

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal Action
	)	No. 21-10270-MLW
v.	)	
	)	
ATICHA JITTAPHOL,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

HEARING

March 8, 2022
2:31 p.m.

John J. Moakley United States Courthouse
Courtroom No. 2
One Courthouse Way
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR
Official Court Reporter
One Courthouse Way, Room 3200
Boston, Massachusetts 02210
mortellite@gmail.com

1 APPEARANCES:

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Mark L. Wolf, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 2, Boston, Massachusetts, on March 8, 2022.)

(Case called to order.)

THE COURT: Good afternoon. You may be seated. Would the clerk please administer the oath to the interpreter.

(Interpreter duly sworn.)

THE COURT: Thank you. Would counsel please identify themselves for the Court and for the record. And I'm assuming, if you are fully vaccinated and have no symptoms, you may take the masks off if you're speaking or may be speaking.

MS. WAN: Good afternoon, Your Honor. Elysa Wan for the government.

MS. TOCHKA: Good afternoon, Your Honor. Alyssa Tochka for the government.

MR. HALPERN: Good afternoon, Your Honor. Keith Halpern for Ms. Jittaphol.

THE DEFENDANT: Good afternoon, everybody. My name is Aticha Jittaphol.

THE COURT: All right. This is a continuation, as you know, of the January 2022 hearing. Have the parties received

1 the memorandum I asked Probation to prepare dated today, March
2 8 concerning the results of the defendant's drug tests and drug
3 treatment since January 20?

4 MR. HALPERN: Yes, Your Honor.

5 MS. WAN: Yes, Your Honor.

6 THE COURT: Okay. And as I said in my order that was
7 docketed on February 10, I've considered the submissions
8 concerning the Rule 11(c)(1)(C) binding plea agreement and am
9 now willing to conduct the waiver of indictment and Rule 11
10 plea colloquy and decide whether to accept the defendant's
11 guilty plea.

12 And as I understand it, the binding agreement, if
13 accepted, would require a sentence of probation, no time in
14 custody, 36 months' probation, restitution in the amount of
15 \$7,066 and a \$200 special assessment.

16 So today I'll decide whether to accept the waiver of
17 indictment and guilty plea. I'll defer until the sentencing
18 hearing the decision of whether to accept the plea agreement
19 and impose the agreed-upon sentence. If at that time I don't
20 accept the agreed-upon sentence, I'll give the defendant an
21 opportunity to withdraw her plea, all pursuant to Rule
22 11.3(a)(4) and (5).

23 After taking the plea I'll address the petitions
24 regarding actual or possible violations of the conditions of
25 release and what should be done in the circumstances. Okay?

1 So the defendant should approach the witness stand and
2 be sworn. You want to sit there.

3 MR. HALPERN: There?

4 THE COURT: There.

5 (Defendant duly sworn.)

6 THE COURT: You may be seated. Would you please state
7 your true full name.

8 THE DEFENDANT: Aticha Jittaphol.

9 THE COURT: Ms. Jittaphol, do you understand you've
10 just taken an oath to answer the questions that I'm going to
11 ask you truthfully and any failure to do that could be a
12 separate prosecutable criminal offense?

13 THE DEFENDANT: I understand, Your Honor.

14 THE COURT: Do you also understand that if you're
15 confused by any of my questions or unsure about what an honest
16 and accurate answer would be, I'll let you talk to Mr. Halpern
17 so we can clear up any confusion and you can give me a reliable
18 response?

19 THE DEFENDANT: Yes, Your Honor. Thank you.

20 THE COURT: Have you ever been arrested anywhere under
21 any name that's different than the name you just gave me?

22 THE DEFENDANT: No.

23 THE COURT: And how old are you?

24 THE DEFENDANT: 33 years old.

25 THE COURT: And where were you born?

1 THE DEFENDANT: In Thailand.

2 THE COURT: Are you a United States citizen?

3 THE DEFENDANT: Not yet.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: High school diploma.

6 THE COURT: Have you ever been treated for mental
7 illness or drug addiction?

8 THE DEFENDANT: No.

9 THE COURT: Have you been treated for drug addiction?

10 THE DEFENDANT: Yes, I have been under treatment with
11 the court's order.

12 THE COURT: And have you taken any drugs or medication
13 or alcohol in the last 24 hours?

14 THE DEFENDANT: No. After the treatment, I have not
15 had anything to drink or did not use any drugs.

16 THE COURT: Do you understand that you're charged in
17 an information issued by the U.S. Attorney's Office alleging
18 two counts of making false statements to the government?

19 THE DEFENDANT: Yes.

20 THE COURT: Were those charges read to you in your
21 native language?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you discuss them with Mr. Halpern,
24 including what the government would have to prove beyond a
25 reasonable doubt to convict you on each of the charges?

