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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 536 (PGG)

5 KALEIL ISAZA TUZMAN,

6 Defendant.

7
8 New York, N.Y.
9 September 10, 2021
12:00 p.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 United States Attorney for the
16 Southern District of New York

17 BY: JOSHUA A. NAFTALIS

Assistant United States Attorney

18 GIBSON DUNN & CRUTCHER LLP

Attorneys for Defendant

19 BY: AVI WEITZMAN

DAVID SALANT

JUSTINE GOEKE

20 ALSO PRESENT:

21 Special Agent Julie Amato
22
23
24
25

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1 (Case called)

2 MR. NAFTALIS: Good afternoon, your Honor. Josh
3 Naftalis for the government. With me at counsel table is Julie
4 Amato, special agent with the FBI.

5 MR. WEITZMAN: Good afternoon, your Honor. Avi
6 Weitzman for the defendant. With me at counsel table are my
7 colleagues, David Salant and Justine Goeke, and I'm also here
8 with my client, Kaleil Dov Isaza Tuzman.

9 THE COURT: This matter is on my calendar for purposes
10 of sentencing. Before proceeding further, I will address the
11 recent amendment to Rule 5 of the Federal Rules of Criminal
12 Procedure.

13 As required by Rule 5(f), I direct the government to
14 comply with its obligations under Brady v. Maryland and its
15 progeny to disclose to the defense all information, whether
16 admissible or not, that is favorable to the defendant, material
17 either to guilt or to punishment and known to the government.

18 Possible consequences for noncompliance with this
19 order may include dismissal of charges, exclusion of evidence,
20 and professional discipline or court sanction on the attorney
21 or attorneys responsible.

22 I have entered a written order that more fully
23 describes the government's obligations and the possible
24 consequences of failing to meet those obligations, and I direct
25 the government to review and comply with that order.

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1 Mr. Naftalis, does the government confirm that it
2 understands its obligations and has fulfilled them?

3 MR. NAFTALIS: Yes, of course, your Honor.

4 THE COURT: In preparation for sentencing, I have read
5 the revised presentence report, which is dated April 27th,
6 2018. I've read many hundreds of pages of sentencing
7 submissions from the parties, including, in particular, defense
8 counsel's June 22nd, 2018 submission, including all of the
9 attachments; defense counsel's July 9th, 2021 supplemental
10 sentencing submission and all of its attachments; defense
11 counsel's July 15th, 2021 submission and all of its
12 attachments; defense counsel's July 26th, 2021 letter and its
13 attachments; defense counsel's July 27th, 2021 submission and
14 all of its attachments, and including a more than 20-minute
15 video.

16 I have read submissions from the government dated July
17 27th, 2018; July 20th, 2021; August 2nd, 2021; and August 6th,
18 2021, in which the government reports that it is not seeking an
19 order of restitution, and that the parties have reached an
20 agreement as to forfeiture.

21 I will note that the parties make a number of
22 arguments about the defendant's role in the Obra Pia luxury
23 hotel project in Cartagena. The defendant's sentencing today
24 will not be premised in any fashion on the Obra Pia hotel
25 project.

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1 Mr. Weitzman, have you read the revised presentence
2 report and its recommendations, and discussed it with
3 Mr. Tuzman?

4 MR. WEITZMAN: We have, your Honor.

5 THE COURT: Mr. Tuzman, have you read the revised
6 presentence report and discussed it with Mr. Weitzman?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Defense counsel raised many objections to
9 the factual portions of the presentence report. These
10 objections and the probation office's responses are set forth
11 at pages 44 through 56 of the presentence report. The
12 probation officer made many changes in response to the
13 defendant's objections. To the extent that the probation
14 officer did not make the changes requested by defense counsel,
15 I will address the relevant paragraphs now.

16 The objections to paragraphs 33, 34, 41, and 42 are
17 overruled because I conclude that these paragraphs are
18 factually accurate as written. The material objected to will
19 not affect my sentencing determination in any way, however.

20 Defense counsel objects to paragraph 46 to the extent
21 that it states that Enable was insolvent. The objection is
22 overruled. During the March 8th, 2009 call with Tuzman, Omar
23 Amanat, and Stephen Maiden, Irfan Amanat – the manager of
24 Enable – stated that Maiden Capital's investment in Enable was
25 "frozen" and could not be accessed. He said as much about KIT

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1 Digital's investment in Enable. Although Irfan Amanat referred
2 to these investments as "frozen," over the next three years,
3 all of the relevant parties – Irfan Amanat, Omar Amanat,
4 Mr. Tuzman, and Stephen Maiden – all treated Maiden Capital's
5 investment in Enable and KIT Digital's investment in Enable, as
6 lost. As to Maiden Capital, the lost investment was referred
7 to as the "Enable hole." In sum, the evidence at trial was
8 that Enable was in no position to redeem these investments, and
9 in that sense the company was insolvent.

10 Defense counsel objects to paragraph 52. The
11 objection is overruled because the paragraph is factually
12 accurate as written. To the extent that counsel argues that
13 Omar Amanat's statements to Stephen Maiden should not be held
14 against Tuzman, Mr. Tuzman's sentence will not be affected by
15 Omar Amanat's statements as set forth in this paragraph.

16 As to paragraphs 63, 69, and 81, defense counsel
17 asserts that the time period specified as to the market
18 manipulation conspiracy should be restricted to the time
19 between March 2009 and August 2009. This objection is
20 overruled because the market manipulation conspiracy extended
21 beyond August 2009. See the May 3rd, 2021 opinion, docket
22 number 1145, at pages 38 to 43.

23 As to paragraph 65, defense counsel's objection is
24 sustained to the extent that the last clause in this paragraph
25 will be amended to state that "Tuzman agreed that KIT Capital

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1 would make best efforts to induce KIT Digital to hire Maiden
2 Capital for investor relation and/or strategic advisory
3 services." Citing the trial transcript at page 786, also
4 Government Exhibit 2970, and also the May 3rd, 2021 opinion,
5 docket number 1145 at page 16.

6 Defense counsel's objections to paragraphs 70 through
7 72 are overruled because these paragraphs are factually
8 accurate as written.

9 Defense counsel's objection to paragraph 81 is
10 overruled. To the extent that they go to the time period, I
11 have rejected the argument that the market manipulation scheme
12 ended in August 2009. Moreover, this paragraph is factually
13 accurate. See the May 3rd, 2021 opinion, docket number 1145 at
14 pages 41 and 42.

15 Defense counsel's objection to paragraph 92 is
16 overruled. The evidence at trial demonstrated that Mr. Tuzman
17 knew, as of March 2012, that Maiden Capital was not holding
18 \$1 million in assets for KIT Digital. See, for example, trial
19 transcript at pages 940 through 58.

20 Defense counsel's objection to paragraph 114 is
21 overruled. Rima Jameel served as outside counsel for KIT
22 Digital. She was handpicked by Tuzman for that task, even
23 though she was a fugitive from justice who was operating in
24 Dubai. Although it is true that Robin Smyth, as the chief
25 financial officer of KIT Digital, handled the mundane details

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1 regarding the transfers in and out of the escrow accounts, Rima
2 Jameel's involvement in the escrow accounts – which were a
3 focal point for the roundtripping fraud that Mr. Tuzman and
4 Mr. Smyth were engaged in – was at Mr. Tuzman's direction.

5 Mr. Weitzman, does the defendant have any other
6 objections to the factual portions of the presentence report?

7 MR. WEITZMAN: No, we do not, your Honor.

8 THE COURT: Does the government have any objections to
9 the factual portions of the presentence report?

10 MR. NAFTALIS: No. Thank you, your Honor.

11 THE COURT: Other than as I have indicated, I adopt
12 the factual portions of the presentence report.

13 Although I'm not required to impose sentence in
14 accordance with the sentencing guidelines, I am required to
15 consider what the guidelines recommend.

16 Here, the jury convicted Mr. Tuzman of three crimes:
17 Conspiracy to commit securities fraud in the form of market
18 manipulation; conspiracy to commit wire fraud; and conspiracy
19 to commit securities fraud through the making of false
20 statements and annual and quarterly SEC reports, and through
21 the making of false statements to auditors.

22 Pursuant to the grouping rules of the sentencing
23 guidelines, the probation department grouped all three
24 offenses. The base offense level for the offenses is level 7.

25 The presentence report adds the following enhancements

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1 to the base offense level.

2 The probation department added 22 levels because it
3 found that the loss amount was between \$25 million and
4 \$65 million.

5 The probation department's calculations were as
6 follows: As to count 4, the market manipulation count, the
7 probation department determined that the loss amount was
8 \$25.2 million; as to count 5, the wire fraud count, the
9 probation department found that the loss amount was
10 \$1.15 million; as to count 6, the KIT Digital accounting fraud
11 account, the probation department determined that the loss
12 amount was \$31.4 million.

13 On July 29, 2021, I issued an opinion addressing loss
14 amount for purposes of all three counts, citing docket number
15 1179. In that opinion, I concluded that the government had not
16 proven with reasonable certainty any loss amount as to count 4.
17 Citing the July 29, 2021 opinion, docket number 1179, at pages
18 38 to 39.

19 As to count 5, the wire fraud count, I agreed with the
20 \$1.15 million amount set forth in the presentence report. Id.
21 at page 41. As to count 6, the KIT Digital accounting fraud
22 count, I concluded that the appropriate loss amount was
23 \$22.9 million.

24 Considering together the \$1.15 million associated with
25 count 5, and the \$22.9 million associated with count 6, the

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1 total loss amount is \$24.050 million. This correlates with a
2 20-level increase in the base offense level.

3 The probation office imposed a two-level enhancement
4 because it found that a substantial part of the scheme was
5 committed outside the United States. The defendant has not
6 objected to that enhancement.

7 The probation office imposed a four-level enhancement
8 because it found that the offenses substantially endangered the
9 solvency or financial security of an organization.

10 Mr. Tuzman objects to this four-level enhancement,
11 asserting that KIT Digital was never close to insolvency and
12 that its financial security was not endangered by his offenses.
13 Citing the June 22nd, 2018 defense sentencing brief, docket
14 number 793 at page 58, and the July 9th, 2021 defense
15 supplemental sentencing brief, docket number 59 at page 10.

16 Although KIT Digital filed a Chapter 11 bankruptcy
17 petition on April 25th, 2013, Mr. Tuzman notes that that was
18 more than a year after he left the company and he contends that
19 the company was not insolvent at that time. As to the
20 financial security prong of the guidelines provision – setting
21 aside the sham contracts – the company had hundreds of millions
22 of dollars of legitimate revenue. Mr. Tuzman also argues that
23 the government has not proven proximate cause. See *id.* at
24 pages 60 through 65.

