

1 A P P E A R A N C E S:

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6 Massachusetts, 02210, for the Plaintiff.

7 KEITH S. HALPERN, ESQ., 572 Washington Street, Suite 19,
Wellesley, Massachusetts, 02480, for the Defendant.

8 ALSO PRESENT: James Pace, U.S. Probation Office.
9 Jiraporn Huynh, Thai Interpreter.

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P R O C E E D I N G S

THE COURT: Good afternoon. Would the Clerk please call the case.

THE CLERK: This is Criminal Matter 21-10270, United States v. Aticha Jittaphol.

THE COURT: And is there an interpreter to be sworn?

THE INTERPRETER: Yes, your Honor. This is the interpreter here.

THE COURT: So the Clerk should administer the oath to the interpreter.

(Interpreter Huynh duly sworn.)

INTERPRETER HUYNH: I do. Jiraporn Huynh, Thai interpreter.

THE COURT: Could you spell your name, please.

INTERPRETER HUYNH: J-i-r-a-p-o-r-n, the last name is H-u-y-n-h.

THE COURT: Okay, would counsel please identify themselves for the Court and for the Court Reporter, starting with the government.

MR. HALPERN: Elysa, I think you're on mute.

MS. WAN: Excuse me. Good afternoon, your Honor. This is Elysa Wan for the government, and I'm joined by Alyssa Tochka and Luke Goldworm.

MS. TOCHKA: Good afternoon, your Honor.

MR. GOLDWORM: Good afternoon, your Honor.

1 MR. HALPERN: And good afternoon, your Honor. Keith
2 Halpern for Ms. Jittaphol.

3 THE COURT: And, Ms. Jittaphol, the defendant, is on
4 the Zoom. I see she's been in the United States and working
5 ten years. Does she need the interpreter, or should the
6 interpreter just be available in case there's anything that
7 should be explained or translated?

8 MR. HALPERN: I think doing it the second way should
9 work, but her English is not great.

03:33 10 THE COURT: Well, Ms. Jittaphol, have you been able to
11 understand me so far?

12 THE DEFENDANT: I understand, your Honor. I have the
13 interpreter that's really helping me with this proceeding.
14 Thank you.

15 THE COURT: No, have you been able to -- I'd like you
16 to answer me in English, please. Have you been able to
17 understand me so far in English?

18 THE DEFENDANT: No. I understand different pieces of
19 it. It's not clear.

03:34 20 THE COURT: Then I'll have it translated, although I
21 should not be hearing both parties speak, I think, and I don't
22 know why I am.

23 INTERPRETER HUYNH: Your Honor, are you hearing Thai
24 and English? This is the interpreter. I am switching it to
25 English channel when Ms. Jittaphol is speaking in Thai to relay

1 what she says, but when you ask her, I am speaking in the Thai
2 channel to her.

3 THE COURT: That's fine, but you should be in the
4 English channel.

5 INTERPRETER HUYNH: No. I need to be in the Thai
6 channel because I have to speak Thai to her.

7 THE COURT: Then go out of the English channel so I
8 don't hear you.

9 INTERPRETER HUYNH: Yes. I was telling you what she
03:34 10 was saying in Thai to English.

11 THE COURT: I just did this an hour or so ago. Just
12 come back into the English channel when you're talking to me
13 but go off of it when you're talking to her, okay?

14 INTERPRETER HUYNH: Certainly. I was in the Thai
15 channel as I was speaking to her, and I was just saying what
16 she say in Thai in the English channel. I'm switching back and
17 forth.

18 THE COURT: Okay.

19 INTERPRETER HUYNH: Thank you, your Honor. I'm going
03:35 20 back to the Thai channel now.

21 THE COURT: Thank you.

22 Would the probation officer please identify himself
23 for the record.

24 MR. PACE: James Pace on behalf of United States
25 Probation, your Honor.

1 THE COURT: Okay, I am conducting this proceeding
2 pursuant to the request of the defendant to waive indictment
3 and plead guilty by video in conjunction with the petition of
4 the Probation Department to show cause, for the defendant to
5 show cause why her pretrial release should not be revoked,
6 which defendant opposes in a submission captioned "Opposition
7 to Probation revocation," Docket No. 24. And there are some
8 other pending motions of the defendant, one an ex parte motion
9 for funds, another a request for modification so the conditions
03:36 10 of her release permit domestic travel.

11 It's permissible to conduct these hearings by video,
12 as authorized by the CARES Act, the Judicial Conference of the
13 United States, and the Chief Judge of the First Circuit, if the
14 defendant has spoken to her lawyer and consents. We're still
15 in the midst of a resurgence of the COVID-19 pandemic that
16 makes it imprudent to conduct proceedings in the courtroom at
17 this time. There's some urgency to these matters.

18 The defendant does wish to waive indictment and plead
19 guilty to the charge, two charges against her. There is the
03:38 20 pending petition which involves whether her release should
21 continue and her request in effect that the conditions of her
22 release be modified. So there's some urgency to this, genuine
23 urgency to this.

24 Therefore, as I said, if the defendant has talked to
25 Mr. Halpern and agrees to proceed by video, we can and we will.

1 Mr. Halpern, have you discussed this with her?

2 MR. HALPERN: Yes, your Honor.

3 THE COURT: And is she agreeable to proceeding by
4 video?

5 MR. HALPERN: Yes.

6 THE COURT: All right. And, Ms. Jittaphol, did you
7 discuss with Mr. Halpern whether you wish to have this hearing
8 by video today or at some later time in the courtroom? Have
9 you talked to him about that?

03:39 10 THE DEFENDANT: Yes.

11 THE COURT: And do you agree to proceed by video
12 today?

13 THE DEFENDANT: I agree.

14 THE COURT: Okay, then we will, and this proceeding is
15 of course open to the public.

16 I'd like to review what I understand to be the
17 chronology in this case so you can confirm or correct my
18 understanding as I've reconstructed it. The defendant had her
19 initial appearance before Magistrate Judge Bowler on October 26,
03:39 20 2021. At that hearing, she was released on personal
21 recognizance with additional conditions of pretrial release,
22 which are in Docket No. 12. These conditions include, among
23 other things, not using or unlawfully possessing a controlled
24 substance unless prescribed by a medical practitioner,
25 submitting to testing for prohibited substances, and

1 participating in a program of inpatient or outpatient substance
2 abuse therapy and counseling, if directed by the Pretrial
3 Services office or the supervising officer. As I said, they
4 are in Docket No. 12.

5 On November 19, 2021, Probation filed a petition
6 reporting that Ms. Jittaphol had reported the daily use of
7 methamphetamine and tested positive for amphetamines. That's
8 Docket 16. Probation requested no action because the defendant
9 was agreeable to receiving substance abuse treatment and was
03:41 10 expected to enter detox at the SSTAR treatment center in
11 Fall River. The Court approved taking no action on the
12 violations of pretrial release but ordered Probation to report
13 promptly if the defendant did not properly participate in detox
14 or otherwise violated the conditions of her release.

15 On January 11, 2022, Probation filed another petition
16 reporting additional noncompliance and requesting a hearing on
17 the conditions of Jittaphol's pretrial release. Probation
18 reported that defendant did not begin treatment at the SSTAR in
19 Fall River because she failed twice to report to the program
03:42 20 during intake hours. Probation then referred the defendant to
21 another inpatient treatment program through Behavioral Health
22 Network. Jittaphol was admitted on December 6, 2021. However,
23 on December 27, 2021, Ms. Jittaphol allegedly discharged
24 herself from this treatment without notifying Probation after
25 she completed short-term inpatient treatment, and declined to

1 participate in the next phase of long-term treatment that was
2 clinically recommended by the BHN staff. Probation directed
3 Jittaphol to participate in the long-term treatment, but
4 Ms. Jittaphol's attorney informed Probation that she was not
5 agreeable to complying with this directive, so a January 11
6 petition was filed, and Probation requested a hearing as soon
7 as possible.

