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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. MUBARAK UKASHAT, Defendant.	**Mr. Ukashat's Sentencing Memorandum and His Position Regarding Sentencing Factors** Case No. 2:23-cr-111 Judge Howard C. Nielson, Jr.

Mubarak Ukashat, though counsel, asks the court to impose a sentence of one year and one day. This is the appropriate sentence given the facts of this case. The government's request for a 3-year sentence, near the maximum in the range before the court under Rule 11(c)(1)(C), rests largely on inappropriate argument that should be disregarded in its entirety. Instead, a sentence close to one year is proper as it commensurate with the harm done, the need for deterrence, the harm that Mr. Ukashat has suffered, and his background generally.

A. The government's sentencing argument hinges on unconstitution, improper considerations.

Because Mr. Ukashat is not a citizen of the U.S. while his wife and children are, the collateral immigration consequences of his prosecution have always hung over this case.

That was a critical factor that motivated his decision to enter the plea he did. Under that plea agreement, the court has the option to sentence him between one and three years of incarceration. But in making its case for a sentence at the maximum of that range, the government has taken what should be a collateral issue and placed it front and center. The government has peppered its brief with frequent references to Mr. Ukashat's status as an individual from Nigeria, present in the United States merely as a permanent resident. These arguments are not subtle. Take, for example, the government's open to its sentencing brief:

> Lady Liberty does not invite thieves and criminals into her borders and onto her shores.
>
> . . .
>
> Mubarak Sulaiman Ukashat was born in Nigeria. In 2015, he came to America to successfully pursue a Ph.D. in physics. He became a lawful permanent resident. He married and had children and contributed to Muslim student organizations. He sought to become an American citizen. Outwardly, he appeared to have the makings of a good future citizen. But while he enjoyed all that America had to offer him, he was stealing from the United States and its citizens.
>
> During the global COVID-19 pandemic, while so many Americans were struggling, and Mr. Ukashat was earning a subsidized Ph.D. at Utah State University, Mr. Ukashat betrayed America and broke her trust. He engaged in a wire fraud scheme . . . . He repaid the United States' generosity in welcoming him to its shores by exploiting the United States' pandemic response, misusing COVID relief funds, and damaging the credit of innocent Americans.[1]

This reference to Mr. Ukashat's national origin or alienage is completely improper.

In a case from almost 40 years ago, the Seventh Circuit noted that it "obviously would be unconstitutional" to sentence a person "more harshly solely because of their nationality or alien status."[2] Nonetheless, the government has made Mr. Ukashat's status a

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[1] Doc. 216 at 1–2.

[2] *U.S. v. Gomez*, 797 F.2d 417, 419 (7th Cir.1986).

central pillar of its sentencing argument. Indeed, the government's repeated focus on Mr. Ukashat's national origin goes further than examples condemned in case law. In a frequently cited case, a district court in Nebraska was reversed because it made the following statement:

> The other thing that I feel that warrants imposition at the high end of the guideline range: You are not a citizen of this country. This country was good enough to allow you to come in here and to confer upon you ... a number of the benefits of this society, form of government, and its opportunities, and you repay that kindness by committing a crime like this. We have got enough criminals in the United States without importing any.[3]

In that case, *U.S. v. Onwuemene*, the district court said the defendant's nationality was just one of three reasons it sentenced the defendant to the high-end of the then-mandatory Guidelines sentencing range.[4] Nonetheless, the Eight Circuit held that even if it was just one reason, the statement still violated the defendant's due-process rights and required a new sentencing hearing.[5] By contrast, the government's focus on Mr. Ukashat's national origin is not a one-off statement.

In my review of Tenth Circuit case law, I have not found a published decision that deals with this issue. However, in an unpublished case from 2014, the Tenth Circuit cites the Eight Circuit opinion discussed above as representing the correct legal conclusion: "sentencing a defendant more harshly because of his alien status violates the defendant's

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[3] *U.S. v. Onwuemene*, 933 F.2d 650, 650–51 (8th Cir. 1991).

[4] *Id.* at 651–52.

