

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

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6 HONORABLE CHRISTINA A. SNYDER
7 UNITED STATES DISTRICT JUDGE PRESIDING
8 - - -

9 UNITED STATES OF AMERICA,)
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11 PLAINTIFF,)
12) CASE NO.:
13 VS.) CR 14-648-CAS
14)
15 HARINDER SINGH,)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, NOVEMBER 26, 2018

LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA, MONDAY, NOVEMBER 26, 2018

2 - - -

3 THE CLERK: Calling Calendar Item No. 7.

4 Case No. CR 14-648.

5 United States of America versus Harinder Singh.

6 Counsel, please state your appearances.

7 MS. CHEN: Good afternoon, Your Honor. Carol Chen
8 on behalf of the United States. Also with the Court's
9 permission, if it's possible for IRS Special Agent Donald
10 Classen to be at the table?

11 THE COURT: Yes.

12 MS. CHEN: Thank you, Your Honor.

13 MR. JOHNSON: Good afternoon, Your Honor. Peter
14 Johnson on behalf of Mr. Harinder Singh who is present,
15 prepared for sentencing and assisted by the court's Punjabi
16 interpreter.

17 THE COURT: Very well. Good afternoon.

18 Okay. Let's just review what I'm going to call the
19 preliminaries. It appears that the presentence report in
20 this case was disclosed on March 21, 2018. The Court has
21 reviewed the presentence report, the addendum to the
22 presentence report, the government's position regarding
23 sentencing, the defendant's position regarding sentencing.
24 The supplemental sentencing letters submitted on behalf of
25 the defendant and the letter from Professor Singh which was

1 included in the sentencing papers submitted by defendant.

2 Does that cover everything as best we can tell?

3 MS. CHEN: And Your Honor, I apologize if I missed
4 it, but I believe there also a presentence investigation
5 report disclosed August 15, 2018. I'm not sure if there were
6 any specific material differences.

7 THE COURT: There was one, and then there was a
8 revised one. Um, well, let's discuss that. I think there
9 was a revised sentencing letter. I'm not sure that there was
10 a revised PSR, but I thought there was an addendum. I have
11 an addendum. I have the original letter. The sentencing
12 memorandum from Mr. Singh, the government's sentencing
13 memorandum. I have a revised letter to which there is
14 attached -- okay. There's a second addendum to the
15 presentencing report which is attached to the letter. Is
16 that what you're referring to?

17 MS. CHEN: It is, Your Honor. I think that's
18 Document 1020. There also appears to be a docket entry of
19 1019 which it also says presentence investigation report. On
20 the bottom it says date report prepared March 21st, 2018 and
21 the date report revised was August 15, 2018.

22 THE COURT: Yes.

23 MR. JOHNSON: I have in my notes that there weren't
24 changes, but I just want to make sure that I don't skip
25 anything that might be important to the Court. I will

1 operate from my assumption in my notes that there weren't
2 changes to that. To the extent I am wrong, um, please let me
3 know and I can look at it and go through it.

4 THE COURT: Well, let's be sure we're talking about
5 the same thing. The second addendum that I have, uh, notes
6 changes based on United States versus Evans which was decided
7 recently which goes to conditions of supervision.

8 MS. CHEN: And, Your Honor, that's Document 1020, I
9 believe. And I think on that same day in question, it
10 appears there was a presentence investigation report
11 disclosed also August 15, 2018. It's 23 pages, but I believe
12 there are no material differences between that and the
13 March 21st, 2018. It may be just that with the addendum, the
14 Probation Office also essentially refiled their presentence
15 report.

16 THE COURT: Well, I think you're correct, but
17 Mr. Johnson, if you want to look at everything, I'm prepared
18 to let you do that.

19 MR. JOHNSON: Um, I don't have the physical copy of
20 that addendum. I'm pretty sure that I went through, uh, the
21 documents that were there at least in my notes that I have
22 that there were no changes to the guideline calculation.

23 THE COURT: I'm not helpful because I don't have
24 the document number from the file. I do have the actual
25 report and I do have the presentence report. It says report

1 prepared March 21, 2018.

2 MS. CHEN: And, Your Honor, I can show Mr. Johnson
3 very briefly, if you want, Document 1019 which is the one at
4 issue?

5 THE COURT: Okay. Why don't you do that.

6 MR. JOHNSON: If I may, Your Honor? Thank you.

7 MS. CHEN: And I apologize, Your Honor. I just
8 want to make sure the record is clear.

9 THE COURT: I understand.

10 MR. JOHNSON: Your Honor, I'm fine with the PSR.

11 THE COURT: Okay. Just to summarize and I don't
12 want to mischaracterize things, but I think that the most
13 recent second addendum really deals with the -- we get them
14 in almost every case now because of United States versus
15 Evans which changes certain of the conditions of supervision.
16 And I think that's why the second addendum was issued to
17 account for that. Is that your understanding, Ms. Chen?

18 MS. CHEN: Yes, Your Honor.

19 THE COURT: Okay. Do you have that, Mr. Johnson?
20 I just want to be sure that you have the second addendum.

21 MR. JOHNSON: I -- I don't have the second
22 addendum, but to the extent that I can look at it?

23 THE COURT: Sure.

24 MR. JOHNSON: That's fine, Your Honor. Thank you.

25 THE COURT: Okay. Basically, I think we've covered

1 what's been disclosed. I think to summarize Probation found
2 an Offense Level of 34, a Criminal History Category of one
3 yielding an advisory 151 to 188 months. The government
4 responded, uh, well the recommendation from Probation was
5 151 months. The government agreed with 151 months.

6 And then for reasons which I will go into a minute,
7 Mr. Johnson, you argue that your client should be placed in
8 custody for no more than 12 months and a day. To begin with
9 you argue that the offense level should be 23 which would
10 yield 46 to 57 month advisory range. Um, and basically, you
11 object to the offense conduct because the statements of Sucha
12 Singh are improperly attributed to your client.

13 Secondly, you object to the plus 18 in offense
14 level because the amounts were not reasonably foreseeable by
15 your client and even if foreseeable, you argue that the
16 increase should be 16 not 18.

17 Then you object to the plus six in Paragraph 46
18 because of insufficient evidence that the -- demonstrating
19 that the money that was transferred was connected to drug
20 trafficking. And then you also object to Paragraph 53
21 because, uh, there should be a three level decrease for
22 mitigating role for your client.

23 And so at the end of the day, you say that the
24 offense level of eight should at most be increased by 16 and
25 that the plus two is appropriate, but there should be a minus

1 three and you end up at 23, and I'll let you elaborate
2 further. But in addition you argue that the 3553A factors
3 compel a downward variance based on your client's religious
4 background and what his expectations were regarding huala
5 money transfers, uh, and based on his personal history, age
6 and lack of criminal history. And I'm sure you have more to
7 say, but that's a short form summary.

8 MR. JOHNSON: Yes, that's correct.

9 THE COURT: Okay. Let me say this. Obviously, in
10 light of the sentences that have been given in this case, I
11 think 151 months is extreme and not warranted. I am not
12 persuaded for the reasons I articulated at trial that there
13 is some cultural basis for departing. I'm not convinced with
14 your argument that the loss at issue in this case was not
15 foreseeable by your client. I do think there was substantial
16 evidence that your client knew that the proceeds and the
17 laundered funds were connected to drug proceeds.