8 On January 12 I allowed Probation's request for a
9 hearing on the petition and issued a summons. I scheduled a
03:43 10 hearing on the petition for the same time as the waiver and
11 plea hearing; that is, today at 3:30 p.m. On January 18 the
12 defendant filed an opposition to probation revocation which
13 urges the Court not to require participation in inpatient drug
14 treatment as a condition of probation unless Jittaphol tests
15 possible for methamphetamine and there is a determination that
16 she needs inpatient treatment to remain sober. That's
17 Docket 24.

18 On January 14 Jittaphol filed an ex parte motion
19 requesting funds to retain a psychiatrist with expertise in
03:44 20 addiction treatment to address the appropriate care and whether
21 it is proper to require her to participate in inpatient
22 treatment for methamphetamine use. On January 19 Ms. Jittaphol
23 filed a motion to modify her conditions of pretrial release to
24 allow her to travel domestically to participate in volleyball
25 tournaments and potentially pursue temporary job opportunities

1 in other states.

2 In some of those prior submissions, particularly the
3 defendant's, I was told that the defendant was drug tested at
4 her request on January 12, 2022. The Probation Department told
5 me today that test was negative.

6 I've also received, in addition to the documents I
7 mentioned, the bail report that was prepared for Magistrate
8 Judge Bowler, the Pretrial Services report -- that was provided
9 to defense counsel and the government in accordance with local
03:45 10 Rule 57.1 -- and the defendant's CORI, C-O-R-I, criminal
11 record. It also includes information from the Registry of
12 Motor Vehicles. But is that chronology that I've described
13 accurate from the perspective of the government and the
14 defendant?

15 MS. WAN: That's accurate from the government's
16 perspective.

17 MR. HALPERN: It's accurate. This is the first I've
18 heard of the issues with the Fall River facility, so I can't
19 address that.

03:46 20 THE COURT: Now, I don't know, haven't you seen the
21 petition?

22 MR. HALPERN: I haven't seen a petition concerning
23 Fall River.

24 THE COURT: Well, it's in -- here, let me do the
25 following. Have you seen -- I thought you were responding to

1 it. Just one second.

2 MR. HALPERN: The petition that I saw does --

3 THE COURT: Just let me finish. Let me finish.

4 There's Docket 21, the petition filed on January 12, 2022, and
5 did you receive that one?

6 MR. HALPERN: Yes. I believe that concerns the
7 failure to do inpatient treatment now.

8 THE COURT: All right, but, here, look at Page 2.

9 MR. HALPERN: Oh, I mean, I don't have it in front of
03:48 10 me.

11 THE COURT: All right. Well, Page 2 says that "As
12 outlined in the petition for action on conditions of pretrial
13 release dated November 19, 2021, the defendant admitted to the
14 U.S. Probation Office daily use of methamphetamine and was
15 subsequently amenable to participate in inpatient substance
16 abuse treatment. Following the Court's approval of this plan,
17 the defendant was referred for inpatient substance abuse
18 treatment with SSTAR located in Fall River, Mass., but was
19 denied placement at the program due to failing to report to the
03:48 20 program during intake hours on November 22, 2021, and
21 November 30, 2021. Due to this, the Probation Office referred
22 the defendant to participate in inpatient treatment through the
23 Behavioral Health Network," and then the next paragraphs deal
24 with matters relating to the Behavioral Health Network.

25 MR. HALPERN: I just missed it.

1 THE COURT: Yes, okay. All right, and is there
2 anything else that I said with regard to the chronology that
3 wasn't accurate?

4 MR. HALPERN: There's nothing inaccurate. The only
5 thing I think that is significant is the period of time
6 preceding that chronology because my appointment dates all the
7 way back to July. So even though there wasn't an information
8 and a court appearance until September, she was part of the
9 process way back in the summer.

03:50 10 THE COURT: Okay, and you wrote about that, and when
11 we get to the substantive discussion, you can address it again.

12 Okay, since this is the first time I'm seeing you, I
13 think I'll follow my usual practice and, although I've read
14 everything, give first the government a chance to briefly give
15 me an overview of this case.

16 MS. WAN: Sure, your Honor. Your Honor, Ms. Jittaphol
17 is charged with two counts of making false statements in
18 violation of 18 U.S.C. 1001. These false statements relate to
19 an application to the Small Business Administration for an
03:50 20 Economic Injury Disaster Loan and a Paycheck Protection Program
21 loan. Ms. Jittaphol, from starting in about 2017, owned and
22 operated Mantra Dhevi Spa, a massage parlor in Brighton,
23 Massachusetts, where she employed up to five employees at a
24 time, and Ms. Jittaphol herself worked at the Mantra Dhevi Spa
25 as well. With Ms. Jittaphol's knowledge and consent, employees

1 at the Mantra Dhevi Spa provided sexual services for a fee to
2 many customers. Ms. Jittaphol herself received a portion of
3 the earnings. For example, if customers paid about \$80 for a
4 one-hour massage, Ms. Jittaphol kept \$40, and the remaining in
5 tips would go to the workers at the spa.

6 In relation to the applications to the Small Business
7 Administration, which is an Executive Branch agency,
8 Ms. Jittaphol made false statements in the application stating
9 that the applicant is not engaged in any illegal activity, as
03:52 10 defined by federal guidelines, and that federal guidelines do
11 define "illegal activity" as including any illegal activity
12 under federal, state, or local law. That statement was false
13 because Ms. Jittaphol was violating several state laws related
14 to prostitution. And the Small Business Administration relied
15 on those statements in order to provide funds under the
16 Economic Injury Disaster Relief loan and the PPP loan. In
17 total, Ms. Jittaphol received \$7,066.67 in funds from the Small
18 Business Administration based on those applications which
19 contained false statements.

03:53 20 THE COURT: And did the prostitution, alleged
21 prostitution that you described constitute -- the government
22 considers it or involves sex trafficking?

23 MS. WAN: Your Honor, not under the -- the federal
24 statute, we don't believe it involved "by force or coercion,"
25 but certainly under the state statute, it involved prostitution

1 and profiting from prostitution, and promoting and sponsoring
2 prostitution.

3 THE COURT: Okay. And, Mr. Halpern, is there anything
4 I should know at this point to have a fuller flavor of this
5 case from the defendant's perspective?

6 MR. HALPERN: Well, I think just -- I don't need to
7 get terribly graphic, but the nature of the prostitution did
8 not involve intercourse. It involved massage, and it was not a
9 constant -- essentially the workers were on their own to agree
03:54 10 to what they wanted to agree to behind closed doors, and
11 Ms. Jittaphol was aware that in some instances they would agree
12 to perform sexual services, but the sexual services did not
13 include intercourse.

14 THE COURT: And Ms. Jittaphol owned the massage
15 parlor, the business; is that right?

16 MR. HALPERN: Right.

17 THE COURT: Maybe the government should address this
18 at least first, but the Pretrial Services report that went to
19 Magistrate Bowler says that the defendant entered the United
03:55 20 States on May 2, 2012, on an F-1 visa, which I understand is a
21 student visa, and is legally in the United States until
22 July 13, 2022. Does the government know what kind of visa, if
23 any, she's on now?

24 MS. WAN: Your Honor, I don't have any additional
25 information other than what was in the bail report.

1 THE COURT: Well, it's my understanding that an
2 individual is not -- I mean, is the defendant in school now?
3 Was she in school recently?

