 54 to the extent that Ms.
21 Voissem's conduct willfully obstructed the investigation or the
22 administration of justice.

23 I would just add on that particular point that based
24 upon the evidence and the testimony before the Court,
25 particularly with regard to the undue influence that Mr. Sotis

1 had over Ms. Voissem's decisions and her actions, the question
2 can be fairly asked whether her conduct, in connection with the
3 debriefing, in particular, was a willful obstruction, focusing
4 on willfully.

5 Aside from that, I believe the responses and
6 supplements the Court already has in front of it, I believe
7 Mr. --

8 So do we have any other, anyone else that wants to
9 speak on Emilie's behalf?

10 Okay. So in that case, your Honor, we would -- I will
11 ask Emilie to come up. She wishes to address the Court and
12 then I will --

13 THE COURT: First, let me just -- fortunately, it won't
14 take as long as but I still have to go through the process of
15 calculating the guidelines. Okay?

16 Based upon the rulings in Mr. Sotis's case, the Court
17 finds that the base offense level under 2M5.2, begins at 26,
18 but the Court has departed downward to a Level 21. And so the
19 base offense level then would be -- and then addressing your
20 objection to Paragraph 54, which is the two-level enhancement
21 for the obstruction of justice, based on all that I have heard,
22 and given the facts that -- first, although the Court has the
23 power to take into consideration any evidence, even though it
24 has been -- it is acquitted conduct, the Court in this instance
25 is not going to consider that as far as a basis for obstruction

1 of justice, given the fact that the jury was -- obviously had a
2 tough time with Count 4, and ultimately resolved that tough
3 time with a verdict of acquittal.

4 I think there was evidence in favor of it, of imposing
5 that, but I was basically at equipoise as to whether or not to
6 go with the -- when one is at equipoise, the party that has the
7 burden, which is the Government here, didn't help me tip the
8 scales. It would have also helped tip the jury's scales, the
9 scales for the jury, and would have come back with a
10 conviction. And then I would not have been even considering
11 the role because the role would have been subsumed in the
12 calculation with the base offense level. So, for a total
13 offense then is Level 21; is that correct, Ms. Goulds?

14 PROBATION OFFICER: Yes, your Honor.

15 THE COURT: Okay. And at a Level 21, that, and
16 criminal history category of one, that is a guideline range of
17 37 to 46 months. Term of supervised release remains the same,
18 one to three years. The fine range, I believe, changes, but I
19 believe you have recommended that no fine be imposed. So,
20 that's not necessary to discuss, and then there is the special
21 assessment of \$300. Based upon the Court's determinations as
22 to the guideline range, do the parties agreed that that is the
23 guideline range before we consider the 3553(a) factors?

24 MR. MOSS: We would agree, Judge, subject to our having
25 joined Mr. Udolf and Mr. Sotis on the discussion as to whether

1 the 26 or the 14 base offense level apply, based on the
2 application of what we discussed earlier, otherwise we are in
3 agreement.

4 THE COURT: And I am sure Mr. Thakur reserves the same
5 objection.

6 MR. THAKUR: Yes, your Honor.

7 THE COURT: Okay. We are now at the point of looking
8 at the 3553(a) factors.

9 I am glad that Mr. Thakur is of the same mind that I
10 am, based on all of the factors here and the evidence. When I
11 apply the 3553(a) factors, it is incumbent, as far as Ms.
12 Voissem to vary downward. And the question is where to?

13 Does that help?

14 MR. MOSS: It does, Judge, and for guidance on that
15 particular issue, I think Ms. Voissem is very well-positioned
16 to do so.

17 Emilie, come on up, please.

18 THE COURT: And what, the Government needs to -- let me
19 share this with the Government ahead of time so that they know
20 where I am, so that they can use this time to prepare.

21 After listening to all of the witnesses that presented
22 yesterday -- well, let me hear from Ms. Voissem.

23 Do you need water?

24 DEFENDANT VOISSEM: I am okay, I just need to get my
25 breath first and try not to ball like a blubbering idiot here.

1 THE COURT: I am sorry.

2 DEFENDANT VOISSEM: I am just trying to catch my
3 breath.

4 THE COURT: Why don't you take three slow and deep
5 breaths, with an even longer exhale.

6 Did you do the third one?

7 DEFENDANT VOISSEM: I did, I think so. First of all, I
8 want to express my sincere gratitude to the Court, and the
9 respect shown during the trial by your Honor and the staff and
10 everyone present. I understand the seriousness of the charges,
11 and now understand the consequences if the shipment would have
12 been successful in arriving in Libya, and what could have
13 happened if it was going to be used erroneously.

14 It was not until seeing all of the pieces put together
15 at the trial that I realized the totality. I did not believe
16 that I was violating the law.

17 I am sorry that I allowed myself to be influenced by
18 Peter when he told me not to tell Diana and Mohammad the
19 Department of Commerce was looking into the rebreathers and a
20 license determination may have been needed, and to let them
21 deal with it, and to keep working on the arrangements with
22 them. He had told me he talked to Mohammad, and explained
23 about the rebreathers and Department the Commerce and license
24 determination. And I believed when he told me he had talked to
25 them.

1 This has forever changed their life, their business,
2 and I am sorry for that, and what this has caused them.

3 I understand and respect the decision of the jury, and
4 seeing the overall pictures of case during trial. There were
5 signs and actions that should have been followed up with, more
6 in regards to the order and the Department of Commerce. There
7 is also so much more that I wish I could have been able to
8 portray and testify about. I was under an extremely amount of
9 emotional stress just prior to the Department of Commerce being
10 initially contacted.

11 I was in California, my dad had been suddenly admitted
12 to the hospital and I flew out the house last minute to be with
13 him just days before this. He was in serious condition with a
14 blood infection, it was septic. During this time is when I
15 first learned from Mitch at Global, his recommendation to
16 contact the Department of Commerce.

17 THE COURT: You learned from whom?

18 DEFENDANT VOISSEM: Mitch at Global Forwarding.

19 THE COURT: Okay.

20 DEFENDANT VOISSEM: This is also the first time I
21 notified Peter and Shawn about this. I spoke to them both on
22 the phone, from the hospital, in California.

23 Peter seemed uncaring and treated me and talked to me
24 and told me it wasn't a good time for me to be gone, that I
25 needed to come back and get back to work and that my work is

1 suffering because of being gone.

2 I had dedicated so much time to him already, over and
3 above an average work week. I felt guilty for asking for a few
4 more days to find out what was going on with my dad. But,
5 based on what Peter told me, I flew back to work instead of
6 staying with him in California.

7 I regret that decision to this day. Family should come
8 first. Life is too short to spend it bending over backwards
9 for somebody else.

10 I was distraught over coming back.

11 More stress and pressure was put on me, I was working
12 60 to 70 hours a week for him while on salary and he didn't
13 seem to care, he just wanted more.

14 It was never my intent to cause harm to anyone or our
15 country. And I have had many family and friends and loved ones
16 who have served in the military and during times of war, I
17 honestly did not understand the gravity and totality of the
18 circumstances of what could have happened until during the
19 trial.

