

1 (The following proceedings were held in open court  
2 beginning at 9:36 a.m., reported as follows:)

3 **DEPUTY CLERK:** All rise.

4 **THE COURT:** Good morning, everyone.

5 **THE DEFENDANT:** Good morning.

6 **THE COURT:** We're here today in Cause  
7 Number 2:15-CR-72. It is United States versus Kash Lee Kelly.  
8 We are here for the sentencing of Mr. Kelly, who is here with  
9 his lawyer, Mr. Adams. We have Mr. Nozick here for the  
10 government.

11 Mr. Kelly appeared before the Court way back in -- I think  
12 it was 2017, if I'm not mistaken, June 26 of 2017, and he  
13 entered a plea of guilty at that time to one count of a  
14 nine-count Third Superseding Indictment. And he was adjudged  
15 guilty on that count.

16 After the plea, I ordered the preparation of a presentence  
17 report, which I received the final version on March 6 of 2020.  
18 That's Document 2536. I have studied the report and the  
19 addendum to the report in advance of the hearing today.

20 There's a whole host of other material that I have  
21 reviewed, so let me just make a record of that and make sure  
22 that everybody is in agreement with that.

23 So as I mentioned, there was an initial revised  
24 presentence report; and then, of course, there was an addendum  
25 to the report that set forth a number of objections. Then

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF INDIANA  
3 HAMMOND DIVISION

4 UNITED STATES OF AMERICA, )  
5 )

6 Plaintiff, )

7 vs. )

8 KASH LEE KELLY, )

9 Defendant. )

2:15-CR-72

10 TRANSCRIPT OF SENTENCING HEARING  
11 February 11, 2021  
12 BEFORE THE HONORABLE PHILIP P. SIMON  
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 FOR THE GOVERNMENT:

16 DAVID J. NOZICK  
17 United States Attorney's Office  
18 5400 Federal Plaza, Suite 1500  
19 Hammond, Indiana 46320  
20 (219) 937-5500

21 FOR THE DEFENDANT:

22 JOSHUA B. ADAMS  
23 Law Offices of Joshua B. Adams PC  
24 53 W Jackson Blvd.  
25 Suite 1615  
Chicago, Illinois 60604  
(312) 566-9173

ALSO PRESENT:

Sanjin Bosnjak, U.S. Probation

Stacy L. Drohosky, FCRR, CRR, RMR  
(219) 852-3462 - stacy\_drohosky@innd.uscourts.gov



1 there was a second addendum to the presentence report, then a  
2 third addendum to the presentence report.

3 I received an initial sentencing memorandum from  
4 Mr. Kelly's previous lawyer, Ms. Sonya Scott-Dix, that was  
5 filed back in August of 2019, and then attached to that was a  
6 number of letters that were on the defendant's behalf. And  
7 then Mr. Adams himself submitted a sentencing memorandum as  
8 well. It's 2859 on the record.

9 The government initially filed, first, a motion under  
10 5K -- that's Document 2200 -- and then an initial sentencing  
11 memorandum back in August of 2019. And then they supplemented  
12 it, it's actually called an Amended Sentencing Memorandum, from  
13 February the 8th of this year. It's Document 2864. And then  
14 Mr. Adams filed a response to that filing.

15 And then in addition to that, I have received just a  
16 number of other correspondence, whether it was by way of  
17 letter, email, voice mails, et cetera. And those are all set  
18 forth in the record; Docket Entry 2710; 2711; 2727; 2728; 2729;  
19 2847; 2854; 2858; 2861 was a spiral bound kind of notebook that  
20 was a compilation of comments that were culled from  
21 Mr. Kelly's, I guess, social media accounts and sort of put in  
22 one handy packet for me; 2862 is another compilation of many,  
23 many letters that we have received over the last several  
24 months; 2865; 2867; and 2868.

25 So that's the totality, I believe, that delineates what I

1 have received and reviewed in advance of the hearing today.

2 And then, actually, I should note just this morning I  
3 received a voice mail from Kim Whitaker of Cherokee, Iowa, and  
4 she made known to me what her opinions were on the case.

5 So I have brought that out here to share with you; but  
6 just by way of full disclosure, I received that.

7 So, Mr. Nozick, does that sound like a fair summary of the  
8 material that's been presented to me for my consideration for  
9 sentencing today?

10 MR. NOZICK: It does, Your Honor.

11 THE COURT: How about from your perspective,  
12 Mr. Adams, does that sound like a fair summary --

13 MR. ADAMS: Yes, Your Honor.

14 THE COURT: -- of what I have?

15 All right. Mr. Adams, can I assume that you have had an  
16 opportunity to sit down with your client and thoroughly review  
17 the contents of the presentence report and those various  
18 addenda sometime before the hearing today?

19 MR. ADAMS: We did, Your Honor, yes.

20 THE COURT: Is that true, Mr. Kelly? Did you have a  
21 chance to do that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Mr. Nozick, can I presume you  
24 have also reviewed the presentence report prior to the hearing  
25 today?



1           **MR. NOZICK:** That's correct, Your Honor.

2           **THE COURT:** All right. So the presentence report and  
3 those addenda are placed in the record under seal. If an  
4 appeal is taken, counsel on appeal will be permitted access to  
5 the sealed reports.

6           Can I also presume that all of you received Mr. Bošnjak's,  
7 our probation officer's recommendation, sentencing  
8 recommendation in this case?

9           Mr. Adams?

10          **MR. ADAMS:** Yes, Your Honor.

11          **THE COURT:** Mr. Nozick?

12          **MR. NOZICK:** Yes, Your Honor.

13          **THE COURT:** Okay. The addendum to the presentence  
14 report does set forth a number of objections that have been  
15 raised that I need to resolve.

16          But two of the objections -- and this is one of the things  
17 I want to talk to you about, Mr. Adams, because I know you came  
18 into the case, you know, sometime later, and this is a little  
19 irregular, and it shouldn't really have occurred this way.

20          But Ms. Scott-Dix lodged certain objections. So the first  
21 two -- number one was to the drug weight and the second one was  
22 to the gun possession. But then later on -- and this is not  
23 the way things should operate, but it's the way it operated,  
24 and we should have clarified this and put it officially on the  
25 record -- we received an email from Ms. Scott-Dix saying, "I'm

1 withdrawing these objections." But I have no idea whether you  
2 intend to press those objections or not.

3 I will note that in the plea agreement they were agreed  
4 to, so why don't you tell me -- let's use that as the jumping  
5 off point here.

6 Do those remain contested issues?

7 **MR. ADAMS:** No, Your Honor, they do not. Since  
8 Mr. Kelly agreed to this in the plea agreement in June 2017, I  
9 don't believe there's a basis to object to them now in the PSI,  
10 so we are not raising those objections.

11 **THE COURT:** Okay. So I will show objections number  
12 one and number two as being withdrawn.

13 The third objection deals with whether or not Mr. Kelly  
14 should be assessed an aggravating role under 3B1.1. This, of  
15 course, is an upward movement in the guidelines, and the burden  
16 would be on the government.

17 So, Mr. Nozick, tell me, you know, what I can expect to  
18 hear as it relates to that issue and proof as it relates to  
19 that.

20 **MR. NOZICK:** Your Honor, I had a discussion with  
21 defense counsel yesterday on the phone, or a number of them, to  
22 help, sort of, hone us in on what's actually being disputed.  
23 My understanding is he's waiving that objection as well. The  
24 defendant has admitted to holding different positions in the  
25 Latin Kings, and I believe the only issue today is whether he



1 loses the points for acceptance of responsibility, as far as  
2 guidelines go.

3 So my understanding is there's no guideline dispute other  
4 than three points for acceptance of responsibility based on him  
5 being charged in Washington D. C. at the U.S. Attorney's Office  
6 there and then just, sort of, argument.

7 As far as the objections --

8 **THE COURT:** I'm surprised by that. Because I have to  
9 say, the evidence seems a little bit weak about his aggravating  
10 role, candidly.

11 **MR. NOZICK:** Judge, I will -- there is no evidence  
12 that I'm going to raise, other than what is in the PSR. We  
13 could review what is in the plea agreement, the plea  
14 transcript. Should we take a minute and take that out then?

15 **THE COURT:** Well, he certainly didn't admit to having  
16 an aggravating role in the plea agreement.

17 **MR. NOZICK:** He didn't say, "I admit to aggravating  
18 role," but he said, "I admit" -- Mr. Lanter laid out he was an  
19 Enforcer or an Inca, et cetera, and he admitted to all those  
20 facts, which is admitting to an aggravating role.

21 Judge, we could go back and look, but each and every  
22 person who has held a role of a position in a chapter has  
23 gotten an aggravating role.

24 I mean, I see you shaking your head.

25 **THE COURT:** I'm not sure about that.

1           MR. NOZICK: Okay. I mean, it's our position that if  
2 you're an Enforcer, if you are an Inca, that you have an  
3 aggravating role.

4           Now, we could argue about -- I think maybe sometimes we  
5 agreed to two points instead of three; but if you are an Inca  
6 and you are in charge of a chapter or you are an Enforcer in  
7 charge of -- if you are anything other than a soldier, anything  
8 other than rank and file --

9           THE COURT: So tell me what the evidence was. Just  
10 proffer it for me. Because in the presentence report all that  
11 it says -- it's just a conclusion. It simply says, "A review  
12 of the offense conduct shows that the defendant was a  
13 manager/supervisor." That's not particularly help --

14          MR. NOZICK: Sure, Judge.

15          THE COURT: -- to me.

16          And based upon -- let me just say that the factual  
17 statements in the presentence report, you know, they're not  
18 particularly elucidating on that point.

19          MR. NOZICK: Okay, Judge. To be candid, on that  
20 point, since I was told that there's not going to be an  
21 objection, I don't have my notes from our drafting that. I  
22 thought we were not, you know, litigating it today. But I will  
23 tell you that numerous Latin Kings -- if you want, I could take  
24 a five-minute recess and tell you who they were, run downstairs  
25 and print something, my prosecution memo, and tell us who they



1 were. But a number of cooperating Latin Kings said he held  
2 down, whether it is Enforcer role, Inca role, et cetera, and  
3 then in the factual basis, that was laid out as our factual  
4 basis. And he was asked, do you agree to all of that, and he  
5 says yes.

6 Now, what he did as an Inca or an Enforcer we would only  
7 be relying on the general knowledge of the case of what an Inca  
8 does, what an Enforcer does, et cetera. But certainly -- you  
9 know, we're not talking about Treasurer who just sort of keeps  
10 the books. An Enforcer beats people for not following the  
11 rules of the Kings, and an Inca is the number one of that  
12 chapter.

13 **THE COURT:** I'm not being argumentative. I'm just  
14 searching my memory here. We've had nearly 40 defendants that  
15 we've sentenced. I thought there were some defendants that  
16 were labeled Incas but when the rubber met the road it was a  
17 little bit in name only.

18 Am I not remembering that right?

19 **MR. NOZICK:** I mean, look, there's some people that  
20 might have been the -- the Regional person and would be, sort  
21 of, in name only. Yeah, there are some people that were --  
22 some of them were more figureheads than others; but, certainly,  
23 all of them have the power to order people violated, et cetera.

24 I will tell you that Mr. Kelly -- I don't have knowledge,  
25 off the top of my head, of people he ordered beaten, people he

1 beat. Maybe there's stuff in our prosecution memo. Again,  
2 since I was told this was being --

3 THE COURT: Let me see if I can cut through this.  
4 Let me talk to Mr. Adams for just a second.

5 MR. NOZICK: Absolutely.

6 THE COURT: So you tell me, Mr. Adams. I was  
7 prepared to deal with this objection. Did you advise -- are  
8 you in agreement with what Mr. Nozick is saying here, that from  
9 your perspective he did play a leadership role for that period  
10 of time?

11 MR. ADAMS: Your Honor, it's my understanding -- I  
12 spoke with Mr. Kelly prior to this week -- that that was not  
13 going to be an objection. I think his position has changed on  
14 that, that he would like to object to this. Yesterday I  
15 believed it was not going to be objected to. Today I think  
16 that position has changed, so he would like to raise an  
17 objection to the leadership role.

18 THE COURT: Then I'm going to give the government  
19 some time.

20 MR. ADAMS: For sure.

21 THE COURT: It's not fair to Mr. Nozick to, sort of,  
22 pull the carpet out from under him --

23 MR. ADAMS: I agree.

24 THE COURT: -- when he was led to believe one thing  
25 obviously.



1           **MR. ADAMS:** I agree.

2           **THE COURT:** Mr. Nozick, I'm not trying to create  
3 issues here, but I walked out here thinking this was a  
4 contested issue.

5           **MR. NOZICK:** Of course, Judge.

6           First, let me note, when you said, "I don't mean to be  
7 argumentative," you're the one in court that's allowed to be  
8 argumentative.

9           **THE COURT:** I'm trying to be polite though.

10          **MR. NOZICK:** I get it. I get it. I get it.

11          The second thing is, we can do it however you want. I  
12 could take a five-minute break and get a printout and tell you  
13 who told us he held those positions.

14          We could either do it now or we could do some more of the  
15 sentencing and then when you feel like we could use a break,  
16 bathroom or whatever, then I could go and print it out and we  
17 could circle around and come back to that issue. However the  
18 Court wants to handle it.

19          **THE COURT:** Okay.

20          **MR. NOZICK:** And there are, sort of, in between,  
21 right. Sometimes people get a two-point enhancement, et  
22 cetera. It's not an all or nothing. I'm not going to argue  
23 that he was a big leader in the Latin Kings, but he did hold  
24 positions. And for everyone that held a position, we did argue  
25 that they get some points for it.

1           **THE COURT:** All right.

2           Mr. Adams, you were trying to get my attention. Did you  
3 want to say something?

4           **MR. ADAMS:** Judge, may I have a brief moment to talk  
5 to Mr. Nozick? Is that okay?

6           **THE COURT:** Sure.

7           **MR. ADAMS:** Thank you, Your Honor.

8           (Discussion held off the record between counsel.)

9           (The proceedings resumed in open court, reported as  
10 follows:)

11           **THE COURT:** Did you want to address the Court,  
12 Mr. Adams?

13           **MR. ADAMS:** May I, Your Honor?

14           **THE COURT:** Sure.

15           **MR. ADAMS:** Judge, I spoke with Mr. Nozick outside  
16 just now. I spoke with Mr. Kelly prior to that and after, and  
17 it's Mr. Kelly's intention to waive any objection to the  
18 enhancement in paragraph 28 of the PSI for the three-point  
19 enhancement for manager/supervisor.

20           **THE COURT:** Okay. Then I'll show objection number  
21 three in Document 1479 as being withdrawn by agreement. The  
22 defendant did play an aggravating role in the offense by way of  
23 being an organizer/leader or supervisor of an endeavor  
24 involving more than five responsible participants.

25           The next objection deals with behavior, it's called in the



1 presentence report, and I really think this is kind of a  
2 misnomer. It's not really -- I'm not being critical of  
3 Mr. Bošnjak, but I don't think it's a fair description. It is  
4 offense behavior not part of relevant conduct.

5 And it delineates a whole host of, you know, serious  
6 episodes involving the defendant that if they are true then  
7 they would be relevant conduct, as far as I can see.

8 I think what Mr. Bošnjak is really saying is that this is  
9 offense behavior that he finds is not substantiated and that's  
10 the reason it's not being scored under the guidelines, that  
11 it's not fair to call it not part of relevant conduct because  
12 if Mr. Kelly, for example, you know, with one of his  
13 co-defendants Black Tone kidnapped the owner of this liquor  
14 store and held him, you know, as part of the conspiracy, well,  
15 that would plainly be relevant conduct. But I think what the  
16 probation office is telling me is that they didn't score it  
17 because they didn't find it was substantiated.

18 Mr. Nozick.

19 **MR. NOZICK:** Thank you, Judge.

20 I can't get in probation's mind. The way I was reading it  
21 was that since he was charged in the RICO -- strike that. He  
22 was charged with a drug conspiracy and not the RICO. I thought  
23 that Mr. Bošnjak was saying it's stuff, it's violence, it's not  
24 really germane to the count that he was charged with and pled  
25 to. Maybe I was, sort of, misreading it or reading too much

1 into it.

2 It is stuff that is germane to a drug conspiracy, right?  
3 If it's Latin King stuff, violence, et cetera, it is germane to  
4 the drug conspiracy even though he's not charged in the RICO.  
5 However, it could -- I'm not objecting that he's not scored on  
6 it, so I didn't object and say, you know, yes, it's germane to  
7 the drug conspiracy, I want points added for violence, et  
8 cetera. You know, we could get very far in the weeds on some  
9 sentencing issues. I chose not to -- he's agreeing to a  
10 substantial amount of narcotics, which are driving the  
11 guidelines.

12 So at this point those issues do not affect the sentencing  
13 guidelines in that I have not tried to hold him responsible for  
14 that under the sentencing guidelines. It would be my burden to  
15 bring forth evidence on that. I am not.

16 As far as a legal matter goes, I don't think it's outside  
17 the scope of the drug conspiracy and, you know, not relevant  
18 conduct.

19 **THE COURT:** Sure.

20 **MR. NOZICK:** I get that the Court, as part of 3553  
21 and, sort of, the holistic approach, and you have said this  
22 before, even when stuff doesn't drive the guidelines, you would  
23 like to know if it were true for the whole picture. And all I  
24 can say to that is the government is not presenting any other  
25 evidence on that today or, obviously, at any time.



1 To the extent you would want it fleshed out to have a  
2 whole picture of the defendant, there's nothing else that the  
3 government is choosing to present on that, and it does not  
4 affect the sentencing guidelines.

5 So in my mind it doesn't need to be litigated today unless  
6 this Court needs to hear more on it, and I could have someone  
7 flesh it out.

8 **THE COURT:** Mr. Adams, did you want to respond to  
9 that?

10 **MR. ADAMS:** Yes. Thank you, Judge.

11 The way I read this nonrelevant conduct was that it was  
12 unsubstantiated. I went back and looked at the proffers and  
13 the discovery that were, sort of, tied to these allegations  
14 starting in paragraph 35, and the conclusion I came to, too,  
15 was that these were unsubstantiated claims, such that Mr. Kelly  
16 participated in a kidnapping. Again, I don't have any proof of  
17 that. The government had not raised it in their sentencing  
18 memo. I had not responded to it in our sentencing memorandum,  
19 and I had not considered it to be part of the 3553 factors that  
20 were driving the sentence.

21 I was going to address it at my sentencing speech,  
22 Your Honor, to the Court about Mr. Kelly's conduct. But a lot  
23 of this -- which would focus on -- a lot of this happened  
24 pre-2010. A lot of it's pre-Indictment.

25 **THE COURT:** Okay.

1 Mr. Nozick.

2 MR. NOZICK: If I could just add, Judge, I'm not  
3 saying that any of those cooperators are being untruthful, but  
4 just so the Court or the public doesn't have the perception  
5 that we're letting him get away with all sorts of violent acts,  
6 I think it's unlikely we would be able to prove things such as  
7 that kidnapping by a preponderance of the evidence and some of  
8 the other things. I think it is unlikely that I would be able  
9 to prove it, so I don't want the Court to have the impression  
10 that we're, sort of, letting him get away with other violent  
11 acts.

12 THE COURT: The one I was interested in, if you can  
13 flesh it out for me, is the one dealing with Jeremy Farmer. Do  
14 you have any additional information on that?

15 MR. NOZICK: Judge, again, this is going to be one I  
16 have to go back. You have to realize -- I know we are set for  
17 sentencing today, but there are so many facts and so many  
18 episodes.

19 THE COURT: I totally appreciate that. What I'm  
20 trying to do -- listen, there's a reason we have addendums and  
21 facts get objected to. And in my way of thinking, if they're  
22 going to be presented to me, I need proof. Otherwise, I'm just  
23 going to discard them because there's no evidence to support  
24 them.

25 MR. NOZICK: Judge, there is -- other than one



1 cooperators saying it, there would be no evidence to support it.  
2 It is unlikely we would prevail on that by a preponderance. If  
3 it was something where we had two, three, four, five people  
4 telling us that, I would be going forward on it and pushing it.

5 THE COURT: Okay. I'm going to sustain the objection  
6 to everything that is contained in objection number four in  
7 Document 1479, and that keys back to paragraphs 35 through 41.  
8 I'm going to order those stricken from the presentence  
9 report --

10 THE PROBATION OFFICER: Yes, Judge.

11 THE COURT: -- as just not being substantiated.  
12 There's no evidence to support them, and I will not take those  
13 into account in my ultimate disposition of the case.

14 I'll just state, for the record, those are the kind of  
15 things that -- I mean, you, Mr. Nozick, certainly should know  
16 those are the kind of things that resonate with me that are  
17 important in, sort of, telling the whole story of who is in  
18 front of me. I appreciate the candor, that if you can't prove  
19 it, you can't prove it.

20 Okay. So based on all of those findings, then the  
21 guidelines -- well, there is, of course, the issue of  
22 acceptance of responsibility, which isn't delineated in the  
23 addendum but which resulted from actions that took place after  
24 the addendum was put together, and then it's reflected in the  
25 third addendum to the presentence report.

1           So for acceptance, the burden is on the defendant because  
2 it is a downward movement in the guidelines. And so,  
3 Mr. Adams, why don't you tell me what you intend to do as it  
4 relates to that issue.

5           **MR. ADAMS:** Judge, with respect to acceptance, we  
6 believe that Mr. Kelly has satisfied the requirements under  
7 3E1.1. He pled guilty timely, and the Court did admonish him  
8 at the change of plea if he were to commit another crime while  
9 on bond acceptance could be revoked. Part of the colloquy did  
10 say, though, we interpret it to be crimes related to this case.

11           He pled guilty to the 2015 case in 2016, and from 2016  
12 through early 2021, he was a model defendant. He was on bond.  
13 No violations. I think there was one early on in the case, but  
14 after that, he cooperated fully and truthfully and honestly  
15 with the government, accepted his responsibility for his  
16 actions to which he pled guilty in this case.

17           The charged conduct out of D.C. is unrelated to anything  
18 with the Latin Kings or related to any drug conspiracy. It is  
19 our position based on his conduct before this Court as it  
20 relates to cooperation with the government and the information  
21 he provided and his own admissions of guilt related to his  
22 conduct in this case to the probation office and to the  
23 government is that he fully accepted responsibility with  
24 respect to this case 2:15-CR-72; and, therefore, he should  
25 still get the benefit of the three points for acceptance of



1 responsibility.

2           **THE COURT:** All right.

3           Mr. Nozick, do you want to respond?

4           **MR. NOZICK:** Yes, Judge. I think -- respectfully, I  
5 understand defendant's arguments, but I think he's, sort of,  
6 conflating a number of different issues here. As far as  
7 cooperation, the government is still standing by its 5K motion.  
8 It's under seal, but the Court has named it a 5K motion. The  
9 government is standing by that, and he has been fully  
10 cooperative.

11           However, there is nothing in the plea agreement, nothing  
12 in the plea colloquy -- when he's admonished and warned that  
13 you can lose acceptance of responsibility points for new  
14 criminal conduct, there's nothing in that that links it to  
15 criminal conduct related to this case.

16           As this Court knows, there are people who go -- you could  
17 be in on -- you could be pending a bank robbery and test  
18 positive for drugs and lose acceptance of responsibility.

19           Now, that would be, sort of, a chintzy case of someone  
20 losing acceptance of responsibility. And, you know, to be  
21 candid, I might feel sheepish arguing for it. I might not  
22 argue for it.

23           If this Court is wondering, are there situations where  
24 someone commits new criminal conduct where you haven't argued  
25 for loss of acceptance of responsibility? Yes, there has been.

1 It is in the Court's discretion, and, obviously, the government  
2 has discretion whether we want someone to lose acceptance of  
3 responsibility.

4 So let me say that it is of no import that the new  
5 criminal conduct is unrelated to this case, right? We wouldn't  
6 be here -- if he robbed a bank while out on bond, we wouldn't  
7 be saying, well, that bank robbery has nothing to do with the  
8 Kings or the drug conspiracy. So I think the Court can  
9 agree -- unless you have concern about it, I think the Court  
10 can agree that it's immaterial whether or not the new criminal  
11 conduct is related to this case or not.

12 Defense didn't argue it, but if this Court is concerned,  
13 well, he's only charged with misdemeanors, he's not charged  
14 with a new felony, I think it probably goes without saying that  
15 the government views what he is charged with extremely serious.

16 He was a part -- I'm not saying the driving part, I'm not  
17 saying he was violent, but he was part of a violent  
18 insurrection on our nation's Capitol, an attack on our nation's  
19 Capitol, while Congress was meeting. And the intent of that  
20 insurrection -- I can't get in his mind -- but the intent of  
21 the insurrection was to disrupt the peaceful transfer of power  
22 in our democracy. That is as serious -- to me, that is much  
23 more serious than many felonies.

24 And he has done a lot of good, and we are going to talk  
25 about the good in a while. And I'm not saying that this wipes



1 out the good, and I'm not saying that he was involved with  
2 killing a police officer, that he was involved with trying to  
3 get Mike Pence or any other members of Congress. But on that  
4 day -- he has done a lot of good, but on that day he wasn't  
5 part of the solution. On that day, he was part of the problem.  
6 The government views that extremely serious.

7 And the fact that he did that -- I agreed to leave him out  
8 on bond after a plea. That is always a risk for us when you  
9 leave a defendant, after he pleads, out on bond. It's  
10 extremely disheartening to me and extremely disappointing to  
11 me; and, you know, there's a level of misleading the Court and  
12 misleading the government. The motion said that --

13 In addition to the criminal conduct, he wasn't even  
14 supposed to be in Washington D.C. His motion said, "I need to  
15 go to Texas." I agreed to it. The defense can make their  
16 arguments whether it was a miscommunication between them; but,  
17 certainly, there's a reasonable inference that he didn't tell  
18 the Court and tell probation he was going to Washington because  
19 they knew what was going on in Washington and, you know, so he  
20 says he went to Texas.

21 There's the misleading the Court; but in my mind, much  
22 more concerning, is the shocking events that happened at our  
23 nation's Capitol, Judge, and his role. This Court, I believe,  
24 has read the complaint and has seen the photos. I don't think  
25 there's going to be a dispute as to that being him, as to him

1 being inside. They can speak to that. He has a pending case.  
2 They may not want to. But the government views it as egregious  
3 whether it's charged as a felony or misdemeanor.

4 **THE COURT:** Mr. Adams.

5 **MR. ADAMS:** Thank you, Your Honor.

6 If we're going to take away acceptance for other conduct  
7 it's going to almost double Mr. Kelly's low end of the  
8 guidelines, and then it becomes a question of whether he's  
9 being punished today for his conduct in this criminal case, in  
10 the drug conspiracy which he pled guilty to, or if now he's  
11 going to be punished for pending charges that have not yet been  
12 resolved.

13 I think by withdrawing acceptance -- and he even  
14 cooperated after he was charged in that case, so he's continued  
15 to accept responsibility I think as it's defined in 3E1.1. By  
16 taking away acceptance of responsibility, I think it sets a  
17 bad -- or it sets a precedent that you can still cooperate but  
18 we're still not going to give you acceptance no matter how much  
19 information you do give.

20 And I do recognize that the government has not withdrawn  
21 their 5K and they are still going forward with that. So our  
22 response to the government's position is that we're starting to  
23 punish Mr. Kelly based on other conduct, not on his conduct  
24 related to this case.

25 **THE COURT:** All right.



1 Do you want to say anything else? I thought you were  
2 signaling to me.

3 **MR. NOZICK:** Just very briefly, Judge.

4 I know this Court -- you said many times you take a  
5 holistic approach and you come up with a sentence that you  
6 believe to be just.

7 Regardless of the effect on the guidelines, he should lose  
8 acceptance of responsibility and this Court, in its discretion,  
9 will weigh the factors, 3553 factors, and come up with a  
10 sentence that it believes to be just. And you're going to hear  
11 a lot about the positive that he's done from the defense, and  
12 you're going to hear a lot of the positive he has done from the  
13 government. That doesn't change the fact that he should lose  
14 acceptance of responsibility for the criminal conduct that he's  
15 done, Judge.

16 This Court is well aware, right -- we're having hearings  
17 in Washington today on the effect -- the egregious conduct and  
18 the effect of that on our nation. He needs to lose acceptance,  
19 and then we can deal with a final sentence at the end.

20 **THE COURT:** All right. I overrule the objection. I  
21 do not believe that the defendant is entitled to acceptance of  
22 responsibility.

23 He came in and pled guilty back in 2017, and I'm very  
24 meticulous, I think, at my plea hearings when I question the  
25 defendants. And I go through the plea agreement and I talk to

1     them about the value of acceptance of responsibility, and I  
2     always give them the example that -- especially for people who  
3     are out on bond where there's a substantial risk, but even for  
4     people who are in custody, I tell them: Let's say, for  
5     example, you assault another inmate next week, heaven forbid,  
6     or if you are out on bond, if you go out and commit another  
7     crime, I tell them that that might be an example that would  
8     reflect somebody who is really not fully expressing contrition,  
9     not fully accepting responsibility for their criminal behavior.

10         And, of course, the guidelines themselves support that in  
11     Application Note 1B to 3E1.1 when it states that -- you know,  
12     one of the data points on whether or not somebody has accepted  
13     responsibility is whether they have voluntarily terminated or  
14     withdrawn from criminal conduct or association, and so that's,  
15     of course, why I specifically tell defendants, listen, you've  
16     got to mind your Ps and Qs and turn square corners until  
17     sentencing and then you're going to be rewarded for that, as a  
18     way to incentivize them to tow the line.

19         We'll talk about this a little bit later. This isn't the  
20     sentencing for what you did in Washington. I'm cognizant of  
21     that. But I also don't operate in a vacuum either. And it is  
22     really breathtaking. It's breathtaking to me that somebody who  
23     is, you know, 30 days away from facing a federal judge in a  
24     courtroom for a serious drug conspiracy and knowing that that  
25     date was looming, knowing that and fully appreciating it, that



1 you would think that it's a good idea to, one, not -- to tell  
2 Magistrate Judge Rodovich that you were going to Dallas. I'll  
3 hear from you. And maybe that was some misunderstanding.

4 But throughout this case, you were released -- and  
5 probably one of the only defendants that was released  
6 pretrial -- but, you know, Mr. Nozick in his discretion and the  
7 magistrate judge thought that this defendant was worth taking  
8 that chance on, despite there being a presumption that would be  
9 a presumption of detention, but fair enough.

10 And then throughout the many years since you were first  
11 brought into the case, on many times we gave you a wide berth  
12 because I think it was -- you were demonstrating straightening to  
13 us, to Magistrate Judge Rodovich and to me, that you were kind  
14 of heading in the right direction. Wow, this is real positive.

15 I think you were originally on home detention. That was  
16 removed. You repeatedly asked for permission to travel around  
17 the country. We repeatedly gave you that permission because it  
18 seemed like what you were doing was positive and you were  
19 getting some traction, and terrific.

20 One thing I know for sure, whether you were lying when you  
21 told Judge Rodovich you were going to Dallas when you really  
22 intended to go to Washington, what I know for certain is you  
23 did not ask for permission to go to Washington, and that's not  
24 reflected on the record, despite having many times before asked  
25 for permission to travel.

1 I know you want to talk to me. You are going to be given  
2 a full opportunity to address me.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But it's really breathtaking to think  
5 that in that environment that you would think it's a good idea  
6 to go to Washington. And I don't know what role you played  
7 exactly, but I can believe my lying eyes here.

8 THE DEFENDANT: I understand.

9 THE COURT: And I have photos of you on the wall of  
10 the Capitol waiving an American flag. It's just the most  
11 ironic thing. The irony of that is so amazing to me. I can't  
12 even put it in -- there's no words in our lexicon to describe  
13 that irony.

14 And then pictures in the rotunda of you up on a pedestal  
15 of one of our Founding Fathers, I suppose. I don't recognize  
16 who it is. And then having the temerity or the, maybe,  
17 arrogance to post these things on your social media feed and to  
18 be proud of it.

19 I don't know, man, it's really disturbing to me. It's  
20 really disturbing. So I don't think in any -- there's no way  
21 in good conscience that I can say that you have voluntarily  
22 withdrawn from criminal behavior when you did these things.  
23 That would be crazy, that decision, in my opinion.

24 And the fact that these are only misdemeanors, I can't  
25 even get my mind around that; but perhaps that's the only thing



1 that fits the behavior. I don't know. That will be for a  
2 judge in Washington to sort out. But as it relates to the  
3 specific legal issue before me, has the defendant "clearly  
4 demonstrated acceptance of responsibility in the language of  
5 3E1.1A," the answer is no, so the objection is overruled.

6 So based on those findings, the guidelines in this case  
7 are as follows: There's a total offense level of 33. That's  
8 derived at as follows. There's an initial offense level of 28  
9 based on the drug quantity; two points were added because of  
10 the possession of the firearm under 2D1.1(b)(1); three points  
11 were added because the defendant was in agreement that he's a  
12 manager/supervisor of criminal activity involving five or more  
13 participants under 3B1.1(b). So the total offense level is 33.  
14 The criminal history category is III. And that leads to a  
15 range of suggested incarceration under the guidelines of 168 to  
16 210 months. Supervised release is two to five years. The fine  
17 range is 15,000 to 5 million. Then, of course, there's a \$100  
18 special assessment.

19 Based on all the rulings that I have made, is that  
20 accurate?

21 **MR. NOZICK:** Yes, Judge, prior to the government's  
22 sealed motion.

23 **THE COURT:** Sure. Of course. We haven't talked  
24 about the government's motion for a departure, but prior to  
25 consideration of that; is that accurate?

1 MR. NOZICK: It is, Judge.

2 THE COURT: Mr. Adams, is that accurate?

3 MR. ADAMS: Yes, Judge. After reviewing the PSI, it  
4 is accurate.

5 THE COURT: All right.

6 I do now accept the plea agreement entered into between  
7 the United States and the defendant filed with this Court back  
8 in 2017. The judgment and sentence will be consistent with it  
9 because the agreement adequately reflects the seriousness of  
10 the actual offense behavior and that accepting the plea  
11 agreement will not undermine the statutory purposes of  
12 sentencing.

13 I also now adopt the factual statements contained in the  
14 presentence report, and I also have already set forth what the  
15 guidelines are in this case.

16 Lastly, I do now grant the government's motion filed under  
17 5E for the reasons set forth in that motion. It's more than  
18 justified, and we'll talk about the extent of the consideration  
19 in a few minutes, but for now the motion is granted.

20 Okay. Why don't you guys tell me what you intend to do  
21 here by way of witnesses and other presentation as it relates  
22 to the 3553 issues.

23 Mr. Nozick, I'll let you go first. Are you calling any  
24 witnesses, or are you just going to --

25 MR. NOZICK: I'm not calling any witnesses.



1           **THE COURT:** I thought you had maybe --

2           **MR. NOZICK:** I have Task Force Officer Gootee if the  
3 Court needed anything clarified. I don't believe that I'm  
4 going to be calling him. You are granting the government's  
5 motion. If you have concern about the levels, perhaps I could  
6 address it, or we could talk to Task Force Officer Gootee, but  
7 at this point no witnesses.

8           I believe the defense has witnesses on the phone, perhaps,  
9 and I will just have argument.

10          **THE COURT:** Okay.

11          So, Mr. Adams, I was told that you do have some witnesses  
12 who are listening in who wish to be heard on the defendant's  
13 behalf; is that right?

14          **MR. ADAMS:** Yes, Your Honor. Thank you for making  
15 the accommodation.

16          **THE COURT:** Sure. Why don't we do that first. Why  
17 don't you tell me who these people are, and I will call upon  
18 them, and which order you would like them to speak.

19          **MR. ADAMS:** The first witness is Anthony Russo,  
20 R-U-S-S-O; second witness is Katie Fitsusis, F-I-T-S-U-S-I-S;  
21 the last witness is a pastor, Jay -- I believe the last name is  
22 Calaway.

23          **THE COURT:** Calaway?

24          **MR. ADAMS:** Yes, Your Honor. I believe they are on  
25 the line.

the world is a very different place than it was in the past.

The World Today

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The World Tomorrow

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.

The world is a very different place than it was in the past.



1           **THE COURT:** Okay. Mr. Russo, are you on the phone  
2 there, sir?

3           (No audible response.)

4           **MR. ADAMS:** I believe he was muted.

5           **THE COURT:** I think he has to unmute it.

6           **MR. RUSSO:** I am, Judge. Thank you.

7           **THE COURT:** Good morning, Mr. Russo. I'm going to  
8 ask you to raise your right hand so that you can be sworn in.  
9 My assistant here will swear you in, okay.

10          (The oath was administered.)

11          **MR. RUSSO:** I do.

12          **THE COURT:** Okay.

13          Mr. Adams, I didn't know if you were going to, sort of,  
14 question him or just allow him to take the floor and be heard.

15          **MR. ADAMS:** If it's okay with the Court, I believe he  
16 wanted to make a statement, if that's okay.

17          **THE COURT:** Oh, sure. That's fine.

18          Mr. Russo, why don't you tell me who you are, how you know  
19 Mr. Kelly, and then I'm happy to hear anything that you wish to  
20 say on his behalf.

21          **MR. RUSSO:** Thank you, Judge. Thank you, again, for  
22 allowing me to make a statement on behalf of Kash. My name is  
23 Anthony Russo. I'm the founder of #BeTheChange, Kash's friend,  
24 business partner, and to his newest child, Nova's godfather.

25          **THE COURT:** Okay.

1           **MR. RUSSO:** May I continue?

2           **THE COURT:** Yeah. Anything that you wish to say on  
3 his behalf, sir. The floor is yours.

4           **MR. RUSSO:** Thank you so much, Judge.

5           On paper, Kash and I come from a very, very different  
6 place, different lives. One of us, being me, grew up in the  
7 suburbs outside of St. Louis, and Kash grew up in gang-riddled  
8 neighborhoods in South Chicago and Northern Indiana.

9           Somehow we're here together hand in hand, and in June,  
10 this is where our friendship started. Somebody sent me a video  
11 of Kash talking about self-responsibility of those in his  
12 community, and I was just beginning to get traction with my own  
13 movement and my current business, which is #BeTheChange, which  
14 preaches action over awareness and constant kindness and  
15 positivity.

16           I reached out to Kash via Facebook Messenger and asked if  
17 he would like to do and be on one of our shows, and,  
18 miraculously, at the time when he was getting thousands of  
19 requests, he responded because my last name was that of a  
20 friend from juvy over a decade ago, and he was hoping to  
21 reconnect and show what he had done with his life.

22           With that, an unlikely and accidental brotherhood was  
23 born, and my life, personally, will never be the same. He came  
24 on the show and quickly we became friends. Within two weeks, I  
25 was at his house with my mother, 800 miles away, actually,



1 driving to move her to Michigan. Him and I talked and grew  
2 closer, and it wasn't about politics. It was about creating  
3 positive change and helping people.

4 With that, Kash was 100 percent honest about his past, his  
5 acknowledgment for his previous actions and those that we heard  
6 about again today as long ago as these were. But at the same  
7 time, he was incredibly thankful for where he had come from;  
8 and I know this may beg the question of responsibility, but he  
9 knows he now has the ability with his changes to be able to  
10 speak and be heard by anyone, including the gangbanger wanting  
11 to get out of that life all the way up to the 78-year-old woman  
12 looking for someone that just speaks to her and feels like  
13 she's not alone.

14 He has potential that most don't have to speak to  
15 everyone. It's a gift and a blessing that I don't have the  
16 ability for. His innate ability was forged from his mistakes  
17 and previously flawed life that allows us no matter how -- no  
18 matter what our flaws are, we can relate, and we get to see the  
19 good in humanity and potential in our lives.

20 Your Honor, I ask you: What's the purpose of going to  
21 prison? Is it just serving time, or is it to become the man  
22 Kash has become? To make someone the father that he is to his  
23 children, to become the human that causes people to write  
24 letters that say, without you, I would not be here today, and  
25 to say, you got me through 2020, which is what we all know is



1 driving to move her to Michigan. Him and I talked and grew  
2 closer, and it wasn't about politics. It was about creating  
3 positive change and helping people.

4 With that, Kash was 100 percent honest about his past, his  
5 acknowledgment for his previous actions and those that we heard  
6 about again today as long ago as these were. But at the same  
7 time, he was incredibly thankful for where he had come from;  
8 and I know this may beg the question of responsibility, but he  
9 knows he now has the ability with his changes to be able to  
10 speak and be heard by anyone, including the gangbanger wanting  
11 to get out of that life all the way up to the 78-year-old woman  
12 looking for someone that just speaks to her and feels like  
13 she's not alone.

14 He has potential that most don't have to speak to  
15 everyone. It's a gift and a blessing that I don't have the  
16 ability for. His innate ability was forged from his mistakes  
17 and previously flawed life that allows us no matter how -- no  
18 matter what our flaws are, we can relate, and we get to see the  
19 good in humanity and potential in our lives.

20 Your Honor, I ask you: What's the purpose of going to  
21 prison? Is it just serving time, or is it to become the man  
22 Kash has become? To make someone the father that he is to his  
23 children, to become the human that causes people to write  
24 letters that say, without you, I would not be here today, and  
25 to say, you got me through 2020, which is what we all know is



1 the worst year that any of us have probably ever lived through.

2 I know you received a large number of letters, letters  
3 that literally reminded me what we are doing together, Kash and  
4 I, is making a difference, most of which we had to send  
5 directly. Because of the direction of counsel, we were  
6 suggested to only send two, which I find odd.

7 We had to -- we were supposed to leave out the ones about  
8 teachers impacting their students with Kash's words, people  
9 choosing to turn their lives back to God, people saying they  
10 had quit their nursing jobs, given up, they were hopeless until  
11 they heard him speak, and, yes, even those that would have  
12 committed suicide and wouldn't be here in this horrible year  
13 that was 2020. His impact, now that I have read all of these,  
14 is larger than I even imagined.

15 Kash's children are some of the most amazing kids I have  
16 ever met. They're fun, bright, energetic, and insanely  
17 respectful; and, yes, we know that Kash has a lot of kids. He  
18 has a large brood. Each one of them are unique. Each one of  
19 them intensely loves their father, all eight of his own  
20 children and the ones that he helps raise. Let him come home  
21 to them.

22 For anything that I can ask, for Kash to not leave the  
23 house for a long time. They will actually enjoy that. Taking  
24 him away, I just -- it hurts.

25 People should be accountable for their crimes, no doubt;

1 but as we have heard today, he's been cooperative, followed the  
2 requests of the Court, made a plea, and done everything asked.  
3 And he has had one actual parole violation, which we brought  
4 up, and that was because -- and I'm sorry to say it, and I hate  
5 deflecting minimal blame, but whether it was the defense or  
6 prosecution, somebody made an error because I don't understand  
7 where logic would say why would Kash only ask for 16 hours to  
8 leave town. I was on the other line with him when he got  
9 granted permission. I think we all heard that mentioned  
10 earlier.

11 I just -- I had to touch on it because I think it's  
12 unfair, and I think it's part of the new issues that become an  
13 ideological political discussion, and I don't think that's fair  
14 here. Although this is just the sentencing phase, this is a  
15 huge issue, as his own team possibly is the reason why he has  
16 not been able to prepare for this day on the outside with his  
17 family because I do know that he did request the proper amount  
18 of time.

19 I hope -- although these are questionable mistakes, I hope  
20 the words that Niki, his pastor, and me, and, of course Kash,  
21 have to say today hold as much weight as humanly possible. I  
22 do feel as though Kash has felt alone in this with his legal  
23 team.

24 We have been the ones in communication with Kash. We have  
25 been the ones video chatting. We have been the ones listening



1 to Kash's own requests. His counsel did not want to set up a  
2 video chat with Kash. The day before his hearing Kash tried to  
3 speak to him, and his call was not answered. I hope this won't  
4 be needed, but I want it said on the record as I believe some  
5 things have not been fair to Kash at this point. But I don't  
6 want to deflect anymore because I do believe in  
7 self-responsibility.

8 For me, I have to be totally honest, this year was very  
9 hard for me. In the past, I have headed a very successful  
10 company, had a ton of friends, and traveled the country. And I  
11 have been a part of the event world, which as we all know,  
12 everything was taken away this year. And for the first time in  
13 my life, I felt alone. Add the division in this country, the  
14 loss of friendships, Kash became my best friend and vice versa,  
15 I hope.

16 Somehow some guy from a completely different part of the  
17 country and different background became such close friends that  
18 I ended up becoming his newest daughter's godfather. This is  
19 what our country, change, and progress in supposed to look  
20 like. This is the positive that comes from souls like Kash.  
21 Without Kash, I would have been alone, facing depression, and  
22 with him I have a brother and unconditional love that could  
23 pull me out of very difficult times.

24 If he is what we all need, why would it be justice to put  
25 him away for any period of time? Thank you so much for your

1 time, Your Honor. That's all I have.

2 THE COURT: Thank you very much, Mr. Russo. If you  
3 would, please mute your phone again, but I greatly appreciate  
4 it.

5 I should ask: Mr. Nozick, do you have any questions for  
6 Mr. Russo?

7 MR. NOZICK: I do not.

8 THE COURT: Okay. So, again, Mr. Russo thanks so  
9 much for your words, and, you know, if you would, please, mute  
10 your phone again.

11 All right. Ms. Fitusis, can you hear me, ma'am?

12 MS. FITUSIS: Hello.

13 THE COURT: Ms. Fitusis, can you hear me?

14 MS. FITUSIS: Yes, I can hear you.

15 THE COURT: Okay. Good morning, ma'am. Let me just  
16 ask you, if you would, state and spell your name and tell me  
17 how you know Mr. Kelly.

18 MS. FITUSIS: My name is Niki Fitusis; N-I-K-I; F, as  
19 in Frank, I-T, as in Tom, U-S, as in Sam, I-S, as in Sam. And  
20 I volunteer for the Streetlights Unity Movement, and Kash is my  
21 friend. And I work for him -- I volunteer for him and Anthony  
22 for Streetlights and #BeTheChange.

23 THE COURT: Okay. I will give you a few minutes now  
24 to tell me anything that you wish to tell me that you think is  
25 germane to my undertaking today.



1 MS. FITUSIS: Okay. Good morning, Your Honor. Thank  
2 you for the opportunity to speak on behalf of Mr. Kelly.

3 In order for my friendship and working relationship to  
4 make sense, I have to go back a bit to the beginning of 2020.  
5 I had just recently lost my job working at the Lake County  
6 Prosecutor's Office for over 29 years. I worked as a victim  
7 witness assistant.

8 Soon thereafter, I saw a video of Kash. I kept following  
9 him and eventually reached out to him as he was starting to  
10 work with Anthony and they needed volunteers for the  
11 Streetlights and #BeTheChange.

12 From the beginning, Kash talked openly about his past and  
13 how he was recruited by the Latin Kings. He talked openly  
14 about his childhood, the trauma he faced.

15 The reason he talks about his past life is to educate our  
16 youth so they know they have other options. He talked about  
17 how he was changing his life and wanted to continue changing  
18 for God, his children, Erika, and for the country. He made the  
19 decision to start this movement.

20 Kash wanted to have a community center -- or wants to have  
21 a community center where children, women, men, people in need  
22 can come, have food, warmth, shelter, protection; and I wanted  
23 to be a part of that change. That is how our friendship began.

24 There was something in him that I felt and still feel is  
25 truly sincere and transparent. I reached out to him, and

1 eventually, we just started working closely together. I met  
2 Erika; I met the kids. I went to his house. We had a bonfire.

3 Having worked in the criminal courts, I can say that Kash  
4 has and is doing what he can to do better and be a better man  
5 and father. I have spent time with Kash registering people to  
6 vote. We spent time looking for a building for our first  
7 Streetlights building here in Lake County. We have even gone  
8 grocery shopping together. We've been on Zoom calls together.  
9 I spent time with him and Erika and the children, and it's just  
10 amazing to see a man who came from a very different life than I  
11 grew up from.

12 I grew up with two immigrant Greek parents and two parents  
13 in the household, and his life was very different. Much like  
14 Anthony, it's -- even though we are 15 minutes apart -- I live  
15 in Crown Point; he's in Hammond -- it was worlds away. And it  
16 was just amazing to me that our worlds just came to together.

17 I've seen a lot of defendants over a 29-year span, but I  
18 can't speak of anyone who has helped himself to be a better  
19 person than Kash. He works daily to be better.

20 I have never seen anyone start a movement for God, unity,  
21 and love. He has brought people from all over the world  
22 together.

23 Kash supports our law enforcement, and I think so many  
24 people find it so ironic because of his past and because he was  
25 a Latin King. He encourages people to, you know, quote,



1 "snitch." He tells people, "Help the police. If you see  
2 something, say something."

3 He helps -- there was a homeless lady, her name was Lisa,  
4 he helped her, gave her food, gave her gift cards for food. He  
5 went to check on her, him and Erika both, for days and weeks  
6 after that to make sure she was safe.

7 Kash is kind and giving with whatever he has. He knew I  
8 was behind with my NIPSCO bill, and he helped me as well. That  
9 is the Kash that I know.

10 There's so much more that I can say about him, but I  
11 realize we are on a time limit, so I just want to say thank you  
12 once again for allowing me to speak today. Thank you, Judge.

13 **THE COURT:** Thank you so much, Ms. Fitusis.

14 **MS. FITUSIS:** You're welcome.

15 **THE COURT:** So we have Mr. Calaway or Mrs.?

16 **MR. ADAMS:** Mister.

17 **THE COURT:** Mr. Calaway, are you on the phone there,  
18 sir?

19 **MR. CALAWAY:** Yes, I'm here, Judge.

20 **THE COURT:** Okay. Good morning, sir. Could you just  
21 state and spell your name and tell me how you know Mr. Kelly.

22 **MR. CALAWAY:** Yes. It is J-A-M-E-S, James Calaway,  
23 C-A-L-A-W-A-Y. And I go by Pastor J or just "J."

24 **THE COURT:** Okay.

25 **MR. CALAWAY:** I have been a pastor in Hammond for

1 over 32 years.

2           **THE COURT:** Pastor Calaway, I neglected to do this  
3 with Ms. Fitusis, but I don't think anybody is going to give us  
4 a hard time here, but can I ask you to raise your right hand to  
5 be sworn in, sir.

6           **MR. CALAWAY:** Yes.

7           **THE COURT:** Noel.

8           (The oath was administered.)

9           **MR. CALAWAY:** I do.

10           **THE COURT:** All right. Pastor Calaway, the floor is  
11 yours. I'll hear from you, sir.

12           **MR. CALAWAY:** Okay. So, as I stated, I've been the  
13 pastor of The Gate in Hammond, Indiana, located on Sohl Avenue  
14 in downtown Hammond. The church has been on this street for  
15 over a hundred years, and I have been the pastor of the church  
16 for over 32 years.

17           Back, oh, 20, 25 years ago we started a program called  
18 Adopt a Block. It was in the area of Sohl Street, and through  
19 the course of what is known as Jacob Square now, and we would  
20 go in each week and clean up the streets, and just go to  
21 (indiscernible), and I met Kash over 20 years ago.

22           **THE COURT REPORTER:** Judge, can you ask him to slow  
23 down.

24           **THE COURT:** Yes.

25           Sir, honestly, we're having a very, very difficult time



1 understanding you. So I need you to speak really slowly and  
2 more clearly because my court reporter is really struggling,  
3 and so am I, frankly, in fully, sort of, consuming what you are  
4 saying, okay.

5 MR. CALAWAY: Oh, yes. I apologize. Is that better  
6 now? Can you hear me now?

7 THE COURT: Yeah. Just make sure you get right into  
8 the phone. And if you are on the speaker, take it off of  
9 speaker.

10 MR. CALAWAY: Okay. Great. I will do that.

11 Hello?

12 THE COURT: Okay. You may proceed.

13 MR. CALAWAY: Okay. Great.

14 THE COURT: Oh, boy. He may have cut himself off  
15 there.

16 Pastor Calaway, are you there?

17 DEPUTY CLERK: Melanie is calling him.

18 THE COURT: Okay.

19 Pastor Calaway, are you there now, sir?

20 Oh, boy.

21 Pastor Calaway, are you there?

22 MR. CALAWAY: Yes, I am here now.

23 THE COURT: Okay. We lost you there, sir.

24 MR. CALAWAY: I am so sorry. I have moved to a  
25 better place. Hopefully, my signal is better now.

1           **THE COURT:** Yeah, it is still a little dim, so I  
2 really want you to speak up and speak slowly, okay.

3           **MR. CALAWAY:** Okay. All right.

4           **THE COURT:** Go ahead.

5           **MR. CALAWAY:** Okay. So I'm not sure where I lost  
6 you, but just to recap, I met Kash over 20 years ago. He was a  
7 kid on the street. He was part of our children's group and  
8 after-school program as well as (indiscernible). He would be  
9 part of many of our different programs, and so I have been the  
10 pastor the entire time through the up times and the down times.

11           And even though Kash would stray away and go and do the  
12 things that we have addressed here today already and do that  
13 through his guilty plea, he has always come back to his faith  
14 and to his responsibility to answer for the things that he had  
15 done.

16           So, Judge, Your Honor, I really believe that Kash does  
17 stand before you to pay for his indiscretions today, but I do  
18 ask you to be as lenient as you possibly can. I believe over  
19 the last many months and few years Kash has become a productive  
20 part of the community, and he has added value to the community.  
21 I believe that he's added value to his children as a father and  
22 to his family.

23           I understand that we must pay for our mistakes of our  
24 past, and I also believe there can be grace for those who have  
25 proven to repent and move toward a better self, and I believe



1 that's exactly what Kash has done. In this case, he has  
2 repented. He has come clean, and he has accepted  
3 responsibility. And he continues to move toward making himself  
4 and those around him better.

5 And through the course of the last few months, I have been  
6 in constant contact with Kash, been a part of walking through  
7 accountability and times when he just needed advice or he had  
8 spoken to me. He calls me. I'm at his -- he's at my disposal,  
9 and I'm at his, as his pastor. And he does follow when I give  
10 him -- when I give him direction and guidance.

11 **THE COURT:** Okay. Thank you, very much, pastor. I  
12 much appreciate it. If you would mute your phone so we are not  
13 getting any background noise, I would appreciate it, okay.

14 Okay. Mr. Adams, as the lawyer for the defendant, is  
15 there anything that you wish to say on his behalf before I  
16 sentence him?

17 **MR. ADAMS:** Yes, Your Honor. Thank you.

18 **THE COURT:** Sure.

19 **MR. ADAMS:** I think the theme today, especially in  
20 the briefing and also through the witnesses and the letters the  
21 Court has received, has been rehabilitation and, I think,  
22 redemption to some point.

23 Mr. Kelly, his last case prior to the 2015 Indictment, was  
24 2009. He was a teenager, and I think it's significant after  
25 2009 he has no contact with the criminal justice system until

1 this case is indicted. And even at the time he was indicted,  
2 he was not a member of the Latin Kings. He did give up that  
3 lifestyle. He turned away from it.

4 I think he's tried very hard to become a different person  
5 than the teenage boy that he was. He's a man now. He's a  
6 father. And I think -- I know fatherhood changes people. It  
7 changes how they look at life, how they look at their own  
8 actions and what actions they do, how it affects their  
9 children. Now he's not living for himself anymore. He's  
10 living for people that are very dependent on him and can't  
11 depend on themselves.

12 I think based on all of these people that have contacted  
13 the Court, he's had a positive impact on them in terms of his  
14 speaking about loving each other, unity, respect of law  
15 enforcement, respect of authority.

16 I think he also -- Judge, I think it's important not just  
17 to look at what he's doing now but look at the person he came  
18 from. And in the PSI it details a very, very, very traumatic  
19 childhood, and I'm talking about paragraphs 57, 58, and 59.

20 His father was murdered when he was very young, and I  
21 think as a young boy, the impact that has on somebody I think  
22 is -- it can't be counted; it can't be measured. And I think  
23 the fact that Kash is now a dedicated father himself speaks  
24 volumes about the person that he has become and that he's not  
25 the same person that was in the Latin Kings that was dealing