



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

February 24, 2023

BY ECF

The Honorable Denise L. Cote
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *United States v. Saadah Masoud, 22 Cr. 359 (DLC)*

Dear Judge Cote:

The Government respectfully submits this letter in advance of the March 3, 2023, sentencing of Saadah Masoud (the “defendant”). On November 8, 2022, the defendant pled guilty, pursuant to a plea agreement, to participating in a conspiracy to commit hate crime acts, in violation of 18 U.S.C. § 371. The parties have stipulated, and the Probation Office agrees, that the applicable United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”) range is 18 to 24 months’ imprisonment (the “Stipulated Guidelines Range”). For the reasons set forth below, the Government submits that a sentence within the Stipulated Guidelines Range would be sufficient but not greater than necessary to achieve the purposes of sentencing, as set forth in 18 U.S.C. § 3553(a).

I. Offense Conduct

Between in or about May 2021 and in or about April 2022, the defendant and others participated in a conspiracy to commit hate crimes against individuals who were, or were perceived to be, Jewish and/or Israeli. (PSR ¶ 9).

On May 19, 2021, the defendant and others participated in a group chat on the encrypted chat platform Signal, in which they discussed traveling to Manhattan the following day to disrupt a pro-Israel protest. (PSR ¶ 10). Among other things, the chat included references to bringing weapons including Molotov cocktails. (*Id.*) In the course of the exchange, the defendant “emphasized,” which is a digital response akin to highlighting text, a message from another participant in the chat which stated, “Remember, don’t chant out jews, it’s the Zionists.” After emphasizing the message, the defendant affirmed: “Big facts.” Another participant then stated, “Fuck all Jews.” The chat included multiple reminders that participants should go to the rally “face covered,” and the defendant explained: “NO FACE NO CASE.” During a separate exchange that day, the defendant stated: “I beat the shit out of three Zionist[s] yesterday and didn’t even see a jail cell.” He exhorted his associates: “VIOLENT!! ONLY VIOLENCE... IN PALESTINE THEY WISHHH THEY COULD SMACK A ZIONIST AND NOT GET TORTURED TO DEATH. WE CAN THO!! And we’ll just get a [desk appearance ticket from the NYPD].”

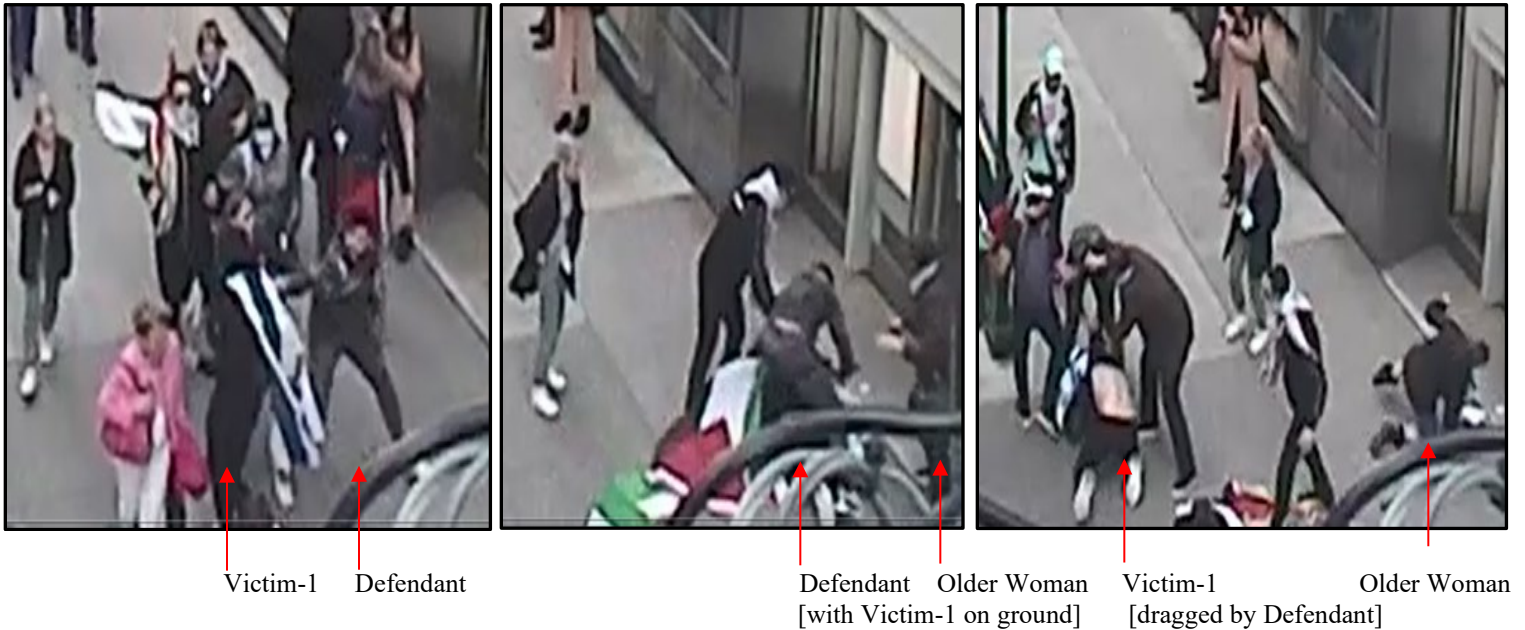
The following day, on May 20, 2021, the defendant and his associates arrived at the pro-Israel protest as planned, and approached a man who was walking with his wife (identified in the Indictment as Victim-3). (PSR ¶ 10). At the time, Victim-3 was wearing a necklace with a large Star of David, which Victim-3 received as a wedding gift from his grandfather. (*Id.*). According to Victim-3, the defendant approached Victim-3 and shouted, in substance and in part, “Are you a fucking Jew?” (*Id.*). Then the defendant punched Victim-3 in the face. (*Id.*). Afterward, Victim-3’s face was red and swollen. (*Id.*). Victim-3 and his wife sought refuge from the assault in a nearby pharmacy and reported the incident to the police the next day. Following the assault, the defendant exchanged further text messages with his associates, stating, “no videos of me anywhere lmaooo. I’m Gucci. No face no case.”