20 In regards to the trial, I was offered a plea prior to,
21 but it was to the lying charge --

22 THE COURT: It was to what?

23 DEFENDANT VOISSEM: The lying to Count 4.

24 MR. MOSS: The false statement.

25 DEFENDANT VOISSEM: The false statement, and I

1 honestly, in my heart, know that I did not lie or perjure
2 myself, and I could not go forward with that.

3 THE COURT: Why didn't you admit everything else and
4 just go to trial on that?

5 DEFENDANT VOISSEM: Your Honor, I did not believe I did
6 anything wrong until seeing all the evidence at trial. I -- I
7 truly now know, like, from looking at everything and everything
8 the jury saw was wrong. It was so wrong. It should have never
9 left the building.

10 It didn't cross my mind during those few days from the
11 Department of Commerce agent coming out and to the Zaghabs
12 arranging the shipment, that I was doing anything wrong.

13 THE COURT: But after it was brought, in the interview
14 with Agent Bollinger, why didn't you tell him all of this
15 information you just said now?

16 DEFENDANT VOISSEM: The only thing I can go back to is
17 how much influence and control I felt from Peter.

18 And I -- I still, in my heart I believe I didn't lie
19 during the debrief. But, I should have been more forthcoming
20 with information during the debrief.

21 I didn't look at it as lying. I was still under his
22 influence and, lack of a better word, his control that he had
23 on me.

24 THE COURT: This is a first time that I have heard, and
25 I presume it is the first time the Government has heard, that

1 Peter told you that he had spoken to Mr. Zaghab and that he
2 told them about the problem with the Commerce, and you believed
3 him.

4 MR. MOSS: Say this again, Judge.

5 THE COURT: Did I hear correctly, that Ms. Voissem said
6 that she -- Peter told her that he had spoken to Mr. Zaghab.

7 MR. MOSS: My recollection, Judge, was that she
8 testified that.

9 THE COURT: No, no, I mean just here today in her
10 statement, maybe I need to ask Sharon to go back. If you can
11 find when she says she spoke to Mohammad.

12 (The portion requested was read back by the reporter as
13 above recorded.)

14 THE COURT: Ms. Voissem, why didn't you share that
15 with Agent Bollinger?

16 DEFENDANT VOISSEM: It was the phone call -- it was the
17 phone call from Mohammad, when Mohammad said that he had spoken
18 to me and Peter, and that I didn't tell Mohammad about the
19 Department of Commerce.

20 THE COURT: Um-hmm.

21 DEFENDANT VOISSEM: It was that, because I -- I didn't
22 talk to Mohammad during that time period. Peter had talked to
23 Mohammad.

24 THE COURT: Oh, so until you heard his testimony, you
25 did not realize, and after you heard that testimony, did you

1 share that with Mr. Moss, that is -- you know, "Peter told me
2 that he had called and spoke to him"? And then Mr. Moss could
3 have cross-examined the witness, to follow up on that, or maybe
4 you did, and -- I can't remember the exact cross-examination,
5 Mr. Moss, you have been very good, Mr. Moss, on following up
6 on --

7 MR. MOSS: If you are talking about in relation to the
8 debriefing, itself, I am trying to understand the --

9 THE COURT: No, what I understood Ms. Voissem to just
10 tell me, when I asked her, "Why didn't you tell that to Agent
11 Bollinger," she did not realize until she heard from Mr.
12 Zaghab's testimony that what she believed that Peter had done,
13 Mohammad said, did not happen.

14 In other words, Peter did not speak to him and disclose
15 the problem with the rebreathers, and the Department of
16 Commerce.

17 MR. MOSS: Well, my understanding from Emilie's
18 testimony and from our previous discussions, was that -- and I
19 don't remember if she quoted him word-for-word, but her
20 position was that she had been told, I believe on either
21 August 4th or 5th, by Mr. Sotis, that -- and that he would take
22 care of the problem or he would take care of the issue.

23 I don't recall offhand whether that reassurance
24 included that he had spoken to the Zaghab's, or that he was
25 going to speak to the Zaghab's. It was one or the other.

1 But, either way, she relied on his representation that
2 he would handle the matter appropriately with the Zaghabs.
3 That is my understanding.

4 THE COURT: I should probably refrain from asking any
5 questions at this point because I am not the investigator.
6 That is not my job.

7 Okay. It just -- and in helping me understand -- okay.
8 I am sorry, continue.

9 DEFENDANT VOISSEM: I was blinded by his charm, his
10 demeanor, his charisma and, honestly, his love for me. He was
11 able to manipulate so many people in the years I have known
12 him. I just did not see it until he wasn't allowed to talk to
13 me anymore, which I am grateful for.

14 I wish you knew and could see who he truly was then, I
15 believe who he currently is. He would tell me he loved me, buy
16 my flowers for my birthday, Valentine's Day, he called me his
17 work wife, and introduced me as such.

18 I felt that he cared for me and he made me feel special
19 and involved with everything.

20 During his allocution, he apologized, and I do
21 appreciate that acknowledgment. And I do not know how to
22 explain how he makes me feel even to this day.

23 I am worried, if he would come up to me at sometime in
24 the future and apologize and want to give me a hug, that I
25 wouldn't be able to tell him no, and walk away.

1 I would end up back involved with him. I do not
2 understand how he has this hold over me, and there was nothing
3 ever romantic between us, I know it never really came up in
4 court or anything, and there was assumptions made, but there
5 was never anything romantic. It was more of a -- father,
6 family figure.

7 I can't put my finger on why I feel drawn to him. In
8 order to protect myself, I have to, and want no contact with
9 him. And I have avoided him throughout this entire trial
10 process to make sure that I am not anywhere near him alone.

11 I am truly sorry for the actions I did not take and the
12 direction I followed. This experience has truly changed my
13 life, the lives of those around me, my friends, my family,
14 everyone involved in the case. I do not trust anyone anymore,
15 and do not, and will not allow myself to be put into a position
16 with any type of responsibility. It has made it very
17 challenging to work, and have any responsibility, however
18 limited it may be.

19 I will never be a part of someone business to the point
20 I have my name on anything of value. I am even hesitant in
21 signing my name to my last employer's emails. My last employer
22 has since replaced me for the position I was working in due to
23 this situation and not knowing the outcome, I would no longer
24 be able to work for him. I understand that he needed to, he
25 needed to find somebody else, but it has made all this very

1 difficult.

2 I have constant depression, anxiety, and I will never,
3 ever want to be in a situation of anything like this again.

4 Again, I am truly sorry for all this, and even though I
5 did not take a plea bargain prior to trial it does not mean
6 that I do not take responsibility or feel remorse, because I
7 do.

8 Thank you for your time and your consideration.

9 THE COURT: Thank you very much.

10 There is something Kleenexes there.

11 MR. MOSS: Sorry?

12 THE COURT: Mr. Moss, there are some Kleenexes there,
13 she was using her jacket.

14 MR. MOSS: I wasn't even looking, Judge.

15 There is no an old truism within the defense bar, your
16 Honor, that I am going to paraphrase for this proceeding.

17 That truism is, when the Judge is making a case for
18 you, shut up.

19 I am going to modify that by keeping it short because
20 it is abundantly clear from the proceedings over the last
21 couple of days and your Honor's observations and questions
22 throughout the proceeding that I don't need to stand here to
23 belabor the record that has been laid before your Honor, not
24 only with regard to the nature and circumstances of the
25 offense, which we agree was, in fact, serious, I will not

1 minimize that for a second.