1 THE DEFENDANT: Yes.

2 THE COURT: Are you fully satisfied with his work as
3 your lawyer?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that under the United
6 States -- well, do you understand that each of the charges
7 against you is a crime punishable by more than one year in
8 prison, making it what's called a federal felony?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: Do you understand that under the United
11 States Constitution, when a federal felony is involved, you
12 have a right to be charged in an indictment brought by a grand
13 jury rather than in an information like this one issued by the
14 United States Attorney's Office?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that a grand jury is
17 made up of 16 to 23 people, at least 12 of whom would have to
18 find probable cause to believe that you committed a particular
19 crime to convict you of that crime?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand if this matter was
22 presented to a grand jury, it might or might not indict you?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you or Mr. Halpern have a copy of the
25 letter dated October 20, 2021 from the U.S. Attorney's Office

1 to him?

2 MR. HALPERN: Your Honor, I'm not sure which one --

3 THE COURT: It's the second plea agreement.

4 MR. HALPERN: The plea agreement.

5 THE COURT: It's docket number 7. And is that your
6 plea agreement with the government?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you sign it on page 6?

9 THE DEFENDANT: Yes.

10 THE COURT: Was that letter read to you in your native
11 language before you signed it?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you discuss the letter with
14 Mr. Halpern before you signed it?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you feel you understood that letter
17 before you signed it?

18 THE DEFENDANT: Yes.

19 THE COURT: Does that letter both accurately and
20 completely describe your agreement with the government in
21 connection with your desire to waive indictment and plead
22 guilty to the information?

23 THE DEFENDANT: Yes.

24 THE COURT: Has anybody made any promises to you or
25 given you any assurances that are not in that letter?

1 THE DEFENDANT: Yes.

2 THE COURT: Here, listen again. Has anybody made any
3 promises to you or given you any assurances that are not
4 written in that letter?

5 THE DEFENDANT: No.

6 THE COURT: And has anybody threatened you or tried to
7 force you to waive indictment or plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: On page 3 of that letter, there's a
10 section 6 that says, "Waiver of Appellate Rights and Challenges
11 to Conviction or Sentence." Was that provision read to you in
12 your native language?

13 THE DEFENDANT: Yes, but I couldn't remember
14 everything.

15 THE COURT: Okay. Do you remember having that read to
16 you in your language?

17 THE DEFENDANT: Yes.

18 THE COURT: And do you understand that in this part of
19 your plea agreement you're giving up the rights that you would
20 otherwise have to appeal or challenge the fact that you're
21 guilty of the charges in the information and your right to
22 appeal your sentence if I accept the binding plea agreement and
23 sentence you to probation?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you discuss that provision

1 specifically with Mr. Halpern?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you want to give up those rights to
4 challenge the fact you're guilty and your sentence if I give
5 the agreed-upon sentence?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Well, I'm satisfied that the
8 defendant is competent, acting knowingly and voluntarily and
9 effectively represented in her desire to waive indictment, so
10 I'll accept it.

11 Mr. Halpern, is that a waiver of indictment form?

12 MR. HALPERN: Yes.

13 THE COURT: Okay. So here is a waiver of indictment
14 form. I'm going to make the plea agreement Exhibit 1 of
15 today's date, and I will sign the waiver of indictment form.

16 We'll now proceed to the arraignment phase. Would you
17 like the information read to you, or will you waive, give up
18 the reading of the information?

19 THE DEFENDANT: There's no need to, Your Honor.

20 THE COURT: No need to read?

21 THE DEFENDANT: No.

22 THE COURT: Okay. So I'm going to ask you some more
23 questions to decide whether I should accept your guilty plea.
24 Do you understand if I accept your guilty plea, you will become
25 a federal felon and you may lose certain rights if you have

1 them, including the right to vote, to hold public office, to
2 serve on a jury and to possess a firearm?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: And do you understand that if I accept
5 your guilty plea, there's a very good chance that you will be
6 required to leave the United States or you will be removed from
7 the United States and not allowed to return without the
8 permission of the Secretary of Homeland Security?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that the maximum or
11 highest possible penalties for each of the two counts to which
12 you're pleading guilty are five years in prison, supervised
13 release for three years, a fine of up to \$250,000, a mandatory
14 special assessment of \$200, and restitution in the amount of
15 \$7,066?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand that at the time of
18 the sentencing hearing I will decide whether to accept the
19 binding plea agreement and sentence you to probation, five
20 years of probation and restitution, or, if I reject the binding
21 plea agreement, if I do not accept it, you will have an
22 opportunity to withdraw your guilty plea and go to trial. Do
23 you understand that?

24 THE DEFENDANT: Yes.

25 MS. WAN: Your Honor, I believe it's three years'

1 probation, not five.