4 MR. HALPERN: She was in training. She's not currently
5 in school.

6 THE COURT: I know, but prior to the pandemic, was she
7 in school?

8 MR. HALPERN: I don't know the exact dates, your
9 Honor.

03:56 10 THE COURT: Well, I'll ask Probation to determine
11 this. I'm surprised the government doesn't know it, what her
12 immigration status is, because, as I understand it, if you're
13 in the United States on a student visa, A, you need to be in
14 school, and, B, there are limits to the amount you could work.
15 So she wasn't in school; she was working. She may be in the
16 United States illegally, which is a crime.

17 So, Mr. Pace, would you look into that for us,
18 please --

19 MR. PACE: Yes, your Honor.

03:57 20 THE COURT: -- after this hearing?

21 MR. PACE: Yes. And do you want me to notify the
22 Court or notify the parties? How would you like me to proceed?

23 THE COURT: You can notify all of us simultaneously.

24 All right, so the plea agreement in this case is a
25 Rule 11(c)(1) binding plea agreement. That means that usually

1 I would conduct a waiver-of-indictment colloquy and then a
2 Rule 11 colloquy. If all of the answers were satisfactory, I
3 would accept the guilty plea; I would defer until sentencing
4 whether to accept the plea agreement and impose the agreed-upon
5 sentence, or allow the defendant an opportunity to withdraw her
6 plea, as required by Federal Rule of Criminal Procedure
7 11(c)(1)(4) and (5). And then, after accepting the guilty
8 plea, presumably I would address the petition to revoke
9 supervised release and the related questions as to whether the
03:58 10 conditions of pretrial release should be revised.

11 But I have a question concerning whether I should
12 conduct a Rule 11 colloquy because to an unusual, possibly
13 unique degree, I have questions as to whether it's reasonably
14 likely that I'll accept the binding plea agreement if we go
15 through the protracted process of having the presentence report
16 prepared, and let me explain.

17 (Defendant speaking.)

18 THE COURT: The defendant needs to be quiet and listen
19 to this, okay? As the Supreme Court wrote in *Freeman v. United*
04:00 20 *States*, 564 U.S. 522 at 529, a decision not in pertinent part
21 altered by the later Supreme Court decision in *Hughes*, as I
22 understand it, in *Freeman* the Supreme Court wrote, "Federal
23 sentencing law requires the District Judge in every case to
24 impose a sentence sufficient but not greater than necessary to
25 comply with the purposes of federal sentencing in light of the

1 Guidelines and other Section 3553(a) factors. The Guidelines
2 provide a framework, a starting point, a basis in the
3 common-sense meaning of the term for the Judge's exercise of
4 discretion. Rule (c)(1)(C) permits the defendant and the
5 prosecutor to agree that a specific sentence is appropriate,
6 but that agreement does not discharge the District Court's
7 independent obligation to exercise its discretion."

8 Then, after some other language, the Supreme Court
9 wrote, "11(c)(1)(C) makes the parties' recommended sentence
04:01 10 binding on the Court once the Court accepts the plea agreement,
11 but the governing policy confirms the Court's acceptance is
12 itself based on the Guidelines. See Guideline Section 6B1.2.
13 That policy statement forbids the District Judge to accept an
14 11(c)(1)(C) agreement without first evaluating the recommended
15 sentence in light of the defendant's applicable sentencing
16 range. The commentary to Section 6B1.2 advises that a Court
17 may accept an 11(c)(1)(C) agreement only if the Court is
18 satisfied either that such a sentence is an appropriate
19 sentence within the Guideline range, or, if not, the sentence
04:02 20 departs from the applicable Guideline range for justifiable
21 reasons."

22 So as I read that, it's not automatic, even if the
23 agreed sentence is within the Guideline range, that the Court
24 must accept it. I have to consider all the 3553(a) factors and
25 decide whether it provides for an appropriate sentence. And

1 that's consistent with the Advisory Committee note, the 1974
2 Advisory Committee note to Rule 11 which says, "The plea
3 agreement procedure does not attempt to define criteria for the
4 acceptance or rejection of a plea agreement. Such a decision
5 is left to the discretion of the individual trial judge."

6 That was written before the Guidelines came into
7 effect in 1987, which to some extent focused what should be
8 considered in exercising discretion, and at the moment, I doubt
9 that I would find the agreed-upon sentence sufficient. As I
04:03 10 understand it, it provides for no time in custody, three years
11 probation, no fine, and it would require the defendant to repay
12 the \$7,000 she illegally obtained. And one of the
13 Section 3553(a) factors I have to consider at sentencing was
14 whether the need for the sentence to reflect the seriousness of
15 the offense, to promote respect for the law, and to provide
16 just punishment for the offense. And I also have to consider
17 whether the sentence would be sufficient to afford adequate
18 deterrence to criminal conduct, and I have to consider whether
19 it would be sufficient to protect the public from further
04:04 20 crimes of defendant.

21 I think it would be most efficient if the parties,
22 starting with the government, right now would address why I
23 should find that this sentence is sufficient because --

24 MS. WAN: Thank you, your Honor.

25 THE COURT: Oh, okay, go ahead.

1 MS. WAN: Thank you. We understand that this sentence
2 is in many ways a generous offer from the government. There
3 were certain mitigating factors that we considered in coming to
4 this conclusion. One is that Ms. Jittaphol herself was not
5 just a ringleader or a leader of a brothel, but she herself was
6 a worker. She was a sex worker and participated in prostitution,
7 and the profits from the employees were not sufficient to
8 support her as only an overseer.

9 THE COURT: So the United States regards it as a
04:06 10 mitigating factor that she was a prostitute?

11 MS. WAN: Your Honor, I think that's not exactly what
12 we're saying. I think it's a mitigating factor in the sense
13 that this isn't a top-down trafficking organization the way
14 that we've seen in other places where there is a defendant at
15 the top and the worker is below. This seems to be actually a
16 much more flat organization and one where Ms. Jittaphol was
17 also subjected to sex work as well.

18 THE COURT: She was also what?

19 MS. WAN: She was also subjected to sex work as well.

04:07 20 THE COURT: When you say "subjected," nobody else
21 subjected her, did they?

22 MS. WAN: I do think also at the same time we
23 recognize that Ms. Jittaphol had certain characteristics that
24 made her more vulnerable than other people might be. For
25 example, Ms. Jittaphol is a transgender individual. She also

1 has, as you can see from the chronology, a drug addiction
2 problem; and although those aren't necessarily mitigating
3 factors, that played into the overall picture of what we saw.

4 THE COURT: Well, I heard you say earlier that it was
5 a mitigating factor that she wasn't earning enough money to
6 support herself from the people who worked in her massage
7 parlor. Did I understand that right?

8 MS. WAN: Your Honor, again, I'm sorry for the
9 ineloquence. I guess what I'm trying to say is, she wasn't
04:08 10 profiting greatly from the people who were working at her
11 massage parlor.

12 THE COURT: But, you know, in fraud cases, sometimes
13 people are just greedy and sometimes they need money. The
14 whole, you know, fundamental premise of the criminal law is to
15 deter people who need more money, or think they need more
16 money, from committing crimes, lying to the United States
17 government. And I think I can take judicial notice of this:
18 The U.S. Attorney's Office started this case with great
19 fanfare. It released a press release, and it talks about -- do
04:09 20 you know about the press release?

21 MS. WAN: Yes, your Honor, I'm sure I know about it.

22 THE COURT: It was released by the Department of
23 Justice on September 14, 2021. It reviews the allegations
24 and...