25 In considering "whether, as a result of the offense,

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1 the solvency or financial security of an organization that was
2 a publicly traded company was substantially endangered," a
3 court, "shall consider" a non-exhaustive list of factors
4 including, one, whether the "organization became insolvent or
5 suffered a substantial reduction in the value of its assets;"
6 two, whether the "organization filed for bankruptcy under
7 Chapter 7, 11, or 13 of the bankruptcy code;" and three,
8 whether the "liquidity of the equity securities of a publicly
9 traded company was substantially endangered. For example, the
10 company was delisted from its primary listing exchange or
11 trading of the company's securities was halted for more than
12 one full trading day." Citing section 2B1.1 of the 2016
13 sentencing guidelines application note (13)(B), and section
14 2B1.1 of the 2018 sentencing guidelines note (14)(B).

15 Here, the board of KIT Digital requested Mr. Tuzman's
16 resignation as CEO on March 31st, 2012. The company was
17 delisted by NASDAQ in December 2012, and the company filed for
18 Chapter 11 bankruptcy protection in April 2013.

19 Although Mr. Tuzman blames new management for the
20 collapse of the company, and complains that the Form 8-K filed
21 by new management was "overbroad," his accounting fraud at the
22 company, including the roundtripping transactions and the
23 phoney restructuring reserves rendered the company's past SEC
24 filings unreliable, which necessitated the Form 8-K disclosure.
25 A company whose SEC filings can't be relied on is not an

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1 attractive investment, and the company's collapse was thus
2 foreseeable. Indeed, at the trial, Gavin Campion – KIT
3 Digital's president – testified that he asked Mr. Tuzman at one
4 point during the accounting fraud conspiracy what would happen
5 if the "elephant" came to light. "Elephant" was the code term
6 that Mr. Tuzman, Robin Smyth, and Gavin Campion used for the
7 accounting fraud. See the May 3rd, 2021 opinion, docket number
8 1145 at page 121, citing the trial transcript at 2256 through
9 57 and 4142. In response to Mr. Campion's question, Mr. Tuzman
10 replied that "the company would fail." Citing the trial
11 transcript at page 4225.

12 Given these circumstances, I conclude that the
13 four-level enhancement is properly imposed.

14 The probation department has imposed a four-level
15 enhancement because Mr. Tuzman was an officer or director of a
16 publicly traded company.

17 The defendant has not disputed this enhancement.

18 Accordingly, the adjusted offense level is 37.

19 Mr. Tuzman has no criminal history points and he thus
20 falls within criminal history category 1.

21 Based on a total offense level of 37 and a criminal
22 history category of 1, the guidelines range is 210 to 262
23 months' imprisonment.

24 Mr. Weitzman, do you have any additional objections to
25 the accuracy of the guidelines calculation as I have reported

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1 them?

2 MR. WEITZMAN: No additional objections.

3 THE COURT: Does the government have any objections to
4 the accuracy of the guidelines calculations as I reported them?

5 MR. NAFTALIS: No. Thank you, your Honor.

6 THE COURT: Based on my independent evaluation of the
7 sentencing guidelines, I find that the offense level is 37,
8 criminal history category of 1, and the recommended sentencing
9 range under the sentencing guidelines is 210 to 262 months'
10 imprisonment.

11 I'll hear from you, Mr. Weitzman, as to an appropriate
12 sentence.

13 MR. WEITZMAN: Your Honor, may I approach the podium?

14 THE COURT: Please.

15 MR. WEITZMAN: Your Honor, this is a very difficult
16 day, for Kaleil, of course, for his family, for his friends,
17 for his loved-ones, only some of whom are here in court today.
18 The overflow courtroom is packed and there are people dialing
19 in, dozens of them to show their support for Kaleil, and this
20 is a difficult day for all of them, as well.

21 And it is a difficult day for me personally, because I
22 have lived with this case for six years now. I was retained on
23 the day that Kaleil was sexually assaulted La Picota prison. I
24 visited him a number of times while he was incarcerated in
25 Colombia, and I saw firsthand the tremendous impact his

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1 imprisonment there had on him. He was a shell of a man, eyes
2 sunken, spirit broken. Through his tears, I saw his shame and
3 despair. He spoke of giving up. He asked others for
4 assistance. Thank god they were unwilling to assist. Nothing
5 could prepare anybody, anybody for the conditions and
6 experiences Kaleil faced in Colombia.

7 Over the past six years, I've gotten to know Kaleil
8 very, very well. I've gotten to know his amazingly loving
9 large family and his wide network of friends. To many of those
10 friends, Kaleil goes by Dov, his middle name and his Hebrew
11 name, but given the charges in this case, I will continue to
12 refer to him as Kaleil.

13 His character is reflected in the many incredibly
14 moving sentencing letters that your Honor has received, more
15 sentencing support in both volume and substance than I think I
16 have ever seen in any criminal case before.

17 I want to thank the Court for reviewing those
18 submissions, the video portrait from Aleph Institute, and for
19 all its time and attention to this matter. We know the Court
20 has many matters. All cases are important. But this case was
21 extremely challenging, your Honor, given the sheer volume of
22 motions, the length of the trial, the complexity of the issues,
23 and the emotional toll it took on everybody involved.

24 We know that passing judgment is a difficult task.
25 You are now required, not just to examine and evaluate the

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1 crime of conviction, but to put it in the context of the arc of
2 this man's life. This is, in my estimation, the hardest task
3 of a judge. So we want to express our appreciation, your
4 Honor, for taking time and the attention to this very important
5 matter for Kaleil and his loved-ones.

6 As your Honor is aware, we've been vigorous advocates
7 in this case for Kaleil. We stand by our advocacy and we
8 believe, passionately, that all human beings, including
9 criminal defendants, must be treated with dignity, and that
10 everybody is entitled to their day in court. I have lost many
11 nights of sleep worrying about Kaleil, worrying about this day.

12 Now, there have been moments when our advocacy on
13 Kaleil's behalf has been impassioned due to some unique
14 circumstances in this case. Even when emotions ran high, we
15 have been grounded by the respect we have for this Court as we
16 do for the U.S. Attorney's Office and the FBI and postal
17 service and the adversarial system.

18 So I've been lying awake at night contemplating what
19 could I say that might persuade your Honor that a noncustodial
20 sentence is warranted.

21 While I will speak for a while, your Honor – and I
22 apologize in advance for that – let me start with, it boils
23 down to one word: Compassion. Each of us is so much more than
24 the worst thing any of us has done in our lives. Kaleil's
25 history and character should be measured based on the arc of

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1 his entire life, not just the crimes of conviction.

2 You've read the letters of support. We've submitted
3 nearly a hundred of them from people from all walks of life.
4 In most criminal cases, as your Honor probably knows, people
5 run away from those convicted of crimes. Who wants to be
6 publicly associated with a felon? The sheer number of letters
7 of support Kaleil has received, not just from relatives, but
8 from friends, old and new, colleagues, old and new, mentors and
9 mentees, says a lot about his character.

10 I would venture to say, your Honor, that there has
11 rarely ever been any criminal defendant and criminal case quite
12 like this one.

13 This Court regularly sentences hardened criminals,
14 drug kingpins, terrorists, violent gang members, Ponzi schemers
15 heartless, rapacious individuals for whom a 10-year sentence or
16 more may befit their crimes and the lives they have ruined.
17 People who have little humanity in their hearts and even less
18 concern for society or a desire or ability to benefit the world
19 around them. Kaleil, your Honor, is at the opposite end of
20 that spectrum.

21 His life has been one of meaning, one of purpose, of
22 compassion, of sacrifice, of hard work, all in an effort to
23 give back to society and improve the lives of countless others.

24 And he gives back even during the hardest times in his
25 own life when he should be focused on himself. Some of the

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1 letters you received describe how, as he was preparing for his
2 criminal trial and even during it, he was checking in on his
3 friends to make sure that they are alright when it was he who
4 was in shambles.

5 Undoubtedly, your Honor, Kaleil is incredibly bright.
6 Some would say brilliant and visionary. He left Goldman Sachs
7 20 years ago to found govWorks.com, where he used his
8 entrepreneurial skills to harness his vision of how the
9 internet could improve government-citizen interactions. And
10 throughout his entrepreneurial career, he has worked to harness
11 the power of technology to improve people's lives. He was very
12 early to understand the power of the internet as a positive
13 change agent in society.

14 You saw in the sentencing video that we submitted and
15 Aleph created when Kaleil was speaking at the White House in
16 the late 1990s. What he was most concerned about was the
17 digital divide, making sure that the internet access was
18 equitable and that internet boom did not exacerbate preexisting
19 social inequalities.

20 That's what Kaleil set out to do at every step of the
21 way when he undertook so many of his entrepreneurial endeavors.

22 When Kaleil created govWorks, which uses the internet
23 to improve people's access to government, like paying parking
24 tickets or property taxes or getting a fishing license all
25 online. That govWorks system lives on today in the form of the

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1 online New York City parking ticket payment system.

2 When Kaleil built up JumpTV in the mid 2000s – which
3 connected immigrant communities to their TV channels back
4 home – it was once again about making people's lives better.
5 And that company, too, lives on today as part of Neulion.

6 When Kaleil built KIT Digital, he was harnessing the
7 power of the internet to provide consumers access to video
8 content on all three screens: Televisions, personal computers,
9 and mobile phones.

10 Remember, when Kaleil envisioned this three-screen
11 approach in 2007, Netflix was still offering DVD rentals by
12 mail.

13 Like govWorks and JumpTV, KIT Digital also lives on
14 today, and it is now called Piksel. It remains a leader in
15 three-screen video management software and employs over 1,000
16 people.

17 Kaleil's intellect, hard work, and vision for the
18 internet permitted each of these companies to grow, and his
19 companies, including KIT Digital, collectively employed
20 thousands, giving them honest work and honest pay.

21 I don't believe the government's charges in this case
22 undermine his prior history of effectively running companies
23 and his talents as an entrepreneurial.

24 Nor do the charges in this case take away from
25 Kaleil's prior history of mentoring other entrepreneurs. It is

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1 telling that so many of his former employees, and even
2 negotiating counter-parties – some of whom are here in your
3 Honor's courtroom and the overflow room – have now written
4 letters of support extolling Kaleil's virtues as a leader and a
5 mentor. Their letters describe Kaleil's virtues as a boss with
6 words like, quote, generous, respectful, honest, decent.
7 Treating your employees and business partners and
8 counter-parties well is an estimable trait that reflects well
9 on Kaleil's character.

10 The letters of support also paint a picture of Kaleil
11 as a highly empathic man with an uncanny ability to connect
12 with people of all ages, from diverse backgrounds and all over
13 the world, from China, to Egypt, Taiwan to Costa Rica.

14 All his life, Kaleil has been there for his friends
15 and attempted to inspire them to be the best of themselves, to
16 find their own path in life.

17 People like Alex Berzofsky, who submitted a letter.
18 He was Kaleil's college roommate, who credits Kaleil with
19 persuading him to pursue a career path in investment banking.

20 Or Dan Gertsacov, who also submitted a letter, and
21 credits Kaleil with the opposite inspiration, encouraging Dan
22 not to work on Wall Street, but to pursue his passion with a
23 Fullbright fellowship in Chile, with which ultimately led to
24 Dan's creation of the largest nonprofit organization promoting
25 corporate social responsibility in Latin America.