2 THE COURT: Three years' probation? I'm sorry. Do
3 you understand that the binding plea agreement provides for
4 three years' probation, not five?

5 THE DEFENDANT: (Nods)

6 THE COURT: All right. Do you understand that the
7 sentencing in this case will be governed by the advisory
8 guideline system that operates in federal courts?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand -- have you talked with
11 Mr. Halpern about how that advisory guideline system might
12 apply in your case?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that if I don't accept
15 the binding plea agreement and you're convicted at trial or you
16 continue to plead guilty, depending on the facts, I might have
17 -- well, let me ask you this. Do you understand as we sit here
18 today, neither Mr. Halpern nor anybody else can tell you with
19 certainty what the guideline range is for your sentence or what
20 sentence I will impose if I don't accept the binding plea
21 agreement and you're convicted or plead guilty because, until I
22 conduct a sentencing hearing, I cannot make those decisions
23 myself?

24 THE DEFENDANT: (No response.)

25 THE COURT: I'm sorry, what's the answer?

1 THE DEFENDANT: I understand.

2 THE COURT: And do you understand that if I don't
3 accept the binding plea agreement but because you're convicted
4 or continue to plead guilty, I sentence you, depending on the
5 facts, I could give you a sentence that's higher or lower than
6 the guideline range, but in many cases I find it's appropriate
7 to give a sentence in the guideline range?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if I reject the
10 binding plea agreement, you and the government will have a
11 right to appeal my sentence?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you understand, in that instance,
14 even if I give you a sentence that's higher than you hoped for
15 or higher than the government recommends, you wouldn't be
16 allowed to withdraw your plea?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. But as I said earlier, if I
19 reject the binding plea agreement, you'll have an opportunity
20 to withdraw your guilty plea if you want to. Do you
21 understand?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand you still have a right,
24 if you want to use it, to have the charges against you decided
25 at a trial by a jury?

1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand, if we had a trial,
3 you would have a right to a lawyer, and if you could not afford
4 a lawyer, a lawyer would continue to be appointed to represent
5 you at public expense?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand if we had a trial, you
8 would be presumed innocent. You would not have to prove you
9 were innocent. Rather the government would have to prove you
10 were guilty as charged beyond a reasonable doubt to achieve
11 your conviction?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that if we had a trial,
14 you would have an opportunity through your lawyer to object to
15 the government's evidence and challenge its witnesses?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand if we had a trial, you
18 would also have an opportunity but not an obligation to present
19 a defense?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that as part of that,
22 you would have an opportunity but not an obligation to testify
23 yourself, and if you decided not to testify, I would instruct
24 the jury that it could draw no suggestion that you were guilty
25 from your decision not to testify?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if I accept your
3 guilty plea, you'll be giving up your right to a trial and
4 there will be no trial?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that in this information
7 you're charged in two counts of making false statements to the
8 United States Government?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand that you're
11 specifically being charged with making false statements in
12 connection with electronic PPP -- hold on just a second. I'll
13 come back to that.

14 So you're charged with two counts of making false
15 statements to a matter within the jurisdiction of the executive
16 branch of the United States. Do you understand that to prove
17 that charge, if we had a trial, the government would have to
18 prove beyond a reasonable doubt, first, that you knowingly and
19 willfully made a material false statement?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand that a statement is
22 false if it was untrue when made?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that a statement is made
25 knowingly if it's made intentionally, not by accident or

1 mistake, and it's made willfully if you knew it was unlawful?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: And do you understand that the government
4 would also have to prove -- and do you understand that a
5 statement is material if it has a natural ability to influence
6 the decision of the decisionmaker to whom it's addressed?

7 INTERPRETER: Your Honor, can we go over that again.
8 I just have --

9 THE COURT: That's okay.

10 INTERPRETER: -- to the other language.

11 THE COURT: You're doing a good job.

12 Do you understand that a statement is material if it
13 has the natural ability to influence the person making the
14 decision?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand the government would
17 also have to prove that you made the statement voluntarily and
18 intentionally?

19 THE DEFENDANT: Yes.

20 THE COURT: And do you understand that in this case,
21 the government would have to prove that you made the statement
22 in connection with particular PPP electronic applications for
23 Mantra Dhevi Spa through Small Business Administration
24 authorized lender Bank of America? Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: And in Count One it's charged in paragraph
2 17 that on or about March 31, 2020 in the District of
3 Massachusetts, you, also known as Lilly, knowingly and
4 willfully made a materially false, fictitious and fraudulent
5 statement and representation in a matter within the
6 jurisdiction of the executive branch of the government of the
7 United States as described in paragraph 12 of the information,
8 which discusses the submission on March 31, 2020 by you of an
9 electronic application for approximately \$30,000, stating that
10 the applicant is not engaged in any illegal activity as defined
11 by federal guidelines. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: And did you commit the crime charged in
14 Count One?