25 Is this case a case brought by the Attorney General's

1 COVID-19 Fraud Enforcement Task Force that's mentioned in the
2 press release?

3 MS. WAN: No, your Honor. I think we just cited that
4 to highlight the efforts and the DOJ's efforts to fight COVID
5 fraud, which this is one of.

6 THE COURT: Well, I mean, you're the first prosecutor
7 I've asked this question to, but if -- and I think somebody
8 reading the press release would get the impression that this is
9 part of that task force, which is said to have been constituted
04:10 10 to investigate and prosecute the most culpable domestic and
11 international criminal acts, but, anyway...

12 I mean, my concern, though, basically I have to
13 consider -- you consider -- and you have to advocate for your
14 plea agreement, so I'm not even going to ask you this. I
15 consider fraud during the pandemic to be serious, you know, a
16 lot of money. There was an effort to distribute huge sums of
17 money to people who were entitled to it and needed it very
18 quickly with fewer safeguards than usual, I think the evidence
19 would indicate, and it was a program vulnerable to fraud, and
04:11 20 we're still in such a period. I assume that a purpose of
21 prosecution is deterrence, including general deterrence,
22 sending the message, "Don't criminally abuse this system
23 because it will have serious consequences for you."

24 But in this case -- and I'm saying this so you'll at
25 some appropriate point address it and again more note it -- in

1 this case, somebody looking at Ms. Jittaphol will see here's
2 somebody -- and I'll assume for present purposes that she's in
3 the country legally and authorized to work -- but so here's
4 somebody running a massage parlor, profiting from prostitution,
5 and who two times lied to the federal government to get a total
6 of \$7,000, and she got caught, and she got prosecuted. And the
7 penalty is that she doesn't do a day in custody, she doesn't
8 have to pay any fine that she might not have the means to pay,
9 and she has to give the \$7,000 back, if she's got it.

04:13 10 So I think there are a lot of calculating criminals
11 out there who would think, if they were well-informed about
12 this case, that "Why not defraud the United States government?
13 Why not lie to the United States government to get COVID relief
14 money because if I get caught, all I have to do is give the
15 money back?" And I don't know that that's sufficient to serve
16 the purpose of deterrence, which is one of the 3553(a) factors,
17 or to recognize the seriousness of the crime. That's the heart
18 of my concern.

19 MS. WAN: Thank you, your Honor, for the explanation,
04:13 20 and I definitely understand the deterrence issue here. I think
21 the complicating factor is simply the Sentencing Guidelines
22 calculation based on the \$7,000 in losses. I do think there is
23 some deterrence value to bring this type of prosecution. As
24 you know from our office and from DOJ's standpoint, COVID-19
25 fraud has been rampant, and there's rarely these type of cases

1 where the fraud amount is so low, and I do believe there's a
2 deterrence effect in the very fact that we're prosecuting a
3 crime with a \$7,000 loss figure.

4 And the other complicating factor is, when we get to
5 the Sentencing Guidelines, the plea is a Guideline plea. Based
6 on the loss amount, the total offense level is about VI, and --

7 THE COURT: And the Guideline range is what?

8 MS. WAN: Is zero to six months.

9 THE COURT: Right, so it's the lowest end of the
04:15 10 Guideline range. And, as I told you, the Supreme Court says
11 that, A, I have discretion, and it has to be an appropriate
12 sentence within the Guideline range, which now is only
13 presumptive anyway. In appropriate cases, I can give a
14 sentence that's higher than the Guideline range.

15 I mean, a prosecution is expensive. It requires a lot
16 of prosecutorial resources, lawyers' pay; Probation spends a
17 lot of time on it, as this case is demonstrating, and it
18 requires a lot of judicial time. You know, the resources of
19 your office and all these other resources are finite; and, you
04:15 20 know, I wonder why, if the United States thought there were so
21 many mitigating factors, that it should devote its limited
22 resources to prosecuting this defense. And I think you gave me
23 the answer, and that is, you want to send a message that even
24 if you lie to get the \$7,000, not \$70,000 or \$700,000, you
25 might be prosecuted. But, you know, then the only penalty is

1 the publicity. And if she's only authorized to be in the
2 United States until -- I think I said July, which doesn't
3 appear you focused on that, I don't know that this is going to
4 be much of a problem for her in time. I don't know what it's
5 going to deter. It may be the U.S. Attorney's press release
6 that talks about the maximum 20-year sentence would give
7 somebody the misleading impression that the government is going
8 to try to lock them up for 20 years if they lie and get \$7,000,
9 and this concerns me.

04:17 10 MS. WAN: And, your Honor, I think the immigration
11 issue is one that I have looked into. I don't have that at my
12 fingertips now. I don't have any information that she's going
13 to be leaving the country in July or anything like that.

14 THE COURT: You do. You do. You do. It's in the
15 bail report.

16 MS. WAN: Other than what you've provided, but other
17 than that, I don't -- I believe --

18 THE COURT: Well, I can provide it. Were you involved
19 before Magistrate Judge Bowler?

04:17 20 MS. WAN: I was. I was. I apologize. Other than the
21 bail report. And, your Honor, that's something that I will
22 look into, but I believe she has -- she has -- in talking with
23 defense counsel, I understood that she has plans to stay. I'm
24 not sure through exactly what mechanism, but I understood that
25 the 36-month probation period would be served in the United

1 States, and that's been my understanding.

2 THE COURT: Okay. Well, I mean, the sentence
3 shouldn't give her some rights -- and obviously I don't know
4 anything except what's in the bail report. It says she came on
5 an F-1 visa -- that's a student visa -- eleven years ago, but I
6 don't think --

7 MR. HALPERN: She's actively seeking to stay in the
8 United States and avoid deportation, in large measure because
9 of the way that transgender individuals are treated in Thailand.

04:19 10 THE COURT: So, here, let me stop because, I mean, the
11 explanation I got from the government is helpful. And they've
12 got a plea agreement; they have to advocate the plea agreement.
13 But I've got many, many cases, and I wouldn't want to get -- I
14 don't know that I want to accept the plea and get to
15 sentencing, reject the plea and present the defendant with the
16 dilemma of withdrawing the plea or, you know, taking the risk
17 of a higher sentence. I just want to be as transparent as
18 possible.

19 So what should I hear from your point of view
04:19 20 essentially --

21 MR. HALPERN: So I --

22 THE COURT: -- within the range of reason and I should
23 accept it?

24 MR. HALPERN: Well, I think there's a few factors I
25 just want to make sure you're aware of. This is not a case

1 that we read about involving coerced sex workers, women who
2 have been sort of forced to work in these places, owe money to
3 the people who brought them into the country. There's none of
4 that in this case. There's no evidence of coercion. The
5 employees worked there because they wanted to, and they made
6 the decision of what to do when they gave these massages. We
7 refer to it generically as "prostitution." You know, it's a
8 massage parlor, like the massage parlors that Bob Kraft went
9 into. It's a massage parlor in which the women did not take
04:20 10 their clothes off. It's a massage parlor in which the massages
11 sometimes included sexual acts.

12 If you look at the credit card statements of the
13 customer base -- and a majority of the customers paid by credit
14 card -- a very, very high percentage of them were women. So
15 this is not, you know, a whorehouse. This was a massage parlor
16 in which the majority of the business was legitimate, some of
17 it wasn't, and that complicates the issue of the fraud because
18 this isn't a case -- I mean, I've got cases where people
19 created, you know, phony identities to get better COVID
04:21 20 benefits, and so they knew it was all or nothing; they knew it
21 was a fraud. This is a more ambiguous situation where this
22 business was not a sham business. It was a legitimate
23 business, but a piece of it was illegal. And so it wasn't so
24 clear that applying for COVID benefits was a crime because it
25 wasn't so clear that the business itself was entirely a crime.