[5] *Id.* at 652.

constitutional right to due process."[6] Moreover, this conclusion seems to be uniform among the circuit courts to have considered it.[7]

But even without a published Tenth Circuit case, there is plenty of authority that should have alerted the government to the problem with its argument. For instance, in the Guidelines it states plainly that "Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status" are "not relevant in the determination of a sentence."[8] That provision, in place since 1987, reflects Congress' directive that "the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders."[9] Similarly, the Justice Manual, which "publicly sets forth internal Department of Justice (DOJ) policies and procedures,"[10] states that a prosecutor "should oppose attempts by the court to impose any sentence that is . . . based on a prohibited factor, such as race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs."[11]

The bottom line is that the government's sentencing argument has been undermined by its assertion that Mr. Ukashat's national origin is an aggravating factor. It should be disregarded completely.

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[6] *U.S. v. Oyegoke-Eniola*, 595 Fed.Appx. 784, 787 (10th Cir. 2013) (unpublished) (cleaned-up) (citing *U.S. v. Garcia–Cardenas*, 242 Fed.Appx. 579 (10th Cir.2007) (unpublished)).

[7] *Id.* at 787 (collecting published cases from the Seventh and Ninth Circuits).

[8] USSG § 5H1.10.

[9] 28 U.S.C. § 994(d); *accord Onwuemene*, 933 F.2d at 651.

[10] Justice Manual, § 1-1.100 – Purpose (updated March 2024), *available at* https://www.justice.gov/jm/jm-1-1000-introduction.

[11] *Id.*, § 9-27.745 - Unreasonable or Illegal Sentences (updated Feb. 2018), *available at* https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.745.

B. The logic underlying the government's relevant-conduct argument is flawed.

As stated above, the collateral consequences to Mr. Ukashat's immigration status were central to his decision to enter the plea agreement before the court. He has pleaded to a technical, regulatory offense, not the fraud he was charged with. Consistent with that, it was originally his intent minimize his discussion of that alleged relevant conduct, only objecting to avoid a finding that he has conceded it.[12]

However, the government's focus on that fraud has made further silence untenable. Its argument fails to seriously acknowledge any problems with its proof. Essentially, the government asserts that Mr. Ukashat is at the center of the fraudulent that put the COVID loan money in his hands without any direct proof. There is no figurative smoking gun—no proof that the loans applications were completed by him, or even submitted from his IP address, or something of the like. Instead, recycling its trial memo, it points to how Mr. Ukashat handled the proceeds of the loans as its prime evidence of fraud. However, the government asserts all the necessary inferences necessary for conviction as a given. It never mentions, let alone confronts, the alternative inferences that could be drawn.

To understand the problem with the government's argument, the court must understand more backgrounds details. First, there has never been any serious question whether the loans at issue in this case are fraudulent. The loan paperwork includes the details of random businesses and individuals. The only connection to Mr. Ukashat is that the loans were deposited in the Muslim Student Club account, which he had access to. As a consequence, the only relevant question was whether Mr. Ukashat had the required culpable mental state that made him criminal liable for the fraudulent loans.

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[12] *See, e.g.*, FRCrP 32(i)(3)(A) (stating that "the court . . . may accept any undisputed portion of the presentence report as a finding of fact).

Second, Mr. Ukashat provided an explanation to the government for why he was not guilty. Around August 2023, his previous counsel sought a resolution of the case with the government by explaining what would essentially be Mr. Ukashat's defense at trial: an acquaintance told Mr. Ukashat that he could get Mr. Ukashat a grant in support of his non-profit ventures. Mr. Ukashat only needed to provide a business account for the deposit. Trusting this acquaintance—an apparent friend of a friend—Mr. Ukashat provided details about himself. However, he did not have a business account for his educational non-profits, so he provided the Muslim Student club account.

Third, the government obviously did not credit this explanation. It was never curious about investigating the possibility of others' involvement in the offense. The government's only response was to seek a second superseding indictment that added aiding-and-abetting allegations to all the previously charged crimes.[13]

But despite being aware of Mr. Ukashat's potential defense, the government makes no effort to justify the inferences it suggests over the inferences that would support his defense. For starters, take the government's focus on Mr. Ukashat using the club business account.[14] The government asserts that using the club account to receive the funds is evidence of guilt because the Muslim Student club has nothing to with the agricultural businesses that were falsely named as the loan applicants.[15] But that inference is faulty because it presume what it is attempting to prove: that Mr. Ukashat was aware of funds' true providence. Without that assumption, the fact that the club account was used proved little. Yes, it shows access and control of the loan funds once they are deposited. But the

[13] Doc. 41 at ¶¶ 24, 27, 30.