L9ACTuzS

1 Let me give you another example, your Honor. You
2 received a letter from Kaleil's former barber, Filippo Davi,
3 whose son, Rosario Davi, in this courtroom here today, in the
4 back, Kaleil has mentored and taken under his wings to employ
5 for 20 years now. Have you ever heard such a story, the bond
6 between a high-flying Goldman Sachs banker and his barber or
7 his barber's son? This give you a window into Kaleil's true
8 character, a person who goes out of his way to help others,
9 even those whom he knows just tangentially or occasionally.

10 In today's world, so many in leadership positions
11 think that they have to put others down, to denigrate and
12 deflate in order to elevate and inflate themselves. We've
13 likely all seen that in our own personal careers, working with
14 more senior partners or colleagues. That is the opposite of
15 Kaleil. He's always trying to elevate those around him.
16 That's not my words. That's the way his employees, friends,
17 and family have described him.

18 So let me, at this point, discuss the government's
19 requested sentence within the guidelines range. That request
20 is beyond the pale. It is not even credible. It is not even a
21 true starting point for the Court's analysis. I have utmost
22 respect for the U.S. Attorney's Office. I was there, I
23 prosecuted securities fraudsters and other cases for years.

24 But, for all intents and purposes, a guidelines
25 sentence here for Kaleil - who is soon 50 years old - is a life

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1 sentence. No objective observer, your Honor, would possibly
2 suggest that this is even in the right stratosphere of a
3 reasonable sentence. Indeed, it's ludicrous in light of the
4 fact that we now know there is no restitution in this case, no
5 identified victims, there is a \$288,000 forfeiture order that
6 the government has sought that the parties have agreed upon,
7 and that Kaleil did not profit even one cent from the market
8 manipulation or accounting fraud scheme.

9 In my own experience, your Honor, I know that the
10 government sometimes engages in a form of positional
11 bargaining, hoping that if they push the guidelines higher, the
12 Court would split the baby and still give the defendant a very
13 substantial prison sentence.

14 Respectfully, splitting the baby here would not be a
15 just sentence, it would be a Solomonic injustice.

16 I know the care and attention your Honor takes, and I
17 am confident that any such effort at positional bargaining is
18 misguided.

19 Now, of course, we already know the sentence your
20 Honor imposed on Omar and Irfan Amanat, his codefendants. And
21 while the government has characterized Kaleil and Omar as
22 having similar culpabilities, the differences between them
23 could not be more stark, and they weigh heavily in favor of
24 leniency for Kaleil.

25 Let me explain several reasons, your Honor.

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1 Perhaps, most importantly, is the issue of specific
2 deterrence. It is notable that both Omar and Irfan are fraud
3 recidivists. Irfan had previously been charged with securities
4 fraud by the SEC in connection with TradeScape, and Omar
5 attempted to commit fraud even after his arrest, and it was a
6 fraud on the Court by introducing fabricated evidence at trial.
7 Kaleil, by contrast, has shown utmost respect for the law over
8 the past six years and, in fact, since leaving KIT Digital 10
9 years ago. Unlike the Amanat's, what happened at KIT Digital
10 was truly aberrational in Kaleil's life.

11 And it is now clear that, unlike the Amanat's, Kaleil
12 does not need to be specifically deterred or face any further
13 punishment. He has been justly punished already. In fact, we
14 can all agree that what happened to him in Colombia reflects
15 unjust punishment. So he knows full well the risks of what
16 happens when you're arrested for violating the law.

17 I need not go into detail here as to what he endured
18 there. The Court is fully aware of the horrendous prison
19 conditions that are far worse than anything that exists in MDC
20 and MCC. The lack edible food and potable water. The sickness
21 and lack of adequate medical attention. The extortion by
22 prison officials and other inmates. The threats to Kaleil's
23 life and the lives of his family members here in the U.S. And,
24 of course, the knifepoint sexual assault he endured by a gang
25 of four men, a terror he relives, even today as a result of his

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1 ongoing post traumatic stress disorder.

2 Kaleil has fully internalized what deprivation means
3 in every sense of the word. He knows about deprivations of
4 liberty, he knows about deprivations of physical security, he
5 knows about deprivations of mental and emotional stability, and
6 he knows all these deprivations, not just through his
7 imprisonment in Colombia, but also his five years of house
8 arrest here in the United States can recur if he were to break
9 the law again.

10 So, your Honor, there is no doubt in my mind, and I
11 don't think in anybody's mind in this courtroom, that Kaleil
12 will never do anything to subject himself to these types of
13 deprivations again. He has been specifically deterred.

14 But you don't need to take my word for it, your Honor.
15 You have the evidence of five years of good works and good
16 deeds by Kaleil since his return to the United States in 2016.

17 These past five years show that Kaleil is a different
18 man today than he was when he was CEO at KIT Digital 10 years
19 ago. He is more mature. He has been humbled. His focus has
20 turned from professional achievements and material accumulation
21 to relationships with friends, family, and community. He knows
22 that that's what truly matters in life, and as you will hear
23 from Rabbi Bryski, he has done Teshuvah, repentance in Hebrew,
24 and returned to his best essence.

25 Dr. Snehal Amin, who has known Kaleil since college,

L9ACTuzS

1 puts it this way: His imprisonment in Colombia was not so much
2 "a transformation, but rather a distillation." He writes,
3 "Through the course of his arrest, incarceration, and trial
4 period, Kaleil did not become a different person, but rather a
5 concentrated form of the Kaleil that I always admired. His
6 experience in jail and in court has been like a sieve that has
7 shaken him up and left only his best qualities. He was always
8 kind, generous, and honest. Now, this is a more focused
9 version of himself, devoted to his family, friends, and faith."

10 Perhaps this is what Kaleil's rabbi, Rabbi Bankhalter,
11 who is here in court, refers to as the "concealed blessing" of
12 his experiences in Colombia, an effort by Kaleil to find
13 greater meaning and purpose through what happened to him there.
14 It's caused him to be introspective and think long and hard
15 about what he wants his legacy to be and how he can improve the
16 world for the better.

17 The past five years since his return from
18 incarceration from Colombia and his placement on house arrest
19 have been a crucible that demonstrates Kaleil's true character,
20 not the limited view portrayed by the government's case.

21 The public is at no risk whatsoever. Kaleil will not
22 reoffend. He will not put his family, friends, and his
23 community at risk. There is absolutely no way, your Honor.

24 A second factor that distinguishes Kaleil from the
25 Amanat's is the fact Kaleil was, himself, victimized by the

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1 Amanat's. Your Honor is aware that the Amanat brothers stole
2 money from Kaleil, personally and from KIT Digital. At Omar
3 Amanat's sentencing, your Honor further described how it was
4 Omar Amanat who came up with the market manipulation agreement
5 as a way to plug Enable hole. Kaleil went along with the plan
6 to try to save his company in the throes of the 2008-2009
7 financial crisis and the Amanat's fraud. That was obviously
8 misguided.

9 Forgive me for being an armchair therapist, your
10 Honor – it's the Phil Donohue in me – but I believe that in
11 crossing this red line and working with the Amanat's, it made
12 it easier for Kaleil to justify to himself crossing other red
13 lines – fudging numbers, advancing misrepresentations to
14 auditors, his board, and the investing public – which he
15 justified to himself to keep KIT Digital from ruin, a misguided
16 end justify the means logic.

17 As the father of three children, I have frequently
18 told my kids that one lie begets another. That's not just an
19 old adage, it's backed by science. It's been shown that when
20 people are dishonest, activity in a part of the brain called
21 the amygdala – the hub of emotional processing and arousal –
22 change. And with each act of dishonesty, the amygdala is less
23 activated, especially if the subject has rationalized their
24 original lie. This means that, as you lie, you have less of an
25 emotional reaction of dissonance and it becomes easier to tell

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1 another lie.

2 I believe that by hiding the Enable fraud and entering
3 into the agreement with Maiden and the Amanat's, Kaleil started
4 down a path of lies that ultimately ended in his astounding
5 downfall.

6 Now, while this partly answers why Kaleil engaged in
7 the accounting fraud scheme, although it may be unsatisfying,
8 it doesn't answer why did Kaleil even agree in the first
9 instance to go along with the Amanat's plan and to hide the
10 Enable hole from others. That's a question your Honor asked at
11 the sentencing of Omar and Irfan Amanat. Why would such
12 talented people engage in any amount of fraud?

13 And I think the answer to why he didn't disclose the
14 Enable fraud when it occurred is simple, but perhaps, again,
15 unsatisfying. Kaleil's brilliance is a virtue, but it can also
16 be a shortcoming when it results in hubris. The hubris to
17 believe that he could somehow cure the Amanat's fraud and plug
18 the Enable hole, the hubris to believe that if he could delay
19 just a bit longer, he could get the company's money back and no
20 one would be harmed. It was misguided, it was stupid, and it
21 led him down a path of lies and deception. But I truly believe
22 that it was never intended to harm the shareholders or any
23 other stakeholders of the company.

24 Now, none of this is offered to excuse or justify
25 Kaleil's conduct. There is no excuse or justification. We all

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1 have agency over our own lives and no one is responsible for
2 Kaleil's conduct but Kaleil himself. I offer these thoughts,
3 my own personal observations merely to explain the traumatic
4 dissonance between the life Kaleil has lived and the crimes of
5 which he is convicted, and to help answer your Honor's question
6 of why.

7 I expect you will hear personally from Kaleil as he
8 accepts responsibility for his conduct. Now the government
9 sometimes argues that a defendant's statements of remorse and
10 contrition are too little, too late, particularly when a
11 defendant has proceeded to trial. Someone who's truly
12 remorseful, the government might argue, would have pled guilty.
13 So why didn't Kaleil just plead guilty here?

14 Well, I have a few reactions to that, your Honor.
15 First, I must emphasize that Kaleil never felt blameless in
16 this case. He was open from the beginning to a plea bargain.
17 I asked the government for a plea offer, any offer, the
18 government refused to provide one. They insisted that any plea
19 be an open plea to the entire indictment. In my 15 years
20 practicing criminal law, I must say, I rarely ever heard the
21 government take that position in a white collar case of this
22 type. It was surprising, as was the government's failure -
23 despite repeated requests - to provide a Pimentel letter. So
24 an open plea would have truly been an open plea. Given all
25 this, is it any surprise that Kaleil insisted on proceeding to

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1 trial?

2 Second, and more importantly, to hold Kaleil's
3 exercise of his right to trial against him is precisely the
4 type of trial penalty that many judges and commentators have
5 noted courts should be mindful not to impose.