1 THE COURT: Well, that could create -- if she didn't
2 know she was committing a crime --

3 MR. HALPERN: No, she knew that it was illegal, all
4 right? But there is a difference to creating a scam for the
5 purpose of stealing COVID money versus, "Well, let's just
6 ignore the fact that some of the guys are getting sexual
7 services, so a percentage of our business isn't appropriate and
8 we're violating this rule." It's more of a gray area than I
9 think the vast, vast majority of COVID fraud. So I think
04:23 10 that's important.

11 And obviously the sum of money is important. You
12 know, I mean, I've got another case right now -- I think it may
13 be with you -- where, you know, we're talking millions of
14 dollars that were stolen. I mean, so here --

15 THE COURT: A COVID-related case?

16 MR. HALPERN: Yes.

17 THE COURT: What's the name of that one?

18 MR. HALPERN: I'm trying to remember the lead
19 defendant. I mean, it was a group of guys that across the
04:23 20 country applied for the enhanced unemployment benefits that
21 COVID created under -- I mean, it was a huge amount of money.

22 THE COURT: I'll ask my clerk to look for that because
23 that's what we should be spending our time on, although I -- I
24 know that I'm no longer Assistant to the Attorney General of
25 the United States, I know I'm no longer the Deputy U.S. Attorney

1 who used to have to approve every indictment, and I know there
2 can be good reasons to charge a case like this where there's a
3 small amount of money involved, so people won't think they're
4 immuned if they don't get some certain higher amount. And, you
5 know, maybe I'll go along with this. I think at this point --
6 But, as I said, it's unusual, bordering on unique, for me to
7 pick up a file like this and have such major questions because
8 in contrast to some of my colleagues, I don't consider binding
9 plea agreements disfavored generally, but --

04:25 10 MR. HALPERN: Another factor that I think needs to be
11 acknowledged here is, while she's transgender, she has not had
12 surgery for the transition, although she may in the future. So
13 incarceration is a challenge, right, compared to, I mean, where
14 exactly --

15 THE COURT: You're addressing the first judge in the
16 United States who ordered sex reassignment surgery for a
17 transgender inmate, but in that case, *Kosilek*, K-o-s-i-l-e-k,
18 the state Department of Corrections, first with regard to
19 hormones and then with regard to sex reassignment surgery,
04:25 20 said, well, we can't have a person with breasts in a male
21 prison or a person who's anatomically a woman in a male prison;
22 it would cause too many problems. And we can't have that
23 person in a female prison because in that case, he murdered his
24 wife. And I found that that was pretextual. And when the
25 Department of Corrections decided to give hormones, *Kosilek*

1 developed breasts and lived uneventfully for years in a male
2 prison. I think it's since been, without sex reassignment
3 surgery, transferred to a female prison.

4 So, look, I don't know that that's something the
5 government took into account. And the government is being
6 faithful to its obligations, I understand, *Bello* and one of the
7 First Circuit cases, *Taylor*, they have to advocate for the plea
8 agreement.

9 Look, I think there's two things I can do right now:
04:27 10 I can conduct the waiver and plea colloquy, or I can postpone
11 it for a week or two till you have more time to think about
12 this. So you can maybe give me there's more you'd like to say
13 because you didn't know this was coming, you know, sort of in
14 support of why I think that's a reasonable way to proceed.
15 But, you know, there should be a reasonable likelihood that
16 I'll accept the plea agreement and impose that sentence, and
17 then see, because I defer you till sentencing, see everything
18 that I get in the Presentence Report and your, I'm sure,
19 thorough sentencing memos.

04:27 20 And I think the defendant's immigration status may be
21 somewhat material to my assessment. The government has made
22 its decision. It has to live with this plea agreement, and I
23 can't rewrite it. I can just reject it. But I just felt I
24 should raise these with you.

25 Do you think I should continue this hearing, let

1 Mr. Pace -- and the government should do it -- get information
2 on the defendant's immigration status and then schedule a
3 further hearing? You know, you're telling me things that I
4 need to think about when I tell you I have reservations about
5 this. Does that make sense with regard to this aspect?

6 MR. HALPERN: Yes.

7 THE COURT: Ms. Wan?

8 MS. WAN: Yes, that sounds fine. And, your Honor, we
9 can brief the issue of the immigration status.

04:29 10 THE COURT: Well, I don't know how long it will take
11 to ascertain that and -- today is the 20th. Mr. Pace, do you
12 have any idea how long it's likely to take to find from the
13 Department of Homeland Security the defendant's immigration
14 status?

15 MR. PACE: Your Honor, I've already sent a message to
16 some colleagues at ICE to determine exactly her status. It
17 does say her immigration is going to end in July, and most
18 likely she'd have to reapply; and during that time, she could
19 potentially be deported if she's convicted of a crime. So I
04:30 20 think that does play a role for them to make a determination,
21 if she does reapply, what would that look like, your Honor?

22 THE COURT: Okay, so ICE says that her status in the
23 United States expires in July of this year?

24 MR. PACE: No. From the report, your Honor, the
25 pretrial. But I'm on a call with the agents to see if they can

1 find out some information.

2 THE COURT: All right. Do you have some idea how long
3 that would take?

4 MR. PACE: I'm hoping to hear back from one today, but
5 if not, it most likely will take us about a week, your Honor,
6 to get certified information in writing.

7 THE COURT: Well, I'm going to do the following, and I
8 can extend this: One, I think I'm going to order that
9 Probation inform us all as promptly as possible of defendant's
04:31 10 immigration status, what kind of visa is she here on now? Does
11 it authorize her to work, and when does it expire? And if
12 there's a good reason, I'll extend this, but now I'm immersed
13 in it. I'm ordering that the parties by January 28 file
14 memoranda in support of why this agreed sentence is sufficient
15 and I should proceed to take the waiver and the plea and defer
16 until sentencing a decision on whether to accept the plea
17 agreement and impose that sentence.

18 It may turn out -- I was actually told something else
19 today that may be relevant to -- what I thought was relevant to
04:32 20 what we're going to discuss next. I was told that the
21 defendant is now working -- Probation just learned that -- and
22 that she's being paid in cash, which raises some other possible
23 issues.

24 Anyway, so I'm ordering that you order the transcript
25 of this hearing on an expedited basis, and that Probation

1 inform the parties and the Court as soon as possible as to the
2 defendant's immigration status, and that the parties file
3 memoranda explaining their views as to why, in the context of
4 the Section 3553(a) factors, the agreed-upon sentence is
5 sufficient, and I should take the plea and defer until I have a
6 fuller record at sentencing the decision whether to accept the
7 plea agreement. Okay?

8 All right, then I have the petition relating to the
9 defendant's refusal to do inpatient drug treatment. On
04:34 10 October 26, 2022, the conditions of release the defendant
11 signed require her to participate in a program of inpatient or
12 outpatient substance abuse therapy and counseling, if directed
13 by the probation officer or the supervising officer. That's
14 Docket 12. And it appears from that report that the defendant
15 asked to get drug treatment and agreed to go into the SSTAR
16 program in Fall River but twice failed to appear for intake.
17 That's in Docket 16. And I had previously ordered Probation to
18 inform the Court promptly if the defendant didn't properly
19 participate in drug treatment or otherwise violated conditions,
04:35 20 a condition of her supervised release.

21 The January 12 petition states that the defendant
22 discharged herself from inpatient treatment at Behavioral
23 Health Network without notifying Probation. Probation directed
24 her to go into long-term inpatient treatment service, and her
25 lawyer said that she would not, and then Probation requested

1 this hearing, which I regard as a hearing to consider whether
2 her pretrial release should be revoked, whether I should put
3 her in custody.