2 But, the second prong of the inquiry, I am sorry, the
3 history and characteristics of Ms. Voissem, I think have been
4 made crystal clear through the PSI, through our objections, to
5 the sentencing memo, the numerous letters that were submitted
6 on Emilie's behalf and some of those that were submitted on Mr.
7 Sotis's behalf, as well as the statements that you heard from
8 her family yesterday.

9 All of those things, I think, speak for themselves in
10 terms of the value and the appropriateness of a departure that
11 would allow Ms. Voissem to not be committed to prison time.

12 I only want to add one thing with regard to the imagery
13 of the black hole that I referred to in my sentencing memo, I
14 want to make it clear from the outset, and I wish Mr. Udolf and
15 Mr. Sotis were here to hear this, but I don't suggest for a
16 minute that the relationship between Mr. Sotis and Emilie
17 started off with any bad intentions on the part of Peter. I
18 certainly don't believe, and there was no evidence that he met
19 her on that guide boat one day in 2012 or 2013, and said, "Oh,
20 boy, I've got myself a patsy if I ever one."

21 I mean, at that point in his life, clearly there was no
22 reason for him to believe that he would ever be involved in
23 anything that would require a patsy in the first place.

24 I certainly believe that neither one of them, and I
25 believe both of them have said as much before your Honor, I

1 don't believe either one of them realized the depth and the
2 nature of the entanglement that the two of them had embarked
3 upon. But we certainly know that by, if not in July, August of
4 2016, we certainly know by November, that that entanglement for
5 Emilie had taken a more dangerous turn. Specifically, the
6 reference from the Government's response to our presentence
7 investigation, where they presented the quote from Shawn
8 Robotka in which Sotis admitted, quoting, "You don't get it.
9 Our signatures are not on the documents, I ran everything
10 through Emilie. She will take the fall for everything, I had
11 Ken Wessler delete all the files on the server, which we will
12 blame on Emilie as a disgruntled employee."

13 There is really not much more I need to add to that, to
14 demonstrate how the relationship had deteriorated by this
15 point.

16 Which brings to an observation that did not come out
17 during the trial, but I think is relevant in terms of the
18 events of March 27, 2019.

19 As I said earlier, the Government is correct that
20 Mr. Sotis did attempt, or did reach out to Emilie to have her
21 stall the debriefing. To her credit, she notified me, I told
22 her we were not going to stall. We were going to go forward.
23 But, here is what --

24 THE COURT: Is this before you were appointed?

25 MR. MOSS: No, this was since I was appointed. I was

1 appointed back in, either November or December of 2018, when
2 she had received the target letter.

3 THE COURT: Oh, okay.

4 MR. MOSS: But there really hadn't been any activity in
5 the case until March of 2019.

6 THE COURT: Okay.

7 MR. MOSS: I mentioned that because that could have
8 been a factor in terms of the statements that she made during
9 the debriefing.

10 She never said, and I agree with the Government, that
11 she never said that she had a faulty memory as to the
12 information that she provided, but I would note that it was a
13 period of approximately 15 months between the time I was first
14 appointed and she and I had our initial discussions about the
15 case and the time of the debriefing. Whether that had impact
16 on the details that she was able to recall, that's for the
17 Court to decide but that I do mention that for whatever it is
18 worth.

19 But here is the more important point, and I think
20 testimony, more than anything else, demonstrates the grasp that
21 Peter Sotis had on her during that period of time.

22 What Agent Bollinger did not testify to, and, frankly,
23 I was surprised that this did not come out, was that at the
24 outset of the debriefing, Mr. Thakur, either he or Agent
25 Bollinger, I believe it was Mr. Thakur, specifically told

1 Emilie, "Do not discuss this debriefing with Peter. Do not
2 talk to him about what we discussed today."

3 Nothing about no prohibition on them discussing the
4 Nexus Underwater or family events or anything of that nature,
5 just that specific topic was off limits.

6 I don't have an independent recollection, but if I
7 follow my normal practice in these situations, I told her the
8 same thing, when we left the conference room. And I am sure
9 that she can tell you, and that -- I can be very forceful
10 myself at times. As a matter of fact, I will acknowledge that
11 this caused a couple of clashes between us during the course of
12 my representation, for which, of course, I apologize.

13 But, here is the point, Judge, at that particular
14 moment, roughly 12 o'clock, the afternoon of the 27th, she had,
15 Mr. Thakur, she had me, both telling her what she could and
16 could not discuss with Peter. What happens within an hour of
17 the end of the debriefing, we hear the testimony directly from
18 Emilie herself, and I bring that up, Judge, because here I was,
19 her legal representative, guardian of her legal interest in a
20 case that had not yet been indicted, but was right on the
21 verge, and still, once she got on the phone with Peter, her
22 resolve, because she made it clear to me that she understood
23 that instruction, that she would stay away from that topic if
24 they spoke. I had recommended that she not speak to him for,
25 you know, a period of time. But I couldn't, I couldn't force

1 her.

2 She was honest in her testimony. They talked about a
3 number of other topics, particularly with Nexus Underwater.
4 But, then she brought up that, the topic of the debriefing did
5 arise. That, I think, crystalizes in a way that everything
6 else that you have heard and seen did not, the extent to which
7 she had been drawn into Mr. Sotis's black hole. The only
8 difference, the only reason that that analogy is not quite
9 accurate is because, in this instance, Emilie got pulled back
10 over that event horizon.

11 By that time, the damage was done. But, at the very
12 least, she was now able to recognize the implications of her
13 conduct and wrongness. Better late than never.

14 I do want to touch on one issue with regard to the
15 cases that I cited in connection with the sentencing
16 disparities and I am going back to the sentencing memo that we
17 filed duty, DE 139. We cited U.S. v. Gromacki, we cited U.S.
18 v. Behroozian and U.S. v. Caby, and the Government is correct
19 in that what distinguishes those three cases from the case that
20 we had here is that those three defendants entered pleas of
21 guilty and got the three point reductions for acceptance and
22 timely plea. The reason that I cite those cases is that while
23 you have that factor on the one hand, on the other hand,
24 contrast to this case, look at the duration of time which was
25 implicated in the conspiracy, or the offenses in those cases.

1 In Gromacki, this was over three tons of carbon fiber shipped
2 to China, and I am looking for the -- the indictment, there was
3 six year period from 2006 to 2012. And what was particularly
4 noticeable with Gromacki, as I cited on Page 3 of my memo, is
5 that he had had a legal license to sell carbon fiber to a
6 specific company in Singapore. That license was revoked, for
7 reasons that didn't appear in the record, notwithstanding that,
8 while he was appealing, that license determination, Gromacki
9 continued sending the prohibited carbon fiber to Singapore.
10 That was such a much more glaring red flag in that case than
11 anything Agent Wagner said during the meeting on October 4th.

12 Six-year period.

13 And the District Court in that case, as your Honor is
14 aware, found there was a higher pro-offense level in that case
15 of 23, and it departed downward by 15 levels.