6 And third, let me play Phil Donohue again to explain
7 why Kaleil proceeded to trial, despite his expressions of
8 remorse. What happened to Kaleil in Colombia was
9 unconscionable, it was wrong, and fairly or unfairly, he blamed
10 and still blames the Department of Justice for it. When he
11 arrived in the U.S. after 11 months in Colombian prisons,
12 Kaleil was broken, depressed, hurt, and deeply angry, including
13 at the Department of Justice for causing him to be arrested
14 while on a business trip to Colombia and for failing to act on
15 disclosed threats to his safety. Is it any surprise that he
16 continued to want to fight the government's charges then, lest
17 his arrest in Colombia somehow appear to be more justified?
18 That's not to say that Kaleil disrespects the criminal justice
19 system. He holds it in the utmost esteem and, indeed, has
20 relied on it to obtain justice for himself for what happened in
21 Colombia. But it does explain the psychology of why, upon
22 arrival in the U.S., Kaleil could not bring himself to accept
23 the charges against him.

24 On this note, your Honor, a third factor distinguishes
25 Kaleil from the Amanat brothers, and that's the substantial

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1 assistance and cooperation he provided to the prosecution of
2 corrupt officials in Colombia.

3 His cooperation, which began while in prison in
4 Colombia and has continued for years thereafter, has resulted
5 in the arrest and imprisonment of numerous officials at INPEC,
6 the Colombian Bureau of Prisons, including the warden at La
7 Picota and the former head of human rights for INPEC. These
8 are high-ranking government officials, the same ones whose
9 statements the government relied on here in opposition to our
10 motions, and they would never have been brought to justice
11 absent Kaleil's courage to speak out. And his cooperation is
12 not even over yet.

13 The lead Colombian prosecutor on the case, Aida
14 Esperanza Moreno, pleads for a sentence reduction for Kaleil
15 based on what she described as his "essential cooperation in an
16 investigation of grave institutional consequence in our
17 country."

18 Prosecutor Moreno describes Kaleil's cooperation as
19 extensive and "at his own risk and by his own account without
20 any proffer or exchange for his help." She said that he
21 provided testimony, tangible evidence, and other witness
22 contacts that have been "of material and substantial assistance
23 to our investigation." She also explained that his statements
24 have been verified, resulting in the arrest and incarceration
25 of numerous corrupt officials and that his "valuable

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1 information also pertains to potential additional criminal
2 charges to be brought against several INPEC officials in the
3 present year, signaling the commencement of a new
4 investigation."

5 It is exceedingly rare for a criminal defendant to
6 receive such a full-throated support from foreign law
7 enforcement officials, very rare.

8 Kaleil has also received endorsements of his character
9 from current and former government officials here in the United
10 States.

11 People like Benny Forer, a career prosecutor of white
12 collar crime in L.A. County, who has had soul-searching, civil
13 dialogue about the criminal justice system with Kaleil, in
14 private and on Kaleil's faith-based radio talk show, Equal
15 Footing. ADA Forer assessed Kaleil's remorse as follows: "The
16 way Kaleil has been living his life since his arrest and
17 extradition demonstrates an individual that is both aware of
18 his past conduct and contrite, and has chosen to move forward
19 in his life in a manner through which he can contribute to
20 society."

21 You also received a letter from Steven Vegliante, the
22 town supervisor in the town of Fallsburg, New York, who writes
23 about how Kaleil's active role in the community of Loch
24 Sheldrake and his efforts to protect the environment there from
25 a developer who was damaging the watershed.

L9ACTuzS

1 And you received a letter from Ambassador Gabriel
2 Guerra-Mondragon, the former U.S. Ambassador to Chile, who
3 writes about Kaleil's fundamental integrity and life mission to
4 help others.

5 So fundamentally, your Honor, Kaleil stands in a very
6 different position than did Omar and Irfan Amanat in terms of
7 his fundamental respect for government and the institutions of
8 justice, and his sentence should reflect that.

9 There is a natural urge in the criminal justice system
10 to punish, not for specific deterrence, but in order to effect
11 general deterrence. Reincarceration of Kaleil here would not
12 serve that interest either. What happened to Kaleil in
13 Colombia has been widely reported in the press, it's been in
14 the New York Times, it's been all over the internet. His
15 friends, his community, and the white collar community, more
16 broadly, is generally aware of it from these press reports.

17 What do you think is a more effective deterrent for an
18 executive considering potentially engaging in fraud. On the
19 one hand, the possibility of a prison sentence here in the
20 United States for a number of years or, on the other hand,
21 what's already happened to Kaleil: Indicted, thrown in an
22 inhuman foreign prison while traveling abroad, subject to
23 horrendous conditions, sick with no adequate medical care,
24 brutalized, threatened with murder, and then put in solitary
25 confinement for months on end, all of which leaving you

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1 emotionally and psychologically traumatized for years, if not
2 the rest of your life.

3 Respectfully, your Honor, if Kaleil does not serve
4 another day in prison, no one will think Kaleil got off light,
5 because he did not. No further sentence of imprisonment is
6 necessary to deter others from committing fraud.

7 Indeed, your Honor, reimprisoning Kaleil will deprive
8 the world of a highly productive member of society who still
9 has so much creativity, intellectual fire power, and leadership
10 to offer.

11 Despite his PTSD and this criminal case, he has
12 continued to be impressively productive as an entrepreneur by
13 continuing to develop projects that demonstrate his life-long
14 ethos of making good by doing good.

15 Like his Obra Pia project that your Honor referenced,
16 which he's continued to work resuscitating a dilapidated
17 17th-century Franciscan convent, working with the local
18 Franciscan Order and converting it into a hotel and commercial
19 project that already, in its incomplete state, provides
20 substantial employment in a poor neighborhood of Cartagena,
21 Colombia.

22 Kaleil also cofounded a new startup called DocuVax, a
23 company that permits enrollees to catalog their vaccination and
24 other basic medical information in a secure cloud-based medical
25 wallet. The letter from the other cofounder of DocuVax,

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1 Dr. Amin, describes the beneficial social impact of that
2 business and how essential Kaleil is to its success.

3 And Kaleil has been hosting the Equal Footing weekly
4 radio show on the national faith-based Talkline Radio Network
5 for the last two years. Equal Footing is a not-for-profit
6 activity that seeks to use the power of discourse to find
7 common ground and mutual respect across religious socioeconomic
8 and political divides.

9 These are just some of the endeavors that we outlined
10 in our submissions, and they all go to show that Kaleil can
11 remain a highly productive member of society.

12 Beyond these and other professional pursuits over the
13 past several years, Kaleil's life has been devoted to good
14 deeds, philanthropy, and mentorship. He has mentored literally
15 dozens of entrepreneurs and continues to do so, helping them
16 realize their full potential in a variety of laudable
17 endeavors.

18 He received a letter from a man named Amir Hegazi, an
19 Egyptian-American who worked with Kaleil for years at JumpTV
20 and at KIT Digital, and who credits Kaleil for helping him,
21 Amir, become a highly successful entrepreneur and a leading
22 authority on early-stage entrepreneurship in the Arab world.

23 Kaleil has devoted thousands of volunteer hours
24 working with Lamplighters Yeshivah, a Jewish Day School in
25 Brooklyn; his Synagogue, Chabad Loft; and Winner's Circle, a

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1 non-profit dedicated to providing rehabilitative job
2 opportunities to formerly-incarcerated prisoners.

3 Yocheved Sidof, the founder of Lamplighters Yeshivah,
4 is in the overflow courtroom here today and will be available
5 to answer any questions from your Honor.

6 Kaleil has also been an outspoken voice regarding
7 prison conditions and sexual assault in prison. That's not an
8 easy thing to do, your Honor. The easier thing is surely to
9 suppress those memories, put them in a box, never visit them
10 again, but with the help of his court-appointed therapists and
11 his family's love and support, Kaleil has instead spoken
12 vulnerably and publicly about sexual assault in the hopes of
13 destigmatizing prison rape, encouraging other victims to come
14 forward and begin their healing process.

15 You will hear from Rabbi Bryski, with the Court's
16 permission, of the nationally-renown Aleph Institute, that
17 their alternative to incarceration recommendation for Kaleil
18 includes working with RAINN, the Rape Abuse & Incest Network,
19 the nation's largest antisexual violence organization to assist
20 with their mission in a myriad of ways.

21 You have also read letters that describe how Kaleil
22 has, on a pro bono basis, help uncover a fraud perpetrated
23 against other investors in a hedge fund and how he spent
24 hundreds of hours to help the same investors recover from the
25 fraud's perpetrators.

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1 Volunteer work and giving back to the community has
2 always been part of Kaleil's life, part of his ethos. He spent
3 summers in high school volunteering in shantytowns in Colombia,
4 he continued doing volunteer work at govWorks with his
5 employees, would perform hundreds of hours of volunteer
6 seminars, and he even did volunteer work in Sierra Leone,
7 facilitating a seminar and entrepreneurship and life skills for
8 former child soldiers.

9 Over his decades-long career, Kaleil has consistently
10 used his position to improve the world around him, a trend that
11 began long before this case and one that will continue for
12 years to come.

13 I must also point out that reimprisoning now is
14 punishment not just of Kaleil, but of his family and his
15 friends.

16 Kaleil's family needs him desperately. His father,
17 Luis Orlando, who is here in court, is aging and recently
18 recovered from a bout with cancer. The last time Kaleil was
19 imprisoned in Colombia, the stress of the situation caused his
20 father to have a nervous breakdown. As you read, Kaleil's
21 imprisonment further aggravated his eldest sister's
22 debilitating ulcerative colitis. Kaleil's younger brother,
23 Emmanuel, is specially-abled. He displays pathology of
24 Cantrell and the symptoms of Williams Syndrome. Kaleil and his
25 sister will one day become Emmanuel's coguardians, and Emmanuel

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1 will need that guardianship his entire life. Kaleil and
2 Emmanuel have a special, beautiful bond, and an additional term
3 of imprisonment would be detrimental to Kaleil's brother's
4 fragile, emotional wellbeing.

5 He has a large family, all of whom rely on him. They
6 look to him as a patriarch and a role model. His cousins and
7 their kids look to him as, quote-unquote, a pillar of strength
8 for the entire family, as his cousin Kira wrote.

9 Of course, let's not forget Kaleil's own daughter, who
10 needs her father and who he's had very limited time with in
11 person over the past six years. His daughter's mother
12 described how his daughter talks about Kaleil constantly. She
13 wrote, "When they are together, there is a great love,
14 learning, and fun between them. No child should grow up
15 without a father. She needs her father and I need Kaleil's
16 help with raising her. It brings tears to my eyes to
17 contemplate both of them not having each other for the coming
18 years. Kaleil has suffered, but my daughter suffers, as well,
19 and both sadden me."

20 As for his friends, Kaleil has been called a
21 "once-in-a-lifetime friend, filling the world around him with
22 light," as David Camp wrote. They felt a deep void in his
23 absence. You've read that time and time again.

24 I would also like to emphasize something your Honor
25 has probably already gleaned, that Kaleil has a special bond

L9ACTuzS

1 with children and teenagers, beyond his own relatives. You've
2 seen that consistently in his many letters of support. So many
3 friends have described Kaleil as a mentor and figurative uncle
4 to their kids.

5 Respectfully, imprisoning Kaleil now would send the
6 wrong message to these youngsters about redemption, about mercy
7 and forgiveness, and about the justice system, which is not
8 reflexive and formulaic in imposing punishment, but is
9 contemplative and purposeful.