15 THE DEFENDANT: Yes.

16 THE COURT: And in Count Two, in paragraph 19, it's
17 charged that on or about April 7, 2020, in the District of
18 Massachusetts, you, also known as Lilly, knowingly made another
19 materially false statement in a matter within the jurisdiction
20 of the executive branch of the government of the United States
21 particularly by submitting an electronic PPE application for
22 Mantra Dhevi Spa through the Small Business Administration
23 authorized lender Bank of America seeking a \$5,066 loan
24 containing the false statement that the applicant is not
25 engaged in any activity that is illegal under federal, state or

1 local law. Do you understand that's the charge in Count Two?

2 THE DEFENDANT: Yes.

3 THE COURT: And are you guilty of the crime charged in
4 Count Two?

5 THE DEFENDANT: Yes.

6 THE COURT: Now I'd like you to listen while the
7 government summarizes what its evidence would have been if we
8 went to trial, and then I'm going to ask if you agree with its
9 summary of what you did.

10 MS. WAN: Your Honor, if this case were to proceed to
11 trial, the government would prove beyond a reasonable doubt
12 that since in or around 2017 --

13 THE COURT: Excuse me. This has to be translated, so
14 you want to go slowly, please.

15 MS. WAN: I will. I apologize.

16 If this case were to proceed to trial, the government
17 would prove beyond a reasonable doubt that since in or around
18 2017, the defendant owned Mantra Dhevi Spa, a massage parlor in
19 Brighton, Massachusetts.

20 The defendant employed two to five employees and at
21 times herself worked at the Mantra Dhevi Spa. Employees at the
22 Mantra Dhevi Spa engaged in illegal activity, in particular
23 employees, including the defendant, provided sexual services
24 for a fee to customers. Employees did so with the defendant's
25 knowledge and consent, and the defendant profited from the

1 illegal activity. Customers paid about \$80 for a one-hour
2 massage session and the defendant received \$40 for each
3 session. The defendant's employees kept the remaining \$40 and
4 any tips.

5 Despite running an illegal -- excuse me. Despite
6 running a business engaged in illegal activity, the defendant
7 applied for and received COVID relief funds. On March 31,
8 2020, the defendant applied to the Small Business
9 Administration for an economic injury disaster loan of about
10 \$30,000.

11 On April 7, 2020, the defendant submitted a Paycheck
12 Protection Program application to Bank of America, a Small
13 Business Administration-approved lender. Both applications
14 required the applicant to certify that the applicant is not
15 engaged in any activity that is illegal under federal, state or
16 local law. The defendant knowingly and willfully falsely
17 certified that she was not engaged in any illegal activity, and
18 she made these statements voluntarily and intentionally.

19 The false certification was also material. The Small
20 Business Administration would not have awarded the funds if
21 they were aware that the applicant was engaged in illegal
22 activity. The Small Business Administration is an executive
23 branch government agency.

24 Although the Small Business Administration declined to
25 give Jittaphol the full \$30,000 loan amount she requested,

1 they paid Jittaphol \$2,000 under the EIDL Advance program, and
2 the defendant also collected \$5,066 in funds from the PPP loan
3 program.

4 THE COURT: Do you agree with the government's summary
5 of what you did?

6 THE DEFENDANT: Yes.

7 THE COURT: And how do you now wish to plead to the
8 two counts against you, guilty or not guilty?

9 THE DEFENDANT: Guilty, Your Honor.

10 THE COURT: Then I'll direct the clerk to enter your
11 pleas of guilty to Count One and Two, because I find you are
12 competent, you are acting knowingly and voluntarily, you are
13 effectively represented, and there's an independent basis in
14 fact to support your guilty plea. You may take your seat back
15 at the table.

16 THE DEFENDANT: Thank you, Your Honor.

17 MS. WAN: Your Honor, if I could address one matter?

18 THE COURT: One matter relating to the guilty plea?

19 MS. WAN: Yes, Your Honor.

20 THE COURT: Well, what is that?

21 MS. WAN: Your Honor, while the plea agreement
22 reflects the agreement between the U.S. Attorney and the
23 defendant, we do want to make the Court aware that Ms.
24 Jittaphol has a pending Suffolk District Court charge for
25 possession with intent to distribute. And although the

1 government has made no promises --

2 THE COURT: Why are you telling me this now, not
3 before I started questioning her?

4 MS. WAN: Your Honor, because I believe that we have
5 not made any promises, inducement or rewards.

6 THE COURT: All right. But this is -- here. Start
7 again and tell me what you want to tell me. But if it relates
8 to potential promises, I would have preferred to have known
9 about it before I questioned her, but go ahead.