16 If you notice, I mention the factors underlying that
17 departure, so I am not going to belabor them here, but as I
18 indicated with Behroozian, here we are talking about a 12-year
19 scheme, 12 years, not only that, but the products that he was
20 selling, while they were not considered dual use for Commerce
21 Control List purposes, those items, as the Government argued,
22 could be used to enhance the economic viability of a nation,
23 specifically, Iran, which was an officially designated state
24 sponsors of terrorism and had been since 1984.

25 Notwithstanding all those factors, Judge, the Court

1 imposed a sentence here of 20 months, and the total offense
2 level found was -- 26, with a criminal history category of one,
3 same as we have here. It brought it down to 20 months, the
4 mitigation being that the products were not of military or dual
5 use nature, Behroozian's financial gain was modest, he had no
6 significant criminal record, and had significant health issues,
7 as I mentioned in the memo.

8 And then in the United States v. Marjan Caby, a case
9 that was tried -- or was prosecuted before Judge Bloom, this
10 was a four year -- sorry. This conspiracy was September 2013
11 to March 2014, so we are talking six months, involving two
12 different offices for the company in question, one in Miami and
13 one in Sofia, Bulgaria, that was a transshipment point for the
14 prohibited goods in that case.

15 And as I indicated, as well, there was indication,
16 unlike in Emilie's case, that Marjan Caby had some degree of
17 supervisory control over that particular scheme, as I cited in
18 Footnote 5 of the sentencing memo. In that case, a year and a
19 day. Substantial departures from the total offense level found
20 by the Court.

21 THE COURT: The name of that case again.

22 THE WITNESS: Marjan Caby, C-A-B-Y, that would be
23 16-20803CR-Bloom, it was a 2017-case. This one involved
24 shipment of specific aircraft parts to Syrian Air, to the
25 Syrian national airline. Each one of these parts was

1 designated in the Commerce Control List and like Iran, Syrian
2 is on the state department list as state sponsors of terrorism,
3 unlike what we had in this case.

4 And I don't claim in any way that Libya is a friend to
5 the United States. That goes without saying, but there is a
6 substantial difference, I would suggest, between a shipment
7 going to an official state sponsor of terrorism and one that is
8 not, especially in the case of Libya where the items that were
9 shipped to that state sponsor were, in fact, dual use without
10 dispute.

11 And those cases are -- Judge, I would argue that the --
12 well, let me go back to one other point. I mentioned this in
13 Paragraph 4. The Government cites that each one of those
14 individuals pled guilty and accepted responsibility. Well and
15 good. But I would suggest that the reasons -- that had the
16 cases gone to trial, or had the Government decided to be more
17 Draconian in their sentencing recommendation, it is highly
18 conceivable that not only would those individuals have not
19 received a three-level reduction that is on the record, but
20 might well have received a four-level enhancement, because of
21 their roles as the organizers, as the leaders of these ongoing
22 transactions.

23 Now, when the Government says that the transaction
24 before the Court was not a one-off, I would agree to the extent
25 that there was no one, it was not like a single lapse in

1 judgment on the part of the defendants that brought this out.
2 What I refer to as a one-off was that this was, as I mentioned,
3 the first and only transaction that they had ever done with a
4 company that was on the -- under suspicion or subject to the
5 Commerce Control List. And while the Government claims that
6 they were in the process of contemplating additional business
7 that could be gained if this transaction went forward, we know
8 that none of those transactions ever took place.

9 And, so basically, that brings us to what is the --
10 what is the most appropriate sentence that would address the
11 3553(a) factors, but not go beyond them.

12 What we would suggest, your Honor, is we ask for a
13 sentencing memo that a -- that a downward departure to a
14 Level 11, that's what we would be asking for, because this
15 would be a case, Judge, in which the purposes of 3553(a) would
16 be more than adequately served by an extending period of
17 probation with home confinement or any other conditions the
18 Court may consider appropriate, GPS monitoring, curfew, or
19 whatever the -- whatever the Court finds most fitting.

20 The only thing we would ask, and I am sure that the
21 Court has taken this into account, is the situation with the
22 members of the family.

23 Your Honor heard from, particularly from her mother
24 yesterday, about the health crisis that she has gone through
25 and how Emilie has been such a support and such a help to her

1 during this timeframe.

2 And, as a man whose own wife is battling Stage 4 cancer
3 at this time, I can certainly, that, that representation tugged
4 at my heart. I am not going to lie. I can relate.

5 You heard just how critical a presence Emilie is in the
6 life of her family, you know the sacrifice it took for her in
7 2012 to make the decision that I need to get out of California,
8 I need to get away from these dysfunctional dynamics that are
9 no longer serving my purpose. And she left her kids in
10 California, as well. You can imagine what kind of a painful
11 sacrifice that must have been.

12 But, once she got to South Florida, you saw the
13 letters, I indicated the ones that show just how positive a
14 presence she was, once she arrived and got herself positioned
15 within the diving community. And that is part of what makes
16 this presentation so painful. Because unlike most of the
17 mitigation cases that I have handled over the years, I very
18 seldom have a client, a client very seldom has a codefendant
19 with the histories of accomplishment that they each have.
20 Peter Sotis was a superstar in the rebreather community.
21 Emilie was an up and coming protege.

22 I have often reflected on what kind of partnership they
23 could have had right now, how much -- what kind of a thriving
24 enterprise Add Helium would have been in 2022, had Osama
25 Bensadik not crossed the radar screen.

1 The other thing that makes this sentencing unique, and
2 I am sure your Honor has had some experience with this in the
3 sentencings that you have done over 23 years, most of the
4 clients that I have in those situations come with a matrix of
5 risk factors, I am sure the Court is familiar with the Justice
6 Department's inventory. And you have had a chance to consider
7 how those factors interacted, given the client's life, to bring
8 them to where they are. This case, presents the sharpest
9 delineation in any cases I have ever had as to where the client
10 went off track.

11 What was the point at which a totally law-abiding life
12 ended up in this situation? That was the Peter Sotis factor
13 and I don't intend to dump on him any further. That has been
14 thoroughly covered by the letters, by the testimony you should
15 have before your Honor.

16 To the extent that that influence was not only undue,
17 but above and beyond typical life experience in these
18 situations, I would argue that your Honor is entitled to
19 consider that as a mitigating factor, and that can serve as a
20 valid basis for the variance that we are seeking.

21 If your Honor has any questions at this time, I will be
22 glad to answer them. Otherwise, I would -- I would basically
23 reiterate the pleas, her family, from her loved ones, to temper
24 justice with mercy, to provide her the opportunity to reflect
25 upon her conduct and to resolve to be better without -- without

1 having to be confined away from her family. She has learned
2 her lesson.

3 At this time I am able to answer any questions that
4 your Honor has, otherwise --

5 THE COURT: Mr. Thakur?

6 MR. THAKUR: Yes, your Honor. I appreciate the
7 effective advocacy of Mr. Moss, but human beings aren't
8 celestial objects. We have punishment at all in our justice
9 system because people have free will. They have the ability to
10 make choices, otherwise, there would be no point in meting out
11 any punishment at all. You can't deter someone from the common
12 sense of justice if they had no control over what they did.