10 Your Honor, we have all made mistakes in life.
11 Kaleil's bad judgments will haunt him for the rest of his life,
12 no matter what sentence you impose here today. He will forever
13 be a changed, and in some respects, a broken man as a result of
14 what he did, his arrest and his conviction.

15 He will never restore his professional reputation. He
16 will likely never, ever be able to work in a public company
17 again. And at nearly 50 years old, it is unlikely he will ever
18 have the professional success that was once on his horizon.
19 And he's been decimated financially.

20 Which leads me to the final reason why Kaleil should
21 not be reincarcerated. And I apologize for the length of time,
22 your Honor. Putting Kaleil back in prison would aggravate his
23 post traumatic stress disorder and fundamentally threaten his
24 mental wellbeing. Kaleil has been seen by court-appointed
25 therapists at least six times per month for over five years

L9ACTuzS

1 now, and they have confirmed his diagnosis of PTSD.

2 We have also submitted psychological reports from
3 Dr. Jessica Pearson, a respected clinical and forensic
4 psychologist. She confirmed that Kaleil continues to suffer
5 from nightmares, flashbacks, and occasional suicidal ideation.

6 Reading Dr. Pearson's letter, you've learned about his
7 understandable struggles with romantic relationships. He also
8 has a fear of enclosed spaces and crowded places. Fluorescent
9 lights are a trigger for his PTSD. He is not the confident man
10 he once was, and he suffers from chronic insomnia and
11 occasionally paranoia.

12 Dr. Pearson further wrote, "Mr. Isaza Tuzman's PTSD
13 will be seriously exacerbated by incarceration. All the
14 triggers associated with his specific trauma of physical and
15 sexual assault in prison will be chronically present, and he
16 will not have the mental health treatment that he has had over
17 the past several years in order to cope with the significant
18 symptoms he is likely to experience. He will also not have
19 access to his friends, family, and religious community who have
20 provided the needed, psychological and emotional support during
21 his recovery. He will be at an increased risk for selfharm and
22 suicide."

23 Now, I've been speaking for some time now and I very
24 much appreciate your Honor's indulgence as I near the end of my
25 remarks.

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1 Your Honor, you wrote a thought-provoking article a
2 few years back titled, "Federal Sentencing: Time for a Second
3 Look?" I very much agreed with the sentiment of that article,
4 that part of the way through a defendant's sentence, judges
5 should revisit and consider whether continued punishment is
6 necessary. The premise is that sentencing a defendant right
7 after a jury trial doesn't provide the Court with sufficient
8 insight about what rehabilitative and deterrent effect
9 imprisonment will have on the defendant, and how the defendant
10 will modify behavior as a result of punishment.

11 The past five years since Kaleil's return to the
12 United States is effectively that second look that your Honor
13 advocated for years ago. You now have a more clear
14 understanding of who Kaleil is and what he could achieve if out
15 of prison as compared to how society loses if he is in prison.

16 Kaleil has made mistakes, as have we all. Those
17 mistakes should not define us and they should not destroy us.
18 If Kaleil is returned to prison, I, along with his family,
19 friends, and therapists all fear that Kaleil will not have the
20 tools and support needed to cope with his PTSD. So while
21 physically, your Honor, he may walk out of prison one day,
22 mentally, he will never leave.

23 Fundamentally, Kaleil is a good man. He's a
24 productive man. He's a generous man. He's a man who can do so
25 much good in this world and he is a man who has already been

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1 punished and suffered so much. Reincarceration simply is not
2 necessary and would not serve the interests of society or
3 justice.

4 Let me end with a final remark. As your Honor is
5 aware, Kaleil has become a much more religious person over the
6 past ten years, starting long before his arrest. In the Jewish
7 tradition, in addition to the Old Testament, the Torah, one of
8 the authoritative texts is the Talmud, which is a record of
9 rabbinic discussion on Jewish law.

10 The Talmud teaches "whoever saves a single life is
11 considered to have saved the whole world." That principle
12 exalts the paramount value of every life, and it also
13 recognizes the power of a single individual to have a positive
14 ripple effect on so many people throughout the world. That
15 ripple effect is embodied in Kaleil. He has touched people
16 around the world and will continue to have such great positive
17 impacts on countless others if he has the opportunity to do so.

18 On behalf of Kaleil, his family, his friends, and all
19 his supporters, we respectfully implore your Honor to impose a
20 noncustodial sentence on Kaleil, with the specific
21 recommendation of three years' community service supervised by
22 the Aleph Institute, as Rabbi Bryski will explain with your
23 Honor's permission.

24 If your Honor decides to impose a term of detention,
25 we respectfully request a sentence of home confinement with the

L9ACTuzS

1 combination of community service, particularly in light of the
2 substantial risk that further imprisonment will retrigger his
3 PTSD.

4 Thank you, your Honor, for allowing me to be heard.

5 Unless your Honor has any further questions, I would
6 ask that your Honor permit Rabbi Yossi Bryski of the Aleph
7 Institute to speak briefly about Kaleil and Aleph's proposal of
8 community service as an alternative to incarceration. It
9 should be very brief remarks, your Honor.

10 THE COURT: All right. I'll hear from the rabbi.

11 MR. BRYSKI: Good afternoon, your Honor. Thank you
12 very much for the opportunity to address the Court in this
13 important matter.

14 The Aleph Institute provides its services and its
15 program to select individuals, pro bono, and we reserve the
16 right to only accept people into our program if they are
17 serious about remorse and serious about following all aspects
18 of our program, leading to sentencing and beyond.

19 We came to know Dov very well during the many years
20 that he has been awaiting this sentencing. We came to
21 understand his life story and the person who is here today
22 before you.

23 He met our criteria and fit perfectly into our model
24 for someone who ought to be considered for an alternative
25 sentence, which would include a very serious and meaningful

L9ACTuzS

1 regimen of home confinement and community service that would
2 adequately and effectively address all the components of
3 sentencing.

4 Your Honor, I'm not an attorney, and I don't claim to
5 understand all the nuances of this case. Apparently, the
6 attorney knows a bit Torah and Talmud, but I definitely don't
7 understand exactly all the intricate details of what Dov has
8 done.

9 But I do know there is no excuse for what Dov did,
10 period. So Dov needs to be punished. He has already been
11 punished, severely, but we are asking the Court that any
12 further punishment be imposed with a noncustodial sentence.
13 Throughout this process, Dov has expressed deep regret and
14 shame to me and many others. Shame is, in itself, a punishment
15 for a person's actions.

16 I personally went to Loch Sheldrake. I drove out
17 there and had a very deep conversation with Dov. He became
18 very real with me. He's very real with his personal rabbi,
19 Rabbi Bankhalter. And we have found that Dov's natural
20 inclination is to be kind, sincere, and dedicated to supporting
21 and uplifting those around him.

22 He has been working so hard, as your Honor has already
23 heard from his attorney, and he has come to terms with his
24 wrongdoing and truly made amends, and he will make amends for
25 the rest of his life. He has been wholeheartedly devoted to

L9ACTuzS

1 learning and growing from this experience. Your Honor, I, too,
2 believe Dov will not reoffend.

3 In prison, he would not be able to focus on
4 introspection and rehabilitation – one of the sentencing
5 factors. Our sentencing proposal is designed to facilitate his
6 continued rehabilitation, to continue his transformative
7 journey. This is the kind of work that will force him to
8 reflect on his past behavior. We commit to overseeing this
9 program and sending regular reports directly to the Court or
10 through the probation department, and we believe the Court will
11 be pleased with the progress and results.

12 I submit to you, your Honor, humbly, that, in some
13 cases, we need to adjudicate holistically. It's no mistake
14 that, in the Bible, there is no such punishment as prison.
15 There are discussions about capital punishment, corporal
16 punishment, financial punishments, garnishing a person's wages,
17 but not prison. The Torah advocates for, quote-unquote, kind
18 punishments that serve to rehabilitate the offender.

19 I tuned in to Dov's radio show – he doesn't know
20 this – and I heard raw emotion being expressed to countless
21 people who are listening. Some of them call and berate him for
22 what he has done. He doesn't argue with them. He accepts
23 everything they say and expresses deep remorse in public.

24 There must be a degree of deterrence that you might
25 not find with other defendants that sit before you. I'm

L9ACTuzS

1 intimately aware of all his work with the Lamplighters at
2 Yeshiva and many other good things that he has done that, no
3 doubt, your Honor has already read about.

4 The Aleph Institute is going to ensure that he will
5 follow through with anything the Court asks him to do, and we
6 humbly suggest that he be allowed to enter a very, very
7 important program that his grandfather, who he lovingly calls
8 Zeva (ph). As a matter of fact, it was his grandfather, Zeva,
9 who gave him his name, Dov, at his Bat Mitzvah, and I choose to
10 use that name to refer to his Jewish identity.

11 This organization promotes very important teachings
12 about the Holocaust. Everyone needs to reflect. Everyone
13 needs to think about this event because it causes them to get
14 real with themselves, to ask themselves if they are continuing
15 something that an evil person tried to stop.

16 Dov's grandfather -- I don't know if he wants me to
17 share this story in open court, but his grandfather came to the
18 Synagogue on the day of atonement on a regular basis, and he
19 would scream and shout at God. He witnessed atrocities of the
20 Holocaust. While most people would say blasphemy, screaming at
21 God on the holiest day of the year, I beg to differ. This is
22 an expression of raw emotion and of deep intimacy with God.
23 While others sit there in the Synagogue and give lip service to
24 God and talk about Teshuvah and talk about repentance, speak
25 about returning to God, returning to themselves to their souls.

L9ACTuzS

1 And once in a while, there is a fleeting emotion, we hope,
2 maybe the rabbi's sermon will inspire us. This man comes and
3 he has it out with God. To him, God is not abstract. It's a
4 real thing. Dov has those genes. He most definitely has those
5 genes. He gets real with everyone around him now. And most
6 importantly, he gets real with himself as he gets real with
7 that higher power.

8 America is going to be reflecting a lot in the next 24
9 hours. The Jewish people have had their own day of atonement
10 for thousands of years where we do the same thing: We reflect,
11 we wonder, we think, we think about the heros, we think about
12 those that gave up their lives, and we think about ourselves a
13 lot, our relationship with God.

14 Dov is going to get involved in that family
15 organization. It's about time that he takes it up to the next
16 level, brings it to other countries. They need funds and they
17 need someone of his caliber to take it to the next level in a
18 huge way. And we are going to see to it that, in fact, he is
19 going to make a big mark on the world at large.

20 And, as was mentioned by defense counsel, the program,
21 the RAINN program, it's an organization, it's been around for
22 26 years and helped already three and a half million people.

23 Dov is a victim. He will always be a victim. He's
24 always going to have PTSD. He's always going to deal with
25 whatever he had to deal with in the most horrific way out in

L9ACTuzS

1 Colombia. But I've never met somebody who's willing to take
2 everything that they dealt with and use it to help other
3 people. He's a tremendous asset to society, to people in
4 society who really need someone like him, someone who
5 experienced it himself.