4 Potential revocation -- well, revocation of pretrial
5 release is governed by 18 United States Code, Section 3148.
6 Section 3148(a) says that violation of a condition of release
7 can result in revocation, detention, and the finding of
8 contempt. Section 3148(b) provides that the Court can revoke
9 release if there's probable cause to believe the defendant has
04:36 10 committed another state or federal crime, or there's clear and
11 convincing evidence that the defendant has violated a condition
12 of release, and the Court finds, based on the Section 3142(g)
13 factors, that no combination of conditions will reasonably
14 assure the defendant will not flee or be a danger, or,
15 significantly for this matter, that the defendant is unlikely
16 to abide by any combination of conditions of release. And it's
17 the burden of the -- well, I would have to find by a
18 preponderance of the evidence what I think is most relevant
19 here, but maybe not the only relevant consideration, has it
04:37 20 been proven by a preponderance of the evidence the defendant is
21 not likely to abide by any combination of conditions of
22 release? The preponderance of evidence standard was found to
23 be an appropriate one by the Fifth Circuit in *Aron*, A-r-o-n,
24 904 F. 2d 221 at 224, and *Gotti*, 794 F. 2d 773 at 777.

25 So, again, to be as transparent as possible, I wonder

1 why I should find that the defendant is likely to obey any
2 condition of release. It appears she didn't report to the
3 SSTAR Program. She left the drug treatment program Probation
4 ordered her to participate in prematurely. She refused the
5 direction to return.

6 And, again, I just want to lay all this out so you can
7 address it. The criminal record document that I received today
8 from Probation shows that she has a possession with intent to
9 distribute Class B charge that she's scheduled to appear in
04:39 10 Brighton District Court on on January 24, and then it's got a
11 Registry of Motor Vehicles document. Do the parties have this
12 document, the CORI? I can have the Deputy Clerk email it to
13 all of you in case you don't have it or have it easily
14 accessible.

15 Please send it to Ms. Wan and Mr. Halpern. I think
16 Mr. Pace has it, right?

17 MR. PACE: I do, your Honor.

18 THE COURT: But you'll see this record shows that on
19 3/29/21, the RMV says she failed to appear for trial/court. On
04:40 20 2/28/2021 she failed to appear for trial/court. On January 26,
21 2021, she failed to appear for trial/court. On January 14,
22 2020, her license was suspended. November 26, 2019, it says
23 "License suspended." It says "INC." I don't know what that
24 means. May 1, 2019, it says she failed to pay a fine and
25 costs.

1 So basically, primarily for Mr. Halpern, she was
2 directed by Probation to go into inpatient treatment, and she
3 had a court order, a condition of release, to follow directions
4 of Probation. In my view, the proper way for this to have
5 proceeded would have been for you to do what you attempted to
6 do and persuade Probation to change the direction, and if it
7 didn't, you could have filed a motion with me to modify the
8 conditions of her pretrial release. But it's not up to the
9 defendant to decide which court order she's going to follow and
04:41 10 which one she's not, and this is about following court orders,
11 not whether the directions or, again, drug treatment are most
12 appropriate or not, in my current conception.

13 MR. HALPERN: I didn't find out that there was an
14 issue at all until January when I was contacted by Probation,
15 and I was told that they wanted her to go into an inpatient
16 residential program and she had rejected that. I think you
17 really have to go back to how this began. The only reason that
18 Probation knew anything about drugs was because she brought it
19 up. This wasn't a drug case. She asked me when I was
04:42 20 appointed in July if I could help get her into a detox program,
21 and she wanted to go into a detox program. That got deferred
22 until charges were actually filed in September. I don't know
23 what happened with Fall River, so I can't really address that.
24 I didn't know about it, and I would have to talk to her about
25 it, but my guess is that there is a legitimate explanation that

1 she could provide, based on my dealing with her, that she
2 didn't get there in time, something happened, I don't know
3 what. But the bottom line is, she did go to inpatient detox,
4 and I've provided documentation. I believe she started the
5 first week of December. It was a one-week program, and she
6 completed it successfully.

7 They then transferred her to a two-week inpatient
8 program at the Hope Center. She didn't discharge herself. She
9 didn't walk out against medical advice. She got a certificate.
04:43 10 She completed the program. The issue was that when she
11 completed the program, she apparently was told, "We want you to
12 transfer now to a third program. We want you to go to a
13 residential inpatient program." And she didn't go. She went
14 home. So it's not that she walked out. It's that she did not
15 go to the next step.

16 THE COURT: Well, two things. Just let me pause you
17 for a minute. One, I mean, the petition I got November 18 said
18 Ms. Jittaphol reported daily use of methamphetamines.
19 Ms. Jittaphol's urinalysis from 10/29/21 was positive for
04:44 20 amphetamines. So she failed the drug test, although she may
21 have said that she was using methamphetamine before Probation
22 got the results. I don't know what the chronology was.

23 MR. HALPERN: She acknowledged all along that she
24 could not stop using methamphetamine on her own. She asked to
25 go into a detox. I asked Probation in July, all right, July

1 whether they could put her into a detox. They said "no," all
2 right? So the fact that she was using wasn't deceptive. I
3 told them that she could not quit; she told them she couldn't
4 quit. She begged to go into a detox. She got into a detox in
5 December. She completed it successfully. There is no
6 evidence, none, that she has used from the time she got out of
7 treatment.

8 She's been tested once. The only reason she was
9 tested was because I said I wanted her tested. She got tested
04:45 10 a week ago. That result came back today, and it was negative.

11 What I think is critical here is, she knew she had a
12 problem. She wanted to overcome it. She asked for help. She
13 was completely candid with me and with Probation that she
14 needed help to stop using. Now she completes the program, and
15 she says to me and she says to Probation, "I'm okay. I don't
16 want to use. I don't have any desire to go back to it, and I
17 don't need inpatient treatment." And there's no evidence that
18 she does, so --

19 THE COURT: Well, excuse me, excuse me. Maybe
04:46 20 Mr. Pace should speak to this. My understanding from what I
21 read is that the one-week program stated that she needed
22 additional inpatient treatment, and Probation directed her to
23 do that.

24 MR. HALPERN: And she did it.

25 THE COURT: No, the additional --

1 MR. HALPERN: She did it.

2 THE COURT: She did what, more than a week?

3 MR. HALPERN: She did the additional inpatient
4 program. She finished a one-week inpatient detox.

5 THE COURT: No, but that -- stop and listen to me. I
6 know she did one week and got a certificate. Let's let
7 Mr. Pace talk about this.

8 MR. PACE: Thank you, your Honor.

9 THE COURT: What transpired? Because, as I said, my
04:47 10 understanding from reading the petitions was that the one-week
11 program opined that she needed additional inpatient treatment,
12 and Probation directed that she do it and she refused, she
13 didn't follow directions --

14 MR. HALPERN: No, that's wrong.

15 THE COURT: Here, let's let Mr. Pace speak.

16 MR. PACE: Thank you, your Honor. Yes, that's what we
17 indicated, that defendant was advised that they wanted her to
18 seek long-term treatment. The defendant completed, yes, the
19 one-week program; but at the end of that one-week program, they
04:48 20 referred her to a residential program for long-term success,
21 and she refused and walked out. And that's why we tried to get
22 her to participate in a long-term residential treatment program,
23 your Honor.

24 MR. HALPERN: That's not what happened. And you have
25 the documents. I gave them to you.

1 THE COURT: You gave them to who?

2 MR. HALPERN: To you.

3 THE COURT: Stop. Mr. Halpern, as always, I admire
4 your zeal. However, you address me when it's your turn to
5 address me. Understand?