Less than two weeks later, on June 2, 2021, the defendant and a co-conspirator drove past the Brooklyn home of Victim-2. (PSR ¶ 11). According to Victim-2, he had previously encountered the defendant at a Black Lives Matter rally. (*Id.*). Victim-2 stated that at the rally, the defendant followed Victim-2 shouting antisemitic insults as Victim-2 tried to leave the rally. (*Id.*). Victim-2 is an observant member of the Jewish faith, and typically wears a yarmulke. (*Id.*). When the defendant approached Victim-2 on June 2, 2021, Victim-2 was sitting in his car waiting for his wife and granddaughter to join him for an appointment. (*Id.*). According to Victim-2, the defendant got out of his own car, walked over to Victim-2, and said to him in substance and in part, “We know where you live, we’ll get you.” (*Id.*). Victim-2 then got out of his car and attempted to film the defendant, who knocked the phone out of Victim-2’s hand. (*Id.*). Next, the defendant’s associate got out of the defendant’s car and punched Victim-2 in the face. (*Id.*). Afterward, Victim-2’s face was red and swollen. (*Id.*). At the time of the assault, Victim-2 was wearing a yarmulke. (*Id.*). A few days later, on June 5, 2021, the defendant described the assault via Instagram direct message:

21370	06/05/2021 01:02:24 AM	10452422051	سعدنة	Nah some jew politician said i assaulted him
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The defendant further described the offense as small potatoes, “hachi shit,” in his parlance, saying; “assault 3, menacing . . . my lawyer fire . . . got me out no bail.”

Subsequently, on April 20, 2022, the defendant participated in a pro-Palestine march in Manhattan. (PSR ¶ 12). Victim-1, a counter protestor, was marching alongside the main protest group wearing an Israeli flag as a cape. (*Id.*). At the time, according to Victim-1, he had an ankle injury and had a single crutch with him. Victim-1 said, in substance and in part, that he went to the protest because he saw flyers advertising the protest, and they included what he viewed as hate speech. According to Victim-1, he wanted to see what the protest was really about. Once at the protest, Victim-1 became uncomfortable and attempted to leave the area. (PSR ¶ 11). The defendant followed Victim-1 and chased him for two blocks. (*Id.*). When the defendant caught Victim-1, he grabbed him from behind and threw him to the ground. (*Id.*). Victim-1 had been walking away from the protest with two women, one of whom was approximately 78 years old, and had attended the protest in support of Palestine. (*Id.*). When the defendant grabbed Victim-1, the older woman fell alongside him and seriously injured her leg. (*Id.*).