6 He's committing to 15 hours a week for the next three
7 years. The Holocaust program is going to give 10 hours per
8 week for the next three years. In addition, he plans to work
9 with an organization - that I'm intimately aware of, because we
10 send a lot of our clients to that particular place for
11 rehabilitation - called Amudim, where he's going to do the same
12 thing, he's going to help sexual abuse victims.

13 So, I plead with you, your Honor. I know it's an
14 out-of-the-box request. I listened to the guideline numbers,
15 and I know it's taking a whole different perspective on
16 punitive elements, but sometimes a case comes before your Honor
17 that begs a different approach, an out-of-the-box approach.

18 Thank you very much, your Honor, for the opportunity
19 to address this honorable Court, and I plead with you to accept
20 our recommendation in a practical way.

21 THE COURT: Mr. Tuzman, is there anything you wish to
22 say before the Court imposes sentence?

23 THE DEFENDANT: Yes, your Honor. Your Honor, may I
24 have a moment and also stand before you?

25 THE COURT: Wherever you're comfortable, Mr. Tuzman,

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1 and take as long as you need.

2 THE DEFENDANT: Judge Gardephe, thank you for the
3 opportunity to speak to you. I apologize in advance if I am
4 emotional. Above all, I want to thank you for saving my life
5 through the immediate effect of the hearing in front of your
6 Honor on November 20th, 2015.

7 However, contrary to statements made before, I am not
8 the victim here, I am the perpetrator. I was a liar, I was
9 dishonest, and as I stand before you today, I am a failure in
10 almost all of the ways I used to define myself.

11 Avi, I want to ask for your forgiveness in advance
12 because I am going to stray a bit from what I told you I would
13 say.

14 I originally, your Honor, met Avi through Dr. Snehal
15 Amin and Amanda Blaurock's efforts - both of whom are in the
16 building today - when I was incarcerated in Colombia. Since
17 then, Avi has become much more than a lawyer to me, he has
18 become like a brother. I am forever grateful to Amanda
19 Blaurock, to Avi, to David Salant, to Justine Goeke, Marcellus
20 McRae, Reed Brodsky, and the other lawyers in my case.

21 And to the firm of Gibson Dunn & Crutcher, I have not
22 been able to pay you now, any of you for almost four years, but
23 you have stuck by me. Thank you. And thank you to all of my
24 family and support system who are here today in this building
25 and on the phone.

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1 Your Honor, I have tremendous respect for our system
2 of law, which I believe is the best in the world, and grows by
3 authentic participation, not by sycophancy.

4 Judge Gardephe, I believe you are a just and fair man,
5 even when I had been saddened by or disagreed with rulings that
6 went against me. As I said, I owe you my life. At the same
7 time, particularly in these days between Rosh Hashanah and Yom
8 Kippur, I believe that I stand before you, and I also stand
9 before God, that is the highest court.

10 With this in mind, I want to divide my comments
11 quickly into three: Number 1, where I believe I have been
12 wrong, legally and ethically; number 2, points of personal
13 perspective and context that I have not had the opportunity to
14 say to your Honor; and 3, a personal statement of
15 responsibility.

16 Your Honor, I have made terrible mistakes which I will
17 regret for the rest of my life. I had no excuse for making
18 them and they have had terrible consequences. I was wrong to
19 not acknowledge the Enable hole at the outset at KIT Digital.
20 When I became aware of its loss, and even after the guarantees
21 that were put in place and were false, at KIT Digital, I signed
22 off on financial statements and reports to auditors that were
23 not accurate and were deceptive to all. I was wrong to
24 incentivize Maiden Capital to purchase stock of KIT Digital in
25 the open market. I was wrong to cause KIT Digital to invest in

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1 capital when I was pulling my own \$250,000 investment out of
2 Maiden Capital.

3 In these and many other respects, I let down KIT
4 Digital stakeholders, investors, employers, employees, clients,
5 suppliers, and partners. I also let down my family, my
6 friends, and all the mentors I have had in my life.

7 I did not have the courage to bring to light
8 statements that I knew or came to know were false. I did not
9 have the courage to stop the cycle of lies, deception, and
10 coverup that I and others engaged in. I was in a position to
11 put an end to these lies, my own and those of others, but I did
12 not.

13 Instead, over time, I slipped further and further into
14 the quicksand of coverup and deception. I allowed the
15 trappings of outward success, reputation, accolades, material
16 comfort, and the pressure to perform and meet numbers as a
17 public company CEO to occlude my judgment and lead me off of
18 the right path in life.

19 While painful to admit, through the court-mandated
20 psychotherapy I have done over these last five years, I also
21 believe, as I stand here today, that I have had a lack of
22 courage to do the right thing, despite it being right in front
23 of me, and this was based on a lifetime strategy of avoiding
24 difficult moral issues, an inability to hold myself properly
25 accountable, and, worst of all, conscious avoidance.

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1 There are many reasons for that conscious avoidance
2 relating to my childhood that I have explored with my
3 therapists, but that is no excuse. I am thankful for the years
4 of therapy that your Honor mandated, and as they have reopened
5 closed wounds, but also helped me to heal and confront my
6 demons.

7 But it wasn't just these coping strategies that caused
8 me to deviate from a righteous and honest path, it was also my
9 ego. I had far too much of my sense of selfworth tied into
10 what others thought of me, the external perceptions and
11 trappings of success. I was trying to protect my reputation
12 being CEO of KIT Digital and literally having my name on the
13 door of the company.

14 Your Honor, I never intended to harm KIT Digital
15 shareholders. To the contrary, I kept investing my own funds
16 through the period in question misguided by the idea that I was
17 trying to save the company from ruin. I know that the lack of
18 intent to harm does not excuse my actions, and I understand, as
19 I stand before your Honor today, that I am to blame for things
20 that I enabled or abetted through my lack of courage. I made
21 the wrong decisions, legally and ethically, and morally. I
22 should have known better.

23 As I said before, I slipped down the slope into
24 criminal behavior, at each point in the slide convincing myself
25 it was the good of the company and I was doing the right thing

L9ACTuzS

1 in the long-term for shareholders. In retrospect, the right
2 decision would have been immediate and radical disclosure, even
3 at the risk of hurting the company's stock price and it's
4 continued viability. Ultimately, the actions I and others
5 engaged in hurt the company dearly.

6 I remain proud of what we accomplished at KIT Digital
7 and stay in touch with many employees at Piksel, as it is now
8 called.

9 I want to make clear, none of what I have said, your
10 Honor, is an excuse. I was wrong. I made ethical mistakes and
11 legal ones, and those mistakes had horrible consequences. I
12 simply wanted to state these things for the record, perhaps for
13 my daughter to read some day.

14 At KIT Digital, I did not intend anyone harm. I was
15 doing my best to deal with a very messy situation. I got into
16 bed with the wrong people, I allowed the pressure to perform
17 and ego-based desire to protect reputation and lifestyle to
18 bury my moral compass. I have myself to blame for that, no one
19 else.

20 Once again, I apologize to everyone I failed in my
21 life as a result.

22 Your Honor, I would like to say only a few words about
23 my overseas arrest and my extradition process from Colombia and
24 what happened to me there, because I know you've heard from
25 many sources in that regard.

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1 I do not believe there was a good reason to arrest me
2 overseas. I was on a five-day business trip to Colombia, and I
3 had even seen District Attorney Preet Bharara at a Harvard
4 reunion over the summer. I believe that my physical assaults
5 and rape were entirely predictable and avoidable, and the
6 prosecution did not make a genuine effort to protect my life.
7 I believe that no U.S. citizen should be made to be held at La
8 Picota prison. I believe the S.D.N.Y. has the necessary
9 suasion to have U.S. citizens awaiting extradition in Colombia
10 to be held in a safer and more humane place in the future.

11 Your Honor, thank you again for the opportunity to
12 speak, for your patience with my soliloquy. As a result of my
13 mistakes, my life at this moment is a failure by all measures:
14 achievement, recognition, material comfort.

15 However, the measure that matters the most are the
16 people I love and anything I have done in my life that has been
17 positive for them. My daughter, my siblings, my nephews and
18 niece, my extended family, my friends, and for the rest of the
19 world around me.

20 I failed the people who believed in me in business,
21 and at KIT Digital in particular. I am deeply sorry for my
22 errors in judgment, my stupidity, my selfcenteredness, and my
23 negligence. I have been expressing this remorse for years in
24 public settings.

25 I am sorry for the resources expended all around to

L9ACTuzS

1 get here, the waste of energy and time in so many people's
2 lives, and any poor reflection that my actions have had on the
3 Jewish people.

4 Your Honor, last night, I could not sleep, and with
5 pretrial services' permission, I went to the grave of
6 Rebobenockin Schneerson in Queens. And I went with my rabbi,
7 who is here in this courtroom, Rabbi Yakov Bankhalter, and he
8 told me that because I am turning 50 years old, that when I
9 went to the rabbi's grave, I should read psalm 50. Psalm 50 is
10 the psalm of Asaph. It's a psalm that requires honest
11 accounting before God and discounts any confession that has
12 guile.

13 I stand before you, your Honor, without guile. I
14 cannot bear the thought of going back to prison. I have
15 started a new life over these past five years, even under the
16 constraints of house arrest. I pray I can be given the
17 opportunity to continue this new start surrounded by the people
18 I love instead of reincarcerated. I pledge to your Honor that,
19 if given this opportunity, I will redouble all of my efforts to
20 live the rest of my life grounded in the best aspects of me,
21 focused on giving instead of taking, thinking of others instead
22 of myself. I ask your Honor for maximum mercy at this time
23 with the solemn promise that I will never make these mistakes
24 again. I will rededicate the rest of my life to honest
25 dealings and devotion to family and community. Thank you.

L9ACTuzS

1 THE COURT: I'll hear from the government.

2 MR. NAFTALIS: Thank you, your Honor. I wanted to
3 make a few points. Your Honor is obviously very familiar with
4 this case, and you've heard a lot from Mr. Weitzman and the
5 defendant.

6 I think everyone here agrees that the conduct was
7 serious. You heard it from the defendant himself, and I think
8 this is the first time in any of the papers where he's
9 expressed contrition.

10 He was the CEO of a public company that he named after
11 himself. He knew better, and he lied to his investors, and he
12 perpetrated multiple schemes over years. As a result, his
13 company went bankrupt and people lost their jobs, investors
14 lost money, and a hedge fund imploded, as well.

15 That was the result of his lies and his dishonesty, as
16 he said, and he knew better. We know he went to Harvard, we
17 know he worked at Goldman Sachs, we know he is intelligent, we
18 know he is gifted, we know he's talented, we agree. He didn't
19 have to do any of this. He knew he shouldn't manipulate his
20 own stock, he knew he shouldn't be using company money to do
21 that and to cover up another fraud, and he knew he shouldn't
22 have been the architect of a massive accounting fraud that
23 inflated the revenues by 10 percent.