6 MR. HALPERN: I understand.

7 THE COURT: Mr. Pace, go ahead.

8 MR. PACE: Yes, from the summary that we have, the
9 discharge summary from the admission, it states that they
04:49 10 wanted her to participate in long-term treatment and she
11 refused, and that's in the discharge paperwork. And that's the
12 documentation they have that she completed a program? Yes, she
13 completed a program -- I believe that was a detox program --
14 but she did not complete the long-term treatment as requested
15 by the program, your Honor.

16 THE COURT: And did Probation direct her to participate
17 in that long-term program?

18 MR. PACE: Yes, we did, your Honor, and based off of
19 prospective other conditions of the program, your Honor.

04:49 20 THE COURT: I'm sorry. Based on what?

21 MR. PACE: Based off the recommendation of the
22 treatment program, we directed her to participate as
23 recommended.

24 THE COURT: Okay.

25 MR. HALPERN: Can I address that now?

1 THE COURT: Not yet. So you direct her to do it, and
2 did she do it?

3 MR. PACE: No, she did not, your Honor.

4 THE COURT: All right, Mr. Halpern, go ahead.

5 MR. HALPERN: Okay, so that is not what happened, and
6 my filing includes certificates that make it evident that
7 that's not what happened.

8 THE COURT: Here, so here's one thing I'm going to do.
9 I'm ordering that Probation provide the government, the
04:50 10 defendant, and the Court the portions of its records that
11 reflect what Mr. Pace just told me. Now, you're talking about
12 your filing. Let's see, which one is that, your opposition to
13 Probation's revocation?

14 MR. HALPERN: Yes.

15 THE COURT: Filed --

16 MR. HALPERN: My filings included a certificate -- I
17 want to try to pull it up -- from Hope Center. She was in two
18 different facilities, both of them under the BHN network. The
19 first place she went was a one-week detox. That's called the
04:51 20 Carlson Rehabilitation Center, I believe. And not only did I
21 provide you a certificate, but I gave your clerk a letter from
22 her counselor there, which has not been filed but you have
23 that.

24 THE COURT: Hold on just one second. So I'm looking
25 at Docket 24 filed on January 18, which is your opposition to

1 probation revocation, and it has two certificates attached.

2 MR. HALPERN: And you'll notice that one of them --

3 THE COURT: Stop. Let me finish. But they both
4 appear to be exactly the same. It says she's completed the
5 Hope Center program this 27th day of December, 2021.

6 MR. HALPERN: There's a letter. There's a certificate,
7 and there's also a letter.

8 THE COURT: So then there's a letter that I had the
9 clerk direct you to file. You can redact her date of birth if
04:52 10 you want, but does Probation have this letter?

11 MR. HALPERN: I believe so, but I was referring to a
12 different letter that I believe I filed as an attachment to
13 that opposition.

14 THE COURT: Okay, hold on a second. Let me look, but
15 I don't think so. I don't have anything attached except what
16 appear to be two copies of the same certificate.

17 MR. HALPERN: All right, I may have goofed. I can
18 send it to you, but --

19 THE COURT: Hold on just one second. So I have a
04:53 20 letter that Mr. Halpern emailed today, and it looks like I
21 think the clerk told you you had to file it under seal. It
22 says, "To Keith Halpern: Per your request, I'm writing this
23 letter regarding Aticha's federally mandated admission on
24 12/6/2021. She formulated treatment goals, including taking
25 better care of her health in mind, by refraining from

1 methamphetamine use, stopping methamphetamine use, as it
2 interfered with her work and personal life, and discharging to
3 Hope Center CSS, even though she would rather not, but she
4 wanted to cooperate with her mandate. She attended
5 psychoeducational groups once she felt better, and noted how
6 moved she was by the life stories her peers shared. Aticha was
7 polite, cooperative, and participatory, as reflected through
8 her verbiage and demeanor. She successfully discharged to Hope
9 Center on 12/13/21." And the Hope Center certificate says that
04:54 10 she was discharged 12/27/21, but this does sound -- well --

11 MR. HALPERN: That's a different letter than the one
12 I'm referring to.

13 THE COURT: It sounds like I don't have everything I
14 should have.

15 MR. PACE: Your Honor, if I may, James from Probation?

16 THE COURT: Yes.

17 MR. PACE: I'm going to send -- you requested us to
18 send you the discharge summary. I think the Hope House was the
19 one program the next step after that, so I think that's why
04:55 20 counsel may be a little confused. She did complete the Hope
21 House, but there was a program afterwards that the program
22 wanted to refer her to to complete the long-term one. So, yes,
23 she completed Hope House. There was a program after the Hope
24 House that the program wanted her to participate in. So I'm
25 going to forward that to counsel. I know they requested it

1 before, and I'll forward it to your clerk and the AUSA also,
2 your Honor, the discharge summary.

3 THE COURT: Thank you.

4 MR. HALPERN: Your Honor, I'm not confused about
5 anything. Probation misstated what happened. She was in the
6 Carlson detox for one week. They transitioned her to Hope
7 House for a two-week program. I thought I attached a letter to
8 my memo. I just emailed you a copy of that letter confirming
9 that she completed that program. It was a two-week program.

04:56 10 THE COURT: All right, and then was she ordered,
11 advised by that Hope Center to go inpatient for a longer
12 period?

13 MR. HALPERN: My understanding is that they told her,
14 "We recommend that you go inpatient." She said she didn't want
15 to. She went home. She didn't walk out of a program --

16 THE COURT: I understand that, and my order was that
17 she follow the directions of Probation.

18 MR. HALPERN: Yes.

19 THE COURT: So Mr. Pace, who's being very helpful,
04:57 20 although this wasn't his case until earlier today -- he's just
21 supervising somebody else -- what Mr. Pace is telling me is
22 that then Probation directed her to go to that inpatient
23 program and she didn't. That's what I understand to be the
24 alleged violation. And, as I said, I don't regard the primary
25 issue here as to whether she should be inpatient or didn't need

1 it. The primary issue is whether she's going to follow
2 directions from Probation as the Court ordered her to do. And
3 it's a very important question, who decides? She doesn't
4 decide if Probation directs her to do something. So there are
5 basically three options: One, she does it, reluctantly but
6 does it; two, you join her in trying to persuade Probation to
7 change the direction, but she has to follow the direction
8 unless Probation alters it; and then, if you're dissatisfied
9 with that, you can file a motion with me to modify the
04:58 10 condition of release, say she doesn't need drug treatment.

11 But this -- you know, one week ago I get a motion from
12 Probation that tells me, reminds me that I directed them to
13 tell me promptly if she violated any condition of her release,
14 and they tell me, "We directed her to go to inpatient treatment
15 and she refused it." So I reorder my priorities, and here we
16 are at 5:00 o'clock, which is fine, but I am concerned that she
17 doesn't understand the way this works.

18 MR. HALPERN: She may not understand the way it works,
19 but I got a phone call -- the first I learned of this --

04:59 20 THE COURT: Oh, she doesn't. That's the heart of the
21 issue. Let's not lose what I told you. I'm seriously
22 considering ordering her to report to the Marshal tomorrow to
23 be locked up because she doesn't understand that conditions of
24 release are Court-ordered and because I'm persuaded that she's
25 not likely to obey my orders in the future.

1 MR. HALPERN: The first I found out about this was
2 around January 4 when I got a call from Probation. They told
3 me that they wanted her to go into a program. I talked to her,
4 and I told Probation we should get this in front of you, all
5 right, as soon as possible because she didn't think she needed
6 a program; and based on what I was told, I didn't think she
7 needed a program either. Probation didn't say, "No, we're not
8 going to wait a week. She has to go there today." So we
9 agreed to defer this until we had an opportunity to tell you
05:00 10 the story.