18 I want to hear further from everyone regarding the
19 statements of Sucha Singh and whether they are relevant or
20 not. I don't think Mr. Harinder Singh is entitled to minus
21 three for mitigating role given his participation in the
22 transaction.

23 So I guess what I'm prepared to say is that I think
24 the offense level of 34 is appropriate, but I do think there
25 are mitigating factors most particularly to avoid disparity

1 of sentencing which should apply here. And I searched
2 through the docket sheet and I know that Mr. Sucha Singh was
3 sentenced to 63 months in custody, Harmeet 42 months. I
4 think Mr. Wadhwa was 46 months and think right now --

5 MR. JOHNSON: 41.

6 THE COURT: -- they're at the high level in this
7 case. So Ms. Chen, can you tell me if there's someone who is
8 higher than I have missed?

9 MS. CHEN: Yes, Your Honor. So I too went through
10 the docket and from my understanding, Sucha Singh got
11 63 months. He was facing an advisory range of 108 to 135
12 months.

13 THE COURT: Right.

14 MS. CHEN: But he got credit for attempted
15 cooperation which is not news to anybody. John Bradley
16 Martin who was a repeat courier got 63 months out of an 87 to
17 108 months advisory range. Harmeet did get 42 months out of
18 a 70 to 87 months. He did cooperate. Again, it's public
19 knowledge.

20 There were two couriers Montenegro who was facing
21 an advisory range of 46 to 57 months and Baraza who was
22 facing 57 to 71 months and both got 24 months. Sanjev Wadhwa
23 as we all know cooperated.

24 THE COURT: He was initially at 70 months, and then
25 reduced.

1 MS. CHEN: Yes, Your Honor. And for the record,
2 while the government did submit the recommendation of
3 151 months, having reviewed all of the sentences given by
4 this court, we do agree that 151 months would create a
5 sentencing disparity and so we're actually prepared to adjust
6 our recommendation today.

7 THE COURT: Mr. Johnson, why don't you go from
8 there.

9 MR. JOHNSON: Your Honor, I can begin where we left
10 off at the last hearing, I think it was at the end of the
11 August, where the government actually agreed after
12 Mr. Singh's arrest in October of 2012 that he did not
13 continue on delivering. And I begin there because I think
14 it's an important part of examining the -- what was going on
15 in Mr. Singh's mind. It, I think, offers mitigation that
16 once he learned that what was actually going on, once he put
17 the puzzle together that he wasn't going to continue
18 delivering money.

19 Even when, and he can tell you, when solicited by
20 his uncle Sucha Singh to continue to deliver money after
21 October of 2012, he didn't do so. Um, I think that's
22 important because on that day and thereafter, um, Mr. Singh,
23 Harinder Singh, was, um, met with the government. He was
24 going with some of the agents to various places where he
25 picked up money in an effort to cooperate. That cooperation

1 didn't work out because there was no plea agreement and no
2 admission related to that the money was connected to drugs.

3 I think that I'll just as we go along, the
4 objection related to the reasonably foreseeable, I think is
5 right. And it's right because if the Court recalls from
6 trial, the money that was being delivered in the very
7 beginning, um, there was no indication that this was from
8 some illegal source. There was the testimony by the expert
9 that there are legal ways to deliver money that are
10 traditionally practiced within the Punjabi faith and culture.

11 The indictment described that as white huala. And
12 those beginning payments that I've listed out on page 4,
13 would be considered in at least Mr. Singh's mind white huala.
14 There was no evidence at trial that they would be anything
15 other than white huala. No evidence that he was told that
16 this must be some form of illegal activity or drugs.

17 That was the early ones that I've -- that I've laid
18 out. That's on page 4 I'm referring to where I say the
19 \$522,000 in March of 2012 and \$600,000 again in March.
20 Another \$500,000 in April.

21 THE COURT: Could I ask one question?

22 Let's assume you're correct. At the beginning he
23 had every belief that they were white huala payments. Along
24 the way, though, he's asked to transport money and has reason
25 to believe that that money comes from drug sources. Doesn't

1 that impact the argument that the first four payments were
2 white hwala?

3 In other words, doesn't it make it more foreseeable
4 for your client to believe that the earlier payments were of
5 the same nature as the later payments?

6 MR. JOHNSON: No, and I can explain why.

7 THE COURT: Yes.

8 MR. JOHNSON: What I did was that I looked at the
9 trial evidence, the evidence from Mr. Khukaran from Canada
10 and the person, uh, Mr. Wadhwa from India and the expert's
11 testimony, the testimony at trial. The testimony was that at
12 the time of this when Khukaran was involved that Mr. Harinder
13 Singh was operating his own kind of hwala.

14 Now, we disagree with that, but there would be some
15 basis then in the facts to say, okay, this is different
16 somehow. This was not my uncle telling me that I should
17 deliver this money from one, um, Punjabi Sikh to another
18 Punjabi Sikh. Because those funds weren't delivered to what
19 the evidence said well, it may be somebody outside of the
20 faith. These were internal deliveries of money.

21 So in, uh, based upon the evidence, there's --
22 there's really no evidence to show that this would have been
23 somehow illegal in nature because the evidence actually was
24 that, uh, there are legal payments -- from the expert, there
25 are legal payments of money in the church, in the Sikh faith

1 that are transferred and it's in the billions of dollars
2 every year.

3 As well as from Mr. Taran Singh who said yes, there
4 are legitimate for what he believed to Mr. Singh, Taran Singh
5 said that all of it was illegal. That's different from the
6 government's theory that there is money being collected
7 throughout the church and Punjabi Sikh businesses throughout
8 Los Angeles that are collecting money and then delivering
9 money to various sources.

10 In addition to that, in the journal there were
11 multiple, and that came out at trial during
12 cross-examination, there were multiple hwalas where
13 Mr. Harinder Singh was picking up money and delivering money.
14 Under those circumstances, there's no indication in and of
15 themselves that this is drug related. I fully understand the
16 evidence.

17 While I disagree with it, again, I understand the
18 evidence that there is evidence to say if large amounts of
19 money are being delivered in a parking lot to an individual,
20 that is not of the Sikh faith. I think that's where the
21 Court got to say there were some form of illegal activity
22 that characterized the illegal activity, but that didn't
23 exist in the first three portions where Mr. Harinder Singh
24 was involved. And that's why I believe that those should not
25 be considered unreasonable.

1 Now, in addition to that, if those payments
2 occurred after, not before but after, then I think they would
3 be reasonably foreseeable. But, again, under the
4 circumstances and the government's already conceded this
5 fact, that the last payment of \$310,000 that he had already
6 withdrawn. So that payment should not be included in the,
7 uh, in that calculation.

8 And I think there's -- actually, we would only be
9 assuming and making -- speculating about what the evidence
10 may be related to, uh, the payments in the early ones and I
11 just don't think it's reasonably foreseeable. There's no
12 evidence to say that it is.

13 Your Honor, I'll turn next to the drug, uh, the
14 plus six. The plus six is inappropriately applied and this
15 is why. There is absolutely no evidence, no evidence not
16 from any one of the witnesses that testified at trial, um,
17 not from anybody that this money that Mr. Singh, Harinder
18 Singh, knew or believed, that's the standard, knew or
19 believed that the offense involved the distribution of a
20 controlled substance.