10 MS. WAN: And Your Honor, I apologize for that. I was
11 hoping to have an opportunity, but I also didn't want to
12 interrupt the Court, and I see that that's my fault.

13 The federal prosecutors, including Alyssa Tochka, has
14 been coordinating with the state prosecution and understands
15 that the state plans to dismiss those charges and have informed
16 the defendant of the same.

17 THE COURT: You've told the defendant that?

18 MS. WAN: Not in terms of a promise but informed the
19 defendant that we've coordinated and asked what the status of
20 that court case is and that they intend to discuss those
21 charges.

22 THE COURT: But that's not a promise the government,
23 the United States Government has made to the defendant?

24 MS. WAN: Correct. And it's not something that we can
25 enforce because it's a Suffolk District Court case.

1 THE COURT: All right. Mr. Halpern, is that your
2 understanding?

3 MR. HALPERN: Yes, it is.

4 THE COURT: All right. So there are no additional
5 promises?

6 MS. WAN: Yes, Your Honor.

7 THE COURT: Thank you. So I'm scheduling the
8 sentencing for June 14 at 2:00 p.m., unless somebody has a
9 foreseeable conflict. Sentencing memoranda, which will be
10 required, shall be filed by May 31, and any replies by June 7.

11 MS. WAN: Your Honor, I apologize, but I will be on
12 maternity leave during that time, and Alyssa Tochka will also
13 be on leave until I believe June 1 through 24.

14 THE COURT: Until when, until June what?

15 MS. WAN: 24th.

16 THE COURT: Well, this is fine. I'm not going to be
17 here after that.

18 MS. WAN: We can find someone else to cover.

19 THE COURT: There are about 175 lawyers in your
20 office. I don't want to interrupt your maternity leave but --

21 MS. WAN: We can find someone else to cover, Your
22 Honor.

23 THE COURT: How many weeks, was that the 12 weeks or
24 16 weeks, Jarrett?

25 That's 16. Can the Presentence Report be done, I'll

1 ask, earlier than that?

2 U.S. PROBATION: I don't know the answer to that
3 question, Your Honor, but I can get clarification after the
4 hearing today.

5 MS. WAN: Your Honor, we can find someone else to
6 cover.

7 THE COURT: There may be flexibility. I'm not sure
8 when I'm going to be here in June, so we'll work it out. All
9 right. When is your colleague, whose name escaped me, going to
10 be back from her leave?

11 MS. TOCHKA: I will be back the last week of June, so
12 June 27 on.

13 THE COURT: 27th?

14 MS. TOCHKA: Yes, Your Honor.

15 THE COURT: That's not going to work because I'm not
16 going to be here. Okay. June 14. All right. Then there are
17 the pretrial release issues that we began discussing on January
18 20.

19 On November 19, 2021, in docket number 16, I was
20 advised that the defendant had tested positive for
21 methamphetamine and that she admitted using meth daily but that
22 she was agreeable to treatment. So I was asked by Probation to
23 not take any action on that.

24 Probation ordered certain treatment, and on January
25 12, 2022, in docket 21, another petition, I was informed that

1 the defendant failed to report to the SSTAR program as directed
2 by Probation, a violation of a condition. She did not complete
3 the Behavioral Health Network program as directed by Probation,
4 which we discussed extensively on January 20, 2022.

5 I continued the hearing on the petition to possibly
6 revoke pretrial release so I could get further briefing on
7 whether I would consider the binding plea agreement and other
8 matters.

9 On February 7, 2022, in docket 38, I was informed the
10 defendant had tested positive in a sweat patch test that she
11 wore from January 20 to 27, 2022. And she has had subsequent
12 sweat patch and urine tests which were not observed where she
13 tested negative. The parties have, as I ordered, made written
14 submissions concerning what should be done in the
15 circumstances, what I should order in the circumstances.

16 In its written submission, the government indicated
17 that it was supporting a recommendation by Probation that I
18 again order the defendant into inpatient treatment rather than
19 do something else, including revoke her release. The defendant
20 in her written submission said she was agreeable to outpatient
21 counseling.

22 In my February 10 order, I stated that today I would
23 consider whether the defendant should be detained for violating
24 the conditions of her release as well as considering what the
25 parties were recommending. That revocation of release could be

1 based on the fact that she used meth before November 19, 2021,
2 the fact that she didn't complete the inpatient treatment as
3 directed by Probation, and if I found that she used meth again
4 around the time or after the January 20 hearing, that would be
5 another violation. Although that issue is hotly disputed.

