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February 13, 2023

VIA ECF

Hon. Denise Cote
United States District Judge
Federal District Court for the Southern District of New York
500 Pearl Street
New York, NY
10007-1312

Re: Defense Sentencing Submission in *United States v. Saadah Masoud*, 22-cr-000359

Dear Judge Cote,

We write to formally request that you impose a sentence of six months' incarceration and three years of supervised release on Mr. Masoud at his upcoming sentencing on March 3, 2023.

Mr. Masoud's agreed-upon Guidelines Range is eighteen to twenty-four months. Chief U.S. Probation Officer Jonathan Sparks has recommended the minimum of that range — eighteen months. It is our understanding that the Government does not intend to argue for a sentence outside the Guidelines Range.

A sentence of six months imprisonment with three years of supervised release, however, is sufficient to, but not greater than, a sentence necessary to comply with 18 U.S.C. Sec. 3553(a)(2).

Nature and Circumstances of the Offense and History and Characteristics of the Defendant

The use of violence to promote social and political goals in a democratic society is never acceptable. Not before January 6, 2021, and certainly not since. No matter how deeply Mr. Masoud feels about the occupation of Palestine, that fight cannot be permitted to take place on the streets of New York. Period.

There are, however, several circumstances regarding the offense conduct that warrant closer examination and belie the Government's narrative that Mr. Masoud is fueled singularly by antisemitic hate.

As a preliminary matter, all three victims were known only to Mr. Masoud as outspoken advocates for the State of Israel. His conduct toward them would have been the same, no matter the religious faith to which they belonged. Indeed, in terms of numbers alone, there are more

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Evangelical Christians in the United States, who identify with the State of Israel than Jews. See <http://bit.ly/3xqYWLG>. Video of the April 20, 2022, demonstration reveals dozens of members of the Satmar religious group marching with, and being welcomed by, Mr. Masoud and his colleagues. The Satmars are one of the two main branches of Hassidic Judaism, and they stand in fierce opposition to the existence of the State of Israel.

With respect to the assault on Matthew Greenberg, it occurred on April 20, 2022, at the peak of clashes between Palestinian and Israeli Defense Forces in the Al-Aqsa Compound of Jerusalem. Mr. Masoud attended a pro-Palestine rally and march in Manhattan. Mr. Greenberg attended, wearing a giant Israeli flag like a cape, and proceeded to heckle the demonstrators. He came armed with a crutch (which video showed he did not need for any legitimate purpose). He acted as a provocateur. His behavior can only be described in ideological terms; it is not a Jewish practice, cultural or religious, to wear the Israeli flag, nor is it an accident that the symbol was placed in direct view of thousands of pro-Palestine demonstrators, during a period of intense conflict in Israel/Palestine. Usually, the NYPD separates mutually-antagonistic demonstrations from each other—precisely to prevent provocation and escalation. But Mr. Greenberg did not apply for a march permit and his one-man-show flew under the police radar.

Without question, Mr. Masoud punched Mr. Greenberg, without being physically provoked. And without question, this was a wrongful, criminal assault that could have been, and indeed should have been, prosecuted by local authorities. But Mr. Masoud had no knowledge of Mr. Greenberg’s religious or ethnic identity; to Mr. Masoud, he was a pro-Israel counter-protestor, seeking to disrespect the pro-Palestine message. PSR at ¶22(b).

The second victim is a public figure named Harold “Heshy” Tischler, a pro-Israel, Pro-Trump, anti-masking spewer of hate who has achieved a degree of notoriety for calling then-Mayor DeBlasio’s wife Charlene McCray a “whore” and a “retard woman,” and encouraging a mob to attack a reporter with whom Mr. Tischler had disagreed about Covid-19 restrictions. Mr. Tischler ultimately pleaded guilty to inciting a riot and received a non-carceral sentence. He was also a fierce critic of the Black Lives Matter protests that took place in the aftermath of George Floyd’s murder.