[14] Doc. 216 at 3–4, 7.

[15] Doc. 216 at 7.

club account was linked to Mr. Ukashat, so using the account would have been an ineffective diversionary tactic. And if Mr. Ukashat was unaware of the funds' true providence, using the account would also be consistent with innocence.

Similarly, the government focuses on how the funds moved out of the club account, primarily into other accounts, to further assert Mr. Ukashat's guilt. It claims both the speed and the number of accounts involve support an inference that "he knew the funds were fraudulently obtained and had to be moved quickly."[16] But the government offers no explanation of what that inference necessary follows. The majority of the loan funds were moved to accounts in either Mr. Ukashat's or his wife's name. If Mr. Ukashat was trying to hide fraud, why not move the money into accounts he had no obvious direct control over? On the other hand, if he believed the money was legitimately his, there is nothing untoward about putting where he thought was appropriate. And, as both sides concede, the money had nothing to do with the club, moving the money out of the club account was entirely appropriate.

A similar point follows how Mr. Ukashat used the money. The government asserts that the sudden surge in spending also supports an inference of guilt.[17] Again, though, even Mr. Ukashat thought the money was legitimately his as the proceeds of a grant, then the same spending infers nothing supporting guilt. That follows, too, for Mr. Ukashat's effort to wire money to Nigeria. The government recites with some detail how one credit union put a restriction on Mr. Ukashat's that prevented him from wiring money from the account.[18] But the government fails to note one key point: a large factor playing into the credit union's

[16] Doc. 216 at 4–7.

[17] Doc. 216 at

[18] Doc. 216 at 9–12.

decision to restrict Mr. Ukashat's account was the fact that he was wiring money overseas and to Nigeria in particular. The government offers no explanation for why Mr. Ukashat should have given into the credit union's paternalistic oversight. Again, if he thought the money was legitimate, there was no untoward about taking his business elsewhere.

The government's most potent circumstantial evidence is the unemployment benefits improperly requested from other states. But even on this front, the government's logic needs help. The government simply asserts, without elaboration, that because Mr. Ukashat was receiving legitimate unemployment benefits for himself, he must have understood that the benefits were fraudulent. The government further argues that this conduct shows that Mr. Ukashat had a common modus operandi.[19] Again, had this case gone to trial, Mr. Ukashat would likely have presented evidence that he was told that the employment benefits were for the benefit of Nigerians who, because of travel restrictions, were unable to collect the benefits directly because they were stuck abroad. And if he believed the benefits were valid, those benefits were not evidence of modus operandi.

Admittedly, for the inferences to have gone in Mr. Ukashat's favor, the jury (or this court) would have to believe that Mr. Ukashat, despite his intellect, is also an incredibly gullible individual. Except for such gullibility, how could someone like Mr. Ukashat, who earned a Ph.D. in physics, really believe that he received a grant? The answer is that Mr. Ukashat would have to possess a similar gullibility for the government's inferences and arguments to be valid. Otherwise, how else could a factfinder believe that Mr. Ukashat had the wherewithal to get valid, non-public information from businesses and individuals, use that information to apply for loans without leaving any connection he was involved in the

[19] Doc. 216 at 13–14.

process—but then funnel all the money to accounts linked to him. The last fact meant that, eventually, the trail would lead to Mr. Ukashat, and he would be caught, despite his efforts at obfuscation. Putting the money into accounts tied directly to him is more consistent with Mr. Ukashat being an unwitting fall guy than a criminal mastermind.

However, despite the strength of Mr. Ukashat's potential defense, he still pleaded guilty. As stated already, partly that was due to collateral immigration concerns. But, in all frankness, the decision was also partly due to the fear that the jury, despite voir dire and instruction from the court, would nonetheless indulge the same prejudice that the government blatantly presented in its sentencing memo. Mr. Ukashat's plea avoided that potentiality and limited his punishment. It made sense.