6 The sanction for violating a condition of release is
7 governed by 18, United States Code, Section 3148. And as the
8 parties know -- well, I've had questions about the defendant's
9 immigration status. And while I have additional submissions, I
10 still have questions. But I asked Probation to prepare this
11 memo that you received this morning, the March 8 memo, which we
12 should make Exhibit 2 of today's date. It hasn't been
13 docketed.

14 There have been all these negative tests since about
15 January 27 and Probation has ordered the defendant to
16 participate in outpatient substance abuse treatment services
17 through CPC located in Boston, and she attended her first
18 session with CPC last week and is scheduled to participate in
19 individual treatment sessions on a weekly basis, and I'm told
20 that defendant has also been directed to participate in Crystal
21 Meth Anonymous, CMA groups, and that she has provided Probation
22 of verification of her attendance in CMA meetings on February
23 19 and March 5.

24 So I'll ask, what are the government and Probation
25 recommending today?

1 MS. WAN: Your Honor, we spoke with Probation earlier
2 today. Our understanding is that Probation is asking that the
3 defendant continue with her drug treatment program through CPC
4 and through Crystal Meth Anonymous and also continue with the
5 scheduled drug testing urinalysis and sweat patch drug testing,
6 and that, at this point in time, there is no recommendation
7 from Probation that the defendant attend an inpatient program.

8 THE COURT: All right. Would the probation officer
9 identify herself for the record, please.

10 U.S. PROBATION: Yes. This is Taylor Wertz from the
11 U.S. Probation Office.

12 THE COURT: And has the government accurately stated
13 what you're recommending?

14 U.S. PROBATION: Yes, Your Honor.

15 THE COURT: And what is CPC?

16 U.S. PROBATION: CPC is an outpatient treatment
17 provider. They treat for both substance abuse --

18 THE COURT: I'm sorry, could you keep your voice up a
19 little. I want to make sure the translator hears you and I
20 hear you, even though she's speaking.

21 U.S. PROBATION: Of course. CPC is an outpatient
22 treatment provider in the Boston area. They treat individuals
23 with substance abuse disorder as well as mental health issues.
24 We've been working with them for a number of years. They're a
25 good provider for our clients under supervision.

1 THE COURT: All right. And you feel that's
2 appropriate and sufficient for Ms. Jittaphol?

3 U.S. PROBATION: Yes, at this time. I would also
4 state that the Crystal Meth Anonymous group will be very
5 beneficial for her, given her substance use --

6 THE COURT: Mr. Halpern, what's the defendant's
7 position with regard to that recommendation, or what's her
8 recommendation?

9 MR. HALPERN: We're in accord with that. She's fully
10 prepared to comply with the outpatient treatment
11 recommendation.

12 THE COURT: Speak into the microphone, please.

13 MR. HALPERN: We're in accord with the recommendations
14 of Probation. If you want me to address the issues of the
15 violations, I will.

16 THE COURT: No, no. Here, you've done a good job in
17 raising questions about whether the sweat patch positive test
18 is reliable. And if necessary, I could decide those questions
19 after hearing from you. But my inclination is to continue this
20 hearing to give the defendant another chance to follow these
21 orders. Conditions of release are court orders. If you
22 violate a condition of release, you can be locked up and can be
23 prosecuted for contempt as well. You can get six months in
24 prison for that.

25 MR. HALPERN: But I --

1 THE COURT: Let me finish. Unless you want me to
2 change my mind?

3 MR. HALPERN: No. Go ahead.

4 THE COURT: You'll get a chance, if you want to, to
5 speak. But look, here is the concern. If I impose those
6 conditions, I will also require weekly sweat patch and urine
7 testing again. I will require that it be observed so we don't
8 have any more issues about whether the urine has been tampered
9 with. They'll be observed by males. That would be the
10 probation office's policy in this situation.

11 And I'm concerned because in the past Ms. Jittaphol
12 had said she's agreeable to treatment and then she decides she
13 would prefer not to do it or not to do this treatment, and
14 that's not acceptable. So she has to understand that if I
15 continue this hearing and don't decide whether to lock her up
16 today for violating the conditions of supervised release, which
17 would require certain showings by the government for me to have
18 the discretion to do that, that she's got to follow, she's got
19 to do it.

20 Mr. Halpern maybe knows the Herman Melville story,
21 Bartleby the Scrivener. The prosecutor does, too. Bartleby
22 the Scrivener is a famous story written by Herman Melville, who
23 also wrote even more famously Moby Dick. And Bartleby the
24 Scrivener takes a job in about 1850 in a law office in New
25 York, and he starts to do the job. And then his boss says,

1 "Here, do this," and he says, "I prefer not." The boss says,
2 "Do this." He says, "I prefer not." And eventually he's not
3 doing anything.