Mr. Masoud admits that he was driving by Mr. Tischler’s house when he saw him outside; that the two exchanged words; that Mr. Masoud slapped the phone Mr. Tischler was using to record him out of his hands. PSR at ¶ 22(a). Mr. Tischler’s statement to the press in the immediate aftermath tracks these admissions entirely. Further, Mr. Tischler himself identified an individual other than Mr. Masoud as the individual who hit him and identified Mr. Masoud as someone known to him from a George Floyd memorial service led by Black Lives Matter. See <http://bit.ly/40Pt29d>. Mr. Tischler called Mr. Masoud “a terrorist” for “coming to his neighborhood” but said nothing about Mr. Masoud’s culpability other than making a threat. *Id.* Mr. Masoud independently corroborated his prior relationship with Mr. Tischler at his pre-Sentence interview. PSR at ¶ 24 (“I had encountered him and argued with him previously at a Black Lives Matter protest where he appeared as a counter-protestor). Mr. Masoud’s actions with respect to Mr. Tischler cannot be reduced to a caricature of anti-Semitism, but instead, are the result of a prior, fraught relationship, over multiple issues that both parties consider deeply personal.

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Finally, the third incident took place several blocks from a highly confrontational clash between pro-Palestine and pro-Israel demonstrators in Times Square. See <http://bit.ly/3IBztMN>. Mr. Masoud takes responsibility for the fact that he approached and struck someone who had been present at the pro-Israel rally and without provocation. PSR at 11. Video footage of the incident shows Victim-3 carrying an Israeli flag in one hand, returning from the demonstration.

Mr. Masoud’s conduct cannot be reduced to anti-Semitism. Nor can it be reduced only to opposition to the State of Israel. Mr. Masoud was clear in his Pre-Sentence interview that the aggression he showed towards these three individuals was triggered by the death of his father and cousin, a recent break-up, and constant confrontation with counter-protestors at demonstrations. PSR at ¶ 23. He is clear that “anything could have made [him] snap because [he] was just so angry at everything”; that he should have taken a break from protesting because he was “not in the right state of mind.” *Id.* Every single one of his letters of support echoes the role that timing played in his escalating aggression. The fact that he has no prior convictions, has worked his entire adult life, and has earned his Associate’s Degree and was working towards his Bachelor’s at the time of the instant offenses, offers further corroboration for the notion that his criminal behavior was highly aberrant, and extremely context-dependent.

Mr. Masoud has taken the break he now knows he needed, from the time of his arrest on these charges. His pretrial status and his present incarceration have given him the opportunity to seriously reflect on his wrongful conduct. He understands that all three incidents stemmed from his own undisciplined reaction to simultaneous moments of acute conflict in Israel/Palestine and acute trauma in his life (the death of his father and cousin). Exhibit A, Mr. Masoud’s Letter to the Court. He has expressed not only tremendous remorse and a desire to apologize to the victims, but has re-committed himself to his faith such that he never makes the same mistake again. *Id.*

He attaches a large number of letters of support at Exhibit B. Each emphasizes the same key themes: Mr. Masoud’s commitment to helping others, through volunteering and raising money and awareness, and the simultaneous struggles he has faced overcoming domestic violence, the death of his father, the death of his cousin, and growing up visibly Arab and Muslim in a post-911 NYC. All recognize that he has erred; none make excuses for his behavior. They do however, understand its root causes, and see Mr. Masoud making an active effort to address them.

Jumana Khatib, a close family friend, describes Mr. Masoud as putting those he loves first, largely as a function of his difficult childhood.

Mahmoud Ahmed, a close friend and entrepreneur, describes the likelihood that Mr. Masoud’s grief — after the loss of his father and cousin — played a huge role in his actions during the protests in 2021.

Ahmed Hussein, a Sargent in the United States Army, FDNY firefighter, and former MOS of the NYPD, describes Mr. Masoud as someone like himself — committed to helping others, and being of service wherever possible.

Rushdy Hauter, LCMSW, describes Mr. Masoud’s kind heart, despite the struggles he endured growing up.

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Reem Hassan, Mr. Masoud's sister-in-law describes Mr. Masoud going above and beyond for others, known and unknown, by volunteering and raising money in the community, all despite the loss of his father in 2021.

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Mr. Masoud's mother, Fadwa Jaber with whom he hopes to reside upon his release, describes Mr. Masoud's life as being defined by being both a victim of, and witness to, domestic violence, at the hands of both his father, and her second husband.

Fade Masoud, Mr. Masoud's brother, describes Mr. Masoud's moving attempt, at the end of his father's life, to reunite his father with all of his children, so that he would not die with regret. He describes Mr. Masoud's regret for the offense conduct.

Fatma Elhousseini, Mr. Masoud's sister, goes to great pains to describe Mr. Masoud as someone who puts the suffering of those around him before his own, no matter its magnitude. She recognizes that repressed trauma bubbled over, causing him to commit the instant offenses. Her description of Mr. Masoud as technically her half-brother, but someone who never treated her as anything other than a full sibling, is itself, telling.

Nour Elhousseini, Mr. Masoud's sister, describes Mr. Masoud's constant presence in her life; his struggles after losing his cousin and his father; her desire to have him attend her high school graduation, as he has so many of her milestones.

Applicable 18 U.S.C. 3553(a)(2)-(7) Factors

The proposed sentence is more than adequate to deter the defendant from engaging in other criminal acts in the future, and to protect the public. The defendant has never before been incarcerated. A full six months of imprisonment is certainly more than a taste of what awaits him should he recidivate. Indeed, a similar type of sentence is routinely employed in the State court system with first felony offenders deemed unsuitable from probation.¹

Six months' imprisonment will importantly avoid creating large sentencing disparities between that imposed in the case against Mr. Masoud, and that imposed in similar state prosecutions currently pending. Waseem Awadeh, for example, facing charges stemming from the same Times Square May 20, 2021 incident described above, *supra*, is expected to be sentenced to six months' imprisonment. See <https://bit.ly/40YfsAC>. Defense counsel is informed by Mark Kleiman, that criminal charges stemming from an incident where pro-Palestine supporters allegedly *threw glass bottles* at several pro-Israel individuals who were eating outdoors at a restaurant are currently expected to reach a non-custodial disposition. See <http://bit.ly/3K50nqC>.

¹ State sentences of six months incarceration and five-years' supervised release, a so called "split sentence," are common and likely to be the most severe punishment Mr. Masoud would face had State authorities chosen to prosecute him. It is worth noting that a six-month sentence is deemed "city time" and the defendant serves only four months. By contrast, as this Court is no doubt aware, there is no "good time" reduction at all for a six-month federal sentence.

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The offense conduct herein is serious, but neither of the assault victims were seriously injured. That is, under New York law, both offenses would qualify for “physical injury,” rather than “serious physical injury.” Mr. Masoud did not employ any weapon.

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Ultimately, Mr. Masoud has learned his lesson; despite his serial failure to abide by the terms of his home confinement, he did not attend a single other pro-Palestine demonstration, though many took place during the period of his pre-trial proceedings. His participation in weekly counseling (which he never failed to attend) fulfilled 18 U.S.C. § 1353’s focus upon rehabilitation; not only did Mr. Masoud develop tremendous insight into why he acted with aggression towards the victims, but he recommitted himself to his faith, praying daily and attending Mosque weekly. He wishes to apologize; he sees the consequences of his actions; he pleaded guilty and appeared in court when remand was imminent. He does not defend his actions, nor do we intend to in this submission. We thus ask that you impose a sentence of six months’ imprisonment, and three years post release supervision.

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Respectfully submitted,

/s/ _____
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Dated: February 17, 2023