But in sentencing Mr. Ukashat, regardless of whether the court concludes that the fraud is relevant conduct or not, it is important that the court understands that the case against him is nowhere as clear-cut as the government's assertions would lead it to believe.[20] Put another way, to the extent the government claims that Mr. Ukashat's conduct was "egregious" separate from his focus on his alienage,[21] this explanation shows the possibility that he potentially innocent, or, alternatively, willfully blind.

[20] This is especially true as it concerns the aggravated identify theft charge. To prove that charge, the government must show that Mr. Ukashat knowingly used "a means of identification of another person." 18 U.S.C. § 1028A. That requires proof that Mr. Ukashat knew the identification was legitimate and not counterfeit. *See generally Flores-Figueroa v. U.S.*, 556 U.S. 646 (2009). The government presented no evidence that supports that conclusion. In fact, the government's dependence on aiding-and-abetting liability makes that practically impossible.

[21] *See, e.g.*, Doc. 216 at 19.

C. The government has failed to prove that the "leader-organizer" enhancement should apply.

Regardless of the court's conclusion as to the greater relevant conduct question, the government nonetheless fails in its burden to show that an enhancement under USSC § 3B1.1(c) should apply. The government's argument is that Mr. Ukashat earned that enhancement because, purportedly, he used his wife to wire money abroad.[22] However, to prove the enhancement, the government must show that Mr. Ukashat's wife was a participant in the offense—meaning she was criminally culpable—and that Mr. Ukashat exercised control over her.[23] But it offers only complete speculation about what Mrs. Ukashat knew or understood, and to extent she might be considered a participant, what role she played vis-à-vis her husband. In short, the government has in no way met this burden.

D. The court should impose a sentence at the bottom of the agreed upon range.

The court has the option to sentence Mr. Ukashat to between 1 and 3 years of imprisonment. As stated at the top, the appropriate sentence here is at the bottom of that range. Specifically, a sentence of 1 year and 1 day imprisonment, together with a 3-year term of supervised release, combined with the stipulated restitution, is more than adequate under the § 3553(a) factors. That is a below-Guideline sentence, but under the circumstances, it is the appropriate sentence in this case.

For starters, the court should take note of Mr. Ukashat's extended period of home incarceration. For nearly 18 months, Mr. Ukashat has been confined to either his home or the small area around it. Although home incarceration was result of his own bad actions—continued traffic violations—the court must be aware that those conditions were still

[22] Doc. 222-2.

[23] *See* USSC § 3B1.1 notes 1 & 2.

onerous even if they were not actual incarceration. That is not to say that his term of home incarceration should be credited on a day-for-day basis. But in determining what additional punishment he should receive, his home incarceration deserves to be considered.

Moreover, the five years that have passed since the events underlying this case show that a term longer than a year is not needed for deterrence or incapacitation. For about three years, Mr. Ukashat was not on any sort of supervision. After he was charged, and even when he was confined to his home, he had the potential tools to commit fraud or similar crime. But through these five years, nothing of the sort happened. While he cannot claim that he has lived a mistake-free life or has been perfect on court supervision, he has shown that supervision itself, rather than additional incarceration, is sufficient to deter him from future misconduct.

In one point of agreement with the government, a longer term is not needed for rehabilitation. Mr. Ukashat is a well-educated man who has shown resourcefulness even as he has been confined to his home. During this latter period, he has written and self-published one book and started a business refurbishing computer equipment. And before he was charged, he showed a lengthy history of pro-social activities, represented by the letters offered in his support together with his efforts to deliver educational supplies to his home country as well as his creation of a streaming educational series.

That leaves only just deserts. Without a clear picture of what conduct should be held against him, this calculation is fuzzy. But given the Guideline range of 24 to 30 months, combined with his period of home incarceration, his requested sentence of a year and a day is more than reasonable and appropriate. And, needless to say, contrary to the government's assertions , Mr. Ukashat's alienage should not play any role in that calculation.

So, for these reasons, and others that may be presented during his sentencing hearing, Mr. Ukashat asks the court to impose a sentence near the bottom of the proposed sentencing range.

Respectfully submitted,

DATED August 20, 2025.

/s/ Nathan K. Phelps
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