4 That's not the way this works. You can't say, "I
5 prefer to do something else." You have to do what I order you
6 to do and what Probation tells you to do, because if I have to
7 see you again before I sentence you, there's a very good chance
8 that you're going to go from this courtroom to jail. And under
9 your plea agreement, if I accept it, you won't go to prison at
10 all. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And are you prepared to fully participate
13 as directed in the CPC program?

14 THE DEFENDANT: Yes.

15 THE COURT: And also to go to all the required
16 meetings of Crystal Meth Anonymous?

17 THE DEFENDANT: Yes.

18 THE COURT: And to be drug-tested every week,
19 including observed by a man?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. That's what I'm ordering.
22 Unless Mr. Halpern wants to be heard further, that's what I'm
23 ordering. I'm changing, I'm continuing your release, but I'm
24 not deciding the petition. If you violate a condition, it will
25 be all the violations that are proven or admitted that I'll

1 take into account in deciding what to do, including using meth
2 daily for a while after you were charged in this case and
3 leaving the program in December that you were ordered to go in.

4 And I'm again directing Probation to tell me promptly
5 of any violations, and all the other existing conditions will
6 remain in effect.

7 Then there's one more issue that will need to be
8 further addressed in connection with the sentencing. So I
9 raised the question of the defendant's immigration status. I
10 was told she was here and allowed to be here until July of this
11 year on a student visa, which didn't make sense to me because
12 she's not in school, and I know a person can't work on a
13 student visa.

14 And now I've read the parties' submissions on this, of
15 course, the government's docket number 48. I asked the clerk
16 this morning to -- you filed it under seal without a motion to
17 seal, which is required by Local Rule 7.3, and I would have
18 ordered a redacted version. You filed a redacted version but
19 you redacted too much. I thought you would redact personal
20 identifiers, not all the exhibits. Under *Kravetz*, judicial
21 records are presumptively public and documents on which
22 judicial decisions are made, it's important they be public to
23 the maximum extent possible. The exhibits aren't all
24 confidential information.

25 But why doesn't the government explain to me what it

1 understands her immigration status is, and Mr. Halpern can do
2 the same thing, and I'll tell you what my questions are looking
3 at the records.

4 MS. WAN: And Your Honor, first we'd like to apologize
5 for the different accounts that USCIS and HSI has given to
6 Probation. But from the best of our knowledge at this point,
7 the government believes that the defendant entered the United
8 States originally on a student visa in May of 2012. That
9 student visa expired shortly after her entry as soon as she
10 stopped attending a course of study. But in the meantime, the
11 defendant did apply for an asylum application.

12 THE COURT: Well, according to your papers, when did
13 she first apply for an asylum application? It looks like 2015.
14 I'm looking at Exhibit A.

15 MS. WAN: It was at least as early as 2015.

16 THE COURT: Well, why "at least"? Is there some
17 indication that it was earlier?

18 MS. WAN: Yes, Your Honor, because Exhibit A refers to
19 the work authorization applications.

20 THE COURT: Where is that?

21 MS. WAN: So the first one is actually Exhibit B.

22 THE COURT: Exhibit B?

23 MS. WAN: Correct. So this is an application for a
24 work authorization, and in it, it refers to a pending asylum
25 claim.

1 THE COURT: So Exhibit B was signed by the defendant
2 on February 10, 2015, right?

3 MS. WAN: Correct.

4 THE COURT: She came here in 2011, right?

5 MS. WAN: I believe 2012, May of 2012.

6 THE COURT: 2012, and almost immediately wasn't in
7 school. So for a couple of years, it appears she was here
8 unlawfully, to me, based on what I know at the moment.

9 All right. And then this document says "Application
10 approved. Employment authorized to 3/29/2016," I believe. Is
11 that the way you read it?

12 MS. WAN: Correct, Your Honor.

13 THE COURT: And is there any document showing that she
14 was authorized to be employed after that?

15 MS. WAN: Yes, Your Honor. The next application is
16 attached as Exhibit C.

17 THE COURT: Exhibit C.

18 MS. WAN: That goes from 2016 through 2017.

19 THE COURT: 2015 or 2016?

20 MS. WAN: 2016.

21 THE COURT: To 2017?

22 MS. WAN: To 2017. And then, Your Honor, I know this
23 is confusing, but Exhibit A shows subsequent applications, and
24 it shows another application that was received on June 7,
25 2016 -- excuse me -- 2017.

1 THE COURT: But it appears from Exhibits B and C that
2 each application can result or does result in a one-year
3 extension.

4 MS. WAN: From those two exhibits, yes, but then in
5 addition to that, we have received, and I believe the defense
6 counsel has a copy, an actual work authorization card that says
7 that it's valid from 2017 through --

8 THE COURT: Who did you receive that from?

9 MS. WAN: From the defendant.

10 THE COURT: Right. Who has the actual card? May I
11 see it, please? Would the government like to see it?

12 MS. WAN: Sure, Your Honor. Thank you.

13 THE COURT: Does the defendant need the actual card
14 now, or can it go to Probation, for example?

15 MR. HALPERN: I honestly don't know what the
16 requirements would be if she seeks another position. Whether
17 she would have to demonstrate that she has the card, I don't
18 know.