24 Whether it was hubris or wanting to earn your way out
25 of a fraud, as we often see in these types of cases, or just

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1 ego and greed, it happened for years and it injured and harmed
2 a number of people.

3 Whether the defendant made any money in the end misses
4 the point. He stood to make millions if he could have pulled
5 it off. The goal was to take the company private, pay off his
6 special investment vehicle, his investors, himself, his friends
7 he put on the board, and continued this upward ascent that he
8 had painted for himself. That's why we're here.

9 Your Honor, on the one hand, he paints himself as a
10 victim, that it happened to him; on the other hand, he accepts
11 responsibility. On the one hand, he went along with a market
12 manipulation scheme; on the other hand, other people told lies
13 at KIT Digital.

14 What is clear is that he was the architect of many of
15 these frauds, and he had other people do the dirty work. When
16 a public company's CEO cooks the books and breaches the trust
17 that he owes to investors, a serious sentence is required. Not
18 time served, we respectfully submit is not sufficient. And we
19 acknowledge the guidelines sentence, in light of your Honor's
20 prior sentences, is also not appropriate. We also do not
21 object, your Honor, crediting the time he spent in Colombia in
22 prison.

23 Now, I was not on this case until trial. I do not
24 know what happened. But the Department of Justice rejects the
25 argument they are to blame, the State Department rejects the

L9ACTuzS

1 argument they are to blame about what happened.

2 Now, finally, a brief discussion of relative
3 culpability, your Honor. We can put Irfan Amanat to the side
4 on this case.

5 Mr. Tuzman is more culpable in this case than Omar.
6 He was the architect of the schemes, he was a public company
7 CEO, that is clear. Now that Omar decided to obstruct justice
8 and lie to the Court and put fake documents puts him in another
9 league. But in terms of what was done here, the offense
10 conduct, we believe that Mr. Tuzman is more culpable.

11 This has obviously been a difficult case for
12 everybody, but the fact that Mr. Tuzman has been on house
13 arrest is an argument that anybody could make, either in
14 pretrial or posttrial supervision. We do believe that some
15 level of just punishment and deterrence should be taken into
16 account here. We know your Honor is very thoughtful, knows
17 this case better than anyone in this room, and we thank you for
18 your time.

19 THE COURT: In deciding upon an appropriate sentence,
20 I have considered all of the factors listed in Title 18, United
21 States Code, Section 3553(a), including the nature and
22 circumstances of the defendant's offenses, his personal history
23 and characteristics, the need for the sentence imposed to
24 reflect the seriousness of the offenses, the need to promote
25 respect for the law, to provide just punishment, and to afford

L9ACTuzS

1 adequate deterrence.

2 As to the nature and circumstances of the offenses,
3 Mr. Tuzman was the chairman and chief executive officer of KIT
4 Digital. He, along with others, conspired to commit securities
5 fraud by manipulating the market for KIT Digital stock; he
6 conspired to commit wire fraud by participating in a scheme to
7 defraud KIT Digital shareholders by failing to disclose that
8 KIT Digital's investments in a hedge fund, called Maiden
9 Capital, were not part of an arms-length relationship, but were
10 related party transactions entered into for a corrupt purpose;
11 and he conspired to commit securities fraud by making false
12 statements to auditors and in SEC filings so as to conceal KIT
13 Digital's true operating and financial performance.

14 In May of this year, I issued a 128-page decision
15 which rejected Mr. Tuzman's request for a judgment of acquittal
16 or a new trial. I'm not going to go through the factual
17 discussion that I set forth in that opinion. Suffice it to say
18 that the relevant facts regarding the market manipulation, the
19 wire fraud, and the accounting fraud in which Mr. Tuzman
20 participated or discussed at length. Citing the May 3rd, 2021
21 opinion, docket number 1145.

22 As to Mr. Tuzman's personal history and
23 characteristics, he's currently 49 years old. He was raised in
24 western Massachusetts by highly intelligent parents who were
25 active in social work and committed to social justice. The

L9ACTuzS

1 defendant's father was born and raised in Colombia, came to the
2 United States on a merit scholarship to study at Brandeis
3 University. Mr. Tuzman was very active in community service
4 from a young age. During school breaks, he was involved in
5 service projects in Medellin, and he did a gap year in India
6 where he worked with the Dalit population.

7 Although his parents divorced when he was 10 and they
8 both remarried, the two couples and their families resided in
9 the same two-family home.

10 Mr. Tuzman was a brilliant child, graduated at the top
11 of his high school class, went on to Brown University and then
12 to Harvard University where he obtained a bachelor's degree,
13 magna cum laude. He is fluent in English, Spanish, and
14 Portuguese, and also speaks some French, Russian, and Hebrew.

15 As we've heard, from Harvard, he became an investment
16 banker at Goldman Sachs, staying at the firm from 1995 to 1999.
17 In 1999, he cofounded a website called the govWorks, a highly
18 innovative website portal that allowed citizens to access
19 municipal services to pay for and apply for city services,
20 jobs, and receive information about their community. In 2002,
21 he became the chairman and CEO of a digital media agency called
22 KPE, Incorporated. Between 2005 and 2007, he served as the
23 president and chief operating officer of JumpTV, a broadcaster
24 of international and sports content over the internet. Between
25 2007 and 2012, Mr. Tuzman was the chairman and chief executive

L9ACTuzS

1 officer of KIT Digital, which provided software for managing
2 video content over the internet. After leaving KIT Digital,
3 Mr. Tuzman became involved in a luxury hotel project in
4 Cartagena, Colombia, Obra Pia. That project, which involves
5 the restoration of a Franciscan convent, is mired in
6 litigation. He was in Colombia working on that project on
7 September 7, 2015, when he was arrested on a warrant issued in
8 connection with this case.

9 Mr. Tuzman was held for more than 10 months in several
10 prisons in Colombia awaiting extradition. I'll be addressing
11 that incident in more detail in a moment.

12 Mr. Tuzman was married in 2004, but the couple
13 divorced in 2007. He is the father of one child who lives with
14 her mother in Dubai.

15 As to medical condition, Mr. Tuzman was diagnosed with
16 non-Hodgkin's lymphoma in 2001, but was treated successfully.

17 As to mental health, Mr. Tuzman suffers from post
18 traumatic stress disorder as a result of the abuse he suffered
19 while in prison in Colombia.

20 There is no significant history of substance abuse and
21 the defendant has no criminal record.

22 To summarize the sentencing guidelines matters, I have
23 concluded that the sentencing guidelines call for a term of
24 imprisonment of 210 to 262 months.

25 Based on an incorrect guidelines range of 262 to 327

L9ACTuzS

1 months, the probation department has recommended a sentence of
2 132 months' imprisonment.

3 In its papers, the government seeks a sentence within
4 the guidelines range of 262 to 327 months set forth in the
5 presentence report. Although, it has acknowledged today that
6 such a sentence would be excessive.

7 The defendant contends that the applicable guidelines
8 range is 24 to 30 months' imprisonment, and that the sentence
9 imposed should be substantially below that range.

10 With all of this in mind, I'm going to state in some
11 detail the reasons, the background for the sentence I intend to
12 impose, and then I'll ask the parties if there is anything
13 further they wish to say.

14 Mr. Tuzman, as I noted, was the chairman and CEO of
15 KIT Digital. He used his initials, K-I-T, to brand the
16 company. He thus named the company after himself. And, in
17 many ways, the company was an extension of Mr. Tuzman and his
18 hard driving and innovative personality. The evidence at trial
19 showed that he was a hands-on manager and that he was
20 intimately involved in every significant financial decision
21 made at the company.

22 Until today, throughout the six long years that this
23 case has been pending, Mr. Tuzman has not accepted any
24 responsibility for the accounting fraud at KIT Digital, the
25 manipulation of its stock, or the wire fraud he committed on

L9ACTuzS

1 KIT Digital's shareholders in connection with his dealings with
2 Maiden Capital. He was the prime mover in all of these
3 schemes, which continued for several years. Instead of
4 accepting responsibility for what he had done, Mr. Tuzman
5 pursued what I would characterize as a scorched earth
6 litigation strategy at enormous cost. According to the
7 presentence report, he owes outstanding amounts of more than
8 \$15 million to his lawyers and other legal service providers,
9 and presumably much was paid before he went into debt to his
10 lawyers.

11 As a result of this scorched earth strategy, no legal
12 issue was too insignificant to raise. Thousands upon thousands
13 of pages of submissions have been made. A two-month trial took
14 place. Despite the enormous briefing submitted before the
15 trial, throughout the trial, new issues emerged nearly every
16 day, generally in the form of letters submitted in the early
17 morning hours.

18 Despite the incredibly extensive efforts by
19 Mr. Tuzman's lawyers, which truly left no stone unturned, the
20 core response to the government's case was simply that all of
21 the government's primary witnesses were lying. This was not a
22 credible defense because much of what the government's
23 cooperating witnesses said about Mr. Tuzman's involvement in
24 the fraudulent schemes was corroborated by emails, text
25 messages, and other written documents.

L9ACTuzS

1 In many of the countless letters of support that I
2 have read in preparation for sentencing, and I might say that I
3 have never read a collection of more articulate letters of
4 support than those submitted in this case, Mr. Tuzman's family
5 and many close friends say that he proclaims his innocence, and
6 many people went on to say that they believe that he's
7 innocent. And, of course, we've heard to the contrary for the
8 first time today.

9 But, to those people, I want to say that the evidence
10 of Mr. Tuzman's guilt at trial was overwhelming. The
11 allegations that have been made throughout the case, that the
12 witnesses lied and that Mr. Tuzman was "convicted on perjured
13 testimony" - citing the defense brief, docket number 738 at 59
14 - that's not true.

15 The government's case here did not rest merely on the
16 word of those who conspired with Mr. Tuzman: Stephen Maiden,
17 Robin Smyth, and Gavin Campion. Their testimony was
18 corroborated by countless emails, text messages, and other
19 documents, including an actual written contract that
20 memorialized the manipulation scheme. The emails, text
21 messages, and other documents plainly showed Mr. Tuzman's
22 direct involvement and the effort to manipulate the market for
23 KIT Digital stock, the effort to defraud KIT Digital
24 shareholders through Mr. Tuzman's corrupt relationship with
25 Maiden Capital, and the effort to misrepresent KIT Digital's

L9ACTuzS

1 financial performance to investors. Among other things,
2 Mr. Tuzman and his chief financial officer, Robin Smyth,
3 orchestrated a complex roundtripping scheme in which KIT
4 Digital's own funds were routed through escrow accounts in
5 Dubai – set out by Mr. Tuzman's hand-picked lawyer, who herself
6 is a fugitive from justice – to make it look like the company
7 was receiving tens of millions of dollars in revenue when it
8 wasn't.

9 Among the many tragedies in this case, and there are
10 many, one tragedy is that KIT Digital was a real business that
11 generated hundreds of millions of dollars of real revenue. But
12 at that time, that wasn't enough for Mr. Tuzman. He wanted to
13 sell the company and become fantastically wealthy. In order to
14 make the company an attractive acquisition target, he needed to
15 goose the revenues to make it look like the company's financial
16 performance was better than it actually was. In doing so, he
17 lost his position at the company, he destroyed his hard-run
18 reputation, and he caused irreparable harm to the company, its
19 investors, and its many employees.

