

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

v. :

CRIM. NO. 21-00100 (JS)

GAAFAR MOHAMMED EBRAHIM AL-WAZER :

GOVERNMENT'S SENTENCING MEMORANDUM

I. INTRODUCTION

On August 18, 2020, defendant Gaafar Mohammed Ebrahim Al-Wazer was charged by Indictment with three counts of making false statements, in violation of 18 U.S.C. § 1001(a)(2). Al-Wazer, a native and citizen of Yemen, entered the United States in 2014 and applied for Temporary Protected Status (“TPS”) in 2015. United States Citizenship and Immigration Services (“USCIS”) granted the defendant TPS status in 2016, and in 2017, he re-applied to renew his TPS status. During his January 2018 TPS renewal interview with a USCIS officer in Pittsburgh, Pennsylvania, the defendant was asked if he sided with any side in the conflict in Yemen, and falsely answered in the negative. On March 25, 2021, Al-Wazer waived prosecution by Indictment and venue in the Western District of Pennsylvania, and pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), entered a plea of guilty to an Information charging him with making a false statement to USCIS during his TPS interview in Pittsburgh. A sentencing hearing has been scheduled for Thursday, April 8, 2021 at 9:00 a.m. The government recommends that the Court impose the parties’ stipulated sentence of time served.

II. OFFENSE CONDUCT AND RELEVANT CONDUCT

According to his alien file and statements he previously provided to U.S. authorities, defendant Al-Wazer is a native and citizen of Yemen. PSR ¶ 15. On December 16, 2014, he was admitted to the U.S. on an F-1 student visa. *Id.* On September 3, 2015 the Secretary of the Department of Homeland Security (“DHS”) designated Yemen for the TPS program based on its ongoing armed conflict. PSR ¶ 16. By this time, the defendant had enrolled in English language classes at Drexel University. *Id.* On October 26, 2015, the defendant applied for TPS, and on June 3, 2016, he was granted TPS. *Id.* In 2017, the defendant applied for a renewal of his TPS status. *Id.* By this time, the defendant had transferred to Mount Aloysius College, in the Western District of Pennsylvania, where he had begun attending classes on or about January 6, 2017. *Id.*

On January 18, 2018, the defendant appeared at the DHS - USCIS Field Office in Pittsburgh for his TPS renewal interview. PSR ¶ 17. At the beginning of his audio and video-recorded TPS interview, the USCIS officer placed the defendant under oath, reviewed his answers to his TPS renewal application, and asked follow-up questions. *Id.* When the USCIS officer asked the defendant if he sided with any side in the conflict in Yemen, the defendant falsely answered “no.” *Id.* The defendant knew that this answer was false because he in fact did support one of the sides in the conflict in Yemen, as evidenced by his social media posts and communications. PSR ¶¶ 18-20. The defendant’s false negative answer had the tendency to influence the USCIS in its decision whether to grant the defendant renewed TPS status. PSR ¶ 21.

III. SENTENCING CALCULATION

A. Statutory Maximum Sentence (18 U.S.C. § 1001(a)(2)), false statements)

The statutory maximum for a violation of 18 U.S.C. § 1001(a)(2) is five years' imprisonment, up to three years of supervised release, a fine of not more than \$250,000, and a \$100 special assessment. PSR ¶¶ 53, 56, 62, 63. The guideline range for a supervised release term is one to three years. PSR ¶ 57.

B. Sentencing Guidelines Calculation

As stated in the PSR, the correct guideline calculation is as follows. Under U.S.S.G. § 2B1.1, the Base Offense Level is 6. PSR ¶ 28. With a two-level downward adjustment for early acceptance of responsibility, the total offense level becomes 4. PSR ¶ 25, 36. With a criminal history category of I and a total offense level of 4, the defendant's guideline range is zero to six months' imprisonment. PSR ¶¶ 39-40, 54.

IV. ANALYSIS

After *United States v. Booker*, 543 U.S. 220 (2005), sentencing involves a three-step process: (1) "district courts are to calculate a defendant's sentencing Guidelines range precisely as they would have before pre-Booker"; (2) courts must formally rule on any departure motions "and state on the record whether they were granting a departure and, if so, how such a departure affects the initial Guidelines calculation"; and (3) courts "are required to exercise their discretion by considering the relevant 18 U.S.C. § 3553(a) factors in setting their sentences, regardless of whether it varies from the original calculation." *United States v. Fumo*, 655 F.3d 288, 329 (3d Cir. 2011); accord *United States v. Goff*, 501 F.3d 250, 254 (3d Cir. 2007).

A. Sentencing Guideline Range.

As set forth above, the PSR correctly states that the sentencing guideline range that is applicable in this case is zero to six months' imprisonment. PSR ¶ 54. By way of written plea agreement, the parties have agreed to a stipulated sentence of time served, pursuant to Fed. R. Crim. P. 11(c)(1)(C). PSR ¶ 55. The defendant has been in the custody of the United States since November 7, 2019. PSR ¶ 13.

B. Consideration of the Section 3553(a) Factors.

In addition to the Sentencing Guidelines, this Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a). As discussed below, a review of all pertinent factors supports the conclusion that a sentence to time served would be appropriate in this case.

The nature and circumstances of the offense and the history and characteristics of the defendant militate in favor of a sentence of time served. The integrity of the United States' immigration system relies in the first instance on the truthfulness of those seeking the benefits of the system's various programs. Truthful answers from an applicant, be they written answers on a benefit application, or oral answers during a related in-person interview, are critical to USCIS' adjudication process, as its officials assess an applicant's qualifications and eligibility for that benefit. At the time of his offense conduct, the defendant was a well-educated, intelligent adult, who had been living in the United States for over three years. Nevertheless, he knowingly lied when asked a question, the answer to which was capable of influencing USCIS' ultimate decision whether to renew his TPS status, since the answer he gave tended to cut off a line of inquiry relevant to his eligibility. Accordingly, the nature and circumstances of the offense, as well as the history and characteristics of the defendant, warrant a sentence of time served.

A sentence of time served is also necessary to promote respect for the law, afford deterrence and provide just punishment for these offenses. Consequences must inhere in the wrongdoing committed by the defendant, and he must be justly punished. Furthermore, a sentence of time served would afford adequate deterrence to others who would commit a similar offense. There is no need in this case to adjust the sentence in order to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner, nor would a guidelines sentence present a risk of unwarranted sentencing disparities. Restitution is not an issue in this case.

V. **CONCLUSION**

The defendant must be held responsible for his own actions. In this case, a full review of all pertinent factors supports the conclusion that a sentence of time served is appropriate in this case.

Respectfully submitted,

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Acting United States Attorney

s/ Nelson S.T. Thayer, Jr.
NELSON S.T. THAYER, JR.
Assistant United States Attorney

Dated: April 7, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Sentencing Memorandum has been served by me, this date, by electronic mail upon:

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s/ Nelson S.T. Thayer, Jr.
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Date: April 7, 2021