19 THE COURT: She could get it from Probation. She has
20 to inform -- it's in my file, but do the conditions of release
21 require that she inform Probation of her employment?

22 U.S. PROBATION: Yes, Your Honor. I believe the
23 condition reads -- excuse me, I misspoke. She does have a
24 condition that says she must continue or actively seek
25 employment.

1 MR. HALPERN: What would the purpose be of
2 surrendering the card?

3 THE COURT: Well, if there's any question of validity
4 of it. I'm adding that condition, that she fully inform
5 Probation of the details of her current employment and not
6 change her employment without the permission of Probation. So
7 that's an additional condition.

8 But, Mr. Halpern, maybe you can help explain -- I
9 mean, the card looks valid, and I don't want to overcomplicate
10 this, but I also want to be fully informed about the person I'm
11 going to have to sentence.

12 MR. HALPERN: So I consulted with an immigration
13 attorney and everything I'm really saying, I'm repeating what I
14 was told. Applying for a work permit while an asylum
15 application is pending is routine, and they are granted
16 routinely. Her asylum application could be pending for a very
17 long time, and the likelihood that it would be resolved by
18 mid-June when the permit expires is zero. So she's eligible to
19 have the work permit reinstated, and there's no telling how
20 long the asylum application could be pending.

21 THE COURT: That's consistent with my understanding,
22 what you've said so far. But nobody has shown me a document
23 extending the work authorization to now.

24 MR. HALPERN: So her immigration attorney passed away,
25 and so my -- I've tried to get her file. I haven't managed to

1 do that, so I don't have the application that led to the
2 issuance of the card, and I'm not sure I'm going to be able to
3 get it. You would think it would be on file somewhere with the
4 government, but I don't know.

5 THE COURT: You would think that, because these others
6 were.

7 MS. WAN: And, Your Honor, we have looked into that.
8 We have tried to get the more recent work authorizations. I do
9 want to be clear, Your Honor, that the July 13, 2022 date does
10 not come solely from the work authorization card that the
11 defendant provided. That was independently verified when we
12 asked HSI about this case. I'm not sure if -- I reviewed the
13 A-File, Your Honor. There's nothing in there that states that,
14 but, if necessary, we can ask for an affidavit or some sort of
15 internal printout showing that status.

16 THE COURT: I'm interested in this because Exhibit B
17 is an application of various things crossed out and handwritten
18 in.

19 MS. WAN: I can explain that, Your Honor. Usually
20 when an applicant goes in for an interview at USCIS, during the
21 interview, the USCIS employee helps them fill out the
22 application, so the red marks come from the USCIS examiner, and
23 eventually the applicant signs.

24 THE COURT: Well, I remain interested in seeing the
25 applications, whether they include any misrepresentations. All

1 right. And I'm going to order the government to have another
2 attorney file by March 22 an appearance on behalf of the
3 government so I can know who is going to be responsible for
4 this when two prosecutors here today are not available.
5 Because sentencings are regularly scheduled 12 weeks from
6 pleas. They were 16 weeks. So if the U.S. Attorney sends two
7 of you here for good reasons, I'm sure, who can't be here 12
8 weeks from now, she should send a third lawyer for Mr. Halpern
9 to contend with.

10 All right. Is there anything further -- I'll ask the
11 probation officer to prepare a new set of conditions of release
12 that I'll append to my order as soon as she's able. And as I
13 said, I'm continuing the hearing on the petitions that could
14 result in the defendant's pretrial detention. But it's
15 everybody's preference that that not occur.

16 But Ms. Jittaphol, that's entirely up to you. If you
17 decide you'd prefer not to do any of the programs, either of
18 the programs that Probation has ordered you and I'm ordering
19 you to participate in, you can tell Mr. Halpern, and he can
20 talk to Probation about it. They can come and ask me to change
21 it. But unless I change the orders, you have to follow them.
22 Because if you decide like Bartleby the Scrivener that you just
23 prefer not to do it, you'll be telling me you prefer to go to
24 jail.

25 Anything else for today?

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MS. WAN: None from the government.

MR. HALPERN: Nothing else, Your Honor.

THE COURT: All right. Court is in recess.

(Adjourned, 3:41 p.m.)

1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Kelly Mortellite, Registered Merit Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 8th day of April, 2022.

10

11 /s/ Kelly Mortellite

12 _____

13 Kelly Mortellite, RMR, CRR

14 Official Court Reporter

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