20 Many of those who wrote letters suggested to me that
21 it was a mistake for Mr. Tuzman not to testify, and that that
22 decision was due to the length of the trial, and the risk of a
23 mistrial if there was a lengthy defense case. I want to say to
24 those people that it was an entirely rational decision for
25 Mr. Tuzman not to testify, because if he had testified, he

L9ACTuzS

1 would have been cross examined with the text messages, emails,
2 and other documents that were so incriminating and that
3 corroborated his involvement in the charged schemes.

4 Many of Mr. Tuzman's family and friends wrote that the
5 charges against him are entirely incompatible with their
6 knowledge of the man and his character, and I accept what these
7 people say based on their interactions with Mr. Tuzman. But
8 they weren't with Mr. Tuzman when he was plotting with Robin
9 Smyth how to falsely inflate KIT Digital's revenues, and they
10 were not on the phone with him and Maiden when they were
11 speaking about and texting about Maiden's efforts to manipulate
12 KIT Digital's stock using KIT Digital's own money. And they
13 weren't present when Mr. Tuzman used \$250,000 of KIT Digital's
14 money to redeem his personal investment in Maiden Capital,
15 knowing full well that Maiden Capital wasn't solvent and that
16 KIT Digital would never see that money back again.

17 As the CEO of a public company, Mr. Tuzman engaged in
18 blatantly illegal conduct that showed no regard for the
19 securities laws or for KIT Digital's shareholders.

20 So yes, Mr. Tuzman is an incredibly gifted man, highly
21 intelligent, with an incredible work ethic. He's been kind to
22 countless people and is loved by many, but in the context of
23 KIT Digital – which is what this case was about – he lost his
24 way. Although a spiritual man in many respects, when he was
25 the chief executive of KIT Digital, his focus appears to have

L9ACTuzS

1 been very much on material matters. And that focus led to his
2 destruction and that of the company which bore his name.

3 In mitigation, there is much to say. First, there is
4 Mr. Tuzman's experience in Colombia after he was arrested on
5 the warrant issued in this case.

6 Mr. Tuzman was in Colombia for entirely innocent
7 reasons. He was working on the hotel project I have mentioned
8 earlier. In September 2015, for whatever reason, rather than
9 wait for him to return to the United States – which would have
10 happened soon because of the Jewish holidays – the government
11 decided to have him arrested in Colombia. That triggered a
12 nightmare for Mr. Tuzman that lasted for more than 10 months
13 and will affect the rest of his life.

14 In Colombia, those awaiting extradition are commonly
15 held in a prison outside Bogota called La Picota. I was
16 familiar with La Picota long before this case because of
17 Colombian defendants brought here for trial on drug trafficking
18 cases who were held there before they were extradited.

19 All of these men, prior to sentencing, describe to me
20 their experience in La Picota, and all said that it was a
21 hellish place. No heat, no food, no running water, no medical
22 care. A very, very dangerous place. None of those men claim
23 that they had been sexually assaulted there. But when you're
24 part of a drug organization, you have some protection at La
25 Picota. Mr. Tuzman did not enter La Picota as a member of a

L9ACTuzS

1 drug trafficking organization, however. He was a white collar
2 defendant and someone who was immediately marked by the other
3 inmates as a subject for extortion and assault. Complaints
4 were made to the United States Embassy about the threats that
5 were being made to Mr. Tuzman, and the fact that he was in
6 imminent danger of serious harm. The personnel at the U.S.
7 Embassy said there was nothing they could do.

8 At that moment, the U.S. Government failed Mr. Tuzman.
9 As I said back in November of 2015, Mr. Tuzman is an American
10 citizen who had been arrested at the behest of the United
11 States Government. He has a right not to be subjected to
12 assault and extortion while being held on a warrant obtained by
13 the U.S. Government. In my view, the government had a moral
14 obligation to do everything in its power to ensure his safety
15 after the danger he was in was brought to the government's
16 attention. The government did not meet its obligation to
17 Mr. Tuzman, and as a result, he remained in La Picota and was
18 subjected to a brutal sexual assault that will likely haunt him
19 for the rest of his days.

20 After Mr. Tuzman suffered this assault, his lawyers
21 sought relief from me, and I held a hearing on the matter on
22 November 20th, 2015. I, of course, don't have the power to
23 tell anyone in Colombia to do anything, but I made it clear
24 that the appropriate officials in Washington were going to have
25 to answer for what happened to Mr. Tuzman. The next day, he

L9ACTuzS

1 was moved from La Picota to a much safer prison. These events
2 demonstrate that steps could have been taken before Mr. Tuzman
3 was assaulted to ensure his safety.

4 In determining an appropriate sentence for Mr. Tuzman,
5 I have given great weight to the suffering he endured in
6 Colombia. I've also given weight to the fact that Mr. Tuzman
7 has been on release for more than five years and has been fully
8 compliant with what were very restricted terms of that release.
9 He has performed thousands of hours of community service during
10 this period. As we've heard, he told his story about La Picota
11 to Colombian authorities, and the top officials at that prison
12 have been arrested. And I do have a letter from Colombian
13 authorities asking me to exercise mercy in sentencing
14 Mr. Tuzman.

15 Mr. Tuzman has no criminal record, and I believe that
16 given the horrors that he endured in Colombia, he presents
17 little risk of recidivism. I conclude that a further period of
18 incarceration is not necessary to ensure specific deterrence.

19 With respect to general deterrence, I have spent many
20 hours thinking about what is appropriate, and this is of
21 particular concern in white collar cases where it is my belief
22 and it is my practice that white collar defendants who have
23 committed serious crimes such as this must receive a sentence
24 of imprisonment. However, I have decided in this case that the
25 risk associated with sending Mr. Tuzman back to prison, the

L9ACTuzS

1 risk to his mental health is just too great. And so, while, in
2 many other cases, it has been my practice to sentence white
3 collar defendants who have committed these sorts of crimes to a
4 substantial prison sentence, in good conscience, I can't do
5 that here. Accordingly, I intend to impose a sentence of time
6 served.

7 With respect to supervised release, I intend to impose
8 an aggregate term of three years on the following conditions:
9 Mr. Tuzman will not commit another federal, state, or local
10 crime; he will not unlawfully possess a controlled substance;
11 he will refrain from unlawful use of a controlled substance.

12 I intend to suspend the mandatory drug testing
13 condition based on my determination that Mr. Tuzman poses a low
14 risk of future substance abuse.

15 Mr. Tuzman will cooperate in the collection of DNA as
16 directed by the probation officer.

17 I intend to impose the 13 standard conditions of
18 supervised release set forth in the presentence report along
19 with the following special condition: Mr. Tuzman will provide
20 the probation officer with access to any requested financial
21 information, and he will not incur new credit charges or open
22 additional lines of credit without the approval of the
23 probation officer.

24 Mr. Tuzman will submit his person and any property,
25 residence, vehicle, papers, computer, or other electronic

L9ACTuzS

1 communication or data storage devices under his control to a
2 search on the grounds if there is a reasonable suspicion that a
3 violation of the terms of his supervised release may be found.
4 Any search is to be conducted at a reasonable time and in a
5 reasonable manner. Failure to submit to a search may be
6 grounds for revocation of release. Mr. Tuzman will inform any
7 other residents that the premises may be subject to search
8 pursuant to this condition.

9 Mr. Tuzman will participate in an outpatient mental
10 health treatment program approved by the U.S. Probation Office.
11 I authorize the release of available psychological and
12 psychiatric evaluations and reports, including the presentence
13 report to the healthcare provider.

14 As to a fine, the presentence report indicates that
15 Mr. Tuzman's debts far exceed his assets. I conclude,
16 therefore, that he lacks the ability to pay a fine.

17 I am required to impose a \$300 special assessment.

18 The government is not seeking an order of restitution.

19 As to forfeiture, the government and defense counsel
20 have conferred and have reached agreement as to a consent
21 preliminary order of forfeiture in the amount of \$288,000
22 comprised of the \$250,000 in KIT Digital assets that Mr. Tuzman
23 caused KIT Digital to invest in Maiden Capital in 2011, plus
24 the \$38,000 in profit that Maiden Capital paid back to
25 Mr. Tuzman when he regained his personal investment in Maiden

L9ACTuzS

1 Capital.

2 Accordingly, I will be signing the consent preliminary
3 order of forfeiture.

4 Mr. Weitzman, is there anything further you wish to
5 say?

6 MR. WEITZMAN: Only thank you, your Honor.

7 THE COURT: Mr. Tuzman, is there anything further you
8 wish to say?

9 THE DEFENDANT: Thank you, and God bless, your Honor.

10 THE COURT: Mr. Naftalis, anything else from the
11 government?

12 MR. NAFTALIS: No. Thank you, your Honor.

13 THE COURT: Mr. Tuzman, for the reasons I just stated,
14 it is the judgment of this Court that you be sentenced to time
15 served and three years' supervised release on each of counts 4,
16 5, and 6, with all terms to run concurrently. Your terms of
17 supervised release will be served subject to the mandatory
18 standard and special conditions of supervised release I just
19 mentioned. You are ordered to pay a special assessment of
20 \$300.

21 I am executing the consent preliminary order of
22 forfeiture that has been previously executed by the parties.

23 Mr. Naftalis, are there open counts that should be
24 dismissed?

25 MR. NAFTALIS: Yes, your Honor. We move to dismiss

L9ACTuzS

1 the open counts which were not subject to extradition in this
2 indictment and the underlying indictments, as well.

3 THE COURT: That application is granted.

4 Mr. Tuzman, I am required to advise of you your appeal
5 rights. You have the right to appeal your conviction,
6 including the sentence I just imposed. With few exceptions,
7 any notice of appeal must be filed within 14 days of judgment
8 being entered in your case. Judgment will likely be entered on
9 Monday. Your attorneys will discuss with you whether or not
10 you wish to file a notice of appeal. If you're not able to pay
11 the costs of an appeal, you may apply for leave to appeal in
12 forma pauperis. If you request, the clerk of court will
13 prepare and file a notice of appeal on your behalf.

14 Mr. Weitzman, I believe that you have a pending
15 application to withdraw; is that true?

16 MR. WEITZMAN: It is, your Honor.

17 THE COURT: I will grant that application subject to
18 your consultation with Mr. Tuzman about the notice of appeal.
19 Once that issue is resolved, your application to withdraw is
20 granted.

21 MR. WEITZMAN: Thank you, your Honor.

22 THE COURT: Mr. Naftalis, anything else for the
23 government?

24 MR. NAFTALIS: No. Thank you.

25 THE COURT: Mr. Weitzman, anything else for the

L9ACTuzS

1 defense?

2 MR. WEITZMAN: No. Thank you, your Honor.

3 THE COURT: We are adjourned.

4 THE DEPUTY CLERK: All rise.

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