13 What I have heard so far is that Peter Sotis was a
14 controlling person, that he had an enormous influence over the
15 defendant. But what I haven't heard is that she understood,
16 the time that this offense was occurring, that it was wrong.
17 The defendant says she learned much later that it was. But
18 that doesn't really comport with the facts of this case.

19 As someone who had been a deputy sheriff for seven
20 years, conducting, at times, complex investigations involving
21 embezzlement, she never once picked up the phone to tell Agent
22 Wagner, by the way, that customer is going to pick this up. It
23 is en route to Libya. She takes an almost legalistic approach
24 to what Agent Wagner said during that meeting, whether or not
25 he used the word detention, or detained, but I think there is

1 no question that what happened and what was in her mind was
2 that Agent Wagner was clear that he had concerns over these
3 rebreathers, that he didn't want them to go to Libya, that they
4 would be seized, and I think even in the PSI reports, Mr. Moss
5 had no objection to the fact that it was said that it would be
6 seized, at that very first meeting. It was conveyed to them,
7 the defendants, that.

8 So, in the face of that, she understood that this was
9 of high concern. And, what she said today was that,
10 simultaneously, Mr. Sotis was telling her that he was going to
11 tell the Zaghabs what the commerce agent said, but also was
12 telling her not to tell them anything that occurred. That
13 doesn't make sense at all. And that should have set off red --
14 alarm bells in her head, that he was telling her not to tell
15 the truth to the Zaghabs.

16 She had the choice, when the Zaghabs continued to email
17 her, on August 4 and after, never once telling them, the
18 Commerce Department came here, they talked, and this is what
19 they said.

20 You could see from the emails, the Zaghabs were trying
21 to understand what the law compelled. What the law was
22 requiring, in this circumstance. They were looking to her for
23 guidance. They were looking to Peter Sotis for guidance, as
24 well. And the fact that both these defendants hid the critical
25 facts of this case is what allowed this to occur.

1 We didn't simply arrest these defendants right away.
2 We investigated this case thoroughly. We went to Ms. Voissem,
3 we went the Court to have an attorney appointed for her, Mr.
4 Moss, and it is then that we met with her, and as Agent
5 Bollinger testified we, frankly, were beyond astonished that a
6 former law enforcement officer would come and take that
7 approach at a debrief, that she never once said that
8 Peter Sotis was the one who told her to go ahead with the
9 shipment, she described it as a joint decision.

10 She never once indicated any of the red flags that were
11 given to her, she never mentioned that Agent Wagner had
12 concerns with the shipment. The amount of minimization, the
13 amount of less than forthcoming nature of it, was shocking.
14 But even with that, we still approached Mr. Moss and we told
15 him, these are the charges that she would be facing, the very
16 charges that went into the indictment. We showed him the
17 emails, the exhibits that we would later use at trial. We
18 presented to him back in 2019 to show to his client. And
19 still, she maintained the same position, that she did.

20 So, she had a number of opportunities along the way to
21 really see the error of her ways, long before this ended up in
22 an indictment or a trial. And, she persisted with it. She
23 never told us at the debrief that Peter Sotis told her to delay
24 that debrief. She never told us that Peter Sotis was giving
25 her equipment for her own business at the time.

1 So, I think you have to take into account all these
2 choices that were made along the way, the fact that someone
3 with both law enforcement and military experience is not
4 someone similarly situated to other defendants who may have
5 understood that there was a violation of the law, but didn't
6 have that level of experience.

7 So, I fully agree that Peter Sotis is far more culpable
8 in this case, but I also think that there is no precedent out
9 there for no jail time in these kind of cases, and certainly
10 not in a case like this where, you know there was not only lack
11 of admitting to responsibility early on, but actively working
12 against the investigation in this case.

13 I do believe that Ms. Voissem was less than
14 forthcoming, not only at the debrief but at trial. And, I
15 believe that the Zaghab's were truthful in saying that they had
16 contacted both, both defendants in trying to understand what
17 the commerce agent had said, and neither one of them were frank
18 about what occurred there.

19 So, taking this all into consideration, we believe that
20 there -- there needs to be some level of imprisonment on it.
21 We have stated before, we thought a guideline sentence was
22 appropriate but we also note your Honor's concerns about the
23 3553(a) factors.

24 So, we will defer to your Honor that we also think
25 there needs to be a level of imprisonment here.

1 THE COURT: Okay.

2 If I may take a short restroom break. I will be right
3 back.

4 (Whereupon, there was a recess, after which the
5 following proceedings were had:)

6 THE COURT: Okay. Anything -- the defendant,
7 Ms. Voissem is present, and all counsel are present and the
8 probation officer is present.

9 Is there anything else for the Court to take into
10 consideration?

11 MR. MOSS: Nothing from Ms. Voissem.

12 MR. THAKUR: No, your Honor.

13 THE COURT: Okay. The Court truly appreciates all of
14 the counsel's arguments, and hard work that they have done in
15 this case. The Court has also read all of the letters that
16 were filed on behalf of Ms. Voissem at docket entry 131, and I
17 have listened to Ms. Voissem and her family.

18 The Court, in applying the 3553(a) factors, have taken
19 the following facts into consideration: Ms. Voissem was the
20 office manager, on one hand, she was not a low level employee.
21 She was also not the owner of the company.

22 But, she obviously took care of all of the
23 administrative matters, at Sotis's direction. She was -- my
24 sense is that she was very good at the detailed work, and I am
25 not a psychologist but I have a distinct sense that she needs

1 the -- to please, and it was psychologically rewarding to
2 please Sotis, who was a dynamic personality.

3 But, there was also that she saw her future as, through
4 Sotis, and that future was dependent on maintaining his
5 affirmation, and I presumed that there were, it sort of came
6 out, possibility of promises of his financial support and maybe
7 even an interest in the business.

8 I do not agree, given her background, both in law
9 enforcement for as many years and, as in the military, that she
10 was naive. I see that much more as she let her need for the
11 dream of her future, the need to be needed, her status's
12 success, and I think, to this, based on what the children have
13 said, and her mother has said, I think even at this point, she
14 cannot admit to herself, or to others, that she decided to
15 throw away all of her law enforcement training when Agent
16 Wagner came and intentionally made that decision to not be
17 forthcoming.

18 She was close today in getting there, but I don't know
19 that deep down, yet, she is finally there to coming to grips.
20 She has not succeeded -- I mean, she has succeeded
21 significantly in her 45 -- is it 45 years -- and she didn't get
22 this far by being a complete patsy. I do agree she probably
23 does not have the strong will that she needs, but, again, it is
24 that needy feeling and also the dream of her future and her
25 finally achieving financial and professional success that makes

1 her sort of say, well, this is the way that business goes.

2 Having said that, the evidence supports, and so the
3 nature and examining offense, this is a serious offense in
4 which she took an active participation.

5 But, I do think that, in comparison between the two,
6 there is a significant difference in the level of
7 responsibility and the benefits that one was going to get out
8 of this.

9 I also believe that there are -- I accept that there is
10 a certain amount of undue influence that is probably beyond the
11 normal, that is something that Ms. Voissem has to work on,
12 because you do need to put your trust in something other than
13 human beings in the sense of -- I am concerned about the family
14 responsibilities, and the obligations that she has there. I
15 agree with the Government that certain -- there needs to be
16 some time to achieve the -- of incarceration to achieve the
17 purposes of 3553(a) in the sense of deterrence.