As onlookers attempted to intervene, the defendant repeatedly punched Victim-1 in the head and face, dragged Victim-1's face along the sidewalk, and then ripped his Israeli flag from his neck and ran away. (PSR ¶ 12).¹ Victim-1 sustained injuries from the assault. His face and legs were scraped, he had black eyes, broken blood vessels in one eye, serious swelling, and was treated at NYU Hospital for a concussion. (*Id.*). The woman who fell alongside Victim-1 was taken to the hospital by ambulance, and because her injuries were exacerbated by her autoimmune condition, she still experienced pain and bruising months later. (*Id.*).

After the assault, the defendant again took to text message, stating: "I went to the protest. But I'm almost home... no arrest." Later in the text message the defendant stated, "I beat this shit out of this guy." The next day, the defendant exchanged further text messages lamenting, "He made a report already." The other participant in the text message responded, "u need me as a witness I gotchu." The defendant stated, "Yeah I want you, lil ali, and the kid with the mustache. Get your stories straight." Then the defendant provided the story his witnesses should get straight: "He came disrupted the protest. And swong [sic] the crutches at us." Days later, when the Instagram account @JewishLivesMatter posted images on social media identifying the defendant as Victim-1's assailant, the defendant responded from his own Instagram account with vitriol:

¹ The assaults of Victim-2 and Victim-3 also were captured by surveillance video.



More broadly, the defendant’s text messages and social media reflect his awareness of hate crime statutes, and the severity of charges under hate crime statutes.

The defendant was charged by federal complaint and arrested on June 14, 2022. When the defendant was brought to the courthouse following his arrest, he recognized the case detective and said to him, “All this for one Jew?” (PSR ¶ 13). Shortly thereafter, the investigating Special Agent from the United States Attorney’s Office overheard the defendant saying he did not want any “Greenbergs” as a lawyer. (*Id.*). When the defendant was assigned counsel, he demanded that his attorney recite and spell his last name. (*Id.*). And finally, as the Court is aware, during a sustained course of violations of pretrial supervision, the defendant refused to be supervised by a Pretrial Services Officer with the ostensibly Jewish surname “Rothman.” (Jan. 31, 2023, Violation Mem. at 2).

II. Guilty Plea and Applicable Guidelines Range

Pursuant to the plea agreement, dated November 8, 2022, the defendant pleaded guilty to Count Two of the Superseding Indictment (the “Indictment”), which charged him with participating in a conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371, specifically, participating in a conspiracy to commit hate crime acts, in violation of Title 18, United States Code, Section 249, between in or about May 2021, and in or about April 2022. This offense has a statutory maximum sentence of five years’ imprisonment.

The plea agreement provides that U.S.S.G. § 2H1.1 applies to the offense, and because Count Two charges a conspiracy to commit more than one underlying offense, each underlying offense is treated as a separate count of conviction. *See* U.S.S.G. § 1B1.2(d). Pursuant to U.S.S.G. § 2H1.1, the April 20, 2022, assault of Victim-1, and the May 20, 2021, assault of Victim-3 each

have a base offense level of 10. Pursuant to U.S.S.G. § 3A1.1, because the defendant intentionally selected Victim-1 and Victim-3 because of their actual or perceived religion or national origin, a three-level increase is warranted. Thus, the offense level for the assaults of Victim-1 and Victim-3 is 13.

Pursuant to U.S.S.G. § 2H2.1(a)(2), the base offense level for the June 2, 2021 assault of Victim-2 is 12, because the offense involved two or more participants. In addition, pursuant to U.S.S.G. § 3A1.1, because the defendant intentionally selected Victim-2 because of his actual or perceived religion or national origin, a three-level increase is warranted. Thus, the base offense level for the assault of Victim-2 is 15. Pursuant to U.S.S.G. § 3D1.2, the assaults do not group, and count as one unit each under U.S.S.G. § 3D1.4. Thus, the combined total offense level for Count Two is 18. Pursuant to U.S.S.G. § 3E1.1(a) and (b), the defendant is entitled to a three-point reduction for acceptance of responsibility, resulting in an offense level of 15.

Because the defendant is in Criminal History Category I, the plea agreement provides that the Stipulated Guidelines Range is 18 to 24 months' imprisonment. The United States Probation Office calculates the same Guidelines range (PSR ¶¶ 30-51, 88), and recommends a Guidelines sentence of 18 months' imprisonment. (PSR at 25).

III. Discussion

1. Applicable Law

In addition to the Guidelines, which are not mandatory but must be consulted prior to sentencing, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): (1) “the nature and circumstances of the offense and the history and characteristics of the defendant”; (2) the four legitimate purposes of sentencing, as set forth below; (3) “the kinds of sentences available”; (4) the Guidelines range itself; (5) any relevant policy statement by the Sentencing Commission; (6) “the need to avoid unwarranted sentence disparities among defendants”; and (7) “the need to provide restitution to any victims,” 18 U.S.C. § 3553(a)(1)-(7). *See Gall v. United States*, 552 U.S. 32, 50 & n.6 (2007).

In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

2. The Section 3553(a) Factors Support a Guidelines Sentence

In this case, each of the 3553(a) factors supports the imposition of a sentence within the Stipulated Guidelines Range of 18 to 24 months' imprisonment.

First, the nature and circumstances of the offense are extremely serious. The defendant participated in multiple unprovoked assaults of strangers, known to him only as members of the Jewish faith and/or individuals of Israeli descent. Each of these assaults was brazen, occurring on crowded streets and in the middle of the day. The defendant knew nothing about the victims beyond what any passerby could observe: an Israeli flag, a yarmulke, a Star of David.² On the occasion of each assault, the victims were going about their business when the strength of the defendant's bias moved him to physical violence. Each of the victims was injured. Most seriously, Victim-1 required medical treatment at a hospital, as did the woman who fell to the ground when the defendant struck Victim-1.

Importantly, the seriousness of these assaults cannot be measured by physical injury to the victims alone. In passing the Hate Crime Act, Congress found "a prominent characteristic of violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected." *See* Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, 123 Stat. 2190, 2835 (2009). This sentiment is particularly evocative here, where the defendant chose to assault one Jewish man in front of his wife, and another in front of his family, including children, in a predominantly Jewish enclave of Brooklyn. Hate motivated violence such as the defendant's conduct sends a message to an entire group of people that its members are not safe. It targets communities, dehumanizing them, and reinforcing the idea that they are vulnerable due to their perceived otherness. This is an unacceptable message in New York City, or any other city or town in the United States. Accordingly, a sentence within the Stipulated Guidelines Range is necessary to reflect the broader societal harm caused by the defendant's hateful actions.

Second, the history and characteristics of the defendant support a sentence within the Stipulated Guidelines Range. The defendant has repeatedly engaged in hate-based violence towards Jewish people in New York City. The defendant characterizes his behavior as "aberrant." (Def. Ltr. at 3). But there is nothing aberrational about conduct repeated and sustained over the course of a year. Moreover, in addition to engaging in violent, bias-motivated behavior on his own, the defendant encouraged others to do the same. In advance of a planned assault, his text messages exhorted his associates: "ONLY VIOLENCE." On more than one occasion, he celebrated "beat[ing] the shit out of" perfect strangers. Thus, the defendant's history and characteristics weigh in favor of a sentence within the Stipulated Guidelines Range.

² The defense submission indicates that Victim-2 also was carrying an Israeli flag. (Def. Ltr. at 3). This is not readily apparent in the video collected by the Government, nor did Victim-2 mention it when speaking to the Government. However, for purposes of this submission, the Government does not dispute it could be accurate.

Third, the need to promote specific and general deterrence weigh strongly in favor of a sentence within the Stipulated Guidelines Range. With respect to specific deterrence, there is a great need to deter the defendant from future misconduct. To date, the defendant has shown no signs of ceasing his criminal conduct. For instance, after the defendant was charged with the assault of Victim-2 in 2021, he did not re-assess his actions and stop engaging in hate-based crime. To the contrary, he assaulted Victim-1 the following year. When the defendant was charged federally, he did not comply with Court ordered conditions of pretrial release. He repeatedly flouted the Court's orders and was virulently disrespectful toward his assigned Pretrial Services Officer. This course of conduct underscores the need for specific deterrence.

Relatedly, in an atmosphere of rising antisemitic attitudes, general deterrence is a significant consideration. In 2021, the Anti-Defamation League found a thirty-four percent rise in antisemitic incidents from the prior year.³ In 2022 alone, New York saw a preliminary count of 260 antisemitic crimes.⁴ A Guidelines sentence will send a message that violent attacks motivated by bias and hatred will not be tolerated. By contrast, the below-Guidelines sentence requested by defense counsel will send a message that such assaults are not deserving of the sanction that Congress and the Sentencing Commission have deemed to be just punishment based on decades of collective sentencing experience.

