

## EXHIBIT A

United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
leemarz@aol.com

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

2 ELYSA Q. WAN, ESQ., Assistant United States Attorney,  
3 Office of the United States Attorney, 1 Courthouse Way,  
Room 9200, Boston, Massachusetts, 02210, for the Plaintiff.

4 ALYSSA TOCHKA, ESQ. and LUKE GOLDWORM, ESQ.,  
5 Special Assistant United States Attorneys, Office of the United  
States Attorney, 1 Courthouse Way, Room 9200, Boston,  
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

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LEE A. MARZILLI, CRR  
OFFICIAL COURT REPORTER