18 Given the whole of this case, and to -- also consistent
19 to avoid disparity in sentencing in the case that you cited,
20 Mr. Moss, the Court will vary downward to a Level 12, which
21 provides a guideline range of ten to 16 months, and I will
22 impose a split sentence, five months of incarceration and five
23 months of home confinement.

24 I think that that accomplishes the need for -- and I am
25 taking into consideration the fact that as a former police

1 officer, she is going to be segregated, and that that will have
2 an impact on her during custody. I do believe that five months
3 of imprisonment and the five months of home confinement will
4 have the necessary punishment and give her an opportunity to
5 reflect and grow, which I think she has the capability of
6 doing. If she is willing to really accept the fact that her --
7 whatever issues that are underlying that make her feel so
8 needy, to trust others, in particular the male of the species,
9 is something that you need to work on, Ms. Voissem.

10 DEFENDANT VOISSEM: Yes, your Honor.

11 THE COURT: I don't, I am -- I don't know how to coach
12 people or help people that way, but it is quite obvious that,
13 until you get your handle on that, and develop a sense of
14 internal self-worth, that your best friend at work or even your
15 daughter has, I think you need to coach your son, he is too
16 much like you. You both need to work on being a little bit
17 more -- you can trust everyone, but you have to count your
18 cards, or you can trust, but verify.

19 And that's something that requires self-discipline and
20 practice, practice, practice, practice until it becomes a
21 habit.

22 And you need to feed your soul so that you truly have a
23 sense, you feed that internal compass that lets you have a
24 sense of, is this the way I would want to be treated?

25 Is it right?

1 Is it true?

2 And, if you feed your soul enough, you learn to listen
3 to that internal compass that you have fed, that helps you be a
4 person with integrity, and always examine, am I dealing with
5 this person the way I want to be treated, myself? And not
6 giving one's self an easy out by saying, well, I believe
7 so-and-so. At the age of 45, with all that you have
8 accomplished, that is the power of self-delusion, and the mind
9 is very, very powerful, Ms. Voissem.

10 For 23 years I have watched the mind self-delude. It
11 is very humbling for me, because it is a reminder to me how
12 easy it is and how powerful it is, but something we all have to
13 work on.

14 So, I don't have a revised blue sheet that says
15 whatever I am supposed to say, Ms. Goulds.

16 Do you have the split sentence blue sheet?

17 PROBATION OFFICER: No -- I can go look.

18

19 THE COURT: The Court has considered the statements of
20 all the parties, and the presentence report which contains the
21 advisory guidelines and statutory factors as set forth in 18
22 U.S.C. 3553(a). It is also the finding of the Court that the
23 defendant is not able to pay a fine, and therefore, no fine
24 shall be imposed.

25 It is the judgment of the Court that the defendant,

1 Emilie Voissem, is committed to the Bureau of Prisons to be
2 imprisoned for five months of imprisonment, and to be followed
3 by -- which is five months of imprisonment for Count 1, excuse
4 me. It is to a split -- do I say for a split sentence, or five
5 months imprisonment and five months of home confinement?

6 PROBATION OFFICER: Well, your Honor, it is going to be
7 five months imprisonment as to each count concurrently and then
8 in home confinement in addition --

9 THE COURT REPORTER: I'm sorry, I didn't hear you.

10 PROBATION OFFICER: Five months of imprisonment as to
11 each of Count 1, 2 and 3, all terms to be served concurrently.
12 And then five months of home confinement will be a condition of
13 supervised release.

14 THE COURT: Okay. Got it. So, the sentence is five
15 months of imprisonment as to Counts 1, Counts 2, and 3, all
16 such terms to be served concurrently, and then five months of
17 home confinement to be a part of the term of supervised
18 release.

19 Upon release from imprisonment, the defendant will be
20 placed on supervised release for a term of three years, as to
21 each Counts 1, 2, and 3 of the indictment, all such terms to
22 run concurrently. Within 72 hours of release from the custody
23 of the Bureau of Prisons, the defendant shall report in person
24 to the Probation Office in the district in which the defendant
25 is released. While on supervised release, the defendant shall

1 comply with the mandatory and standard conditions of supervised
2 release, that include not committing any crimes, being
3 prohibited from possessing a firearm or other dangerous device,
4 not unlawfully possessing a controlled substance, and cooperate
5 in the collection of DNA.

6 The defendant shall also comply with the following
7 special conditions of five months of home confinement, the
8 association restriction, no contact with Mr. Sotis, financial
9 disclosure requirement, and the unpaid special assessment, as
10 noted in Part F of the presentence investigation report.

11 So, the total sentence is -- oh, it is further ordered
12 that the defendant shall immediately pay to the United States a
13 special assessment of \$100 as to each of Counts 1, 2, and 3,
14 for a total of \$300.

15 Total sentence is ten months of -- excuse me, five
16 months of imprisonment, followed by five months of home
17 confinement, three years -- as part of a condition of
18 supervised release, three years of supervised release, and the
19 \$300 special assessment.

20 It is also ordered that the forfeiture of the
21 defendant's right, title and interest in the rebreathers is
22 hereby ordered, and the United States will submit a proposed
23 order of forfeiture within three days of today's hearing.

24 Now that sentence has been imposed, Ms. Voissem, do you
25 or your counsel object to the Court's findings of fact or the

1 manner in which the sentence was pronounced?

2 MR. MOSS: No objection, your Honor.

3 THE COURT: You have the right to appeal the conviction
4 and the sentence this I have just imposed. Any notice of
5 appeal must be filed within 14 days after the entry of the
6 judgment. If you are unable to pay the cost of the appeal you
7 may apply for leave to appeal in forma pauperis.

8 Did I advice Mr. Sotis that he had the right to an
9 appeal.

10 THE COURTROOM DEPUTY: Yes.

11 THE COURT: I did?

12 THE COURTROOM DEPUTY: Yes.

13 MR. MOSS: I am not sure if you did, your Honor.

14 MR. THAKUR: I don't remember.

15 THE CLERK: You told him you wouldn't have a problem
16 with being reversed.

17 THE COURTROOM DEPUTY: You are right, she did say that,
18 but --

19 THE COURT: But I didn't tell him he had the right to
20 appeal, that the appeal had to be filed within 14 days.

21 How do I cure that?

22 THE COURTROOM DEPUTY: We can do --

23 (Inaudible).

24 THE CLERK: You could do a telephone conference.

25 THE COURT REPORTER: I am sorry, that didn't --

1 THE COURTROOM DEPUTY: We can put it on the docket.

2 You can make a telephone conference.

3 THE COURT: Let's do that. Okay. I do not plan on
4 remanding Ms. Voissem, I want you -- I understand the third
5 grandchild is due in April. But I leave it up to you, do you
6 want to get started now on the term of imprisonment and have it
7 done, and then go out, or do you want to wait until after the
8 grandchild is born?

9 MR. MOSS: If she could have a few seconds, please, to
10 speak to her family, your Honor?

11 THE COURT: Okay. And one thing is to go ahead and get
12 it done with, especially if you are going to move out to
13 California and then have home confinement out there.

14 MR. VOISSEM: Is that the possibility, that the home
15 confinement can be out of Florida?

16 THE COURT: Correct. We can allow the home
17 confinement, yes, to be in Florida -- I mean in California.

18 MR. VOISSEM: Thank you, your Honor.

19 THE COURT: And I imagine if she is -- for five months,
20 it would be over at FDC, so she would be here.

21 MR. MOSS: That, I am not sure about, Judge, you may be
22 right, but, I am not certain.

23 THE COURT: We can arrange that she would be
24 automatically self-surrendered to start her sentencing now and
25 she would end up being at FDC, and it being such a short amount

1 of time, she would at least be -- I mean, FDC is not great, but
2 it is probably better than going up to Tallahassee. They do
3 have a -- they do have a facility at Coleman for women, but
4 that's in Orlando, that will be far away from your husband.

5 But, otherwise, I would give you the opportunity to
6 self-surrender, which is important for your security
7 classification.

8 MR. MOSS: Yes, Judge, Ms. Voissem indicates that she
9 would ask the Court to recommend a placement in either Bryan or
10 Carswell.

11 DEFENDANT VOISSEM: I believe it was Carswell, in Fort
12 Worth Texas, or Bryan in Texas.

13 MR. MOSS: Those apparently are female facilities, or
14 facilities that do house female inmates so that would put her
15 closer to Samantha and her family.

16 THE COURT: So it is either Bryan, B-R-Y-A-N?

17 MR. MOSS: Correct.

18 THE COURT: Or Carswell --

19 MR. MOSS: C-A-R-S-W-E-L-L.

20 THE COURT: -- in Texas, so you want to self-surrender
21 after the baby is born.

22 DEFENDANT VOISSEM: No, your Honor, I would like to
23 start it now, within 30 days.

24 MR. MOSS: (Inaudible.)

25 THE COURT: Well, I am -- I am concerned that if --

1 before we -- before the Bureau of Prisons designates you to
2 there, that it usually takes about 45 days for them to
3 designate you. That was the only reason why I was thinking of,
4 if you want me to order that you self-surrender in five days,
5 then the only place you can self-surrender around here is to
6 walk over to FDC and I am trying to save you from being
7 transported by Con Air.

8 MR. MOSS: Diesel Therapy.

9 THE COURT: Or by the bus.

10 DEFENDANT VOISSEM: Your Honor, would it be -- would I
11 be able to self-surrender in Texas?

12 MR. MOSS: I think that would be feasible, Judge. As
13 your Honor is aware, she has been out on personal surety bond
14 since she was indicted. She has never had any violations,
15 actually been able to travel.

16 THE COURT: That is not the issue, the issue is --
17 okay. So, when do you want, it takes about 45 days to
18 designate so you are going to be -- if that's what you want,
19 that is what I will do.

20 DEFENDANT VOISSEM: Yes, your Honor.

21 THE COURT: Okay, then I will -- I also want to add to
22 the special conditions, I saw in the law enforcement
23 presentence investigation report a concern about consumption of
24 alcohol. And I would recommend and add as a standard
25 condition, assessment for alcohol treatment, and once they do

1 the assessment, if it is not necessary, they won't. But, I
2 have that in there so if you find you have the need of it,
3 probation is already on notice.

4 Anything else?

5 DEFENDANT VOISSEM: No, your Honor.

6 MR. MOSS: Nothing from defense.

7 THE COURT: Okay. So, Ms. Martinez, what is --
8 45 days? Or should we just wait until it is the Bureau of
9 Prisons' designation -- all of these administrative details.

10 PROBATION OFFICER: Honestly, your Honor, we don't
11 know, it is just a recommendation, it doesn't mean she will be
12 designated to these specific places, so it might be best to
13 wait to see where she will get designated.

14 THE COURT: Okay, so give a self-surrender date of
15 60 days? They should have her designated by then.

16 MR. MOSS: That's fine, your Honor.

17 THE COURTROOM DEPUTY: Sixty days?

18 THE COURT: Sixty days, what is sixty days?

19 THE COURTROOM DEPUTY: Sixty days from today is
20 March 13th.

21 THE COURT: Okay. March 13th.

22 THE COURTROOM DEPUTY: Oh, that is a Sunday, Judge.
23 March 11th.

24 THE COURT: No, the Monday.

25 THE COURTROOM DEPUTY: Monday, the 14th.

1 THE COURT: That way that gives her the weekend to
2 travel.

3 The self-surrender date then is March 14th at the
4 designated facility. The Court does recommend either Bryan or
5 Carswell, Texas, two facilities for women that would be close
6 to the family.

7 And, given the responsibility that she has in assisting
8 with the rearing of her two existing grandchildren and the
9 third one that is on the way, to make it easier for the family,
10 is why I am making the recommendation.

11 Anything else?

12 MR. MOSS: Just to confirm, your Honor, that this is
13 your last sentencing hearing as a Senior District Judge.

14 THE COURT: I have one more.

15 MR. MOSS: One more, all right, so I don't have the o
16 pleasure of closing you out, but I want to say on behalf of
17 myself and Ms. Voissem that it has truly been an honor and
18 pleasure to appear in front of your Honor. As you know, we
19 have known each other since you were a candidate for Florida
20 Bar presidency back in --

21 THE COURT: That is 30 years ago.

22 THE WITNESS: Something like that, you were wearing
23 your hair down to your shoulders and I wore mine in a high top
24 fade. How much time has passed since then.

25 THE COURT: Both of us have gotten it shorter.

1 MR. MOSS: That is true.

2 THE COURT: But you may be outdoing me.

3 MR. MOSS: I think that is a permanent condition. But,
4 anyway, Judge, I just want to thank you for the attention that
5 you have given throughout the case, you were very even-handed,
6 I have no complaint in the manner in which this trial was
7 conducted, even though it was my only trial before your Honor,
8 I am certainly glad I had the opportunity, we thank you for
9 your service.

10 THE COURT: Thank you, I asked Ms. Voissem to, I have
11 just one special request. The aunt, I can't remember her name
12 now -- your mother's sister.

13 DEFENDANT VOISSEM: Your Honor, it is -- she is
14 actually my mother's -- she's my grandma's sister's daughter, I
15 believe, if I am saying that correctly.

16 MR. MOSS: So your great niece, it sounds like.

17 THE COURT: What was her name? Oh, Jody Voissem.

18 DEFENDANT VOISSEM: That is my brother, your Honor, it
19 showed as sister, but that is my brother.

20 THE COURT: Well, what was her name? The woman that I
21 am trying -- I am thinking back to her letter.

22 You have to promise me that you will call her and tell
23 her -- she was asking me why did I appoint a counsel that was
24 inexperienced, and I think we need to educate her that although
25 I didn't have the opportunity to appoint Mr. Moss, if I had, I

1 would have, simply because I know his reputation as an
2 excellent counsel.

3 So I was quite concerned that whatever the statements
4 were going on in the family, that what got back to her was that
5 the Court had appointed an adequate counsel.

6 DEFENDANT VOISSEM: Your Honor, I will make sure.

7 THE COURT: She is entitled to her opinion, because she
8 is very protective of you, but hopefully, she will consider
9 that we may have a bit more knowledge about his abilities than
10 she does.

11 DEFENDANT VOISSEM: I will make that clear to whoever
12 that is.

13 THE COURT: And you can tell by the results he has
14 accomplished here today just how effective he is.

15 MR. MOSS: Thank you again, your Honor.

16 THE COURT: Okay. We are in recess.

17 Can we get Mr. Udolf and Mr. Sotis back on the line?

18 (Whereupon, there was a discussion off the record,
19 after which the following proceedings were had:)

20 (A phone call was placed to Mr. Udolf's law office.)

21 LAW OFFICE SECRETARY: Law office, can I help you?

22 THE COURTROOM DEPUTY: Good afternoon, may I speak with
23 Mr. Udolf?

24 LAW OFFICE SECRETARY: Hello, I can't hear you.

25 Can I help you?

1 THE COURTROOM DEPUTY: Can you hear me?

2 LAW OFFICE SECRETARY: Yes, now a little bit.

3 How can I help you?

4 THE COURTROOM DEPUTY: Good afternoon. This is the
5 relief deputy for the Honorable Judge Seitz. We are wondering
6 if Mr. Udolf is in the office?

7 Can you call him on his cell?

8 THE COURTROOM DEPUTY: Sure, may I have the number.

9 LAW OFFICE SECRETARY: Yes, it 954-415-2260.

10 THE CLERK: Thank you, have a great day.

11 LAW OFFICE SECRETARY: Thank you, you, too.

12 (A phone call was placed to the cell phone of Mr. Udolf
13 but there was no answer.)

14 THE COURT: I don't think it was a fatal affect here,
15 given the fact that I -- we had a discussion that he was
16 preserving things for appeal and I anticipated he was going up
17 on appeal and I looked forward for the Court telling me I was
18 wrong.

19 MR. THAKUR: I think it is the timing of that that is
20 critical, the number of days to appeal.

21 THE COURT: Right. That is the issue.

22 Given the fact that he was preserving things for
23 appeal, and I anticipated he was going up on appeal, and I
24 looked forward to the Court telling me that I was wrong.

25 MR. THAKUR: Maybe the timing is critical, the number

1 of days to appeal.

2 THE COURT: That's the issue.

3 (A phone call was placed to the cell phone of Mr.
4 Udolf.)

5 THE COURTROOM DEPUTY: This is the deputy for Judge
6 Seitz.

7 One moment. Good afternoon, Mr. Udolf, can you hear
8 me?

9 MR. UDOLF: Yes, I can hear you.

10 THE COURT: Mr. Udolf, this is Judge Seitz and I have
11 Mr. Thakur also here. I realized, after you all left, that
12 although I asked whether or not there was any objection to the
13 Court's findings of fact or the manner in which the sentence
14 was pronounced, I did not inform you or your client the
15 official, you have the right to appeal the conviction and the
16 sentence imposed.

17 So, I need to do that, and that any notice of appeal
18 must be filed within 14 days from the entry of the judgment,
19 and that if he was unable to pay the cost of the appeal he
20 could apply for leave to appeal in forma pauperis.

21 So those three sentences are important to finish the
22 sentencing, and I need to have the two of you present so that I
23 can say that, or, if you can get him on the phone, and you want
24 to waive your appearance, I will take care of it right now.

25 MR. UDOLF: Well, I am willing to waive his appearance

1 if your Honor doesn't require, I am willing to do it for him.
2 I am sure he doesn't object to it. He is aware of his right to
3 appeal and I think he is going to appeal.

4 THE COURT: Well, I need to tell him so that he knows
5 straight from me.

6 MR. UDOLF: Okay. Well, if your Honor would, would let
7 me see if I can conference him in.

8 THE COURT: Okay. Thank you, I appreciate that very
9 much.

10 Well, Ms. Goulds, I don't know that you have ever had a
11 sentencing like this one. I certainly haven't.

12 PROBATION OFFICER: Not yet. It is a good experience.

13 THE COURT: The power of positive thinking.

14 (Pause in proceedings.)

15 MR. UDOLF: Peter, are you there?

16 DEFENDANT SOTIS: Judge and Mr. Thakur, Peter Sotis is
17 on the phone.

18 THE COURT: Mr. Sotis, I apologize, this is Judge
19 Seitz. And I have you and Mr. Udolf on the phone, and
20 Mr. Thakur is present here in the courtroom.

21 DEFENDANT SOTIS: Okay.

22 THE COURT: First, I was going to ask you to come back
23 to the courtroom because there were three sentences that I did
24 not tell you that the procedures I am required to tell you.
25 So, let me ask you this: Would you be willing -- that pertain

1 to your rights to appeal, if you are willing to waive your
2 appearance here in court, and proceed with this telephonic
3 hearing, we will proceed the way we are right now, with you
4 hooked up to Mr. Udolf's phone.

5 DEFENDANT SOTIS: Your Honor, I am happy to proceed
6 this way, thank you.

7 THE COURT: Okay. And --

8 MR. THAKUR: Your Honor, could he state his name for
9 the record? I don't know if he said it.

10 THE COURT: Do me I favor, Mr. Sotis, just state your
11 name so that court reporter can hear your voice.

12 DEFENDANT SOTIS: Sure. My name is Peter Sotis,
13 S-O-T-I-S.

14 THE COURT: And Mr. Sotis, you waive your right to
15 appear here for this little supplemental proceeding on your
16 sentencing?

17 DEFENDANT SOTIS: Yes, I do.

18 THE COURT: And Mr. Udolf, you are present by phone?

19 MR. UDOLF: Correct.

20 THE COURT: Okay. And Mr. Thakur, you are present in
21 the courtroom?

22 MR. THAKUR: Yes, I am, your Honor.

23 THE COURT: Okay. Mr. Sotis, I failed to tell you that
24 you have the right to appeal the conviction and the sentence
25 that I have imposed. Any notice of appeal must be filed within

1 14 days after the entry of the judgment, which may be today or
2 it could be tomorrow. If you are unable to pay the costs of
3 the appeal you may apply for leave to appeal in forma pauperis.
4 And I did not give you a surrender date.

5 Mr. Udolf, it takes 45 days. Shall I simply have a
6 surrender date of 45 days from now?

7 MR. UDOLF: That would be fine, or surrender upon
8 designation, Judge, I don't know how long it is taking
9 nowadays.

10 THE COURT: I am happy to do it in -- it is usually
11 45 days, but you are right. Let's make self-surrender either
12 60 days from today, or upon designation, whichever is earliest.

13 MR. UDOLF: Thanks, Judge.

14 THE COURT: Okay.

15 DEFENDANT SOTIS: Thank you, Judge.

16 THE COURT: Okay, and 60 days from now would be
17 March 13th?

18 THE COURTROOM DEPUTY: The 14th.

19 THE COURT: March 14th. The 13th is a Sunday.

20 MR. UDOLF: Okay.

21 DEFENDANT SOTIS: Thanks, Judge, very helpful, thank
22 you.

23 THE COURT: We are in recess, and thank you very much
24 for letting us get you back on the phone.

25 We are in recess.

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(Proceedings concluded at 4:03 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

April 27, 2022
DATE

/s/Sharon Velazco
SHARON VELAZCO, RPR, FPR
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