11 THE COURT: All right. Well, I don't have all the
12 documents, and let's get them. You and Probation can
13 supplement your -- I do want to get soon whatever documents
14 you're talking about. Apparently I don't have a complete
15 record. I don't have Probation's record. I don't have some
16 letter that I think you thought you attached to your
17 submission. So file them promptly, tomorrow. And then I think
18 I'm going to wait until I get your report on January 28
19 relating to the plea so I can again deal with this together. I
05:01 20 have, among other things, the sentencing of an MS-13 murder
21 case next week, a RICO murder case, among other things, and
22 motions for compassionate release to deal with tomorrow.

23 But I'm denying the request -- well, you can be heard
24 on it briefly if you want. I'm not letting her go out of
25 Massachusetts to play basketball or to look for work. I'm also

1 concerned -- well, Mr. Pace, what did you learn and when did
2 you learn it about Ms. Jittaphol's current employment?

3 MR. PACE: Your Honor, when Ms. Jittaphol was released
4 from custody, I mean, after her release was planned, she said
5 that she was unemployed. According to a filing, a motion, she
6 requests that she's currently working under the table as a
7 massage therapist. I informed counsel that Probation is going
8 to make an assessment because (Inaudible) a guardian for her.
9 We're not saying that she can't work at that employment, but we
05:02 10 just want to do an assessment to determine if there's any
11 third-party risk, and also if the employment is appropriate at
12 this time. So I think we're going to be following up with the
13 defendant to gather more information to make that determination
14 and inform the Court if we believe this employment is not
15 deemed appropriate by our standards.

16 THE COURT: Mr. Halpern, you talk to your client about
17 that too.

18 MR. HALPERN: There's no statement that she was
19 working under the table. She's self-employed.

05:03 20 THE COURT: No, excuse me. I think what Mr. Pace had
21 told me more factually, in a less conclusory way, that she said
22 she couldn't provide a record of her employment because she was
23 being paid in cash. And then what's she doing? Because now I
24 know that what she used to do involved some illegal activity by
25 her. That you can't do when you've been charged with a federal

1 crime. One of the conditions of her release is that she not
2 commit another state or federal crime.

3 MR. HALPERN: Which she's not.

4 THE COURT: Well, you don't know. Let me put it this
5 way: I don't know. I don't want her to. My point, you know,
6 if... I have good reason to doubt that she understands the
7 seriousness of those conditions of release, that they're Court-
8 ordered. If you violate a Court order, typically you get
9 locked up. And that's not just a question whether she's going
05:04 10 to go inpatient or not. It's a question whether she's going to
11 get locked up because I'm persuaded by a preponderance of the
12 evidence that she's not likely to abide by any combination of
13 conditions of release.

14 And I don't see a need to authorize funding for a
15 psychiatrist. I mean, what do you expect the psychiatrist will
16 opine?

17 MR. HALPERN: I expect that one of the things the
18 psychiatrist would say is that the most essential criteria in
19 determining whether inpatient treatment is necessary is whether
05:05 20 there's a reason to believe the person is going to relapse in
21 the absence of inpatient treatment, and there's no evidence
22 that she's going to relapse. She's been out for nearly a
23 month. She tested negative. The fact is, she was --

24 THE COURT: No, but here, just stop. We don't have to
25 argue this now. I'm going to accept that as a proffer. You

1 don't have to pay \$1,500 to a psychiatrist to tell me that. I
2 trust that the psychiatrist said that to you, and I accept
3 that.

4 I'm ordering Probation to test the defendant once a
5 week for drugs and tell me whether she fails, and you should
6 start tomorrow. Can you do that, Mr. Pace?

7 MR. PACE: Yes, your Honor. The defendant actually
8 started today. She's actually on a sweat patch, and we
9 replaced that sweat patch. I know the defendant had
05:06 10 discussions of going back to the uniform form of testing, which
11 is a urine sample. I don't know if she wants to speak to her
12 counsel about that, but that is a thing that we could test her
13 weekly in a more efficient fashion.

14 THE COURT: What does a sweat patch do? I'm not
15 familiar with it.

16 MR. PACE: The sweat patch collects glands and
17 determines through the glands if you're using any type of
18 substance, and we send that in to the national lab. We sent
19 one in today. We're hoping to get results in the next two to
05:06 20 three days. But usually we do a urine sample where we send
21 that to a lab and get more efficient results.

22 THE COURT: Well, I think you should get the urine
23 sample as well as the sweat patch because, again, it will
24 provide information that will be valuable.

25 MR. PACE: Not a problem, your Honor, and we can have

1 her report tomorrow and have somebody collect a sample from
2 her.

3 THE COURT: Okay, so --

4 MR. HALPERN: Your Honor?

5 THE COURT: Is there anything else that we should be
6 discussing?

7 MR. HALPERN: I do want to -- I believe that what
8 Dr. Gitlow would -- I'm in the process of obtaining her
9 treatment records from the three weeks that she was in
05:07 10 treatment. So my intention would have been to have Dr. Gitlow
11 review the records, interview her. And this is what he does;
12 he's an expert in addiction treatment.

13 THE COURT: We'll see if it's necessary. We'll see if
14 it's necessary. It's going to just protract this. And, you
15 know, you've told me -- you know, at some point you may want to
16 talk to your client, or she may need to testify about this.
17 But the question for me, I told you, is not whether she needs
18 treatment. The question is whether she failed to follow
19 direction, which based on what Mr. Pace told me is going to be
05:08 20 proven, and then whether she's unlikely to abide by any
21 combination of conditions of release I impose, because I don't
22 have the impression she understands the seriousness of this.

23 MR. HALPERN: If she were ordered to go into inpatient
24 care, she would. She made a determination that she didn't need
25 it. She --

1 THE COURT: She was ordered to go by Probation, and
2 that's Probation's job, not ordinarily mine. So that's it.
3 We're repeating ourselves. You order the transcript of this
4 hearing on an expedited basis. I'll get some more information
5 by the 28th. I will probably see you all the following week,
6 and maybe I'll go through the waiver and plea colloquy; maybe
7 I'll proceed with the revocation proceeding; maybe that won't
8 be necessary. You'll be exchanging more information.

9 But, Ms. Jittaphol, what I hope you've learned today
05:10 10 is that the conditions of your release, which Mr. Halpern
11 should and will review with you again, are Court orders; and to
12 the extent they require you to do what Probation directs you to
13 do, you have to do it unless and until I change that order.

14 Now, right now they're not ordering you to go into
15 inpatient treatment, as I understand. I'm willing to treat
16 this as a motion. And maybe they'll change their mind, maybe
17 you'll persuade them, but it's very important that you not use
18 drugs. It's very important that you not go outside of
19 Massachusetts. It's very important that you not do anything
05:10 20 illegal. You want to plead guilty to what I and others regard
21 as a serious crime, and there are a lot of issues we've been
22 discussing relating to that, but you don't want to make matters
23 worse in the near future. And even if this is stressful to
24 you, don't use drugs. Talk to Mr. Halpern and cooperate with
25 your probation officer, do what she says you need to do, okay?

1 Is there anything further in this matter for today?

2 All right, I'll see my staff and the Court Reporter in the

3 breakout room. Court is in recess.

4 (Adjourned, 5:11 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 51 inclusive, was recorded by me stenographically at
the time and place aforesaid in Criminal No. 21-10270-MLW,
United States of America v. Aticha Jittaphol, and thereafter by
me reduced to typewriting and is a true and accurate record of
the proceedings.

Dated this 25th day of January, 2022.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER