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16 *Attorneys for Defendant Joseph Sullivan*

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 JOSEPH SULLIVAN,

24 Defendant.

Case No. 3:20-cr-00337-WHO

DECLARATION OF DAVID ANGELI
IN SUPPORT OF DEFENDANT'S
SENTENCING MEMORANDUM

25 1. My name is David Angeli. I am a member of the Oregon, Washington, Maryland,
26 and District of Columbia Bars and a partner at Angeli Law Group. I am admitted pro hac vice in
27 the Northern District of California. I represent the defendant Joseph Sullivan in this matter. I
28 make this declaration in support of Defendant Joseph Sullivan's Sentencing Memorandum.

2. Attached as **Exhibit 1** is a true and correct copy of a letter to the Court from Mr.
Sullivan.

3. Attached as **Exhibit 2** is a table of comparator cases in which the defendant was
convicted of and sentenced for obstruction of justice.

1 4. Attached as **Exhibit 3** is a table of comparator cases in which the defendant was
2 convicted of and sentenced for misprision.

3 5. Attached as **Exhibit 4** is an index of relevant news accounts that provide context
4 about the offense conduct and how the prosecution and conviction of Mr. Sullivan has impacted
5 the cybersecurity industry.

6 6. Attached as **Exhibit 5** is a true and correct copy of the reporter's transcription of
7 the sentencing hearing before United States District Judge Amos L. Mazzant, III, in the case of
8 *United States v. Jindal*, Case No. 4:20-CR-358(1), dated December 8, 2022.

9 7. Attached as **Exhibit 6** is a true and correct copy of a certificate of honor from the
10 chief of the garrison in Kharkiv, Ukraine. According to Google, the certificate translates to:
11 "Ministry of Defense Ukraine, Certificate of Honor, Chief of Kharkiv Garrison Awarded
12 Sullivan, Joseph Edmund for courage and patriotism, permanent volunteer support of the hero
13 city of Kharkiv and the Kharkiv region during martial law, dedication to the protection of rights
14 and freedoms and legitimate interests of citizens. Brigadier General Justice S.M. Melnyk."

15 8. Attached as **Exhibit 7** is a true and correct copy of a letter of commendation for
16 Mr. Sullivan from the Chief of the Main Department of the National Police of Ukraine in Odesa
17 region, Police General of the third rank, Mykola Semenyshyn.

18 9. Attached as **Exhibit 8** is an index of media appearances by Mr. Sullivan that
19 highlights the various aspects of his work in cybersecurity.

20 10. Attached as **Exhibit 9** is a true and correct copy of a letter from Nicole Jackson
21 Colaco, dated April 20, 2023.

22 11. Attached as **Exhibit 10** is a true and correct copy of an undated letter from
23 Priscilla David.

24 12. Attached as **Exhibit 11** is a true and correct copy of a letter from Genevieve
25 Gaines, dated April 19, 2023.

26 13. Attached as **Exhibit 12** is a true and correct copy of an undated letter from
27 Suruchi Kothari.

April 27, 2023

The Honorable William H Orrick III
450 Golden Gate Avenue
San Francisco CA 94102

Your Honor:

I'm sorry that I am taking your time today because of my actions and inactions in 2016. There has not been a day since my termination in 2017 that I haven't spent hours rehashing and anguishing over the decisions my team and I made then.

I am writing this letter because I want you to know that I am sorry for what I did. I understand it hurt others and served as a bad example. I don't want to make excuses or argue about the interpretation of facts. I want to assure you it won't happen again on my watch. And I want to dedicate my life to making up for it.

Before I say anything else, I want to thank your courtroom staff, the courthouse security team, pretrial services, the PSR writer, and everyone who treated my family with dignity throughout this process. I also want to thank you for letting the case be audible over Zoom so that my family across the country and across the ocean could listen.

I Accept Responsibility

I deeply regret the actions I took that led to the bringing of this case. I recognize the costs the case has had on so many - and I believe they all could have been avoided if I had acted differently back in 2016.

To protect the company, our customers, and our driver partners, my highest priority was to track down the young men who had accessed Uber's system and ensure that the data they downloaded would never be publicly disseminated. I am proud of the work my team did in this regard. We found them and made sure they knew that if the data were ever publicly exposed, we would hold them accountable. I believe this strategy was in the interest of the company, our customers, and our driver partners, and successfully prevented the data from ever being publicly disseminated.

But I had responsibilities beyond securing the data, responsibilities that I failed to live up to. I knew that it would have been embarrassing to Uber if the details of the incident

were to become publicly known. I informed the CEO Travis Kalanick and my team's assigned lawyer when the incident occurred, and followed other standard processes expected in any similar investigation, but I also helped pursue what I was told was an "aggressive" legal strategy of putting them into Uber's bug bounty program. This provided the company with a plausible basis to resolve the incident internally, and quietly, without having to treat the incident as a "data breach" necessitating disclosures to the authorities.

I regret this decision. As you hopefully have seen from the many letters of support submitted on my behalf, I have tried throughout my career to stand for integrity and transparency, and most importantly have spoken up repeatedly in many contexts and dedicated much of my career to getting the public and private sectors to work more closely on internet security. It is the biggest irony of my life that I personally have done more than anyone to undermine what I have always tried to stand for.

I should have seen to it that authorities were notified of the incident. I strongly believe that cybersecurity professionals must take the lead not only in celebrating our "wins" but fearlessly learning the right lessons from our "losses" and near-misses as well. Good cyber governance should involve transparency, clear lines of accountability, and erring on the side of disclosure rather than looking for ways to avoid it. My actions in 2016 fell short of these ideals.

In this case, I understood who was on the other side of the messages back then, and though I had never met him, I felt something for Brandon. I saw in him a reflection of some of the witnesses you heard at trial: Collin Green, Robert Fletcher, and Mat Henley were all in their youth a version of Brandon. I wanted to find a solution that could steer Brandon onto the right path while also protecting our customers at Uber. I did that and walked away feeling good in 2016. But as is obvious now, I needed to expand my aperture and make sure we did right by the government, and expectations at the FTC in particular. I clearly failed in that regard, and undermined a core principle that has animated my whole career.

I Hurt Those I Care About Most

Since 2017, the negative impact of my actions and inactions in 2016 have caused pain over and over to those I love the most. As my daughter Celia described in the video submitted with my sentencing materials, I am perfectly ok humiliating myself by doing a TikTok dance in front of 500 people to show her I love her. But this case is not the shame I wanted to bring on her and her sisters. From the date when I was fired and the

story splashed across the front pages of every newspaper around the world, my daughters and other family members have had to constantly read and hear about my lack of integrity and respond to hard or unspoken questions from each person they meet. It has pained me even more to have them see what it means for me to be under indictment for almost three years already, to see them distracted from school and other priorities, and to have to explain to them why we end up in secondary inspection every time we travel. I have since their youngest ages talked to my kids about telling the truth and reminded them that I would not punish them for things they do wrong except for not speaking up and telling the truth even when it hurts. And today I am the person most known in their world for a lack of living up to this standard.

The trial also brought back viscerally to me the pain I caused for the team of hundreds I had hired at Uber and built into a special organization. Many of them had followed me there from other companies and put their whole career in my hands. They trusted and relied on me, and together we had been building something unique. I loved that team and was so proud of them. My termination forced me to abandon them in a hostile environment and imposed on me a legal cone of silence so that to this day I have never been able to sit down and ask them how they are and tell them how sorry I am for the pain I brought on them.

I also hurt my peers in the profession. I have tried for decades to establish the role of a security leader inside a corporation as the one person who can be counted on to champion the user and promote better security through collaboration. I love the profession and the type of people it attracts--because you can't do that job if you are not ready to put yourself fully in service to others. But through this case, I've injected a significant modicum of distrust into the dynamic between corporate security and government groups.

I Am Grateful For Those Who Have Lifted Me Up

I will always carry a great weight because of this case, but it is a bit lighter from the efforts of so many who have supported me. I could have never imagined the range of deep positive emotions I have felt over these last months as I have received and read the letters submitted in support of leniency. They have been an unexpected and joyful silver lining. I've read over 200 notes written by true friends, many recalling stories from our relationships that had passed from my memory. I've joked that it is like getting to sit in on my own eulogy without having to die. I am grateful to every one of the hundreds of people who wrote individual letters to you, and I hope they have shown you a different side of me than was presented during the trial.

I Will Make Up for My Mistakes

As much as I have dwelled on my failures since 2017, I have also taken action to try to make up for my mistakes and have plans to do much more.

Since early 2018, I have attended and been a speaker at literally dozens of closed-door conferences of security executives to talk about how those leaders can avoid the mistakes that I have made. I have been reluctant to take the stage at public events in recent years due to the pending trial, but as soon as I am able, I intend to seek out every opportunity to speak loudly to the security community about how we can do better. I believe that we cannot be great at security as a country until we can establish much more transparency and much more collaboration between the private and public sectors. I believe that my actions and their resulting consequences have put me in a unique position to make a very high-profile effort to change things for the better. I want to go to every security conference and find every chance to stand up and tell the world that we need a better model with more collaboration. Even if I have lost the ability to partner with the government on stage while bringing that message, I can still call on the world to learn from my mistakes and not repeat them.

I have continued to give my focus and energy freely to those who need it. I spend a good deal of time mentoring students and supporting others in my profession. Almost all CISOs operate in environments under constant regulatory oversight, compete for budgets with profit-driving initiatives, struggle with getting their company aligned with their security program, and deal with the stresses of near daily incidents. As a result, I've been mentoring and speaking individually with CISOs about this case and how the lessons apply to their situations regularly since 2017.

I have also found a new passion in nonprofit work. After the trial, I turned to a friend who is a recruiter and told him I craved work to motivate and engage me constructively, and that I would prefer a chance to volunteer to help children in need or support Ukraine. Within a short time, he somehow found an opportunity for me to do both, as the CEO of a nonprofit dedicated to humanitarian aid for people in Ukraine. This work has given me a new sense of meaning in my life. I now oversee programs ensuring there are enough first aid kits distributed across Ukraine to deal with all the traumatic injuries caused by the war, and providing laptops and other support to the over 1.5 million children in Ukraine stuck doing remote education. I was fortunate enough to recently spend 2 weeks in Ukraine, traveling to Kyiv, Odesa, Mykolaiv, and

Lviv, where I met incredible people who are resilient in the face of war. I can't wait to go back and want to do all I can to help them until their crisis is over.

Conclusion

As I prepare to stand before you, I am closer to my family than ever before, I have the support of a large network of real friends, I am in a volunteer role where I am doing incredibly rewarding work helping those in need, and I am motivated to and still have an opportunity to use my voice to improve the state of internet security. I ask you to give me a chance to use what has happened here to give back to my community.

I am sorry for what I did. I understand it hurt others and set a bad example. I don't want to make excuses. I want to assure you I won't let the mistakes I made happen again on my watch. Ever. And I want to dedicate my life to making up for it.

Sincerely,

A handwritten signature in black ink, appearing to be 'JS' followed by a horizontal line.

Joe Sullivan

Name	Court and Case No.	Year	Count	Sentence	Description
Charles Johnston	M.D. Pennsylvania (No. 1:18-cr-127)	2022	Obstruction of Proceeding (18 U.S.C. § 1505)	12 months' probation and \$50,000 fine	Johnston, an attorney, lied to government pension fund investigators and failed to provide a fulsome subpoena response in order to protect his reputation and that of his union client. Mr. Johnston was not involved in any of the suspected underlying misconduct. His Guidelines range was 21 to 27 months' incarceration following a bench trial.
Neeraj Jindal	E.D. Texas (No. 4:20-cr-358)	2022	Obstruction (18 U.S.C. § 1505)	3 years' probation and \$10,000 fine	Jindal engaged in a seven-month effort to obstruct a FTC investigation into potential price-fixing in which he participated, including making repeated false statements to the FTC. He was convicted on one count of obstruction following a jury trial. Jindal's Guidelines range was 24 to 30 months' incarceration.
Latoyia McCollum	District of New Jersey (No. 2:21-cr-847)	2021	Obstruction (18 U.S.C. § 1512)	2 years' probation	McCollum was caught during the execution of a search warrant shredding evidence at the behest of a co-defendant who had engaged in a fraudulent scheme that stole more than \$400,000 in unemployment benefits.
Vidal Sheen	E.D. Missouri (No. 4:18-cr-607)	2018	Falsification of Records (18 U.S.C. § 1519)	2 years' probation and fine of \$45,000; \$142,000 restitution	A medical doctor, Sheen, who obstructed an FBI investigation into whether he falsely billed Medicare for face-to-face visits when he was actually out of town, received a sentence of 2 years' probation, a fine of \$45,000, and restitution of \$142,000 after pleading guilty to falsification of records in violation of 18 U.S.C. § 1519. Sheen had been facing a Guidelines range of 10 to 16 months' incarceration.
Lorraine De Blanche	N.D. Arkansas (No. 4:20-cr-233)	2020	Obstruction (18 U.S.C. § 1518)	3 years' probation, along with a \$180,000 fine and \$33,000 forfeiture	De Blanche, a medical doctor, lied to federal agents about performing telemedicine consultations before prescribing drugs. She later admitted the truth.
Khaled Hamade	District of New Jersey (No. 2:21-cr-177)	2021	False Statements (18 U.S.C. § 1001)	3 years' probation and \$93,000 restitution	Hamade lied to federal agents who were investigating customers of his bank who were believed to have defrauded that bank. He had a Guidelines range of 10 to 16 months' incarceration.
Olga Torres	S.D. Florida (No. 1:21-cr-20537)	2021	Obstruction of Agency Proceeding (18 U.S.C. § 1505)	3 years' probation and \$100,000 restitution	Torres co-owned a clinical research site called Unlimited Medical Research, which was hired to conduct a clinical trial designed to investigate the safety and efficacy of an asthma medication in children. Torres admitted that she knowingly lied to a U.S. Food and Drug Administration (FDA) investigator during a regulatory inspection concerning the firm. Torres falsely portrayed the clinical trial as having been conducted legitimately and honestly, when in fact she knew that certain data associated with the clinical trial had been falsified.
Craig Perez	W.D. Missouri (No. 4:14-cr-41)	2014	Obstruction (18 U.S.C. § 1519)	3 years' probation and \$10,000 fine	After speaking with a federal agent from DCIS, and with full knowledge of the purpose of the interview, Perez knowingly destroyed relevant files from his laptop computer relating to his employment at AFI with the intent to impede, obstruct, and influence the investigation of AFI and his possible involvement in that conduct.
Mohsen Motamedian	District of Columbia (No. 1:11-cr-118)	2012	Obstruction (18 U.S.C. § 1512)	Time served (1 day); 3 years' supervised release	Motamedian instructed a government cooperator to lie to U.S. law enforcement officials about the true ultimate destination of computer goods exported by his company, namely that they remained in Dubai instead of Iran. Motamedian had no role in the underlying illegal conduct, but when presented with the facts, tried to cover it up. He faced a Guidelines sentence of 24 to 30 months' incarceration.
Debra Becnel	E.D. Louisiana (No. 2:15-cr-289)	2021	False Statements (18 U.S.C. § 1001)	3 months' prison, followed by 3 months' home detention and 3 years' supervised release	Becnel, a sheriff deputy, lied to FBI agents investigating the death of an inmate who had health issues.

Name	Court and Case No.	Year	Count	Sentence	Description
Rodney Dalton Logan	N.D. Alabama (No. 3:16-cr-212)	2017	Obstruction of a Federal Audit (18 U.S.C. § 1516)	12 months' probation, with 6 months' home confinement; \$2.5 million fine	Logan, who owned and operated several pharmacies, improperly billed Medicare for medications compounded using bulk powders instead of pills and then submitted false paperwork in response to a Medicare audit. The loss amount was significant. Logan had faced a Guidelines range of 12 to 18 months' incarceration.
John Janick	M.D. Florida (No. 8:17-cr-502)	2018	Obstruction of a Federal Audit (18 U.S.C. § 1516)	5 months' prison; 3 years' supervised release; \$119,000 restitution	Janick, a medical doctor, made misrepresentations to government auditor about rental space to cover up the nature of Medicare referrals that were made to assist his girlfriend's employment. Janick had also personally profited from this fraudulent behavior and faced a Guidelines sentence of 10 to 16 months' incarceration.
Kyoungwon Pyo	District of Columbia (No. 1:12-cr-118)	2012	Tampering with a witness, victim or information (18 U.S.C. § 1512)	5 months' prison and \$3,000 fine	Pyo, a senior vice president of a company involved in a potential merger, deliberately altered and directed subordinates to alter numerous existing corporate docs before they were submitted to FTC and DOJ in conjunction with mandatory premerger filings. The altered documents misrepresented and minimized the competitive impact of the proposed acquisition. Pyo's Guidelines range was 10 to 16 months' incarceration.
Charles Moore	S.D. New York (No. 1:14-cr-648)	2014	Obstruction of Regulatory Investigation (18 U.S.C. § 1519)	6 months' prison; 2 years' supervised release	Moore, a CEO of a company, caused a subordinate to falsify invoices to provide to a SEC examination team in response to document request, with the goal of hiding the company's true debts from regulatory examination team and make net capital figures appear accurate. Moore's Guidelines range was 12 to 18 months' incarceration.
David Hausman	S.D. New York (No. 1:12-cr-576)	2013	Obstruction (18 U.S.C. § 1519) and Lacey Act (16 U.S.C. §§ 3372(d)(2), 3373(d)(3)(A))	6 months' prison; 1 year supervised release	Hausman, an antiques dealer who served as a government informant, learned about illegal rhino horns and tried to procure them for himself, instead of reporting to authorities. Hausman's Guidelines range was 18 to 24 months' incarceration.
Dimitrios Grifakis	District of Maryland (No. 1:11-cr-11)	2011	Obstruction of Agency Proceeding (18 U.S.C. § 1505)	6 months' prison; 2 years' supervised release	Grifakis, a ship's chief engineer, obstructed the U.S. Coast Guard's inspection into unlawful dumping of waste oil by concealing the ship's records and then denying that such records existed. Grifakis also directed other members of the engine room crew to lie to investigators. Grifakis's Guidelines range was 15 to 21 months' incarceration.
Joshua Gayl	District of New Jersey (1:16-cr-00154)	2017	Obstruction (18 U.S.C. § 1503)	12 months and a day prison; 3 years' supervised release; \$5k fine	Gayl, general counsel for a company under investigation, misled witnesses and victims of the company's mail and wire fraud, paid potential trial witnesses, and lied in response to criminal trial subpoena. Gayl's Guidelines range was 27 to 33 months' incarceration.
John Servider	E.D. New York (1:15-cr-00174)	2019	Conspiracy to alter records for use in an official proceeding; alteration of records for use in an official proceeding (18 U.S.C. § 1512)	18 months' prison on each count, served concurrently; 1 year supervised release; \$1,000 fine	Servider, an attorney, conspired to alter records that were provided to Grand Jury to hide taxable income, instructed co-conspirators how to maintain secrecy of the scheme, participated in and profited from check-cashing scheme, helping conceal assets from creditors. Government had asked for 33 months' incarceration, given the wide ranging fraud schemes in which Servider was involved.
Ian Norris	E.D. Pennsylvania (2:03-cr-00632)	2010	Obstruction (18 U.S.C. § 371)	18 months' prison; 3 years' supervised release	Norris, a CEO of a company involved in a price-fixing scheme, conspired to cover up the price-fixing conspiracy through destroying documents, tampering with witnesses, making false statements, and recruiting more than a dozen subordinates and co-conspirators into the cover up. His Guidelines range was 21 to 27 months' incarceration.

MISPRISION COMPARATOR CASES

Name	Court and Case No.	Year	Sentence	Description
Caren Battaglia	E.D. Louisiana (2:15-cr-00061)	2016	\$2,000 fine	Battaglia, a licensed practical nurse, was a minor participant in a large multidefendant scheme to defraud Medicare. Court imposed only a monetary fine following a guilty plea to one count of misprision of felony.
Lamarcus Palmer	M.D. Georgia (4:21-cr-00031)	2022	1 year probation and \$12,000 restitution	Palmer worked in County Clerk of Court's Office, where former deputy clerk of court embezzled millions of dollars. Palmer cashed three suspicious checks, keeping \$400 for self, and did not report the suspected fraud.
Bliss Worrell	W.D. Missouri (4:15-cr-00486)	2015	18 months' probation, including 140 hours community service	Worrell, an attorney and former prosecutor, helped a police officer cover up the assault of an arrestee by charging the individual with resisting arrest to explain his injuries. Worrell pleaded guilty to one count of misprision for failing to report this assault.
Maria Zugrav	District of Utah (2:11-cr-00879)	2014	2 years' probation	Zugrav helped cover up her husband's bribery scheme and even participated in some of the fraudulent bank transfers. Given the loss amount, her Guidelines range was 21 to 27 months' imprisonment.
Wilfredo Sanio	W.D. New York (1:16-cr-00033)	2017	2 years' probation	Sanio, a broker, became aware of co-defendants' fraudulent scheme and took no actions to stop or report the schemes or even withdraw from his participation. Instead, he continued to catalogue equipment for use in creating false invoices. He personally benefited from the fraud, as he continued to accept commission payments derived from the schemes to defraud.
Sharlie Colombe	District of South Dakota (3:18-cr-30015)	2019	3 years' probation and \$10,000 restitution	Colombe, who learned of her co-defendant's fraudulent scheme to use victim's signed, blank checks for personal instead of business purposes, pleaded guilty to misprision of a felony. Colombe did not report the fraudulent scheme and instead participated in it by helping cash checks. Despite the government's recommendation for imprisonment following Colombe's role in and monetary gain from the fraud, the court sentenced Colombe to a probational sentence and ordered restitution.
Christine Hernandez	District of Connecticut (3:14-cr-00231)	2015	3 years' probation and \$75,000 restitution	Hernandez helped facilitate co-defendant's \$31 million ponzi scheme by pretending to be a bank representative, among other conduct. She claimed to be unaware of the extent of the scheme. She was facing 18 to 24 months' imprisonment under the Guidelines.
Marla Owuama	S.D. Texas (4:14-cr-00040)	2015	1 day custody; 1 year supervised release with special condition of 6 months' home confinement; restitution of more than \$3.5M	Owuama, a registered nurse, was aware that her husband's medical practice was billing Medicare/Medicaid for services that were not performed, not medically necessary, or not overseen by a doctor. She was also aware that another company was paid for recruiting patients to visit the medical practice and that some patients were paid as well. She shared in her husband's profits from this scheme and was facing a Guidelines sentence of 12 to 18 months' incarceration.
Daniel Wall	District of Connecticut (3:15-cr-00124)	2016	3 years' probation, with first 12 months in home confinement; 75 hours community service; \$592,000 restitution	Wall unwittingly helped facilitate co-defendants' scheme to defraud businesses by \$600,000 through diverting profits from contractors. When Wall began to suspect the scheme, he helped cover it up rather than report it, and profited at least \$60,000 from it.
Laurence Savedoff	W.D. New York (1:16-cr-00041)	2019	4 months' prison; 1 year supervised release	Savedoff, an attorney, assisted with a fraudulent scheme by handling mortgage closings. There was significant loss and he was facing a Guidelines sentence of 8 to 14 months' incarceration.
Zbigniew Cichy	District of New Jersey (2:10-cr-00633)	2015	4 months' prison; 4 months' home confinement; 1 year supervised release	Cichy was aware of his wife's mortgage fraud and was initially charged as a co-participant. He accepted a guilty plea of misprision, while his wife was sentenced to 66 months in prison. Cichy was also ordered to pay approximately \$2 million in restitution.

MISPRISION COMPARATOR CASES

Richard Reynolds	N.D. Texas (3:20-cr-00227)	2020	6 months' prison; 1 year supervised release; \$25,000 fine	Reynolds, an attorney, allowed bribes to be paid through his law firm to disguise their true nature as part of a multi-year, multi-million dollar scheme. Joint plea recommendation was no more than 1 year imprisonment.
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RELEVANT NEWS ACCOUNTS

No.	Article
1.	Interview with Matthew Prince, CEO of Cloudflare (Dec. 14, 2022) (https://www.cnbc.com/video/2022/12/14/annual-plans-allow-cloudflare-to-have-more-free-cash-flow-up-front-says-ceo-matthew-prince.html) (beginning at 2:40 and ending at 4:08)
2	Kashmir Hill and Kellen Browning, <i>As Ex-Uber Executive Heads to Trial, the Security Community Reels</i> , N.Y. Times (Sept. 21, 2022), https://www.nytimes.com/2022/09/06/technology/joe-sullivan-uber-security-trial-ciso.html
3	Joseph Menn, <i>Former Uber Security Chief Convicted of Covering Up 2016 Data Breach</i> , The Washington Post (Oct. 5, 2022), https://www.washingtonpost.com/technology/2022/10/05/uber-obstruction-sullivan-hacking/
4	John Viega, <i>Ransoming the CISO Role</i> , Crash Override (Oct. 6, 2022), https://blog.crashoverride.com/ransoming-the-ciso-role
5	Christopher Burgess, <i>Guilty Verdict in the Uber Breach Case Makes Personal Liability Real for CISOs</i> , CSOnline.com (Oct. 6, 2022), https://www.csoonline.com/article/3676148/guilty-verdict-in-the-uber-breach-case-makes-personal-liability-real-for-cisos.html
6	Paul Rothman, <i>Sullivan Verdict Sends Shockwaves Through the Security Industry</i> , SecurityInfoWatch.com (Oct. 7, 2022), https://www.securityinfowatch.com/security-executives/article/21283224/sullivan-verdict-sends-shockwaves-through-the-security-industry
7	Jody R. Westby, <i>Uber Trial: A Lost Opportunity for Cyber Governance</i> , Forbes (Oct. 8, 2022), https://www.forbes.com/sites/jodywestby/2022/10/08/uber-trial-a-lost-opportunity-for-cyber-governance/
8	Jack Gillum, <i>Uber Executive's Conviction Puts Spotlight on Secrecy About Hacking</i> , Bloomberg (Oct. 11, 2022), https://www.bloomberg.com/news/articles/2022-10-11/uber-executive-s-conviction-puts-spotlight-on-secrecy-about-hacking
9	Rob Chesnut, <i>Uber's Security Chief's Conviction Raises Red Flags: Good Counsel</i> , Bloomberg Law (Oct. 12, 2022), https://news.bloomberglaw.com/business-and-practice/good-counsel-uber-security-chiefs-conviction-raises-red-flags

No.	Article
10	Kellen Dwyer, <i>The Fallout from the First Trial of a Corporate Executive for ‘Covering Up’ a Data Breach</i> , Lawfare (Oct. 19, 2022), https://www.lawfareblog.com/fallout-first-trial-corporate-executive-covering-data-breach
11	Maria Dinzeo, <i>Former Facebook Security Chief Sounds Off on the Case that Rocked the Cybersecurity World</i> , Law.com (Mar. 7, 2023), https://www.law.com/corpcounsel/2023/03/07/former-facebook-security-chief-on-the-case-that-rocked-the-cybersecurity-world/

12/8/2022 - Sentencing Hearing

1

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION

3 UNITED STATES OF AMERICA | DOCKET 4:20-CR-358(1)
4 |
5 VS. | DECEMBER 8, 2022
6 | 9:48 A.M.
7 NEERAJ JINDAL | SHERMAN, TEXAS

7 -----

8 VOLUME 1 OF 1, PAGES 1 THROUGH 65

9 REPORTER'S TRANSCRIPT OF SENTENCING HEARING
10 BEFORE THE HONORABLE AMOS L. MAZZANT, III,
11 UNITED STATES DISTRICT JUDGE

11 -----

12 FOR THE GOVERNMENT: MATTHEW WILLIAM LUNDER
13 U.S. DEPARTMENT OF JUSTICE
14 ANTITRUST DIVISION
15 450 FIFTH STREET NW, SUITE 11300
16 WASHINGTON, DC 20530

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18 U.S. ATTORNEY'S OFFICE - TYLER
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1 (Open court, defendant present.)

2 THE COURT: Okay. Our next case is 4:20-cr-358,
3 *United States of America versus Neeraj Jindal*.

4 And for the government?

5 We'll wait and let every get into position.

6 Then for the government, welcome back from DC.

7 MR. LUNDER: Good morning, your Honor. Matthew
8 Lunder for the United States. With me is Nathaniel
9 Kummerfeld.

10 THE COURT: Very good. Welcome back.

11 MR. LUNDER: Thank you.

12 THE COURT: And then for the defense?

13 MR. COGGINS: Yes. Paul Coggins for the defense,
14 your Honor; and I'm assisted by Jennifer McCoy.

15 MS. McCOY: Good morning, your Honor.

16 THE COURT: It's good to have y'all back.

17 Okay. So let me have -- at least for the
18 beginning part of what we'll have, Mr. Jindal, if you'll
19 take the podium with your counsel just to go through -- I'm
20 going to ask you some questions here in the beginning so --
21 you can stand there or, I mean --

22 MR. COGGINS: Should he stand at the podium or
23 here?

24 THE COURT: Either place. It doesn't matter, just
25 as long as someone has a mic.

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1 So, sir, you're here for your sentencing pursuant
2 to your final presentence report that was filed on
3 September 15th, 2022. Have you had a chance to review the
4 final presentence report, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had a chance to discuss it
7 with counsel?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you believe the report adequately
12 covers your background, other than the objections that were
13 filed?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And then, otherwise, are you satisfied
16 with the accuracy of the report other than the objections?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And then -- I guess you can have a
19 seat, then, because we have other things to take up.

20 So, Mr. Coggins, have you had a chance to review
21 the final presentence report with your client; and do you
22 believe he understands it?

23 MR. COGGINS: Yes, I do, your Honor.

24 THE COURT: Other than the objections you filed,
25 any other comments, additions, or corrections to the

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1 report?

2 MR. COGGINS: No, your Honor.

3 THE COURT: Okay. On behalf of the government,
4 Mr. Lunder, any comments, additions, or corrections from
5 the government's perspective?

6 MR. LUNDER: No, your Honor.

7 THE COURT: And the government filed no
8 objections?

9 MR. LUNDER: That's correct, your Honor.

10 THE COURT: Okay. So, Mr. Coggins, you filed a
11 whole number of objections so --

12 MR. COGGINS: Yes, your Honor; and Ms. McCoy is
13 going to address the objections.

14 THE COURT: Okay. I believe the first two
15 objections were resolved; so we're starting with
16 Objection 3, which is to paragraph 16.

17 MS. McCOY: Yes, your Honor. And I think I can
18 expedite things by grouping together the objections to
19 paragraph 16 -- paragraphs 16 and 18, paragraph 19,
20 paragraph 20, paragraph 21, 22 --

21 THE COURT: Go a little slower. I'm marking these
22 so --

23 MS. McCOY: Oh, sorry.

24 THE COURT: 19, 20 --

25 MS. McCOY: And then 21, 22, and 23.

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1 THE COURT: Okay. So that would -- that would
2 group together your defense objections Number 3 through 7,
3 correct?

4 MS. McCOY: Correct, your Honor.

5 THE COURT: Okay. Go ahead.

6 MS. McCOY: These objections are based on the fact
7 that the presentence officer assumed in the report that the
8 jury had convicted Mr. Jindal on the obstruction count,
9 Count 3, based upon each and every one of the approximately
10 dozen alleged obstructive acts set forth in the Indictment.

11 If you'll recall, we had moved for a unanimity
12 instruction at a few different points in the trial as well
13 as a special verdict. And we, of course, don't want to
14 rehash that here; but given that the Court had denied the
15 unanimity instruction and we did not receive a special
16 verdict, we cannot know, sitting here today, which of the
17 approximately 12 allegedly obstructive acts the jury found
18 Mr. Jindal to have committed such that that act formed the
19 basis of his obstruction conviction. In fact, we can't be
20 sure whether the jury unanimously agreed upon any of the 12
21 acts. It's possible that each of the jurors believed a
22 different act to have formed the basis for the obstruction
23 count.

24 And I would also point to there are several of
25 those acts that there truly was not any evidence admitted

1 by the government at trial that would have allowed the jury
2 to convict on those grounds. So, for example, our
3 objection to paragraph 19, we objected because the United
4 States probation officer reports that Mr. Jindal falsely
5 stated in an email that he would give any information to
6 the FTC to show he was not acting in collaboration with any
7 of his competitors with regard to therapists' pay rates.

8 Well, your Honor, there is no evidence -- in fact,
9 the evidence contradicts the probation officer's assertion
10 that Mr. Jindal made a false statement when he stated he
11 was not acting in collaboration with his competitors when
12 he lowered his therapists' pay rates. In fact, Mr. Jindal
13 was acquitted of the antitrust count in which the
14 government alleged that he acted in collaboration with his
15 competitors in lowering pay rates.

16 And so for the report to state as a matter of fact
17 that this statement was false and that the jury found that
18 it was a basis along with all the other kind of grab bag of
19 different allegation set forth in the Indictment -- to say
20 that all of those were a basis for his obstruction
21 conviction is incorrect. And that's basically -- there's
22 different acts set forth in each of the paragraphs, but
23 that is overall our objection to those paragraphs.

24 THE COURT: Okay. Mr. Lunder, response from the
25 government?

1 MR. LUNDER: Thank you, your Honor.

2 The United States had these paragraphs grouped
3 precisely the same way as the defense. The United States'
4 position is that these purported corrections improperly
5 attempt to relitigate the jury's verdict on Count 3.

6 They are also contrary to the Court's findings in
7 its August 11th, 2022, Memorandum Opinion and Order at
8 Docket Number 146 denying Defendant Jindal's Motion for
9 Judgment of Acquittal or New Trial.

10 The Court found the jury was presented a mountain
11 of evidence that Jindal engaged in an endeavor to obstruct
12 the FTC investigation. He is not convicted of making false
13 statements. And the Court pointed to precise instances
14 that are appropriately cited in these paragraphs of the
15 PSR.

16 So we disagree with Defendant Jindal's purported
17 corrections and revisions of these paragraphs.

18 THE COURT: And I agree with the government, and
19 I'm going to overrule these objections. You know, it's --
20 of course, the Court sat through this trial and -- and,
21 again, none of this actually impacts the guideline
22 calculation.

23 MS. McCOY: Correct, your Honor.

24 THE COURT: And so I'm not sure the Court really
25 even has to rule on those when it doesn't impact the

1 guidelines. But at the end of the day, I'll incorporate
2 and adopt the probation officer's response to each of
3 those. Again, I know you don't want to relitigate the
4 issue; but I think under Fifth Circuit case law, the Court
5 was not required to do the instruction you were asking for.
6 But I understand your position on that, so I'll overrule
7 your objection on those.

8 MS. McCOY: Thank you, your Honor.

9 THE COURT: And what's next?

10 MS. McCOY: Your Honor, the other --

11 THE COURT: I guess Number 8 is the next one
12 but --

13 MS. McCOY: I'm sorry?

14 THE COURT: I think 8 -- your Objection 8 is your
15 next one, to paragraph 24.

16 MS. McCOY: Yes. Well, we skipped over -- oh,
17 paragraph 2 and paragraph 14 we've handled.

18 THE COURT: Oh, okay.

19 MS. McCOY: Yes, that's correct, paragraph 24.
20 And again this objection does not impact the guideline
21 computation; however, we objected to that paragraph on the
22 ground that it provides extraneous information that was not
23 related to the circumstances of the offense of conviction.
24 It speaks specifically about the Texas Attorney General's
25 investigation into this matter and the agreed final

1 judgment and stipulation that was entered into by the Texas
2 Attorney General's Office, which is unrelated to the
3 obstruction count or the FTC investigation, in fact, that
4 is at issue here.

5 THE COURT: I think we're in the same kind of
6 ballpark as before but, Mr. Lunder, do you have a response
7 or --

8 MR. LUNDER: Your Honor, it's United States'
9 position that this information is not extraneous. It is
10 relevant to the three-level increase for substantial
11 interference with the administration of justice under
12 2J1.2(b)(2) because it demonstrates a negative consequence
13 of the obstruction.

14 It was, as you will recall, one of the themes at
15 trial that the State resolutions did not adequately address
16 the conduct, and part of that was due to the defendant's
17 obstruction.

18 THE COURT: Again, I agree generally that -- and
19 I'm going to overrule the objection. This doesn't impact
20 the guidelines in any way, and I think it's appropriate to
21 give a full picture.

22 And then the next one is Objection 9 regarding, I
23 think, acceptance.

24 MS. McCOY: Yes, your Honor. As we stated in the
25 Sentencing Memorandum, Mr. Jindal did, in fact, express his

1 acceptance of responsibility during his presentence
2 interview with the probation officer. In her report she
3 states that he did not offer a statement for acceptance of
4 responsibility, and so it's just a factual objection on
5 that point.

6 MR. LUNDER: Your Honor, the United States doesn't
7 have insight into Defendant Jindal's acceptance of
8 responsibility to the probation officer; but we will note
9 that before trial the defendant was unwilling to engage in
10 plea negotiations and accept responsibility and indeed it
11 took 12 persons from the community to make a decision about
12 his conduct. We do not believe that he should be credited
13 for accepting responsibility.

14 MS. McCOY: And, your Honor, if I --

15 THE COURT: Well, let me ask, I mean -- well, just
16 because I don't think I've ever given acceptance points to
17 someone who's gone to trial. And that's their right to go
18 to trial but --

19 MS. McCOY: We understand, your Honor. This case
20 is very unique, and I know the Court sat through two weeks
21 of trial and recalls that the impetus of the trial and the
22 focus of the trial was the antitrust count brought against
23 Mr. Jindal as a sort of a first-of-its-kind criminal
24 prosecution that the government brought based on these text
25 messages.

1 The obstruction count was tacked onto that and
2 he -- the government did not engage in plea negotiations
3 prior to trial with us. In fact, we're aware of plea
4 negotiations had with the other defendant, Mr. Rogers, who
5 you may recall was acquitted on all counts.

6 But at no time was Mr. Jindal offered the
7 opportunity to accept responsibility solely for Count 3
8 without going to trial on Count 1 as a convicted felon
9 because the government was not willing to drop the
10 antitrust count. Rather, again, it was their focus of
11 bringing this case in the first place.

12 THE COURT: Well, but it's not like your client
13 ever came forward and said, "I want to plead guilty and
14 accept responsibility for the obstruction count."

15 MS. McCOY: Correct, your Honor. There were no
16 plea negotiations had in this case.

17 THE COURT: Right, but that's -- in terms of
18 acceptance, I mean, the Court is not involved in whether
19 there's plea negotiations or not. We're dealing with the
20 fact whether prior to trial did he accept responsibility.
21 He didn't for this count.

22 I mean, he doesn't need a Plea Agreement. He
23 could say, "Hey, I want to plead guilty to that one count"
24 and accept that responsibility and not go to trial. He has
25 a right to go to trial, which he did.

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1 But the fact that there were plea negotiations,
2 does it really make a difference or --

3 MS. McCOY: Again --

4 THE COURT: -- or not -- that there wasn't plea
5 negotiations on this count?

6 MS. McCOY: Yes, your Honor. Again, our -- it
7 really places Mr. Jindal in a very unfair situation wherein
8 he -- in order to contest Count 1 which he was fully
9 acquitted of, he -- he couldn't do that and accept
10 responsibility for Count 3 lest he be branded a felon prior
11 to walking into his trial for Count 1 which, again, he was
12 fully convicted (sic) of.

13 THE COURT: But that's his choice.

14 MS. McCOY: I mean acquitted of.

15 THE COURT: Isn't that his choice?

16 MS. McCOY: Yes, your Honor.

17 THE COURT: I mean, I guess -- you've been doing
18 this a while. Have you ever had a case where a defendant
19 went to trial and they got acceptance points awarded?

20 MS. McCOY: No, your Honor, I have not. I just
21 again point to the --

22 THE COURT: So why should --

23 MS. McCOY: -- uniqueness.

24 THE COURT: -- this be the first case? Because
25 I've never done it either so --

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1 MS. McCOY: I understand, your Honor. Again, we
2 would just point to -- and I point to my esteemed
3 co-counsel who's done this for a few more decades than I
4 have, which he will later nudge me for saying. And the
5 uniqueness of this case given there were no plea
6 negotiations and it was brought in order to make law in
7 connection with Count 1, again, just placed Mr. Jindal in a
8 situation that I also have not seen before.

9 THE COURT: No, I understand that.

10 And let me just ask that question, Mr. Coggins,
11 because you've been doing this longer than both of us, both
12 on the prosecution side as well as on the defense. Have
13 you ever seen a case where acceptance points were awarded
14 when a defendant went to trial?

15 MR. COGGINS: What did I do with my --

16 THE COURT: You can speak into that mic right
17 there or -- that's fine.

18 MR. COGGINS: I have not, your Honor.

19 THE COURT: Okay.

20 MR. COGGINS: And we researched it. So we're
21 not -- we're not -- and as I said, this doesn't impact --
22 or as the Court has said, this doesn't impact -- well, it
23 would if there were points granted. But, no, we found no
24 cases. We didn't argue that there are any cases.

25 I think what Ms. McCoy is just pointing out is

1 this was -- and I'll address this a little bit later. This
2 was a unique case in many, many respects. It's the only
3 case in my experience in which there were absolutely no
4 plea negotiations of any kind.

5 And I think what she was trying to say is we faced
6 the antitrust charge on which he was acquitted and there
7 was no option -- we knew there was no option to plead
8 guilty only to Count 3 because we were aware of the
9 negotiations with our codefendant, Mr. Rogers. He was
10 offered if he pled guilty to Count 1, they would still tell
11 the Court he obstructed but he had to plead guilty to
12 Count 1.

13 So I think the Court is aware -- and the
14 government's fully aware that this was considered a
15 Bellwether case for the government. It was brought for a
16 purpose, to establish a precedent.

17 And not only was it unique in my experience in the
18 fact that there was never any plea negotiations of any
19 nature by either side in this case involving Mr. Jindal,
20 but it's a no-harm, it's a no-loss and I would argue a
21 no-victim case, which not impossible in the federal system;
22 but it's fairly unique in the federal system, particularly
23 when another agency has issued a consent decree that is
24 still, by the way, in force with Mr. Jindal.

25 So we'll address this more later, your Honor. But

1 to answer your point, no, we haven't found a case where
2 acceptance points were given after a trial.

3 THE COURT: I'm going to overrule the objection.
4 You know, this is maybe a better argument -- you can argue
5 in mitigation and try to raise it as part of that in terms
6 of what the sentence should be. But, again, I understand
7 the nuance argument you're trying to make; but I'm not
8 going to be the first court in the country to do it and
9 grant acceptance when the defendant goes to trial and is
10 convicted of the charge.

11 MS. McCOY: Understood, your Honor.

12 THE COURT: No, no problem.

13 And then I think your 10th, 11th, 12th, 13th
14 objections are all agreed to, correct, or they were
15 revised?

16 MS. McCOY: I'm not sure each of them was revised.
17 I don't believe so. But in any account, they don't impact
18 the --

19 THE COURT: Well, the probation officer's response
20 is it was revised --

21 MS. McCOY: Okay.

22 THE COURT: -- on these, but go ahead and check
23 and see which ones haven't been. Again, they don't -- they
24 don't impact the guidelines in any way, but I -- I have
25 Probation's response that they did resolve these other

1 ones.

2 MS. McCOY: Okay. Yeah, I wasn't sure about
3 paragraph 75. Let me look back while we're --

4 So the copy I have here is paragraph 75 still
5 states that "If the defendant had been found guilty of all
6 four counts of the Indictment."

7 THE COURT: It says "three" now.

8 MS. McCOY: Oh, okay. This might be the incorrect
9 draft, then, in which case we -- that moots our objection
10 to those and the other paragraphs.

11 THE COURT: Yeah, so I think it's been resolved.

12 MS. McCOY: Correct.

13 THE COURT: Okay. Then I think you have one
14 objection as to the guidelines.

15 MS. McCOY: Yes, your Honor. The Objection
16 Number 1 under our guidelines objection --

17 THE COURT: Is the issue of substantial
18 interference.

19 MS. McCOY: Yes, your Honor. And as you stated,
20 this is the only objection that actually impacts the
21 guideline computation.

22 We have objected to the three-level increase that
23 was applied under the substantial interference prong of the
24 guidelines. As your Honor is aware, substantial
25 interference of the administration of justice is

1 essentially -- we have an obstruction count already that
2 Mr. Jindal has been convicted on and, thus, for the
3 enhancement to apply, there has to have been greater harm
4 or something that is not already accounted for in that
5 obstruction count itself, else we're left double counting
6 essentially for that obstruction and adding those three
7 points despite there being no distinction between the
8 enhancement and the underlying offense.

9 Such distinction and application of the
10 substantial interference prong would be warranted where,
11 for example, there was a premature or improper termination
12 of a judicial determination or there was unnecessary
13 expenditure of substantial governmental or court resources
14 due to the obstruction.

15 Here at trial there was no evidence whatsoever
16 that the statements made by Mr. Jindal, whichever of the 12
17 the jury might have found him to have obstructed the
18 investigation through -- there is no evidence that any of
19 them caused the government an unnecessary expenditure of
20 substantial resources or that it resulted in the premature
21 or improper termination of any sort of investigation or
22 judicial determination.

23 In fact, the record shows -- and we learned at
24 trial the FTC possessed all of the necessary information
25 that it needed and that it eventually used to bring and

1 resolve this case into an invitation to collude, which is
2 what we're dealing with on the FTC side, of course. We're
3 not talking about an agreement; we're talking about just
4 the invitation to collude. The FTC had those text messages
5 from other parties from the start. The FTC knew about all
6 of the parties involved, all of the communications had, at
7 the time that Mr. Jindal walked into their office and sat
8 for testimony in September of 2017. They presented the
9 text messages to him during that testimony that he's
10 alleged to have tried to have concealed in his earlier
11 testimony that day. Later in the afternoon they put them
12 in front of him, so they clearly had that information.

13 And they eventually entered into a consent decree
14 with Mr. Jindal, Ms. Yarbray, Your Therapy Source, and
15 Integrity based upon all of the information that they
16 obtained from Mr. Jindal and other sources in June of 2018.

17 So it was a relatively short investigation. They
18 had all of the information they needed in order to enter
19 into that eventual consent decree prior to Mr. Jindal
20 walking into their office in September of 2017 for his
21 testimony.

22 And, in fact, the FBI then took the torch and
23 continued to investigate these text messages and this
24 alleged wage fixing for the next five years; and we sat at
25 trial and heard no additional information that the FTC

1 didn't have in September of 2017. And so to say that
2 Mr. Jindal substantially interfered and caused them to
3 expend amounts they otherwise wouldn't have or enter into a
4 consent decree they otherwise wouldn't have had they had
5 the full picture just simply isn't supported at all by the
6 evidence that were presented at trial.

7 THE COURT: Thank you.

8 Response, Mr. Lunder?

9 MR. LUNDER: Thank you, your Honor.

10 As you know, the United States addressed this
11 issue in its Sentencing Memorandum; and I won't repeat
12 those particular arguments other than to point out that the
13 examples of substantial interference in the guideline are
14 not exhaustive and the Court is not limited to looking to
15 only those examples.

16 We believe that the enhancement does apply,
17 correctly increasing the offense level by three for
18 substantial interference. The Fifth Circuit has explained
19 2J1.2 simply "increases the punishment for a defendant who
20 obstructs justice when such obstruction has negative
21 consequences." That's *United States versus Kilgarlin*,
22 157 Fed. Appx. 716, Fifth Circuit 2005.

23 The negative consequences here are correctly
24 identified in the PSR. His false testimony resulted in a
25 minor reprimand by the State of Texas and the FTC. Those

1 outcomes clearly qualify as a judicial determination based
2 upon perjury, false testimony, or other false evidence.

3 We also draw the Court's attention to *United*
4 *States versus Norris*, Fifth Circuit 2000, 217 F.3d 262.
5 And according to *Norris*, "Where a defendant actively
6 conceals important evidence of which he or she is the only
7 source, a Court may infer that the defendant's interference
8 with the administration of justice was substantial."

9 And we'll talk more about this in our
10 presentation, your Honor, but the defendant was not charged
11 or convicted with making false statements. He was charged
12 and convicted with an ongoing endeavor to corruptly
13 influence and impede the due and proper administration of
14 the law over a seven-month period. It's our position that
15 that alone is substantial interference.

16 But in addition to that, if the Court recalls the
17 handwritten and typewritten list evidence, evidence that
18 only the defendant had, that only came out later in the
19 investigation, five months after the investigation began.
20 So there was information that only the defendant had that
21 was concealed; and we believe the Court can infer from
22 that, under Fifth Circuit law, substantial interference.

23 MS. McCOY: Your Honor, if I may, I would just
24 point out that the reason the FTC eventually got the
25 handwritten list is because Mr. Jindal handed it over to

1 them. No one else was aware of it, and he gave it over as
2 soon as they asked for it.

3 I would also point out that the case law that
4 Mr. Lunder is relying on speaks to the obstructor being
5 the, quote, only source for the information that was
6 concealed; and that's simply not true with regard to the
7 other information, such as the text messages, which the FTC
8 received from several other parties.

9 The only information of which Mr. Jindal was the
10 only source was the handwritten competition list; and
11 Mr. Jindal, rather than destroying that, turned it over to
12 the FTC when asked.

13 THE COURT: Okay. So, of course, this one is a
14 little closer for the Court. But at the end of the day,
15 the standard is preponderance of the evidence so is it more
16 likely so than not so that this enhancement should apply;
17 and I believe that there is enough here to overrule the
18 objection.

19 You know, as the government correctly points out,
20 what it says in the guidelines note is not exhaustive of
21 what can be considered; and, you know, I will adopt the
22 Probation's response as well as the government's. You
23 know, there is enough to say it is more likely than not
24 that there was substantial interference with the process
25 here; so I will overrule that objection.

1 And I think that was your only guideline
2 objection, correct?

3 MS. McCOY: Yes, your Honor. That's the last of
4 them.

5 THE COURT: Okay.

6 MS. McCOY: Thank you.

7 THE COURT: Thank you.

8 Okay. Sir, you, of course, were convicted by the
9 jury of Count 3, obstruction of proceedings before the
10 Federal Trade Commission. And so the Court finds the
11 information contained in the presentence report has
12 sufficient indicia of reliability to support its probable
13 accuracy. The Court adopts the factual findings,
14 undisputed facts, and the guideline applications in the
15 presentence report.

16 Based upon a preponderance of the evidence
17 presented and the facts in the report, while viewing the
18 sentencing guidelines as advisory, the Court concludes as
19 follows: Your total offense level is a 17, your criminal
20 history category is a 1, which provides for an advisory
21 guideline range of 24 to 30 months of imprisonment.

22 Now, I will note I have the Sentencing Memorandum
23 from the defense that I reviewed, the government, FTC, a
24 whole host of letters I've reviewed. So I just wanted to
25 say that I have reviewed all of that.

1 But, Mr. Coggins, I will call upon you to comment
2 on what you believe the appropriate sentence should be and
3 why.

4 MR. COGGINS: Well, your Honor, I would ask, first
5 of all, would the Court entertain -- I know Mrs. Jindal is
6 here and there are a number of people who have come to
7 support Mr. Jindal and I would, you know, like to point
8 out, have them rise, but also ask if the Court would
9 entertain if a couple of them could address the Court very
10 briefly on Mr. Jindal's character prior to his --

11 THE COURT: They're just going to make a
12 statement? You're not going to do Q and A?

13 MR. COGGINS: Just a statement at the podium, your
14 Honor, yes.

15 THE COURT: That's fine. I'll allow that, just if
16 they're short.

17 MR. COGGINS: Okay. Yes, we've told them --

18 THE COURT: I have reviewed all the letters so --

19 MR. COGGINS: We've told them to keep it short,
20 and the first would be Ms. Taralee Larson.

21 THE COURT: The podium is fine.

22 MS. TARALEE LARSON: Hi, your Honor. My name is
23 Taralee Larson, and I'm the vice-president of operations
24 for Trinity Health Spa Massage Envy locations here in North
25 Texas. Neeraj Jindal is the primary investor and the

1 employer for my business.

2 My main goal in being here today is to represent
3 140-plus employees, including myself, that rely on
4 Mr. Jindal every single day. Speaking for myself first, I
5 had the pleasure of meeting him five years ago. He was
6 looking at getting into a new business, and we met through
7 a mutual colleague. All it took was one meeting to create
8 a lasting first impression. Just within the first few
9 months meeting him, Mr. Jindal gave me a deep enough level
10 of trust to resign from my stable corporate job to come
11 work for him instead. Looking back, I am so happy and
12 proud that I made this decision. The level of care that he
13 has for each and every single employee is admirable. I
14 strive daily to follow the positive example that he's made
15 with my own employees.

16 More important, what I want to address is how he's
17 affected my life, is the way he's changed 140 employees'
18 lives for the better. Most of the staff that he took over
19 had been with the franchise for over a decade. They had
20 had owners come and go, making lofty promises; but they
21 were never met.

22 Mr. Jindal gained the trust of a broken team
23 ultimately by remodeling all of their locations. He
24 completely restructured the benefits package, raised
25 employee pay structures so they could better take care of

1 themselves. He provided financial and medical assistance
2 through and after COVID when so many of their lives were
3 affected. He made sure he went above and beyond in all
4 state/local/brand recommended protocols and precautions for
5 reopening phases of Texas businesses. The main priority of
6 his business was always making sure his employees felt
7 safe.

8 Getting to experience his servant-style leadership
9 these past few years makes it heartbreaking to see this
10 same great man that I know and respect having to navigate
11 the many hurdles that he has to continue to provide, to
12 just give us care and direction. The most severe
13 punishment you could give Mr. Jindal is taking away the
14 ability for him to provide and protect for his loved ones.

15 I'm here to tell you that these repercussions from
16 the case are already being felt throughout our business,
17 from banking to background checks and more. Mr. Jindal has
18 been working every day and night and everything in his
19 power to make sure we have everything it needs, especially
20 as he faces unannounced account closures and ended business
21 relationships daily.

22 I'm hoping that after you hear everyone, what they
23 have to say today, and seeing this room and how much
24 support he has -- we need him. I'm speaking as a very
25 proud employee of his.

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1 I really appreciate you listening to me.

2 THE COURT: No, that's fine. I mean, I will tell
3 you, all of the statements -- I mean, I read all the
4 letters and everything. The more important thing is really
5 I want to hear from Mr. Jindal himself, in terms of the way
6 the Court looks at this.

7 So I appreciate your comments and -- but I want
8 you to know that the way the Court -- the issue of how it
9 impacts a business isn't -- I sympathize with that, but
10 that doesn't impact the way the Court determines what
11 sentence should be imposed.

12 So I understand that it may cause you hardship and
13 everything, but I also just want to explain to you the way
14 the Court looks at it is he was convicted of a crime. The
15 question is what's the appropriate sentence for him, and
16 that's why his comments will be more important.

17 But I'm glad you shared and everything. I'm
18 just --

19 MS. TARALEE LARSON: And I appreciate you hearing
20 me. I appreciate that, and I just wanted to make sure you
21 heard it from an actual employee currently.

22 THE COURT: No, and I understand. And, believe
23 me, I've read all of his character letters. There are many
24 people that care about him and that are here today to
25 support him, and I understand all that.

1 MS. TARALEE LARSON: Thank you.

2 THE COURT: But I -- but most defendants can --
3 most people who are convicted of a crime can have that.
4 That's not really what moves the Court in determining what
5 the appropriate sentence will be. I look at the
6 defendant's -- him and his actions in deciding that. But
7 I'm just giving you context so -- but I appreciate it.

8 MS. TARALEE LARSON: I understand. Thank you,
9 your Honor. Thank you for hearing me out.

10 THE COURT: Of course.

11 MR. COGGINS: Thank you.

12 And the next would be Mr. Phillip Mongeau.

13 THE COURT: And the last name is spelled just the
14 way it sounds?

15 MR. COGGINS: It's M-O-N-G-E-A-U.

16 THE COURT: Okay. Glad I asked.

17 MR. COGGINS: I got that right, didn't I?

18 MR. PHILLIP MONGEAU: Yes, you did.

19 Yes, sir, it is Mongeau.

20 Your Honor, I'm Phillip Mongeau, as said. I'm a
21 friend of Neeraj's for 15 years. I'm a husband, a father
22 of three children 17, 10, and 9 here in Flower Mound,
23 Texas, two girls and a boy. I'm a 20-year public safety
24 servant, currently serving as the national director of
25 emergency management for American Medical Response; and I'm

1 honored to be in your court today to speak on behalf of
2 Neeraj, a friend and a man that I admire and look up to as
3 a father and a leader and as a businessman.

4 As a Christian and as a Catholic, I was taught and
5 have learned time and time again through countless lessons
6 to judge a man by his heart and action, by the very actions
7 of his life, as many times our words fail us or where our
8 eloquence alone can be perceived as truth.

9 But it's ultimately what a man does, what actions
10 follow his words, that determine the true character of a
11 man. That is what my Catholic faith teaches me and my
12 leadership in crisis has shown me. And my kids remind me
13 daily you can brush your teeth; but if you have cavities,
14 you didn't spend the 2 minutes doing it. Be who you say
15 you are.

16 So, your Honor, Neeraj is a good and honorable
17 man. I know this through 15 years of experience with him
18 in cofounding a nonprofit, Our Seva, where we serve and pay
19 forward the gifts and graces we have received. I know this
20 by sitting in his living room with his children and seeing
21 the behaviors and actions of them in action. I know this
22 through his mentorship with me, through his passion he
23 shares with us and all of his employees as you just heard.

24 So, your Honor, while I have only words to offer
25 you today, please let my presence here before you -- let

1 our presence here before you be the action of our hearts,
2 to be the physical manifestation of our words we share
3 about this good and honorable man.

4 Neeraj is what makes this country great. Neeraj
5 makes our community great. He makes my community great in
6 Flower Mound, Texas, where I live alongside him.

7 So with that, your Honor, as you said, we are all
8 sinners and, yet, despite our errors, despite Neeraj's
9 errors in his life, as a man and a leader and a husband,
10 Neeraj makes us better. Neeraj makes me better. Your
11 Honor, there is no man without error.

12 For 15 years I have known Neeraj and, yet, I find
13 no reason to doubt the man he is and who I am here before
14 your court to say I stand by him no matter the outcome
15 today. I will be beside him right here again and again and
16 again and again.

17 No matter the trials, no matter the errors life
18 may bring, Neeraj Jindal is worthy as any man, probably any
19 man I know, to walk freely the streets of our communities,
20 the streets of Flower Mound, my children's school, my
21 church, my community, and all we do.

22 So with that, your Honor, I plead your leniency in
23 your sentence; and I thank you for your service.

24 THE COURT: Thank you, sir. Very well spoken.

25 MR. COGGINS: Yes, one more before Mr. Jindal

1 addresses the Court; and that would be Mrs. Jindal who did
2 testify at trial, your Honor.

3 THE COURT: Okay.

4 MRS. KAJAL JINDAL: Thank you, your Honor, for
5 allowing me to say a few words today. I ask in advance for
6 any mess-ups, emotions, as I never thought I'd ever be in
7 this position where I have to ask for probation for my
8 husband to keep him home with me, my girls, his mom.

9 Like you said, you know our case. You've read the
10 letters of our friends, and you see all of us today.
11 Neeraj is a man who has touched and continues to positively
12 impact the lives of many people. He's a personable
13 individual who really gets to know who he meets and be
14 friends at a deeper level because he truly cares.

15 We met in 2009 and married a year later. We both
16 come from similar humble backgrounds as first-generation
17 immigrants who came here in '79 and '80 at a very young
18 age. Our parents came to give us a better life. They
19 sacrificed their stable, established lives and families to
20 come to the U.S. Both our parents struggled being
21 successful in the U.S. but never lamented on this. They
22 always put our successes and opportunities first, working
23 hard to make our dreams come true. Both our families also
24 helped other family members to get established in the U.S.
25 Not only have they taught us to be honest, hard workers but

1 also to do right. They taught us to be givers. Our
2 parents are still our role models and foundation.

3 When I met Neeraj, I saw in him the same virtues
4 and ethics I have. He's a family man who, from an early
5 age, took on a lot of -- assumed the duty of taking care of
6 his family after his father had a massive stroke that left
7 him disabled at the age of 49. Neeraj was only 18, a
8 senior in high school. He put aside his dreams and wishes
9 that he may have had at that time to stay close to his
10 family and worked hard to support his family. He's never
11 stepped away from this responsibility. He never took this
12 role lightly and still feels the same responsibility when
13 it comes to his family, friends, as well as his employees.

14 As large a role he plays in his family, his
15 biggest role is probably with his girls. We have two young
16 girls that are 10 and 6 and the sunshine in our lives.
17 They are the reason why we wake every morning and work hard
18 every day. Since they were born, Neeraj has been the most
19 hands-on dad I know, helping in delivery rooms, changing
20 hundreds of diapers, staying up late at night. He
21 continues to be a daily part of our kids' lives with
22 teacher conferences, sports, piano, and just teaching them
23 their homework, reading to them regularly, teaching them
24 their prayers at night. We try to teach them to care and
25 help others.

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1 In the last five years, the girls have been the
2 light that has kept us going. When we want to crawl up in
3 the dark corners and cry our eyes out with everything we
4 are going through, they pull you out with their laughter
5 and play and just pure innocence. They just want to be
6 with us, celebrate the holidays, watch movies. They are so
7 innocent as to what is going on in our lives. Sometimes I
8 feel like we've been living a double life during the past
9 five years.

10 If you add up the numbers, these trials have
11 consumed almost half my married life, definitely half my
12 10-year-old's life and the majority of my 6-year-old's
13 life. It's like walking on eggshells always being
14 stressed, not knowing what is going to come to the door in
15 your mail, email. I feel like we have been putting out
16 fires constantly since this has started, with major banks
17 closing our accounts and relationships, including my
18 accounts, my credit cards, his business credit card being
19 suspended without notice.

20 We fear signing up for kids' activities, not
21 knowing what's going to pop up on background checks.
22 Things we never thought about twice we do now, and the
23 biggest worry is how this lifelong felony is going to
24 affect our kids now and in the future. Will he be able to
25 open bank accounts for them? Will he be able to do

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1 volunteer activities that he loves to do because of
2 background checks? Will they be able to apply for college
3 loans with his name on the applications? Will he be able
4 to continue to do what he loves, being an entrepreneur?

5 So much is and will continue to be affected by him
6 having a permanent felony on his record. This has been
7 some of the struggles we've been facing for years, and I
8 know this will get worse over the months and years. We
9 tell each other at least we have our health.

10 We did start going to a therapist to help with our
11 mental well-being. And fortunately for me, I am married to
12 a "glass half full" guy who always tries to see the
13 positive; but I know this is breaking him as much as it's
14 breaking me. I see the worry in his face and the changes
15 in his behavior. He's always been very organized,
16 confident, structured. Now he has trouble focusing,
17 working, and remembering. He's trying to juggle so much
18 and at the same time be strong for all of us who depend on
19 him.

20 I know and he knows that he made a huge mistake
21 that not only affected us but others. I know he regrets
22 his missteps back in March 2017 and even with the FTC
23 investigation. He initially tried to address the
24 investigation on his own, being somewhat naive to what the
25 situation was and the process. But I also feel he did his

1 best trying to be honest and forthcoming in trying to
2 resolve the situation at that time, not knowing the
3 repercussions of his choices and his words.

4 I know the government thinks the only way to have
5 Neeraj be deterred from future violations or crimes is by
6 sending him to jail. My response to this is that we are
7 ordinary people who make mistakes. We also try to learn
8 from our mistakes and try to better ourselves. Neeraj does
9 not and will not take the rule of law for granted,
10 especially with me at his side.

11 This stressful life-changing experience has
12 strained our relationships and has changed us. In his
13 previous businesses Neeraj did not have legal
14 representations. Since this started, he has realized the
15 importance of this aspect of running a business, even his
16 small businesses. He thinks twice about his communications
17 with others, especially his wording, and now does not
18 hesitate to get opinions from me or others. He takes time
19 to ensure what he is doing is ethical and moral, not just
20 legal. He seeks advice from his lawyers if he questions
21 anything. As much as we have always appreciated the laws
22 governing this country, we have found that this needs to be
23 an ongoing endeavor, just like other things in life.

24 I know this branding of a felon to Neeraj has put
25 a strain on our relationship with each other and friends

1 and family. However, it has also impacted those around us
2 in our community of friends and family, many who are here
3 today who are using this experience to better understand
4 and appreciate the laws governing us at all levels.

5 Your Honor, I hope you can see how regretful
6 Neeraj is over his mistakes in the past five years. We
7 think about this constantly, from the minute we wake up to
8 when we close our eyes at night and sometimes the middle of
9 the night. Neeraj is a good man, honest man who made a
10 mistake that not only has impacted us but others. He tries
11 every day to work hard for his family but also in the
12 community and those he employs.

13 I hope you see the advantage of having him
14 continue as a working member of society and find that the
15 benefits of probation would far outweigh the detriments of
16 putting him in jail.

17 Thank you for listening and taking the time.

18 THE COURT: Thank you, ma'am.

19 MR. COGGINS: And at this point I'd like
20 Mr. Jindal to address the Court and then I'd briefly
21 address the Court afterwards, your Honor.

22 THE COURT: Well --

23 MR. COGGINS: Is that okay?

24 THE COURT: -- that's not the way the Court does
25 it so --

1 MR. COGGINS: Okay.

2 THE COURT: We'll follow my procedure, so next
3 will be you to say whatever you want to say, then the
4 government, and then I ask for the defendant to go last.

5 MR. COGGINS: Yes, your Honor.

6 Well, you've heard, your Honor, that Mr. Jindal is
7 a 50-year-old individual who prior to this had a spotless
8 record, a great father, a great husband.

9 And I've talked to the Court about why this is a
10 unique case; and I knew it was unique from the very first
11 meeting I had with the Antitrust Department, when it was
12 clear it was less about what had happened than, frankly,
13 setting a precedent they wanted to set, a *per se*
14 application for wage fixing cases.

15 And as I said, it's not completely unknown in the
16 federal system to bring a no-harm case. I would say it's
17 extremely rare and it lifts this case out of the ordinary
18 cases that the Court deals with when there is no harm, no
19 victim, a no-loss case, quite frankly.

20 And even the FTC's letter in this case, your
21 Honor, is fairly weak tea. And I know Ms. McCoy raised
22 this with the Court but, frankly, when the investigation,
23 as far as my client knows, starts in April and they have
24 everything from my client by September -- because things
25 did move a lot more smoothly when Mr. Jindal started

1 listening to his wife and hired a lawyer to produce things.
2 But the government had everything in its possession in
3 connection with what turned out to be the case here, that
4 this was an invitation to collude and nothing more.

5 And after years and years of investigation by the
6 FBI, they couldn't turn up anything more. And a lot of the
7 time that the FTC spent on this they spent on YTS and
8 Ms. Yarbray and things that Mr. Jindal, frankly, didn't
9 know anything about, having never talked to her, never
10 texted her, never communicated with her in any way. And in
11 the land of federal law enforcement, a four- or five-month
12 investigation, your Honor, is moving at supersonic speed.

13 So we respect the Court's opinion that there was
14 obstruction, but I would argue that the guidelines here way
15 overstate the offense because the FTC didn't walk away from
16 that testimony thinking any -- didn't terminate it early
17 based upon that, didn't go down the wrong path based upon
18 that. They went down exactly the right path, found an
19 invitation to collude; and, frankly, it took them about a
20 year just to get the consent decree signed up because they
21 were looking into other actors that we really couldn't
22 shine a light on.

23 So if there was -- it lifts it into a situation
24 where I think the guidelines vastly overstate the
25 seriousness of this case. The Court heard the testimony.

1 And the last thing any of us want to do is relitigate this
2 case, but Mrs. Jindal testified that basically Mr. Jindal
3 sent those text messages within about a 5- or 6-minute span
4 and she questioned him, I think, that night saying, "Should
5 you be sending this out to competitors?"

6 He clearly didn't know he couldn't do that because
7 he wasn't trying to hide his tracks. He just sent it out
8 to them. And he said, well, nothing came of it and he
9 didn't follow up on it and that's exactly what happened.

10 And then Mrs. Jindal also later came in and said,
11 "You need to stop dealing with the FTC on your own and need
12 to get a lawyer to work with you."

13 So whatever happened here, I think the guidelines
14 greatly overstate the seriousness of the offense. This is
15 essentially, as opposed to what the government said, a
16 single-transaction offense. There was a --

17 And one thing that you could do, your Honor, is --
18 as you said, you've heard from an employee. You've heard
19 from a friend who works on a nonprofit. You've heard from
20 Mrs. Jindal. I would just ask -- because a lot of people
21 did come to support him. We told them they couldn't talk.
22 But could we just have them stand, the people who are here
23 in support of Mr. Jindal, at this time?

24 THE COURT: That's fine.

25 MR. COGGINS: Thank you. And, your Honor, they

1 came from as far away as California and Arizona to support
2 this person --

3 You may be seated now. Thanks.

4 -- to support this person who has lived up until
5 this an exemplary life, who has been a contributing member
6 of the community, who's worked for nonprofits, who's cared
7 about his employees, who's built a business. That business
8 is obviously gone now.

9 But you have a Category 1 offender who committed
10 an act really -- the law doesn't draw any distinction if
11 you know you can't do something or if you -- if you know
12 you can't send those kind of text messages. If you send
13 them, you know, under the *per se* rule, you're stuck.

14 But the fact, your Honor, that there was no harm,
15 there was no loss lifts it out of the kind of cases you see
16 on a day-to-day basis; and I think it warrants a variance
17 here based upon the type of person he is, the type of past
18 he's lived. And he's a 50-year-old man, your Honor, a
19 50-year-old person. The risk to re-offend is not just
20 minimal. I'm standing up here and telling you there is no
21 risk that he will re-offend.

22 And, you know, our society -- the Court has those
23 guidelines and God bless them, but they're advisory only,
24 your Honor. At the end of the day, you have to decide what
25 kind of sentence is appropriate and whether imprisonment is

1 needed for a person of this nature, whether it serves any
2 purpose whatsoever in our society for a person of this
3 nature.

4 I understand that Neeraj could have handled it
5 better, should have handled it better in the investigation,
6 should have taken it way more seriously than he did. He
7 will address that, your Honor.

8 But I will point out that because -- you know, the
9 only option, as Ms. McCoy said, really -- because we didn't
10 think the antitrust charge was righteous from the get-go,
11 from the first meeting I had with the Antitrust Division;
12 and the jury didn't think it was righteous. So the only
13 option he really had on the -- was to plead guilty to
14 Count 1. And he couldn't do that because he wasn't guilty
15 of Count 1, and the jury so found. And so it was -- he was
16 kind of caught in the vice in terms of how to handle
17 Count 3, which is what he was convicted of, your Honor.

18 So I do know this. We've lived with him now for
19 many years. He's a good man. I have absolutely no doubt
20 in my mind that after today you'll never see him in your
21 courtroom again.

22 But at this point I think I would like to -- I
23 guess you're going to call on the government and then call
24 on Mr. Jindal. Is that your Honor's preference?

25 THE COURT: That's my procedure, yes.

1 MR. COGGINS: Okay. Thank you, your Honor.

2 THE COURT: Let me call upon the government.

3 Mr. Lunder, are you going to be speaking?

4 MR. LUNDER: Yes.

5 THE COURT: Okay.

6 MR. LUNDER: Thank you, your Honor. May it please
7 the Court?

8 Your Honor, you're familiar with the facts
9 established at trial; and I won't take up our time
10 recounting them. There was an eight-day trial before a
11 duly impaneled jury, and during that trial the Court
12 admitted evidence from which the jury found that Mr. Jindal
13 committed multiple acts of obstruction in an ongoing
14 seven-months-long endeavor to impede the due and proper
15 administration of the law in violation of 18 United States
16 Code, Section 1505.

17 The evidence at trial showed Mr. Jindal's
18 obstruction began with his first written responses to the
19 FTC, continued through his subsequent communications with
20 the Commission and all the way through his testimony under
21 oath during an investigational hearing in Washington, DC.
22 On multiple occasions Mr. Jindal falsified, concealed, and
23 lied. This is important evidence in the trial record that
24 Mr. Jindal engaged in an ongoing course of conduct designed
25 to hide his involvement in the events the FTC was

1 investigating in hopes that the FTC would just go away.

2 This illuminates both the seriousness of the
3 offense and repudiates the defense's arguments for downward
4 departure and variance which rest upon a
5 mischaracterization of Mr. Jindal's crime as amounting to
6 making a single false statement as opposed to the ongoing
7 corrupt endeavor to obstruct of which the jury found
8 Mr. Jindal guilty.

9 The Commission entered an agreement with
10 Mr. Jindal in which he admitted to no wrongdoing and
11 suffered no monetary penalty. The FTC has no criminal
12 enforcement authority to bring to bear when a person under
13 investigation commits the crime that Mr. Jindal did. Only
14 because of an interagency relationship based primarily on
15 the FTC's and Antitrust Division's common objective of
16 protecting competition was the Department of Justice able
17 to investigate, prosecute, and be here today to ask the
18 Court to impose an appropriate sentence.

19 If those who rely on our economy, those who do
20 business in it, invest in it, buy and sell in it, employ
21 people in it don't respect the laws governing that economy
22 and laws protecting investigations of what happens in it,
23 this destabilizes both our economy and faith in our
24 institutions. And we're here because when the moment came
25 for Mr. Jindal to choose between respecting, on the one

1 hand, the rules of a nation that gave him the opportunities
2 he had realized at that point in his career and, on the
3 other, his own immediate interests, he chose the latter.
4 He had invested in a business. Its viability was under
5 threat, and he engaged in conduct that caught the FTC's
6 attention. And when it asked him about it, he tried to
7 hide what he had done from the FTC.

8 Characterizing the offense of conviction as based
9 solely on a single false or misleading statement is
10 inconsistent with the evidence and the Court's order
11 denying the defendant's motion for acquittal. The
12 defendant was convicted for a corrupt obstructive endeavor,
13 not merely making a false or misleading statement.

14 Respectfully, your Honor, the defense arguments go
15 too far. They reduce the offense to a crime other than the
16 crime of conviction and, in doing so, brush aside the
17 criminal intent the jury found. The defense's
18 reinterpretation of the jury's verdict woefully fails to
19 account for the nature of the offense and its seriousness.
20 The nature of the offense is not, as the defense suggests,
21 merely in a discrete dishonest act or even in all of them
22 that Mr. Jindal committed. Those acts comprised an ongoing
23 endeavor during a federal proceeding and threaten not only
24 the integrity and disposition of that proceeding but also
25 undermine the public's faith in our institutions. The

1 offense Mr. Jindal committed strikes at our faith in the
2 rule of law itself.

3 Mr. Jindal did not merely make false statements.
4 He corruptly endeavored to obstruct and obstructed a
5 federal proceeding, the Federal Trade Commission's
6 investigation of Mr. Jindal's overtures to competitors to
7 collectively lower pay for health care workers.

8 Your Honor, I will briefly address the specific
9 arguments made in the defense's Sentencing Memorandum; but
10 first the United States asks the Court to recognize a
11 misunderstanding those arguments share. The defense
12 arguments rest on a misunderstanding of the criminal intent
13 the jury found, a misunderstanding necessary to the
14 arguments offered in support of the motions for downward
15 departure and variance.

16 In our tradition, at common law the criminal law
17 punished intent. What makes a violation of the law
18 criminal is the intent of the perpetrator. So when the
19 defense asks the Court to reduce this case to Mr. Jindal's
20 merely making a false statement, it is asking the Court to
21 pretend that Mr. Jindal's intent was not corrupt. But
22 corrupt intent is what the jury found at trial, and it is
23 this intent that properly informs the Court's judgment
24 about the appropriate sentence.

25 In addition to inaccurately minimizing

1 Mr. Jindal's conduct, the defense's arguments
2 inappropriately minimize Mr. Jindal's criminal intent. The
3 conduct under investigation, colluding to lower therapists'
4 pay rates, can be a criminal act, as the Court held in
5 denying the defendant's motion to dismiss in this case.
6 And while the jury acquitted the defendant of that charge,
7 this does not change the seriousness or import of the FTC's
8 investigation.

9 Mr. Jindal's obstruction certainly contributed to
10 the settlement with the FTC, which included no admission of
11 wrongdoing. Mr. Jindal did gain from that settlement. He
12 avoided any financial penalty and did not have to admit any
13 wrongdoing, and the FTC was correspondingly harmed.

14 This is decidedly not like making a false
15 statement and violating 18 USC, Section 1001, as the
16 defense argues. Congress said it was different after the
17 D.C. Circuit overturned the jury's conviction in *United*
18 *States versus Poindexter*, 951 F.2d 369, D.C. Circuit 1991,
19 holding that conduct that would otherwise meet the elements
20 of 1001 did not meet the corrupting element of 1505.
21 Congress rejoined and amended 18 USC, Section 1515, to
22 specify that false statements and false documents in a
23 federal proceeding means corrupt intent.

24 According to the jury, the United States did not
25 merely prove at trial that Mr. Jindal made a false

1 statement or that he acted knowingly, like it would have
2 had to prove if Mr. Jindal had been charged with making a
3 false statement. United States proved, and the jury found,
4 that Mr. Jindal engaged in an endeavor to obstruct and that
5 he did so with corrupt intent. Respectfully, your Honor,
6 the Court should sentence the defendant for the crime of
7 conviction and not for a crime the defense says is like the
8 crime of conviction.

9 The defense is asking the Court to sentence
10 Mr. Jindal for the crime it believes the government should
11 have charged. Again, this argument goes too far. It is
12 the Court's obligation to sentence Mr. Jindal for the crime
13 with which he was charged, the crime that the government
14 proved at trial, and the crime of which the jury convicted
15 him. That crime was an ongoing seven-months-long endeavor
16 to corruptly impede, influence, and obstruct a federal
17 proceeding.

18 We might agree with the sentence the defense
19 proposes if this were the case they describe. What would
20 be the appropriate sentence for a defendant who didn't
21 require 12 persons from the community to say, "You did
22 wrong"?

23 What would be the appropriate sentence for a
24 defendant who came forward with counsel, accepted
25 responsibility, and cooperated? That's not this case.

1 What would be the appropriate sentence for a
2 defendant who negotiated a pretrial resolution, accepting
3 responsibility? That's not this case.

4 This defendant required a jury of 12 people to say
5 you broke the law.

6 In its argument for downward departure and its
7 argument for a variance, the defense says 2J1.2 and 18 USC
8 1505 fail to account for circumstances that should weigh on
9 the Court's judgment. Taking the guideline provision
10 first, the defense argues that the guideline provision
11 fails to account for mitigating factors like not using
12 coercive threats or force to obstruct, not directly
13 profiting monetarily from the crime, and not causing loss
14 to another.

15 The defense argues that the specific offense
16 characteristics in the guideline reflect only more serious
17 forms of obstruction, that the guideline provision provides
18 no reduction for the absence of profit or loss and there is
19 no departure to account for no-loss-or-gain offenses.

20 But, your Honor, the law punishes the corrupt
21 intent to impede and endeavor to impede the due and proper
22 administration of the law, to obstruct a federal
23 proceeding, whatever the means employed. And the statute
24 does draw the distinctions the defense identifies, adding
25 to the offense level when the obstruction is executed

1 through especially odious means; but it simply does not
2 follow that the defendant should receive a reduction in
3 levels if especially odious means are not present.

4 In other words, Mr. Jindal's offense begins at the
5 baseline of what the statute he violated prohibits. He
6 avoids particular increases to his guidelines calculation
7 because, for example, he didn't use violence or threats of
8 violence. He is unable to avoid others, as the Court
9 ruled, like the three-level enhancement; but the guidelines
10 calculation is not reduced because the basis for some
11 particular increase is not present.

12 Simply put, your Honor, the defense misstates the
13 guidelines and asks the Court to find a justification for
14 downward departure in the mere absence of certain
15 aggravating factors.

16 The background section following 2J1.2 makes clear
17 that the base offense level of 14 applies to obstructing a
18 civil or administrative proceeding. If the conduct
19 involved the more serious forms of obstruction, points are
20 added.

21 For example, if the obstruction involved a threat
22 of physical injury or property damage, the offense level
23 increases by 8 levels, to 22. But the absence of such
24 threat or damage does not provide an 8-level reduction. If
25 the false statement or obstruction related to terrorism,

1 the offense level increases by 12; but the absence of a
2 relation to terrorism does not mean a 12-level reduction.
3 And if, as in this case, there is substantial interference,
4 the offense level increases by 3, to 17.

5 So while Mr. Jindal gets a 3-level increase for
6 facts that are established, he doesn't get levels reduced
7 because he didn't threaten physical injury or property
8 damage; and he shouldn't get a downward departure for this
9 reason either.

10 The defense further argues that Mr. Jindal meets
11 the requirements for a downward departure because his
12 single criminal transaction was committed without
13 significant planning, was of limited duration, and
14 represents a marked deviation by the defendant from an
15 otherwise law-abiding life. The evidence at trial and the
16 Court's order denying posttrial acquittal have already made
17 clear that the offense was not of limited duration or
18 committed without planning. The defendant's endeavor to
19 obstruct began in April 2017 and continued for months,
20 culminating in his investigational hearing in
21 September 2017 where he lied again and again.

22 As the Court in the Northern District of Texas has
23 said, quote, a defendant's behavior appears to be
24 calculated rather than spontaneous, so a departure for
25 aberrant behavior under 5K2.2 is not available. That's

1 *United States versus Keller*, 2005 WL 6192897, Northern
2 District, October 2005.

3 Fifth Circuit, *United States versus Williams*,
4 974 F.2d 25, 1992, defendant's "act appears neither
5 spontaneous nor thoughtless."

6 The conclusion for which the defense argues
7 requires ignoring the underlying conduct that Mr. Jindal's
8 obstructive endeavor was designed to hide. The evidence at
9 trial showed Mr. Jindal knew he'd done something he
10 shouldn't have and he knew this is what the FTC was
11 investigating and that he corruptly endeavored to obstruct
12 that investigation.

13 The defense argues for a variance under the
14 3553(a) factors that suffers from the same infirmity as the
15 arguments for downward departure. The defense argues that
16 the statute Mr. Jindal was convicted of violating makes it
17 a crime to obstruct and endeavor to obstruct without
18 drawing distinction in the punishment for the actual or
19 attempted conduct.

20 The defense claims the extremely broad language of
21 the statute has ensnared Mr. Jindal whose conduct falls in
22 the lowest tier among the hierarchy of all acts included in
23 the statute, but this is wrong on the facts and the law.
24 As already established in the record of this case,
25 Mr. Jindal did not merely make a false statement.

1 It is also important to remember that Congress
2 intended for the offense of conviction here, 18 USC 1505,
3 to cover the defendant's conduct. Section 1515(b) of
4 Title 18 makes explicit that (as read) "As used in
5 Section 1505, 'corruptly' means acting with an improper
6 purpose, including making a false or misleading statement,
7 or withholding, concealing, or destroying a document or
8 other information."

9 The defense's arguments ask the Court to ignore
10 Congress's view and the law and adhere to the repudiated
11 D.C. Circuit view for the purposes of this sentencing. The
12 jury found the defendant guilty of violating Section 1505,
13 and that is the violation for which the Court should
14 sentence him.

15 A few quick points on some specifics that the
16 defense offered the Court. The defense claims that other
17 courts have departed from the applicable guidelines and
18 sentenced individuals convicted of a single obstruction
19 count to probation and offers one example, but that example
20 is inapposite and should not inform the Court's judgment
21 here. The case cited in the defendant's Sentencing
22 Memorandum, *United States versus Johnston*, involved a
23 75-year-old U.S. Army veteran with numerous health issues
24 who was raised in an unhappy, financially unstable, and
25 alcohol-affected family. The defendant had no involvement

1 in the underlying wrongdoing. The defendant committed
2 obstruction out of fear of potential embarrassment rather
3 than fear of penalties or other investigative consequences.
4 Considering these circumstances, the probation officer in
5 *Johnston* recommended a below-guideline sentence. The case
6 the defense offers as an example is not like the case
7 before the Court today.

8 Lastly, your Honor, a few words about the argument
9 the defense advances for a probationary sentence based on
10 the Sentencing Commission's latest statistical report and
11 data from the third quarter of fiscal year 2022. The
12 defense claims the data shows that a median sentence for
13 all cases falling into the category called Administrative
14 Justice was only eight months' imprisonment. The data on
15 which the defense relies includes a six-month period and
16 all administration of justice offenses rather than those to
17 which 2J1.2 of the guidelines applies, like this case.

18 If we focus on 2J1.2 and a full year of data from
19 fiscal year 2021, we see that only 20 percent of cases
20 resulted in a sentence of probation only. Most of those
21 cases are likely those in which the defendant pleaded
22 guilty and accepted responsibility, not this case. In the
23 cases resulting in a sentence of imprisonment, the average
24 length was 38 months and the median length was 18 months.
25 Your Honor, that data is consistent with the 24 months

1 recommended by the United States and the probation officer
2 in this case. The sentence avoids unwarranted disparity.

3 To close, your Honor, this case should send the
4 clear message that no matter who you are, if you obstruct,
5 you will be found out and you will be brought to justice.
6 It should send a clear message that while skirting the edge
7 of violating laws protecting competition and fair play in
8 our economy is bad enough, corruptly endeavoring to
9 obstruct investigations into such conduct will not be
10 tolerated.

11 Mr. Jindal's disregard for the law should weigh on
12 the Court's judgment here. It remains an important
13 principle that no one is above the law, not the wealthy,
14 not those with professional success, not those who avail
15 themselves of opportunities to buy and sell businesses for
16 profit, not a self-described serial entrepreneur like
17 Mr. Jindal. The law puts all of us on equal footing.

18 This case is about accountability. It's about
19 holding accountable those who think and act like they can
20 thwart compliance with the law when it benefits them. We,
21 therefore, ask the Court to hold the defendant accountable
22 and impose an appropriately sufficient and severe sentence
23 for this serious offense. United States respectfully
24 requests that the Court sentence the defendant to a term of
25 24 months' imprisonment; impose a fine of not less than

1 \$25,000; and include a three-year term of supervised
2 release to follow the term of imprisonment.

3 Thank you, your Honor.

4 THE COURT: Thank you.

5 Okay. Mr. Jindal, it is -- you have the right to
6 say whatever you want to say prior to sentencing. Now
7 would be the time for you to say whatever you would like to
8 say.

9 Do you have a mic up there?

10 THE DEFENDANT: Your Honor, first and foremost, I
11 want to truly -- I'm truly sorry for my -- and remorseful
12 for my actions in 2017. I've not had a single day in the
13 past few years where I wish I chose a different path. I
14 don't take that lightly. Since that time I've sought and
15 seen a counselor to help me through some of my emotions.

16 This case has affected me and my family for over
17 five years now. I wanted to share a bit of this and my
18 feelings with you. I try to be emotionally strong for
19 myself, my kids, my wife, my mom; but lately it's been hard
20 to do so. I'm usually a rock in my family, and during this
21 time find I needed help to deal with emotions and the
22 feelings of guilt and shame.

23 Over the course of my life, I've always valued my
24 family and friends and hold them dear to my heart. I'm a
25 listener, advisor, father, husband, son, son-in-law,

1 brother, and overall a friend to many individuals near and
2 far. I've tried to focus on happiness first. That's
3 always been my nature. It made me who I am today.

4 I'm a first-generation immigrant that came to
5 America in 1980 from a sponsorship from my uncle that lived
6 in Ohio. My mother wanted the best education for my sister
7 and me, thus bringing us to America. I was 8 and my sister
8 was 12 coming to America. To them, I'm truly sorry for the
9 harm I'm causing.

10 I always felt that being an entrepreneur was
11 always in my blood. Both my father and mother families ran
12 businesses in India. While growing up in Arlington, we
13 grew up in a very modest home. Finances were always a
14 pinch in growing up, but I never felt that from my parents.
15 My father struggled to be a businessman. My mother worked
16 in retail for years.

17 My father had a stroke in 1989 that caused
18 permanent speech deficits and paralysis on his right side
19 of his body. That changed me and my life forever. I was
20 18 and a senior in high school. Without hesitation, I took
21 the role of head of household and of primary supporter and
22 caretaker for my parents and sister. With this sudden
23 change in our family, there were many tears as my father
24 had to adjust to his new life of paralysis, unable to work,
25 drive, and not being able to provide for the family. I

1 felt the need and pressure to be a financial supporter for
2 my family. Since the age of 18, I've played that role,
3 head of household in my family; and I still do today.

4 Five years ago I made a bad judgment by sending
5 these texts, hence why I'm here today in front of
6 your Honor. This lapse of judgment has caused -- a source
7 of mental and sometimes physical pain as well as financial
8 stress for me and my family, not to mention a lifetime of
9 changes I've had to -- I have to make to support my family.

10 Entrepreneurship is in my passion and career. A
11 felony conviction will forever affect my ability to
12 continue my career as an entrepreneur and potentially my
13 ability to provide for my family. I realize the
14 consequences of the actions I've chose; and I totally
15 regret my actions, your Honor.

16 My family means the most to me, the day-to-day
17 interactions with my kids that I don't want to lose. I'm a
18 very involved father. I try to attend all their meetings,
19 games, practices, performances. We spend the evening
20 together trying to do homework and games. It's important
21 to me that my family eats dinner together every night,
22 regardless of our hurdles. Every night I kiss my girls
23 goodnight as we do a small prayer and say the few words,
24 "God give me strength, smarts, good health, and most of all
25 give me happiness." I say to this -- I say these words to

1 my girls every single night, as I did last night. These
2 girls are innocent and my actions from 2017 will stay with
3 them forever, the rest of their lives, and, your Honor, I'm
4 truly sorry for that.

5 Your Honor, our lives are changed forever, already
6 with closed credit card, bank accounts that we've had for
7 decades, including my kids' college savings accounts.

8 My current business has over 140 employees, and my
9 business currently does not want me to run the day-to-day
10 operations due to my actions. I'm also very concerned,
11 have I altered my wife in every way possible, depression,
12 connections with family and friends, travel, kids'
13 activities, financial loss, and other ways. We're doing
14 our best to focus on this very hard and especially not
15 knowing what the future holds. I cannot begin to think
16 about my future as I drown in hopelessness. Being in
17 prison would devastate my family and my 80-year-old mother.

18 Your Honor, I received the letter from the FTC in
19 2017 and I tried to handle things without representation
20 and I'm truly sorry for that. A couple of weeks into it,
21 my wife helped me realize I should have had representation,
22 your Honor. My intent was never to harm anybody. In fact,
23 I did the opposite.

24 I'm remorseful for what I've done and put my
25 family through, but I will continue to live a life of

1 honesty and integrity. Your Honor, I know I made a huge
2 mistake in 2017. I only ask for probation as punishment as
3 I know I could help society, my family. I need and want to
4 be present for my young girls and my family.

5 I want to thank you for this consideration and
6 taking the time.

7 THE COURT: Okay. Thank you. And, Mr. Jindal,
8 stay at the podium.

9 Is there any reason why the Court should not
10 pronounce sentence at this time?

11 MR. LUNDER: No, your Honor.

12 MR. COGGINS: No, your Honor.

13 THE COURT: Okay. So, of course, I think, as
14 Mr. Coggins indicated, this is a unique case in terms of
15 the facts of the case and the claims being brought before
16 the Court. Interesting, you know, as a judge looking at
17 the way -- what the jury ultimately did in the case -- I
18 don't know what the government could ever do to prove one
19 of these cases, considering the evidence they had here. Of
20 course, the jury rejected that evidence on the charges; but
21 I thought it was just fascinating looking at that. Of
22 course, the jury did acquit him of the more serious
23 charges.

24 So, of course, the issue of sentencing is
25 something that -- I always say it's the most difficult

1 thing I do. I take no pleasure in sending anybody to jail,
2 and I find it very challenging. It's probably the most
3 important thing that an Article III judge -- district judge
4 does, too.

5 So in this case we always start with have the
6 guidelines been calculated correctly. They have; and, of
7 course, the sentence I will impose would be the sentence I
8 would impose even if I'm wrong on the guidelines. So
9 that's the starting point, and then the Court has to figure
10 out what is necessary but not greater than necessary to
11 meet the goals of the guidelines. And so in this case I do
12 believe a variance is warranted.

13 I look at, Mr. Jindal, you have no criminal
14 history. I also look at the impact that a felony
15 conviction has on your life. It's something that will live
16 with you the rest of your life.

17 You know, the issue of deterrence in this kind of
18 case, based on what you just got -- the only thing you got
19 convicted of, I think a variance and a probated sentence is
20 something that can still show deterrence to somebody
21 because it still can wreck your life.

22 And then I agree with Mr. Coggins. I don't think
23 I'll ever see you in this Court or any other federal court
24 ever again. You know, it's --

25 I look at the fact that there was really no true

1 loss in this case, and I look at the fact that you were
2 acquitted of the other charges.

3 And I know the government takes argument that --
4 to the defense argument that it's a single criminal act,
5 limited duration. I understand that point of view because
6 it wasn't necessarily just one event; it's a series of
7 things that happened. However, I do look at it as
8 something of limited duration and completely out of
9 character for everything, looking at your whole life; and
10 that's what I have examined throughout this whole process.

11 I do think the guideline -- the range overstates
12 the seriousness of the offense in your case.

13 And, you know, this issue -- of course, the Court
14 didn't give you acceptance of responsibility because you
15 went to trial; but I also take that in consideration, too,
16 because you didn't really have the opportunity to plea just
17 to this charge, I mean, as everyone -- the government
18 didn't refute this, that you never had the opportunity --
19 there were no plea negotiations for this count. And I also
20 look into that -- into consideration of that.

21 So, you know, looking at all of the sentencing
22 factors, looking at you, looking at the seriousness of the
23 offense, you know, sending you to jail just does not seem
24 appropriate for what the jury convicted you of so -- now, I
25 know that you only wanted one year of probation. I'm going

1 to impose three years of probation but --

2 So pursuant to the Sentencing Reform Act of 1984,
3 having considered the factors noted in 18 USC,
4 Section 3553(a), and having consulted the advisory
5 sentencing guidelines, it is the Judgment of the Court that
6 the defendant is -- well, it says "committed to the Bureau
7 of Prisons"; but it's actually you're going to be put on
8 3 years, or 36 months, of probation for Count 3 of the
9 First Superseding Indictment.

10 It is further ordered that you will pay the United
11 States a fine of \$10,000, which is due and payable
12 immediately.

13 The Court finds you don't have the ability to pay
14 interest. I will waive the interest requirement in this
15 case.

16 It is ordered you will pay the United States a
17 special assessment of \$100, which is due and payable
18 immediately.

19 Any monetary penalty that remains unpaid when your
20 supervision commences is to be paid on a monthly basis at a
21 rate of at least 10 percent of your gross income. The
22 percentage of gross income to be paid with respect to any
23 restitution and/or fine is to be changed during
24 supervision, if needed, based on your changed
25 circumstances, pursuant to 18 USC, Section 3664(k) and/or

1 18 USC, Section 3572(d)(3), respectively. If you receive
2 an inheritance, any settlements (including divorce
3 settlement and personal injury settlements), gifts, tax
4 refunds, bonuses, lawsuit awards, and any other receipt of
5 money (to include, but not be limited to, gambling
6 proceeds, lottery winnings, and money found or discovered),
7 you must, within five days of receipt, apply 100 percent of
8 the value of such resources to any financial penalty
9 ordered.

10 None of the payment terms imposed by the Judgment
11 preclude or prohibit the government from enforcing the
12 unpaid balance of restitution or monetary penalties imposed
13 herein.

14 Of course, because I'm placing you on probation,
15 that starts today. So within 72 hours of release today,
16 you must report in person to the probation office in the
17 district to which you are released; and we'll talk about
18 that here in a minute.

19 You must not commit another federal, state, or
20 local crime and must comply with the standard conditions
21 that have been adopted by the Court. In addition, you must
22 comply with the mandatory and special conditions and
23 instructions that have been provided to you and your
24 counsel as part of the presentence report prior to
25 sentencing, which the Court hereby adopts.

1 And then, sir, you have the right to appeal. If
2 you are unable to pay the cost of the appeal, you can apply
3 to appeal in *forma pauperis*, which is without payment of
4 fees. The Clerk of the Court will prepare and file a
5 Notice of Appeal if you make that request; and with few
6 exceptions, any Notice of Appeal must be filed within
7 14 days of the Judgment being entered in this case.

8 Your presentence report is already part of the
9 record. It's under seal and will remain under seal unless
10 needed for purposes of appeal.

11 And then is there anything further from the
12 government?

13 MR. LUNDER: No, your Honor.

14 THE COURT: Anything further from defense?

15 MR. COGGINS: No, your Honor.

16 THE COURT: Mr. Jindal, you know, I believe in
17 second chances. I didn't believe that jail was
18 appropriate, considering what you were convicted of; but I
19 don't want you to see the light that -- you committed a
20 serious offense, and so I don't make light of that. But I
21 don't believe that jail was appropriate for you, and
22 this -- I know having a felony conviction will impact your
23 life significantly. But I wish you good luck. I don't
24 believe I will ever see you again, and that's certainly the
25 hope that I have.

1 I will tell you one thing. Anytime I give a
2 probation sentence, probation is a gift. So when I say
3 that is -- you cannot violate. You have to follow because
4 I'll tell you right now, if someone violates probation I
5 always send them to jail because you've already been given
6 a chance. So I just tell you that just -- don't make light
7 of these conditions.

8 And so your probation is beginning today; but
9 since I didn't know you were going to have a probation
10 sentence when we began today -- I didn't know what the
11 sentence would be, so I haven't talked to Probation. So
12 talk to Probation right there. She's raising her hand.
13 You may have to go across the street to the probation
14 office to talk about that. You have 72 hours to do it but
15 since you're right here, you might want to take care of
16 that today and they'll have to print up some paperwork.
17 Again, some of these times -- I didn't know what I was
18 going to do when I started, so I didn't get that -- I
19 didn't tell Probation because I didn't know what I was
20 going to do. So just -- so your probation begins today. I
21 want you to start off in a good way. Okay?

22 Thank you very much.

23 MR. COGGINS: Thank you, your Honor.

24 MS. McCOY: Thank you, your Honor.

25 THE COURT: Okay. And y'all are excused. And I

1 know that we are far behind in our sentencing schedule
2 but -- we allotted 45 minutes, and that wasn't enough. But
3 I do thank -- everyone did a great job with the case. I
4 know it's not the result y'all wanted, but y'all did a
5 great job throughout the trial and sentencing.

6 (Proceedings concluded, 11:13 a.m.)

7 COURT REPORTER'S CERTIFICATION

8 I HEREBY CERTIFY THAT ON THIS DATE, DECEMBER 14,
9 2022, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD
10 OF PROCEEDINGS.

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/s/
CHRISTINA L. BICKHAM, CRR, RDR

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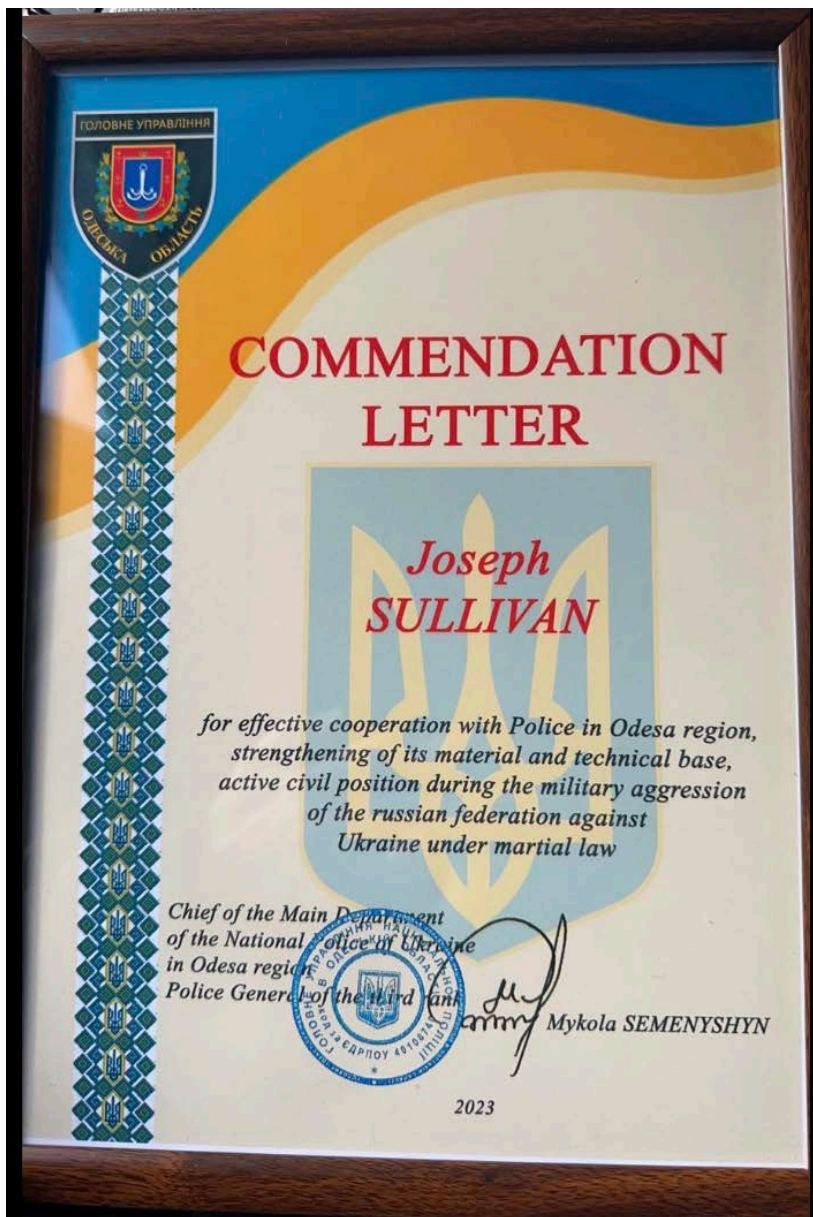
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Christina L. Bickham, CRR, RDR
(903) 209-4013





SELECTED MEDIA APPEARANCES

No.	Description
1.	CNBC: Squawk Box, “Microsoft Rolls Out Uber’s Safety ‘Selfie’” (Sept. 23, 2016), https://www.youtube.com/watch?v=jKS02OH09rU
2	Bloomberg. “Facebook Taps Hackers to Find Security Flaws” (Aug. 15, 2013), https://www.youtube.com/watch?v=Q0yWr-ohKmQ
3	CNN, “Facebook Addresses Keeping Children Safe” (April 19, 2011), https://www.youtube.com/watch?v=y8DeAQkmolg
4	CYFY 2013: The India Conference on Cyber Security and Cyber Governance, “The First Line of Defence: The Private Sector” (Sept. 8, 2016), https://www.youtube.com/watch?v=-ti0mzRVER4
5	Meta (fka Facebook), “Welcome – Security @ Scale 2014,” (Feb. 3, 2014), https://www.youtube.com/watch?v=89OAw8OpMDM
6	Messaging, Malware, and Mobile Anti-Abuse Working Group (MAAWG), “Facebook CSO: A New Model for Threat Sharing” (June 2, 2015), https://www.youtube.com/watch?v=9carwKjAd9A

Nicole Jackson Colaco

[REDACTED]
[REDACTED]
[REDACTED]

20th April 2023

The Honorable William H. Orrick III
San Francisco, CA

Dear Judge Orrick,

My name is Nicky Jackson Colaco and I'm writing to you today in support of my former colleague, Joe Sullivan.

I work in technology policy, specifically in the area of internet safety for children, where I first worked with Joe. I currently serve as VP and Global Head of Public Policy at a technology platform designed for children. I have worked in this area for over 20 years and met Joe during my time leading child safety for Facebook where he served as Chief Security Officer. During my time at Facebook, I worked with Joe on numerous campaigns to better educate parents about tools to protect children who use the internet and social media, as well as on podcasts, press interviews, and other educational materials that focused on child protection. Part of what made Joe so compelling and dedicated to this work was his background as a federal prosecutor, but also his incredible dedication to his daughters and his larger family.

Throughout my time working with Joe I - without fail - found him to be a person of great integrity, honesty, dedication, and work ethic, particularly as it pertained to protecting others and young people.

I write to you today to ask for leniency in Joe's sentencing. Joe possesses skills that genuinely help those around him, and can be leveraged to help many others. I believe these can best be utilized outside of prison, and I humbly but greatly believe that his serving time in prison would be more detrimental than helpful.

Thank you for your consideration in this matter.



Yours very respectfully,
Nicky Jackson Colaco

The Honorable Judge William H Orrick III
United States District Court
Northern District of California
San Francisco Division
Date: 04-26-2023

Re. Case 3:20-cr-00337-WHO ; US Vs. Joseph Sullivan

Dear Judge Orrick,

I am Priscilla David, the sister of Joe's fiance Prathiba David. As a family, we were devastated when we heard about the verdict in Joe's trial. As a person, Joe is one of the nicest human beings I have ever encountered. I write this to provide another window into Joe's world, and kindly request for leniency in sentencing.

When talking to Joe about his three daughters, it is apparent how involved he is as a parent. He has been there for every event in their lives and is their cheerleader. He has taken his girls for all their doctors appointments, he knows every detail of their health, and remembers every doctors' visit, including how they reacted. He knows each of the girls' strengths and where they shine. He has a well thought out plan for each of them and how to raise each one, and works with them to be the best versions of themselves.

When we visited California, Joe talked about the education of his daughters, and the challenges a parent would face in raising daughters. I have two daughters of my own, and Joe was giving my husband and I a lot of advice on what works well, what we can do and lessons he learned in raising his daughters. We look to Joe as a mentoring parent, whom we can call at any time, and he would be there to give us the appropriate advice to handle our situation. My husband and I strive to raise empowering women, and we look up to Joe, who has successfully done that with his three beautiful daughters.

The many times we have met Joe, he was a patient, kind and loving person. He spent time with my 3 year old and 7 year old daughters, trying to play games with them, patiently listening to their stories, appreciating the drawings they made for him and teaching them how to draw Mickey and Minnie Mouse. My 3 year old loved to hold his hand and make him take her for a walk. I have posted a picture of the two of them on the next page. He patiently watched as my daughters performed their ballet recital and appreciated them.

What I loved about Joe's nurturing characteristic is the way he quickly took on a parenting role for my nephew, Vihaan (Prathiba's son). He genuinely cares about my nephew's health and wellbeing. Vihaan looks up to Joe, and loves playing with him and hanging out with Joe. I saw how Joe turned every situation into a teachable moment and I have seen a huge positive change in Vihaan since Joe came into his life.

When we went to California in August 2022, Joe took the time to be with my parents and my family, everyday, while he was preparing for the September 2022 trial. Despite the fact that it was the most difficult time in his entire life, he made it a priority to be with the family of his then girlfriend, which says a lot about the character of a person.

Joe has spent his life in service to others. He has gone to different parts of the world, teaching and mentoring companies and law enforcement on how to make the internet more secure - this includes my country, India. Recently, he went to Ukraine to help the people in need, risking his own safety while he was there. That is how Joe is. That is who Joe is. This is why so many people around the world are watching this trial and rooting for Joe. To put such a person in prison, while depriving his family of his much needed presence is devastating for all of us. His children are at a stage where they need him the most, and taking him away from them during this time will impact their future and well being.

Joe has already lost everything he built and worked for so hard in his life, because of this trial. It has already depleted him of multiple opportunities. I kindly implore you to consider leniency in his sentencing and thank you for reading through my letter.

Sincerely,
Priscilla David



Genevieve Gaines

[REDACTED]

April 19, 2023

The Honorable William H. Orrick III

Dear Judge Orrick:

My name is Genevieve Gaines, and I am a current graduate student enrolled in the Santa Clara University School of Education and Counseling Psychology in California. I am writing on behalf of my former colleague, Joseph Sullivan, to ask for your leniency in sentencing.

I know Joseph ("Joe") Sullivan to be a person of good character, who advocates, uplifts, and supports those around him. I worked in Joe's organization while at Facebook (now Meta) from 2009 to 2015. When I began working with Joe, I was 23 years old—a college graduate just beginning my career. Joe provided me with many opportunities to learn and grow as a working professional including supporting my transition from working in law enforcement response to security operations. There are many examples of Joe's mentorship for which I am grateful, and one that stands out. During my first years working with Joe, I applied for a clearance through the U.S. Department of State. After my application for clearance was initially denied, Joe went back to the agency to advocate on my behalf, asking for a reconsideration of their initial decision. Because Joe stood up for me and vouched for my character, the agency approved the application. His support in this case not only opened a professional door for me, but because Joe was willing to go to bat for me, I felt like he believed in my professional potential. Through this small act of kindness and professional grace, I felt a sense of self-worth and assurance that breathed life into my career aspirations. I am thankful to Joe for his support during my time working with him, for his example of leadership through standing up for others, and for his professional confidence in me, which helped me to cultivate my own self-confidence.

Today I ask for your leniency in Joe's sentencing, for his sake, and also for the sake of his daughters, whom are approaching similar age and life-stage as I was when Joe advocated on my behalf. Respectfully, with your leniency, Joe's daughters may also receive the gifts of experiencing grace, witnessing the life-giving effects of having faith in a person's character, and appreciating the impact of seeing the best in others.

Sincerely,



Genevieve Gaines

The Honorable Judge William H Orrick III
United States District Court
Northern District of California
San Francisco Division
April 15, 2023

Re. Case 3:20-cr-00337-WHO; US Vs. Joseph Sullivan

Dear Judge Orrick,

I am writing to provide a letter of support for Joe Sullivan whom I have had the pleasure of knowing for the past two years. My name is Suruchi Kothari, and I am a Medical Doctor from the UK where I trained at Imperial College London. I first met Joe through Prathiba David, a classmate from Stanford Business School. Since then, I have had the opportunity to interact with Joe both personally and observe him interact with his friends and family.

Joe is a humble, kind and generous man. I have witnessed him go above and beyond to support his loved ones in times of need, and his selflessness and dedication to others truly exemplify his character. Joe's commitment to his family is unwavering. He has always been there for Prathiba, providing her and their children with unwavering support, love, and care. I have seen firsthand how he prioritizes his family's well-being and makes sacrifices to ensure their happiness and security. Based on my interactions with Joe, I have seen that he is someone who can be counted upon to fulfill his commitments and obligations with sincerity and dedication.

I am only aware of the case against Joe from what I have read online, and it appears to me that he is being made a scapegoat in this situation. I believe that blaming CISOs for broader organizational deficiencies is fundamentally unfair.

In conclusion, I want to express my unwavering support for Joe. I sincerely hope that you will take into account Joe's positive impact and long meaningful career and consider a fair and just decision in his case.

Thank you for your time and consideration.

Sincerely,
Dr. Suruchi Kothari
Stanford GSB 2020 Alumnus
Head of BD HealthPals

Cheryl Sweeney Masello, M.Ed.



April 20, 2023

The Honorable William H. Orrick III
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Your Honor:

I am writing this letter on behalf of my friend and former classmate, Joseph Sullivan. Although life has taken us in different directions geographically, Joe and I spent four years in high school seated together in homeroom and sharing locker space because of our last names.

Joe was one of the finest young men I have ever known, and I never knew him to take the easy way out of anything.

When we were seniors in high school, his family moved to Carver, Massachusetts, and rather than transfer, he lived on his own in an apartment so that he could graduate with our class. The maturity and discipline it took to do this as a teenager still amazes me.

We used to go ice skating every Friday and Saturday night during the winters, and my father almost always drove Joe home from the rink. My father was an exceptional judge of character, and he used to look forward to spending time with him on these rides home.

Although I have not seen Joe in some time, I cannot believe that the years have changed the essence of his character. I hope that you will grant him leniency in sentencing and that one error in judgment is not allowed to damage a life and career otherwise well lived.

If I can be of any assistance, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Masello".

Cheryl Sweeney Masello

Lisa Schlesinger



April 21, 2023

The Honorable William H. Orrick III
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge Orrick:

My name is Lisa Schlesinger. I have been a member of the California State Bar and a practicing attorney since 1997. I worked for PayPal as a Senior Director, Senior Attorney from 2004 – 2016. Joe was my direct manager for almost 3 years beginning in April 2006. Additionally, through the years, I have caught up with Joe on several occasions and followed his career accomplishments.

I remember Joe very well as a manager and a leader in the legal department. Our work centered around ensuring PayPal's compliance with consumer protection laws and protecting consumers where the law was still developing. In many areas, PayPal technology was evolving faster than the laws. Joe taught me to always do what is best for the consumer. He taught me that by putting the consumer first, we would find ourselves in the best position as the laws developed. Fast forward 15 years, and this is still my mantra.

From a personal perspective, Joe has always been levelheaded, professional, and kind. He was not one to have a large ego or make others feel bad about themselves. He was always very respectful of everyone around him and in turn, he was very respected. I'm sure Joe has exhibited this same demeanor in the courtroom, and I can tell you that it is authentic.

I know Joe as an ethical person, family man, and leader. I know that behind closed doors, Joe does the right thing. I know that Joe has made great contributions to large Silicon Valley companies – and in turn to protecting consumers. I have the utmost respect for Joe and believe that Joe should not serve prison time. I know that life is not "fair" but assigning any prison time to Joe would be a grave injustice and very unsettling to the many people who have been positively impacted by Joe.

Respectfully submitted,



Lisa Schlesinger

The Honorable William H Orrick III
Judge of the United States District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
Re: Joe Sullivan Sentencing

Dear Judge Orrick,

My name is Hanna Shuvalova, and I am the CEO and Managing Partner of Pawa, a venture studio with a focus on AI/ML technology and innovation in Ukraine. I am writing to humbly request leniency in the sentencing of Joe Sullivan, a person I have come to know and respect deeply.

I first met Joe through his partner, Prathiba David, who was my classmate at the Stanford Graduate School of Business. Our paths crossed again when Joe became the CEO of a non-profit organization called Ukraine Friends, and it was in this capacity that I truly got to know him and his remarkable character.

As a Ukrainian, I have witnessed firsthand the devastating impact of the war on my country and its people. Ukraine Friends, under Joe's diligent leadership, has provided invaluable support to both the nation and its countless refugees. Their efforts have included the delivery of essential medical supplies, ambulances, and other forms of aid that have undoubtedly saved lives and alleviated the suffering of many.

Joe's extensive experience in cybersecurity has also been a great asset in these trying times. Recognizing his potential to make a difference, I connected him with my network of cybersecurity professionals in Ukraine. To the best of my knowledge, Joe's support has been instrumental in the country's fight against Russia in the digital space, effectively protecting critical infrastructure and national security interests.

Throughout my interactions with Joe, I have come to know him as a compassionate, dedicated, and selfless individual. He has consistently demonstrated a genuine concern for the welfare of others, and his contributions to Ukraine have been nothing short of extraordinary. He has also acted with integrity and professionalism, ensuring that his support and actions were always in compliance with Ukrainian policies. Joe's actions during this tumultuous period speak volumes about his character and his commitment to making a positive impact on the world.

In light of Joe's significant contributions to the well-being of countless individuals in dire need, I earnestly request that you consider leniency in his sentencing. I am confident that, given the opportunity, Joe will continue to dedicate his talents and resources to the betterment of society and the lives of those around him. Myself and many of us in Ukraine support Joe in the trial and are eagerly awaiting a positive outcome in sentencing.

I am truly grateful for your time and consideration of my request. Please do not hesitate to contact me should you require any additional information or clarification.

Yours sincerely,

Hanna Shuvalova

Email: [REDACTED]

CEO and Managing Partner

Pawa Venture Studio

April 21, 2023

Cornelius Edmund Sullivan MFA
Former Adjunct Professor
Ave Maria University
Visiting Critic, Visiting Lecturer
Harvard University Graduate School of Design
Emeritus Trustee Boston Center for the Arts



The Honorable William H Orrick III
San Francisco Federal Court
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge Orrick,

I am Joseph Sullivan's father. Along with his brothers and sisters I was able to listen to much of his trial. Your part in conducting the trial was done with expertise and order.

I am writing because I want to present more about Joe and his origins and the man he is today.

My older brother Lieutenant J. G. John Edmund Sullivan, Joe's uncle, was a Naval Aviator who gave his life for his country. He was flying off an Aircraft Carrier in the Mediterranean Sea during the Cold War in 1960 when his plane crashed at sea. His mission was to follow Russian Submarines with radar flying low over the water. No one knows what happened. He was twenty-three years old. I was a senior in high school and I had taken tests to go to the Naval Academy at Annapolis. I could not follow through with that because my parents were devastated by Johnny's death. Joe grew up hearing all about his uncle, and to this day still has Johnny's epaulets.



Lieutenant J.G. John Edmund Sullivan with AD-6 Attack Plane U.S. Navy

I was married to Joe's mother who learned to speak Russian by herself and worked for the CIA. In thirty-seven years of marriage, I learned nothing from her about what she did in her job. She was probably hired in part because she could keep a secret. In Church, if a patriotic song played on a holiday, Joe's mother would cry. She was a painter, musician, teacher, and a linguist and a writer. She published a number of mystery stories through St. Martin's Press, and all of the children often helped her with plots. Her stories always had moral components. Joe got much of his ethics and dedication to our country from her.

Joe is the eldest of seven children. All of my children graduated college, many have advanced degrees, no drugs, and they all go to church. Joe's siblings Rachel and John also went to Providence College, and Rachel is now a well-known emergency room doctor at Mt. Sinai Hospital in NYC, and they just made her an Assistant Professor. John had been very successful on Wall Street, but then chose to get home earlier to see his children and not pursue the big money and instead now works to manage a large portion of the Norwegian Sovereign Wealth fund (which is one of the top funds in the world). Kathleen, Edmund, and Mary graduated from Tufts University. Kathleen lives in Georgia and her husband is an actor. Edmund lives in Charleston and is a software engineer and a singer songwriter, and Mary lives in Cambridge and is an elementary school art teacher at an air force base. Christian went to Bowdoin University to play football and he met his wife there. She is now an Art History Professor at Tufts University. Christian is an artist and manages product development for a company that makes health programs for companies.

Joe started working when he was 10 and has almost always since then had at least one job. He had a paper route delivering the Boston Globe - I remember him delivering during the weeks after the Blizzard of 1978 when schools were closed because the streets were all blocked, but people still wanted their newspaper. He worked in a recording studio as a summer job when he was in 4th grade. He worked construction for his uncle during a middle school summer. He worked from eighth grade through high school at our local church, overseeing janitorial services. Some years he would work for me - install marble fireplaces, and even spent a summer restoring historic gravestones at the famous King's Chapel burial ground on the Freedom Trail in Boston. He also worked for Harvard in high school - preparing packets in the registrar's office for the incoming freshmen class. During college he worked as an athletic trainer for his school, drove a truck nights during the summer, and then became a waiter and bartender until graduating from law school.

When Joe was in middle school he got mugged near a park where he often played basketball. I got home from work soon after Joe got home, so I took a picture of Joe's bruised face and said let's go. We went to the Cambridge Police Station. An officer put us in the back of his cruiser and took us to the park. Joe pointed out the kid and the officer drove across the field and the high schooler was arrested. We went to a juvenile court where we all sat at a table with the judge, and 12-year-old Joe described what happened right in front of the older teen and the judge. Following through with this allowed Joe to play basketball in all the parks in the city. He told me after that he wanted to become a lawyer.

Joe went to Washington DC when he was in middle school, and he really liked it, and went again when he was in high school. When he was in law school at the University of Miami he said "Dad, you know the parking lot here is full of BMWs. All the students have paid internships. I want to volunteer at the Krome Detention Center and work for the government." I said OK I can pay your rent for a while. He already had a hundred grand in student loans. Typical of Joe, he was concerned about the people there. That was the beginning of his government work that led all the way to Silicon Valley. Joe was and still is the most respected man in the country in his line of work because he invented the profession of Chief Security Officer. In a sense he was prosecuted for this. His whole

career has been attacked. It seems that the only people in the country that are not aware that Joe Sullivan has been the top cybercrime detective in the country are two sets of lawyers and a jury in San Francisco.

When Joe started as a cybercrime detective it was like the wild west. He succeeded because of his personal character traits. Unwritten in his job description was the fact that he was the one who could talk to the CEOs. They knew that he grasped the brilliant ideas that made the pioneer internet companies succeed. And he had the personality to be able to not be put off by their eccentricities, and he could push them to do the right thing. Personal trust and communications were important and twenty years later in 2016 more paperwork became required.

In 2016, Joe was chosen by President Obama to be a Commissioner on The President's Commission on Enhancing National Cybersecurity. Joe was the only one with hands-on cybercrime fighting experience. There were ten other Commissioners, all CEOs, Generals, and Senators. <https://www.nist.gov/cybercommission>. There were seven meetings that Joe attended and had substantive contributions. I read the minutes of some of the meetings. They were in Washington D.C., at New York University, UC Berkeley, U of Houston, U of Minnesota, American U, and Gaithersburg, Maryland. I think that Joe was the only commissioner who attended and participated in all of the meetings. Below are only a few of the minutes from some meetings not to be read carefully, but here only to show what he brought to every meeting and that give a general idea of the issues that he spent thirty years working on.

From the minutes of the first meeting in April 2016 at the U.S. Department of Commerce, Washington, DC.:

"Mr. Sullivan pointed out that we have an issue today with companies seeing government involvement with cybersecurity issues only in response mode after something bad has happened to either help catch the threat or to levy sanctions on companies for not being good enough. We never see the government laying the foundation of the "safe road" for companies, as NIST is trying to accomplish now. Could we be the "New Deal" for the internet and technology by identifying the practices that should be foundational to good security on the internet? Could we use this budget to have the government practices be a model?"

From the minutes of the meeting at American University, Washington, D.C.:

Mr. Sullivan: I have two questions. Shortly after the Sony attacks, I was talking to a national security official, who said, "The thing you in the private sector don't get in these international incidents is that, to eastern governments, companies are viewed as extensions of state power. Western companies do not appreciate their role in the middle of all that." I'd appreciate your view from the point of view of the State Department. What's your view on this issue?"

From the minutes of the meeting at U C Berkeley:

"Mr. Sullivan: You mentioned you spend a lot of your time working on hardening open source. I think we've seen a lot of interesting work and investment through things like analytic foundation efforts, or what you've been doing at Google. What role do you see the government playing in getting involved and helping push this work forward?"

Joe was a big contributor in these meetings, and there was one major conclusion in the report that struck me that came from this Committee: government and private cybersecurity experts must do more work together. I mentioned that to Joe and he said, "I wrote that". That gave me pause. I said, "The federal prosecutors, the 'crime fighters', are prosecuting you who have fought cybercrime for your entire career."

I remember the New York Times reporting that “In a pretrial hearing, even the judge seemed struck by the extent to which Mr. Sullivan was being held responsible for Uber’s actions. The newspaper quoted you as saying, “I had not, until this moment, realized that your case was really against Uber and Uber is going to be sitting here in the form of Mr. Sullivan.” The newspaper reported that you went on to say, “The motive “seems implausible,” and that you were also “critical of Dawson’s claim that Uber’s obligation to disclose the hack was necessarily ‘intertwined’ with Sullivan’s, such that Sullivan caused Uber to violate its duty to report the breach.” After the same hearing, the Wall Street Journal reported that you were “dubious about the government’s plan to prosecute only Sullivan at the September trial knowing that he will point a finger at ‘an empty chair defendant’ -- the company. Uber cooperated with the government’s investigation and isn’t a named defendant in the case.”

I am ashamed that my government prosecuted an honorable man using a lie of a young lawyer that he mentored. That young man must now live for the rest of his life with the fact that he stabbed his mentor and friend in the back and got caught lying under oath repeatedly. If the Prosecutors thought that they could pressure Joe Sullivan to also lie to get the bad Uber CEO Travis Kalanick, they picked the one man who would not do that. I do not know if that is the case, but I was talking to an old friend that I respect after Joe’s trial and I could not find any words to describe what he had done wrong, what specific act.

Joe is also a man of faith. Joe’s mother and I wanted to instill in our children a deep commitment to our Catholic faith. I served as a eucharistic minister at our local parish and Joe’s mother taught religious classes there. Joe was married at Saint Peter’s Basilica and was able to meet Pope Saint John Paul II.



We have a family zoom call every week where all of his siblings, he, and I join and we all pray together. It is also our time to stay connected even though we live across many different time zones. Joe went through a lot of pain as he dealt with the idea of divorce and this call was one way we were able to be there for him.

I am eighty years old and do occasional university lectures and work as a marble sculptor, carving every day with a hammer and chisel. Joe has insisted on paying my house insurance and real estate taxes for many years. He has paid the student loans for his sister Mary who is an elementary school art teacher at Hanscom Field Air Force Base outside of Boston. He is always there for his family and friends.

Respectfully,
Cornelius Sullivan

Jonathan Thaw



April 19, 2022

The Honorable William H Orrick III
District Judge
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge Orrick,

I am writing to you in regards to the sentencing of Joseph Sullivan, the former Chief Security Officer of Uber Technologies, Inc., Case Number: 20-cr-00337-WHO.

I am a former Vice President of Communications at Facebook Inc., where I worked from 2010 to 2021. Before that, I was a reporter and editor at Bloomberg LP.

I worked closely with Joe on several occasions in my role at Facebook, as the Security and Communications teams often collaborated on projects together. My role did not revolve around security communications on a daily basis; however, I had multiple opportunities to work with Joe, assisting him in preparing for interviews with the media and addressing specific issues.

Joe was a highly trusted and knowledgeable subject matter expert, both internally and outside the company, given his former role as an Assistant United States Attorney. He answered journalists' questions fully and directly. I was continuously reassured by his experience and the transparent way in which he shared information. I was never in any doubt that Joe would do the right thing for the company and its customers.

In this context, I would respectfully ask that Joe is shown leniency in sentencing. Although we have not worked together since Facebook, I would trust Joe absolutely, and would vouch for his character.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Thaw', with a horizontal line underneath.

Jonathan Thaw

The Honorable William H Orrick III
United States District Court
Northern District of California
San Francisco Division

Dear Judge Orrick,

I am writing to request leniency for Joe Sullivan, who is scheduled to appear before your court for sentencing on May 4th, 2023.

My name is Steven Truong. I work as the Global Head of Capital Markets at InVenture Capital Corporation and I am a good friend of Joe and his fiancé Prathiba who was my classmate at Stanford Graduate School of Business. Through this letter, I hope to provide insight into Joe's character.

Joe is one of the kindest people I know. I'm someone who likes to observe how people behave at a social gathering, which I believe says a lot about who they are. Joe has always been someone who watches out for others. At any social gatherings, you will see Joe running around, making sure that *everyone* has something to eat and drink and that *no one* ever feels left out of a conversation. Personally, as a member of the LGBTQ+ group, I always feel seen and heard by Joe, which speaks volumes about how kind and inclusive he is. And at a social event, if we ever need someone to run out to buy some more ice or snacks, Joe would always be the first one to volunteer. He is also often the last one to leave after helping to clean up. After all, Joe thinks very little of himself and always puts others first.

Joe is a loving partner and father to four beautiful children, aged 20, 17, 15, and 10. He is their rock. His kids, especially, need him now more than ever as they are going through a critical period in their lives. I believe Joe's imprisonment would cause more harm than good, not just to him but to his entire family. I urge you to consider his character and the positive impact he has had on the lives of those around him in his sentencing. Joe is a good person and he deserves a second chance.

Sincerely,

Steven Truong

The Honorable William H Orrick III
United States District Court Judge
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Regarding: U.S. v. Joseph Sullivan

Dear Judge Orrick,

I am writing to you regarding Joseph Sullivan, who is a peer of mine in the cybersecurity industry, and whom I've worked with on a regular basis as an industry peer for the last four years, and indirectly, with the teams he led, over the last decade.

Joe has built the security teams in several large organizations, and always been an active contributor, and someone his peers could rely on, to the wider security community. I've seen him consistently mentor new cybersecurity talent, both inside his own organization, and beyond. This has led to several of his former mentees and staff members now having taken on significant security leadership positions of their own, both at large companies and smaller organizations, who have particularly benefited from the expertise he instilled in them.

Personally, in my experiences speaking with Joe, I always found Joe to advocate for strong security programs with a culture of integrity. I've also seen him instill these values in his leaders, several of whom I've had an opportunity to work with over the years, and whom I have worked with on security incidents, where they took conscientious, thoughtful action to protect their organizations and their customers.

Having Joe in our community and sharing his learnings, including the very hard ones, is an important part of the development of the cybersecurity talent base. I wanted to request that you show leniency in his sentencing.

Thank you, Your Honor, for taking these thoughts into consideration.

Respectfully,

Maarten Van Horenbeeck

April 25, 2023

Re: Update to February 27, 2023 letter from CISOs/CSOs regarding upcoming sentencing in *United States v. Joe Sullivan*, Northern District of California Case No. 20-cr-00337-WHO

Dear Judge Orrick:

[This letter has been updated by adding additional signers, as indicated below.]

We are writing to you as members of the Chief Information Security Officers community, known as CISOs or CSOs (Chief Security Officers). This case marks the first time a company executive has been indicted and convicted over his or her response to a data security incident. We have been closely following Joe Sullivan's trial, the resulting verdict, and the upcoming sentencing. While the trial and the verdict have already had a considerable (and sometimes troubling) impact on our industry, we are particularly concerned about Joe's sentence in this case. A prison sentence would negatively impact our industry, as well as the security of companies and consumers worldwide, by making it too personally risky to make the difficult judgment calls in unique situations, which this line of work requires.

CISOs and CSOs are charged with protecting organizations and their intellectual property, customers, and employees from an ongoing onslaught of cyberattacks. These roles are a relatively new innovation. The job often requires nuanced judgment calls in a largely unregulated environment, which has few explicit rules and regulations, including rules about disclosing data security incidents to the government. We have many complex responsibilities that require us to act nimbly in time-sensitive, high stakes, and often unique situations. This case suggests that we could face both criminal and civil liability if we, for example, defer to General Counsels', CEOs', or other officers' decision-making authority about disclosure obligations or other difficult decisions, which turn out to be improper in retrospect.

This was *particularly* true in 2016. Practices such as paying a "ransom" to ensure the safety of customer data, agreeing to treat a researcher submission as a "bug bounty" (even in the face of bad behavior or even extortionate demands), and viewing incidents resolved through a bug bounty program as different from data breaches that resulted in the public dissemination of organizational or customer data were relatively common, and often viewed as necessary to protect customers and their data. A priority in our jobs is to prevent customers' data from leaking, which can lead to a massive loss of private information, likely resulting in identity theft and other attacks, causing unknown financial damage.

The industry has evolved, and everyone now knows that these approaches may fall short of current best practices or legal obligations, which prioritize disclosure. Indeed, the jury in this case concluded as much. Following this verdict, CISOs and CSOs are reviewing contracts, discussing incidents with executive teams, and putting processes in place to better articulate the

CISO's responsibilities. Ultimately, our legal responsibilities are ambiguous and the challenges we face are high-stakes and sometimes unique. We often need to make judgment calls quickly and in difficult circumstances. As an industry best practice, CISOs and CSOs must present

cybersecurity risks to the organization's leadership, so that breach reporting and other such decisions are made by upper management and lawyers, not us.

Joe's case has had a huge impact on the cybersecurity community. It has been the subject of frequent executive team conversations and panel discussions at industry seminars, and a significant driver of efforts to change policies and practices to err on the side of disclosure, even when the legal requirement to do so remains unsettled. Based on what we have observed, further processes will likely be implemented throughout the industry to better articulate CISOs' responsibilities and to build a culture of shared accountability. Thus, the government has largely succeeded in its efforts to "send a message" by using this criminal prosecution to create a catalyst for change and reflection within the industry.

But a prison sentence for Joe will have a different and deleterious effect. The realization that a security professional could be subject not only to termination, but criminal prosecution and conviction, and even prison, is alarming. It is not always clear what course is the best for the cybersecurity of the company and the customers. The fear of later second-guessing, or finding that a decision was wrong in retrospect, may interfere with our ability to respond quickly in a crisis, damaging our organizations and customers.

Under this heavy shadow, rather than motivating security professionals in similar circumstances to make different decisions, we have growing concerns about whether the CISO role will attract capable personnel in the future. The CISO job is already hard enough that many professionals do not choose it as their career path, or leave these positions for other professional roles. We are concerned that a prison sentence for Joe will further discourage people from taking these necessary jobs. With the threat of increasing liability, we already see candidates shying away from the role.

Thank you for taking the time to read this letter and to consider our points.

In every case below, titles and employers are included for affiliation purposes only.

Sincerely,

[Original signers]

Colin Anderson, CISO at Ceridian, former CISO at Safeway and Levi's

Martin Bally, Chief Information Security Officer

Charles Blauner, Former CISO, Citi

Barak Blima, CISO, CHEQ

Ojeme Chuks, Chief Information Security Officer, Brenntag Austria Holding GmbH

Raymond Cotton, CISSP, CISM

Josh DeFigueiredo, SVP, CISO

George Eapen, Group Chief Information Officer

Gadi Evron, CISO-in-Residence, Team8

Gidi Farkash, CISO

Travis Farral, Vice President and CISO, Archaea Energy

Axel Fehrmann, CISO, Emil Frey Group

Todd Fitzgerald, CISO, Author CISO COMPASS Book, CISO SPOTLIGHT, LLC

Brian Fricke, Managing SVP, Chief Information Security Officer, Financial Industry

Ryne Graf, Information Security Officer

Rebecca Harness, VP, Chief Information Security Officer, Quickbase

Brian Harrell, former Assistant Secretary for Infrastructure Protection, US Department of Homeland Security (DHS)

Erik M. Hart CRISC, CEH, Chief Information Security Officer

Patrick Heim, Managing Partner at SYN Ventures

Shane Hibbard, CISO

Anthony Johnson, Managing Partner

Colonel (retired) Peter E. Kim, Former United States Air Force Chief Information Security Officer

Tyson Kopczynski, SVP, CISO, Oportun

Yashvier Kosaraju, Chief Security Officer

Jay Leek, former CISO of Blackstone and Co-founder & Managing Partner of SYN Ventures

Christopher Lugo, CISO

David Mantock

Itzik Menashe, CISO, Telit Rohit Parchuri, VP & CISO

Hardik Parekh, CISO

Brian D. Payne

Adrian Peters, CISO

Nibin Philip, Vice President, Chief Information Security Officer, Landry's

Robert Rodriguez, Chairman and Founder, SINET

Olivia Rose, Rose CISO Group

Jimmy Sanders, Head of Information Security, Netflix DVD

Ty Sbano

Dhiraj Sharan, Chief Scientist, Query.AI

Andy Stone

Hugh Tower-Pierce

James Tucker, Group Head of Information Security

Yabing Wang, CISO

Mark Weatherford, Chief Security Officer at AlertEnterprise and former Deputy Under Secretary for Cybersecurity at DHS

Jason White

Michael Wilkes, Adjunct Professor NYU and CISO

Troy Wilkinson, Chief Information Security Officer, Interpublic Group

Sounil Yu, CISO, JupiterOne

[Additional signers]

Charisse Castagnoli, General Counsel

Did Dayton, Co-founder, Forte Group (a women's cyber security non-profit)

Summer C. Fowler, SVP Cybersecurity and IT

Reet Kaur, CISO

Katherine Kuehn, Board of Directors, Redshield (New Zealand)

Renee Guttmann Stark, Chief Information Security Officer

Chenxi Wang, Founder and CEO, Rain Capital