Fourth, the need to avoid unwarranted sentencing disparities merits a sentence within the Stipulated Guidelines Range. While the defendant argues that first time offenders in New York State court often receive six months' imprisonment to be followed by five years' supervised release (Def. Ltr. at 4-5), Section 3553(a) demands consideration of "defendants with similar records who have been found guilty of similar conduct." Around the country, defendants charged with committing hate crimes in violation of Title 18, United States Code, Section 249, are regularly sentenced within and above the applicable Guidelines range. *See, e.g., United States v. Roy Lamar Ashley*, 5:22 Cr. 27 (M.D. Fl. 2022) (sentence of 60 months' imprisonment, Guidelines range of 41 to 50 months' imprisonment); *United States v. Lee James Mouat*, 21 Cr. 20102 (E.D. Mich. 2021) (sentence of 60 months' imprisonment, Guidelines range of 51 to 63 months' imprisonment); *United States v. Randy Smith*, 20 Cr. 222 (W.D. Wa. 2020) (sentence of 42 months' imprisonment, Guidelines range of 37 to 46 months' imprisonment); *United States v. Ole Hougen*, 20 Cr. 432 (N.D. Cal. 2020) (sentence of 82 months' imprisonment, Guidelines range of 70 to 87 months' imprisonment).

Likewise, the Guidelines here are consistent with nationwide sentences imposed on first time offenders under the assault guideline, U.S.S.G. § 2H1.1. Over the last five years, the average

³ William Brangham, *Antisemitic incidents hit a record high in 2021. What's behind the rise in hate?*, PBS, Apr. 29, 2022 (available at: <https://www.pbs.org/newshour/show/antisemitic-incidents-hit-a-record-high-in-2021-whats-behind-the-rise-in-hate>).

⁴ *See, e.g.,* Michelle Boorstein and Scott Clement, *Survey finds 'classical fascist' antisemitic views widespread in U.S.*, Wa. Post, Jan. 12, 2023 (available at: <https://www.washingtonpost.com/dc-md-va/2023/01/12/antisemitism-anti-defamation-league-survey/>); Russell Contreras, *Antisemitic hate crimes rise in major cities*, Axios, Dec. 17, 2022 (available at: <https://www.axios.com/2022/12/17/antisemitic-hate-crimes-rise-in-major-cities>).

sentence imposed under that Guideline on individuals who, like the defendant, are in criminal history category I, was 18 months' imprisonment. The median sentence was 37 months' imprisonment. *See* United States Sentencing Commission Interactive Data Analyzer (Fiscal Year: 2017-2021; Primary Guideline: § 2H1.1; Criminal History Category: I) (available at: [https://ida.ussc.gov/analytics/saw.dll? Dashboard](https://ida.ussc.gov/analytics/saw.dll?Dashboard)). Thus, the need to avoid unwarranted sentencing disparities weighs in favor of a sentence within the Stipulated Guidelines Range.


Finally, the defendant's attempt to place his actions in the context of international affairs, the "occupation of Palestine," and events occurring in Jerusalem in April 2022 (Def. Ltr. at 1-2) should be given little, if any credence. This position is in accord with the defense the defendant and his associates seemed to plan in advance of the May 20, 2021, assault of Victim-3: "Remember, don't chant out jews, it's the Zionists." However, the veil of "anti-Zionism" is pathetically thin in this case. As an initial matter, the defendant is not an equal opportunity anti-Zionist. He did not attack "Evangelical Christians . . . who identify with the State of Israel." (Def. Ltr. at 2). Instead, he repeatedly attacked Jewish men. Further, when the defendant communicated by private Instagram text message, he dropped the veil, referring to Victim-2 as merely "some Jew politician." And when the defendant was shocked to find himself in a federal courthouse facing charges for his crimes, his first question was, "All this for one Jew?" More importantly, the defendant's position as set forth in his sentencing submission is flatly inconsistent with his plea allocution, in which he admitted: "I along with others, who I both know and don't know, did agree to commit crimes against individuals we believed and perceived to be Israeli. As part of this agreement, I along with others did cause bodily injury to multiple victims because of my perception of their identity." (Nov. 22, 2022, Tr. 12:5-11). Thus, the Court should discount the defendant's half-baked argument that his conduct is somewhat less serious, and by extension less deserving of prison time, because it stems from his purported political views.

19 Conclusion

Accordingly, the Government respectfully requests that the Court impose a sentence within the Stipulated Guidelines Range of 18 to 24 months' imprisonment, as such a sentence would be sufficient but not greater than necessary to serve the legitimate purposes of sentencing.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: 
Lindsey Keenan / Mitzi Steiner
Assistant United States Attorneys
(212) 637-1565 / 2284

cc: defense counsel (by ECF and E-mail)