21 If the Court recalls that we -- we debated over the
22 jury instructions. That it was, the standard was that the
23 Court decided what the government had to prove some form of
24 illegal activity. I understand the evidence and many of
25 witnesses, Gurkaran Isshpunani Singh, Mr. Taran Singh,

1 Mr. Wadhwa they all said oh, yeah, he should have known that
2 it was something unlawful. That he would have, uh, he would
3 known from the context that it was something unlawful.

4 But they weren't talking about drugs, Your Honor.
5 And I think in the context of the culture and faith that what
6 Professor Gill has laid out, that a reasonable person that
7 was coming into the country, asked to deliver money that is
8 inside, within the church, asked by his uncle, in the
9 cultural context, I think, if -- and without ever being
10 introduced to evidence to say that there were conversations
11 with drugs, with people that delivered drugs, there's no way
12 to say that he knew that this, knew or reasonably believe
13 that this was related to drugs.

14 Um, you know, and I think they recorded as many
15 phone calls as they could in terms of the, um, the evidence
16 here and nobody -- Mr. Harinder Singh is not talking about
17 drugs. I think in addition to that, pulling it all together
18 that he pulled out in October 16, 2012 before he was
19 indicted, he was indicted in May of 2015, that he really
20 didn't know that, um, this was somehow connected to drugs
21 even if they, uh, this evidence to say there was something
22 unlawful.

23 Um, I do believe the mitigating role of three level
24 applies, but I know the Court has read the papers and I won't
25 get into that. I think that the more important part and it

1 does overlap with what we're here about is the 3553 factors.
2 Does the Court want me to get into that right now?

3 THE COURT: Not yet.

4 MR. JOHNSON: Then I'll end there.

5 THE COURT: Okay. Ms. Chen, insofar as Mr. Johnson
6 made his arguments, what do you have to say in response?

7 MS. CHEN: I'll try to be brief, Your Honor.

8 So first off, I think the easier, I hope it's the
9 easiest issue is that I believe Probation, uh, actually did
10 take out the December 2012 seizure, uh, because I don't think
11 the government will concede that he formally withdrew from
12 the conspiracy as in like legally sufficient, but he was
13 certainly arrested in October of 2012. We are fine with not
14 putting the additional December 2012 seizure to the
15 calculations.

16 From what I'm looking at the presentence report,
17 Your Honor, again, it would Document 1019 which is the
18 August 15, 2018 one, it appears that on Paragraph 44,
19 Probation specifically does not take into account the
20 December seizure. Um, I don't think Mr. Johnson talked about
21 it at this time, but in his sentencing position, he had
22 talked about also the double counting.

23 Specifically, I believe it was \$170,000 because
24 there were, um, like \$90,000, \$80,000 amounts that were
25 discussed over the phone I think on October 9th and 10th.

1 And, again, Probation my understanding is they took out
2 \$170,000. I think that still is equivalent to a plus 18.

3 There is an argument that the three seizure amounts
4 from March and early April would be reasonably foreseeable to
5 the defendant, but I think I also can recognize that there
6 probably likely was an escalating level of knowledge for this
7 defendant with regards to the black huala versus white huala.
8 The three amounts discussed are very large amounts, \$560,000
9 essentially.

10 So I do think based on the evidence including the
11 testimony of cooperators where they indicated that the large
12 amount itself would be a red flag. The money laundering
13 expert also discussed that. Without waiving the government's
14 right to argue that the plus 18 does apply on appeal, we're
15 literally talking about a difference of two levels, plus 16
16 versus plus 18.

17 Um, I do think that 151 months like I stated again,
18 not to waive the government's rights, I do think 151 months
19 normally would be sufficient, but not greater than necessary,
20 but given the sentences imposed in this case, I think the
21 government would be fine if we just imposed the plus 16
22 enhancement to, uh, knock down one level of dispute, but
23 however, I do think plus 18 would be consistent with being
24 reasonably foreseeable.

25 THE COURT: Well, let's just take that to its

1 logical conclusion. If for purposes of discussion and
2 without committing the government to any position it was plus
3 16, that would take him to 24. If I understand, you still
4 believe that he should have the plus six.

5 MS. CHEN: Yes, Your Honor. So if I may briefly
6 address that?

7 THE COURT: Yeah.

8 MS. CHEN: I believe that issue was taken care of
9 at trial.

10 THE COURT: I do, too.

11 MS. CHEN: The only theory that the government
12 proceeded on at all times in this case including heavy
13 litigation preceding trial and at trial, the evidence was
14 that it was drug trafficking proceeds. I believe the jury in
15 order to convict Mr. Singh on Count 1 had to find that each
16 and every element was proven and that includes that the
17 defendant knew that the money constitutes some proceeds of
18 some unlawful activity.

19 Obviously, we didn't have -- I don't believe the
20 verdict form had them specify which unlawful activity, but,
21 again, that was the only evidence that was introduced at
22 trial so I believe the plus six would apply.

23 With respect to whether or not a mitigating role
24 adjustment does apply, we don't believe so, Your Honor. I'm
25 fully aware that Mr. Sucha Singh has been vilified both in

1 trial as well as sentencing papers and at sentencing
2 hearings. He got sentenced. He took responsibility. He
3 plead. Basically, who's up for sentencing now is this
4 defendant.

5 I fully understand that Mr. Sucha Singh got his
6 nephew involved, but I think the evidence also was
7 established at trial that as he got -- he put the puzzle
8 together as Mr. Johnson would say by July, August and became
9 a pretty indispensable individual for Gurkaran Isshpunani,
10 Sanjev Wadhwa.

11 There's evidence which was referenced in this
12 Court's order denying the motion for acquittal or for a new
13 trial. Uh, it referenced the evidence that Mr. -- that this
14 defendant had contacted Mr. Isshpunani to want to invest his
15 own money. There's also a call, finally, Your Honor, where
16 this defendant boasted about his ties for hwala, I believe,
17 with New York and New Jersey.

18 So while he may have started as a courier, we
19 certainly think that his role was established as much more as
20 a hwala broker along the lines of Taran Singh, Harmeet Singh
21 and Sucha Singh, and in fact he tried to cut out his uncle.

22 THE COURT: All right.

23 MR. JOHNSON: Your Honor, I addressed each of
24 those, the alleged cutting of the uncle, the relationship
25 with Gurkaran Singh, the issue of behind the curtain on page

1 7 and 8 of our brief, that's a direct response to what the
2 government has laid out. Just basically that he is not, uh,
3 wasn't elevating at all within the hwala business, was acting
4 as a courier because he was trusted. He was introduced to
5 Gurkaran Singh by Sucha Singh.

6 Um, Professor Gill who is present in the court
7 today has laid out the interpretation of those calls in his
8 letter. I'm happy to put him on the stand if necessary if
9 the Court needs it, but I've laid out the -- the response to
10 what the government has suggested and talked about him being,
11 uh, the allegations of him being a broker.

12 I fully understand, you know, how the Court will
13 decide whether he's mitigating or minor role, but I think
14 those are the factual issues that are in dispute as well as
15 the idea, and I understand the Court disagrees with me,
16 regarding evidence related to the plus six. I think we've
17 written that and laid out our argument.

18 THE COURT: I think we exhausted that and I have to
19 say that I think the jury's finding is persuasive because I
20 think they did find that the proceeds were related to an
21 unlawful activity. And as Ms. Chen said not specifically
22 drugs, but whether drugs or not, that obviously is an issue
23 that you're going to raise on appeal, but for my purposes, I
24 think the plus six is appropriate.

25 MR. JOHNSON: Your Honor, not to belabor that

1 point, but just to be -- I want to make sure my argument is
2 clear.

3 THE COURT: No, by all means.

4 MR. JOHNSON: Thank you.

5 The standard is different on the guideline and I
6 tried to highlight that out. It says the guideline is
7 different where the jury instruction didn't point to actual
8 drugs, but allowed the -- the jury to be more expansive and
9 say oh, some form of illegal activity or maybe he knew there
10 was some form of illegal activity when he, um, lied to the
11 police when he was pulled over or it was somehow illegal;
12 right? But not that it was related to drugs. That jury
13 finding didn't have that.

14 And what the guideline says is quote "knew or
15 believed that any of the laundered funds were the proceeds of
16 or intended to promote an offense involving the
17 manufacturing, importation and distribution of controlled
18 substances." And that -- it adds six levels to an already --

19 THE COURT: I know that, but what do you do about
20 Pindi and some of the other evidence in the case?

21 MR. JOHNSON: Oh, Pindi never spoke to Mr. Singh.

22 THE COURT: No, but he spoke to others.

23 MR. JOHNSON: And the evidence of Gurkaran said oh,
24 I assumed he knew it was illegal, but there is a difference
25 between white hwala and back hwala. Even there was some form

1 of illegal activity, what could it be? Could it be the
2 importation of illegal products? Could it be the actual --
3 could it be money laundering in some other form? And that's
4 what the plus six adds. Plus six adds another level to the
5 sentence that is related to drugs and it's just not here.

6 THE COURT: Ms. Chen.

7 MS. CHEN: Your Honor, if I can briefly address
8 that point. First of all, I want to make clear the
9 government's position. We are not just relying upon what the
10 jury likely found. To the extent the Court can make the
11 finding based on the evidence that it reviewed itself, that
12 it sat through during this trial and at which, frankly, if
13 need be the government is happy to put it back on for
14 purposes of sentencing.

15 That there is evidence and we believe it's
16 sufficient evidence to show that the defendant knew that the
17 proceeds were some form of unlawful activity. Specifically,
18 drug trafficking. That's the first point.

19 The second point is the government had previously
20 objected and would renew its objection particularly for the
21 record to the letter that was written by Professor Gill who
22 had we intended to cross-examine Mr. Gill, if that had been
23 the case, I would have asked the witness to step out prior to
24 all of this. But the Court had indicated that it was not
25 going to adopt the cultural basis for departing.

1 I would point out that the letter, I understand
2 Mr. Johnson's advocacy here and this is in no way means to
3 offend him, but the letter is highly inappropriate. It seeks
4 to overturn the jury's finding. It basically attempts to
5 testify for the defendant and tries to basically insinuate
6 what he was thinking at the time a few years ago when he was
7 actually conducting the behavior for which he was convicted
8 by a jury.

9 And Mr. Gill with all due respect likely should
10 have been called as a witness. I believe Mr. Johnson had
11 indicated he was going to call him. And now at sentencing
12 has decided to put together a letter which talks about all
13 these cultural bases for departing. And it says that he's of
14 a firm belief that surely this defendant did not know what he
15 was doing was illegal.

16 I find it highly inappropriate and in particular,
17 Your Honor, we would object to the entire letter, but
18 specifically Exhibit B which for the first time transcribes a
19 call that was not played before this jury. He also talks
20 about various interpretations.

21 And the only other thing I would mention,
22 Your Honor, if this Court will recall at the beginning of
23 trial, we were going to have a potential issue in the sense
24 that the interpreter that had translated the calls also
25 happened to be interpreting for the defendant at various

1 points in the trial and sat next to him.

2 And we averted that, if I remember correctly,
3 because Mr. Johnson and the government actually ended up
4 agreeing to the transcripts. So to now come back and, uh,
5 add new color to the interpretation, I believe Professor Gill
6 talks about the government's transcript being woefully
7 inadequate, I'm not even sure he would have been qualified as
8 an expert at trial.

9 For the record and to keep my Appeals Unit happy, I
10 would object to that letter. He's attempting to essentially
11 speak for the defendant. I'm not sure what evidence he
12 reviewed. He's trying to seek to basically overturn the jury
13 verdict and finally we would object.

14 I understand, obviously, the Court can consider
15 anything it wants at sentencing, but as this Court had
16 already indicated, it was not going to accept a cultural
17 basis for departing. Unless the Court changes its mind, I
18 would ask, at that point I would want to cross-examine
19 Professor Gill.

20 THE COURT: Okay.

21 MR. JOHNSON: Your Honor, the Court can consider
22 any of the other transcript of calls to the extent that are
23 necessary. The government actually didn't object last time.
24 I think the Court came out and suggested that we bring
25 Professor Gill here for the next hearing and we did.

1 THE COURT: Well, I think more accurately you
2 sought CJA funds to provide to Professor Gill so he could do
3 an analysis for purposes of sentencing, and I said I was
4 prepared to authorize your requested funds.

5 MR. JOHNSON: I think the Court, forgive me this is
6 my recollection of what happened last time. The government
7 came in to the court and the Court took the bench and said
8 that you read the position papers and that you were sure that
9 the government probably would want to respond. The
10 government said yes, they would like to respond. I didn't
11 receive anything in writing or anything. I asked for the
12 additional funds because we continued the sentencing hearing.

13 THE COURT: I think we're speaking at
14 cross-purposes.

15 MR. JOHNSON: I obviously think that Exhibit B is
16 relevant to the Court's determination. The letter is
17 relevant to the Court's determination. Even if the Court
18 struck the -- the belief that hey, Mr. Singh didn't know and
19 the Court -- Professor Gill was not an expert on what the
20 Court -- what evidence the Court must rule on right now.

21 That the, uh, if that's his belief, if that's
22 stricken from the letter or just taken from the letter or
23 even ignored, the other parts of the letter are very, very
24 important. About the cultural, um, impact of a person coming
25 into the country, being accepted into the Sikh faith and the

1 Punjabi culture. The role of Sucha Singh as an individual.
2 And it's actually interpreting not just that Exhibit B, but
3 other calls as well.

4 That is entirely correct that we disputed over the
5 transcripts. We agreed. I was allowed to cross-examine as
6 to what the calls meant without the ability to impeach
7 because I wouldn't have Professor Gill's interpretation, but
8 we're in a different stage. We're at the sentencing stage
9 and this is entirely important in terms of mitigation and
10 it's definitely important in terms of the plus six.

11 And it's important to see who he, uh, Mr. Singh is.
12 The personal history and characteristics are part of 3553A.
13 It's interwoven with his cultural background. We can't
14 ignore that he was born in Punjabi and raised in the Sikh
15 faith and the -- I think that's entirely relevant and
16 important to the Court.

17 THE COURT: Well, even if it is relevant and I can
18 consider it, let's assume that for a minute. I don't find it
19 persuasive, that's the real problem. Look, I don't want to
20 cut anyone off, but what we come down to in this case it
21 seems to me is a situation whether we accord a plus 16 or a
22 plus 18, the advisory range is quite high. Because of the
23 other sentences I have imposed in the case, I think that a
24 lower range is appropriate.

25 The difficulty in this case which is driven by

1 guidelines, I believe that Sucha Singh is probably a
2 significant force in involving Harinder Singh in this
3 conspiracy. The problem is that Sucha Singh chose the road
4 of pleading guilty and your client went to trial. He was
5 entitled to go to trial. He should not be punished because
6 he did go to trial.

7 But the guidelines do provide a minus three for
8 those who enter into plea agreements versus people who don't.
9 But even if I were to give your client the minus three, he
10 still would be well above the range of other people in the
11 case. So the question for me is what is a principled basis
12 for departing.

13 I think the appropriate sentence is somewhere in
14 the range of 60 to 70 months. I know the government
15 disagrees, but I think that's the appropriate range. There
16 is a part of me that thinks it should be higher than Sucha
17 Singh. There's a part of me that thinks it should be no
18 higher than Sucha Singh's sentence because I understand that
19 an elder came to your client and got him involved.

20 But after that I can't say that anyone transporting
21 those amounts of cash, uh, shouldn't have known that there
22 was some illegal activity notwithstanding the custom of white
23 hwala and all those things. I mean, I don't think there's
24 much evidence, there may be some, that your client engaged in
25 white hwala for parts of this transaction. Uh, this was his

1 hwala experience.

2 MR. JOHNSON: Your Honor, I think that the -- this
3 is where I believe that the cultural and religious context
4 of -- and the expert's testimony that wasn't our expert that
5 testified that there are many thousands, millions of dollars
6 that are being collected in Sikh temples and distributed back
7 to India or collected from Punjabi and Sikh businesses as
8 laid out by the expert that has described how, you know,
9 culturally this is part of a practice that has a very, very
10 long history. It's in the letter and in our papers.

11 I think that putting Sucha Singh, Harmeet Singh,
12 Gurkaran Singh on the same level of Harinder Singh is wrong.
13 And that is because Sucha Singh as the Court recalls the
14 evidence was a leader in this, negotiated exchange rates.

15 Uh, same thing with Mr. Wadhwa. The same thing
16 with Harmeet Singh, all of these individuals and, uh, if I
17 didn't mention Mr. Wadhwa. They were negotiating exchange
18 rates. They're very clearly hwala brokers. And each one of
19 the, uh, there was nothing to say that Harinder Singh was
20 negotiating exchange rates at that level.

21 In addition to that, Sucha Singh, Gurkaran Singh,
22 actually, I don't want to include Gurkaran Singh because I'm
23 not sure of the evidence, but definitely Sucha Singh,
24 definitely Taran Singh, definitely Mr. Wadhwa were dealing in
25 hwala for years. I mean, I think Sucha Singh the evidence

1 was it was all the way back in the early 2000s, maybe the
2 1990s. And Mr. Harinder Singh it was just within the period
3 that he arrived in the United States.

4 Harmeet Singh, the same thing, very, very long
5 period of time. Taran Singh. These were elders in the
6 community. And I think that should be considered in terms of
7 the evidence to say that his sentence should be, I think it
8 would lead to a sentencing disparity to say that they are on
9 the same level. Uh, that it should be much lower than Sucha
10 or Harmeet or Mr. Wadhwa.

11 I know the Court cited the guidelines where there's
12 a minus three, but the 3553A factors don't consider that. I
13 mean, the Court has the power to look at that. And it would
14 lead to a sentencing disparity to say that someone who's been
15 involved substantially over the years is now sentenced the
16 same way that what would be someone that was involved a
17 shorter period of time and then stopped on October 16, 2012.

18 When Mr. Sucha Singh knew that people were getting
19 arrested, but he kept going. Gurkaran Singh kept going. All
20 of them kept going. But Mr. Harinder Singh, I think it's
21 relevant to his personal characteristics, and he stopped and
22 that's undisputed here. It's not disputed that he stopped
23 and didn't keep going.

24 And I think that should be important for the Court
25 to consider under those factors to say once he learned, once

1 the lesson was learned, this is crazy. I have two children.
2 When he's putting it all together, that's when he stops. The
3 others are watching him get arrested, talking about him
4 getting arrested on the phone. They don't care. They just
5 kept going.

6 And I think that's a big distinction what they did
7 before and what they did after that would lead the Court to
8 accept a sentence that would be much lower than anyone else.
9 I think that Harmeet Singh received a sentence of 42 months
10 and Mr. Wadhwa received a sentence of 41 months.

11 THE COURT: But Mr. Wadhwa cooperated such as he
12 did. I know your client attempted to.

13 MR. JOHNSON: My client did, but I'm sure that and
14 in fact, he's ready to cooperate to the extent that he needs
15 to now. I mean, he just doesn't have the information. He
16 wasn't involved. He wasn't involved at that level where he
17 could cooperate.

18 But that shouldn't be -- just because Mr. Wadhwa
19 was intricately involved, and I think he went beyond drugs.
20 There were so many things that were involved in some form of
21 unlawful activity, and he was involved for years. To the
22 extent he would come in and get a 41-month sentence and
23 comparing the two, I understand he cooperated, but he
24 cooperated cause he was so substantially involved.

25 THE COURT: Well, he started out with a 70-month

1 sentence and that lead to his decision to cooperate against
2 your client apparently.

3 MR. JOHNSON: Yes, and I understand that. But to
4 the extent that they're in the same, uh, he had the
5 cooperation. He testified. But to the extent that Mr. Singh
6 had information, he could have testified, too. I mean, I
7 don't want the Court to discount the testimony of
8 cooperators. I understand the cooperators it's different.
9 But I do believe that it shouldn't be oh, that's the
10 exception and not look at the sentencing disparity. I think
11 it's very large to say that he would be around a 60 to 70
12 month sentence.

13 THE COURT: Okay.

14 MS. CHEN: Your Honor, may I just briefly respond?

15 So first of all with respect to once he learned his
16 lesson, he stopped and whereas other people didn't. To be
17 clear he was arrested I believe October 16, 2012. The very
18 next day he attempted to cooperate, and by that I mean he
19 actually spoke with Special Agent Lindsay Burns which meant
20 the wiretap, federal, local investigation was the cat out of
21 the bag at that point.

22 So he knew that we had wiretaps going. He knew
23 that there was a much far-flung investigation. Whereas the
24 other individuals were simply stopped by local law
25 enforcement and they were never told about that.

1 The second thing is to be clear and Special Agent
2 Burns did testify at trial, it wasn't just a matter of he had
3 information to cooperate on and it just never worked out. As
4 Special Agent Burns testified about, he disassembled, he lied
5 during that interview so he had the opportunity to cooperate.

6 Your Honor, I think the main point here is this.
7 At the end of the day, we all agree 151 months is too much.
8 Nobody is trying to punish somebody for exercising the
9 constitutional right to testify -- sorry to go to trial. But
10 I think the Court hit upon the main point which is there's
11 got to be a principled way to come up with a sentencing here.
12 And just looking at it, Your Honor, first of all, each of
13 these individuals, this Court varied, departed I can never
14 remember which one it is.

15 THE COURT: Varied, I think.

16 MS. CHEN: For each of these individuals, and I
17 think, for example, John Bradley Martin got 63 months. He
18 was a repeat courier. He did not do any of the things that
19 this defendant was convicted of and for which the evidence
20 established he actually became a huala broker as of July,
21 August.

22 John Bradley Martin, I believe he actually
23 delivered as a courier. There's no evidence that he actually
24 became a huala broker, I believe, twice. For that he got 63
25 months. This Court departed, I believe the low end was

1 87 months. He did not cooperate. This Court departed
2 25 months. If you look at the pattern, this Court departed
3 about roughly 20, 30 months for non-cooperators which I think
4 is fair.

5 For Bobbi, for Sanjev Wadhwa, Sucha Singh, Harmeet,
6 to be clear all three of them either cooperated or attempted
7 to cooperate and for that they got credit. Whether or not
8 they testified at trial, they actually provided substantial
9 assistance in the government's mind and they got some sort of
10 credit. For those individuals, Sanjev Wadhwa was supposed to
11 get 97 months, that was the low end. Originally, got 70 and
12 ended up getting 41.

13 So ultimately, 97 from 41. Each of the cooperators
14 from my very quick calculation, Your Honor, got about 40 to
15 50 months of credit. I think there is a difference when
16 somebody does not take responsibility, goes to trial. Part
17 of the risk is that this court gets to see the full scope of
18 the evidence. I'm not, again, to be clear, nobody should be
19 punished for going to trial, however, he does not take
20 responsibility.

21 The other individuals not only took responsibility,
22 but also cooperated. And I think the patterns in the
23 sentences being imposed in this case is that for those who
24 took responsibility and cooperated, and, of course, there's
25 self-interest in cooperating, they got a much bigger

1 variance. Whereas I think if you say that he should get the
2 same amount as Sucha Singh, for somebody who actually for
3 good or for bad, he got him involved.

4 And I have to say, Your Honor, to the extent that
5 the Court indicated that an elder came and got him involved,
6 that sounds a little bit like crediting the cultural defense,
7 and I would object to that, Your Honor. I think a lot of
8 these individuals, we can get into 3553A factors and I'm sure
9 we will, but I think a lot of those apply to the same --
10 other defendants as well. They all come from the same
11 culture.

12 I understand Sucha Singh got him involved.
13 However, for him to get the same sentence as somebody who
14 took responsibility and cooperated, I think that actually
15 creates a sentencing disparity. And, again, I point to John
16 Martin Bradley who plead guilty prior to trial, was sentenced
17 by this Court for 63 months for being a courier which is a
18 lesser role than this defendant who went to trial, did not
19 take responsibility.

20 And I would think, Your Honor, looking at it, I
21 think that the government is prepared to say a plus 16
22 applies as opposed to a plus 18. Therefore, it would take it
23 to a base Offense Level of 32, Criminal History of 1 would be
24 121 to 151.

25 I do think given everything, based off of the other

1 sentences, relative culpability, as well as somewhat of the
2 3553A factors, although, again, most of it applies to other
3 defendants who have already been sentenced, I do think a
4 97-to-121-month sentence which is two levels off, even though
5 the Court has already stated he should not get a mitigating
6 role adjustment, I think a 97-month sentence or maybe even a
7 little bit less than that seems to be appropriate for the
8 government.

9 THE COURT: Okay.

10 MR. JOHNSON: Your Honor, I just want to respond
11 briefly.

12 Mr. Martin had drug-related offenses connected to
13 him as well and that's not the same as here with Mr. Singh.
14 He did attempt to cooperate, but I'm talking about
15 Mr. Harinder Singh, but he would not agree because it's not
16 true in his mind that he knew it was related to drugs and
17 that's what the hang-up issue in fact was, um, and at least
18 in the beginning. I think the government did revise the plea
19 agreement to some form of unlawful activity.

20 I still believe that it should be much lower. I
21 think I would be, you know, beating a dead horse already in
22 terms of the sentence, but those individuals that the
23 government has cited to where Sucha Singh gets 63 months,
24 Harmeet 42 and Bobbi Wadhwa, 41, I think the sentence should
25 be much lower than those sentences.

1 THE COURT: Well, first of all, I want to hear from
2 Mr. Singh, but let me just make this generalized observation.
3 I know you're all trying to make the very best case, and I
4 don't mean it in a bad way, to place your respective client's
5 position in the best of light. I don't know that any other
6 defendant in the case aside from Harinder Singh has depended
7 so heavily on the, uh, religious, social characteristics as
8 you have.

9 I could draw two inferences. One, the rest of them
10 didn't think it was very significant or two, you were the
11 person who was careful enough to raise it as basis for
12 departure. But in either event, the fact that the Court did
13 not depart on a cultural basis for the other defendants
14 strikes me as beside the point because I don't think the
15 other defendants really raised the issue in the first place
16 so the Court was probably not confronted with the issue.

17 As far as relative culpability, uh, I think that
18 the factors are at best unclear as to whether Mr. Harinder
19 Singh is so much more culpable than the other defendants that
20 he should have 97 months in custody. As I said, I think that
21 the right number is somewhere between 60 and 70 months. I
22 realize that's a larger departure for Mr. Singh than it would
23 have been for the other defendants in the case.

24 I also think that I have to throw into this the
25 age-old charge that I have to find a sentence that is

1 sufficient, but not overly punitive. And so there are a lot
2 of factors at work here and that's why I always find
3 sentencing so difficult. But I do think that given the
4 history of the case, given that the other defendants Sucha
5 Singh, Harmeet Singh, Mr. Wadhwa all cooperated in some
6 fashion or another, they are not the same as your client.

7 On the other hand, I think that their involvement
8 in the conspiracy was perhaps greater than your client's
9 because your client was induced to enter it. On the other
10 hand, Ms. Chen is correct your client proceeded to engage in
11 the conduct and ultimately became not just a courier, but
12 became a broker. It makes it a very, very difficult
13 situation.

14 And I have said 60 to 70 months. I think 70 months
15 is probably where I would end up in the case, but I recognize
16 that everyone disagrees with me at some level or another and
17 maybe that's good.

18 MR. JOHNSON: I understand where the Court's going
19 and I just want to make, I guess, a few more points. Number
20 one is that the cultural issue is not something that I think
21 should be ignored the way it's being ignored.

22 THE COURT: Well, I don't I'm ignoring it. I am
23 saying to the extent it is relevant, uh, I am acknowledging
24 it.

25 MR. JOHNSON: Um, to the extent that the Court has

1 to consider as well the other 3553 factors, I would ask the
2 Court to consider that he has been out over the six years.
3 He's been in full compliance over the time of the last three
4 on electronic monitoring. Not a risk of flight or a danger
5 to the community. And to the extent that that's a punishment
6 that's no more than necessary, um, I think that so the Court
7 understands where I believe 60 to 70 months is more than
8 necessary to let him know that this is illegal and shouldn't
9 be done when in fact he withdrew on October 12, 2016. And
10 the rest of what we would have to say is in the papers.

11 THE COURT: I've considered what's in your papers.
12 If I were to adopt the level 32, criminal history one, it
13 would yield the range that Ms. Chen referred to which I can
14 pull out, 129 to something.

15 MS. CHEN: Your Honor, I believe 121 to 151.

16 THE COURT: Okay, 121 to 151. If that were the
17 starting point, 70 months is would still be an enormous
18 variance from that level. I've indicated that I disagree
19 with your contention that Mr. Singh is entitled to a
20 three-level decrease for a mitigating role. I disagree with
21 your objection to the plus six because I think there is
22 sufficient evidence to demonstrate that Mr. Singh knew he was
23 connected to drug trafficking.

24 So what we go to is variances and as I say, your
25 client uniquely offered as a basis for a variance religious

1 and cultural history. Um, I'm not sure I buy it, but I'm
2 giving it some credence, obviously, in reaching 70 months
3 when the level might have been 121 months.

4 I'm also considering the other 3553A factors which
5 include the nature and history of our client, whether a
6 sentence of 70 months sends a message to him, if you will, or
7 to others similarly situated. I think it does.

8 And I think that it also shows that he did not take
9 responsibility for his conduct which would have given him
10 perhaps a lower offense level, and I think that a 70-month
11 sentence fairly accounts for the sentences given to others in
12 the case that we've discussed so it seems to me that's where
13 I should end up.

14 That said if as I assume he will, Mr. Singh wishes
15 to be heard, I am more than pleased to hear from him.

16 MR. JOHNSON: Okay, Your Honor. May I have just a
17 moment?

18 THE COURT: Sure.

19 MS. CHEN: And, Your Honor, before we hear from
20 Mr. Singh, may I just make a couple of things clear just for
21 the record?

22 THE COURT: Sure.

23 MS. CHEN: And I'll wait for Mr. Johnson.

24 THE COURT: Please.

25 MS. CHEN: If I may put some things on the record?

1 THE COURT: That's fine. Let him finish and then
2 you can go ahead.

3 MR. JOHNSON: I didn't hear.

4 THE COURT: I think Ms. Chen wants to place
5 something on the record, but she wanted to do it when you
6 were not communicating with your client.

7 MR. JOHNSON: So Mr. Singh does have something to
8 say.

9 Did you want to put something on the record?

10 MS. CHEN: Only just for the record about -- and,
11 Your Honor, I, uh -- the government appreciates the time that
12 this Court has put into this case. I recognize that it is a
13 difficult situation to try to sentence real people relative.
14 I never want to come off strident or cute, frankly, but I
15 would like to put this on the record, again, as my Appeals
16 Unit would want me to.

17 Uh, to the extent that this Court is recognizing
18 the religious and cultural aspects and to address the Court's
19 comments that no other defendant had so explicitly put that
20 on the record, I believe that's true. My recollection was
21 faith and family was explicitly raised in front of the jury
22 over the government's objections and over I believe the
23 Court's sustaining of objections. So this defense frankly
24 has permeated every aspect of this defendant's case.

25 I will say to the extent this Court has indicated

1 it is giving some credence to it, I would simply note, and
2 again, Your Honor, this is for the record that at trial it
3 was raised especially in wiretap calls that this individual
4 and, again, not to be cute, but has tattoos and earrings
5 which likely is not consistent with an orthodox faith. So
6 it's unclear if he was practicing in the faith.

7 And I recognize that that has -- that was a defense
8 and that is now being used as a mitigating factor. But I
9 want to make very clear that the government doesn't believe
10 it should apply. And that even if it did would apply as a
11 mitigating circumstance, it wouldn't apply to this defendant.

12 THE COURT: Okay. Let me just be clear because I
13 think I haven't been clear. The government objected to
14 Mr. Gill's testimony both that he was giving me social and
15 religious testimony and to the substance. I think
16 Mr. Johnson then came back and said the Court has a right to
17 consider that in any event because this is sentencing.

18 What I think I said was to the extent that I have
19 the right to consider that information, I will do so, but I
20 don't buy into it. I disagree that cultural and religious
21 factors come into play in this case. I indicated the reason
22 for my variance related to lots of factors, uh, and to the
23 extent that, uh, the religious factors were offered, I have
24 considered them.

25 I was not granting a variance based on them because

1 as I say, I didn't buy into it. I think I wasn't clear. But
2 that said I indicated that there were a variety of factors
3 that had been put forward in terms of perhaps Mr. Singh
4 wasn't entitled to a minus three for his role in the offense,
5 but it seemed to me that he was less culpable than some of
6 the others.

7 Some of the others received lesser sentences than I
8 proposed to given in this case because they cooperated, uh,
9 they took responsibility early on and there were other
10 factors that lead to their having lower sentences. But once
11 again I was not saying that Mr. Singh was necessarily as
12 involved at every stage as some of the other people who
13 seemed to me to have had higher roles in the operation
14 including Mr. Wadhwa, Sucha Singh, Harmeet Singh to some
15 extent.

16 I don't know if I've clarified anything or not, but
17 your comments are certainly noted for the record. And I just
18 wanted to be clear knowing that sometimes I'm not as clear as
19 I would like to be.

20 MR. JOHNSON: Neither am I. I wanted to make sure
21 that it's clear we are advancing that and would oppose any
22 objection to it. That it's not a cultural departure or
23 variance simply because to say that the individual, I think
24 what the guideline as written say don't depart because of
25 that individual's race or culture.

1 THE COURT: Right.

2 MR. JOHNSON: That's not what the departure is for.
3 The cultural and religious context goes right and fits right
4 within the 3553A factors. I understand what the Court is
5 saying that even if that is the case, the Court rejects -- is
6 not persuaded by it and I understand that.

7 What I would like to note is that the government
8 has consistently and in its papers as well and just now
9 talked about the religious context so I think I would like to
10 address it. When the government talks about mirroring in
11 that Mr. Harinder Singh was mirroring the behavior of Sucha
12 Singh, Gurkaran Singh, it is absolutely not the same thing
13 based upon Professor Gill's letter and the context this
14 occurred. That these individuals were much higher in the
15 faith. That Sucha Singh was a leader in the church who
16 prayed over the community. So was Ramesh Singh, another
17 individual. They were all much higher and had authority than
18 Mr. Harinder Singh would have been low on the totem pole.

19 The government talked about tattoos and earrings.
20 I think that goes further into showing that the deference he
21 would have for someone who would wear a turban and a beard.
22 It's because members of a congregation, including myself,
23 when you look up to a leader of a church, it doesn't mean
24 that you're perfect. It means that you might be striving to
25 get to that level, and that's what Mr. Harinder Singh was

1 doing in our view in this context.

2 Where he may not have worn the turban or had
3 tattoos or he had earrings, but that doesn't mean he's not
4 striving for the ideal values in the Sikh faith. I think it
5 shows that he would look up further to someone that actually
6 has the discipline to do so.

7 THE COURT: And I understand your argument and with
8 all due respect, I just disagree.

9 MR. JOHNSON: Thank you.

10 Mr. Singh has something short to say.

11 THE COURT: Yes.

12 THE DEFENDANT: Your Honor, what I want to say is
13 this case seems different than what it was. The money that I
14 was gathering around 20 people would give money to the
15 San Jose Sikh temple. I would go there for church, and I
16 would deliver to Harmeet Singh. I did this for two,
17 three months. And he told me this is like a Western Union.
18 Even when I wanted to send money and I would ask priest how
19 do I do it? They told me this is the way.

20 And I know this was not wrong. There were --
21 10,000 people were using the same system to send money. And
22 then towards the end, Gurkaran told me he is not well.
23 Harmeet was not right. So Gurkaran asked me that for a while
24 if you can deliver the money. And he told me you don't have
25 to say anything to Sucha Singh. It's not a big thing.

1 And I told him I want to go to India for my
2 sister's wedding, and then after that, I don't want to do
3 this. I want to buy a truck. There are more Sikh people in
4 Southern California than Northern California. They have the
5 book, list of people. You can bring Sucha Singh here and you
6 can ask him most of them are his relatives. The book that
7 they have. All I want to say, Your Honor, I am innocent.

8 MR. JOHNSON: I know that concludes what he's
9 saying, but I think what, uh, Mr. Singh is trying to
10 articulate is that he felt -- this is why I sincerely believe
11 the cultural and religion impacted him. He sincerely
12 believed as he's going along that he's trusting his uncle.
13 He's believing that the things he's delivering are
14 appropriate, and that's really the context of what he is.
15 And every indication was that his uncle was sending him to
16 these Gudwharas to pick up money from the Gudwhara.

17 THE COURT: I understand that is his position and
18 your position. And I -- at the risk of being too candid,
19 when I know a case is going to be appealed, I would not
20 expect a defendant to admit responsibility. I understand
21 that he feels that what he did was proper, and that will be
22 decided obviously on another occasion.

23 That said, I do want to correct one thing that goes
24 to Ms. Chen's point. The recommendation of Probation was --
25 the range was 151 to 188 months. But I want to note for the

1 record that their sentencing recommendation was 100 months in
2 custody, not 151 months in custody which suggests that for
3 purposes of determining sentencing disparity and issues of
4 that nature, 70 months is even more reasonable than perhaps I
5 had indicated earlier because this is a departure of
6 approximately 30 months from the recommended sentence based
7 on the higher offense level of 34.

8 And as we've established, if we assume -- and the
9 government, of course, is not giving up its contentions, but
10 if we assume the offense level is 32, then we're talking 121
11 to 151 months. And if that were the range, I assume the
12 recommendation from Probation is even less, but that's
13 speculation on my part.

14 But for the reasons I previously articulated, it
15 does seem to me that 70 months is the appropriate sentence to
16 meet the various issues and sentencing considerations of
17 Section 3553A so for that reason, that's what I'm going to
18 impose.

19 Does anyone have anything further to say?

20 Otherwise, I would proceed.

21 MR. JOHNSON: Your Honor, I just want to make sure
22 that the record is complete. If I may just have a minute to
23 speak with -- there was just one other thing I wanted to put
24 on the record. I think what Mr. Harinder Singh was trying to
25 explain was that there are --

1 THE INTERPRETER: Correction. Your Honor,
2 Mr. Harinder Singh said there are more Sikh community in
3 Northern California than Southern California.

4 THE COURT: Right.

5 THE INTERPRETER: I wanted to clear that, and I
6 asked him again, and he said yes, and that's what he said.

7 MR. JOHNSON: And that's what he was trying to put
8 in the context to say that those individuals that were in his
9 journal were from Sucha Singh. They were the Sucha Singh
10 contacts that he was using from, uh, to pick up money from
11 the various Sikh temples.

12 Your Honor, just in terms of making sure that the
13 record is complete, is it possible to have Professor Gill
14 make a statement or take the stand?

15 MS. CHEN: Your Honor, the government would object
16 to that. I believe the letter apparently is in the record.
17 I would just object to that.

18 MR. JOHNSON: The Court can consider any evidence
19 related to sentencing.

20 THE COURT: Well, I can, but think about where we
21 are right now. That's fine if you want to do it, but then
22 the government is going to have an opportunity to
23 cross-examine. And I've indicated that I have considered his
24 letter and I just do not accept it as a basis for a variance
25 in this case.

1 MR. JOHNSON: I understand. If I might just have a
2 moment?

3 THE COURT: But if we're going to do that, we've
4 got to take a short recess.

5 MR. JOHNSON: Your Honor, we understand what the
6 Court's rulings are. The Court has read the letter, and
7 we'll leave it at that.

8 THE COURT: Anything further, Ms. Chen?

9 MS. CHEN: Your Honor, I think only to the extent
10 that there was no fulsome -- everything was quite fulsome,
11 but to the extent that there was no fulsome discussion about
12 3553A factors, I would just note that the government believes
13 again for the record that a 97-month sentence would be
14 extremely generous. There's nothing in the defendant's
15 personal history especially with regard, I believe
16 Mr. Johnson raised immigration status. Most of the
17 individuals in this case would likely be deported if they
18 weren't already deported so that would be inappropriate.

19 Mr. Johnson also noted that the sentencing
20 guidelines stated a person's culture or race should not be
21 considered and yet then stated that 3553A should be
22 considered a factor. I'm not sure what the fine line between
23 those two arguments are.

24 With respect to, and to be very clear, I don't want
25 to make any argument, uh, having an argument not addressed.

1 To the extent that Mr. Johnson made the argument that this
2 defendant has been out on bond and fully complied, one, I'm
3 not really sure about that.

4 Two, to the extent that an individual who is facing
5 serious federal charges and decides to obey the terms and
6 conditions of bond, I don't believe that is something for him
7 to be rewarded in terms of a lighter sentence. That's simply
8 following the law.

9 And then finally, in terms of the cultural defense,
10 again, while no other defendant raised this specifically, if
11 we're to apply, it would apply across the board. I
12 understand that, again, to be very clear, Mr. Singh is
13 probably one of the younger individuals in this case, and I
14 understand that he got involved due to familial
15 relationships, but I don't believe -- Gurkaran Isshpunani,
16 Taran Singh, I don't believe they're high level priests in
17 any temple.

18 So, again, just putting it on the record, to the
19 extent that culture should be considered which I believe it
20 shouldn't be under the guidelines because if it can be
21 considered under 3553A factor, how is it then there is
22 prohibition considering it just in general?

23 Again, I believe 3553A factors raised by
24 Mr. Johnson in his papers are not that different from any
25 other defendant. Every defendant has family and children.

1 In some ways having a wife run out of the house with a baby
2 in one arm and \$388,000 in another hand might actually be an
3 aggravating factor.

4 So I just want to make that clear for the record,
5 Your Honor.

6 THE COURT: Okay. Well, having -- I will make
7 clear I agree with everything you say regarding those 3553A
8 factors, however, I have been concerned with sentencing
9 disparity, I have been concerned with the relative role of
10 this defendants versus other defendants in the case.

11 Recognizing that some of the other defendants whose
12 roles may have been more substantial, uh, had lesser
13 sentences because they either cooperated or they plead guilty
14 and all those factors also come into play, but I agree with
15 everything you just said as to those factors.

16 MR. JOHNSON: And I -- and I hate to keep opening
17 up --

18 THE COURT: No, go ahead.

19 MR. JOHNSON: But what I think the government is
20 saying is absolutely wrong.

21 THE COURT: I know and that's exactly why I said
22 that to the extent the government felt that I should not hear
23 Mr. Gill's testimony, I was prepared at least provisionally
24 to hear what he had to say. And I made it very clear my
25 personal view is I disagree with him and that's all there is

1 to it.

2 MR. JOHNSON: I understand.

3 The -- the -- the 3553A factors that -- that we've
4 outlined in our paper, um, are an addition if you cross out
5 the family and religious background is that his lack of
6 experience and communication, connection with drug
7 traffickers, I think that's absolutely true.

8 His -- his saying he accepted a job with Mr. Singh,
9 uh, with his uncle, to, uh -- as an alternative to be home
10 with his pregnant wife, that can be considered as well. His
11 role in the beginning and certainly as a courier, considered
12 as well.

13 His ending on October 16th while others continued
14 is that that should be considered as well the -- the -- under
15 the circumstances of the offense as well as his compliance is
16 absolutely something that the Court can consider at
17 sentencing because it demonstrates that no new arrests or his
18 willingness to get involved again or be connected to criminal
19 activity. Even if it's a small part, it should be considered
20 in the history and characteristics.

21 The extreme family circumstances of his wife having
22 two children after the initial arrest, his zero criminal
23 history with a low risk of recidivism, those are all factors
24 that the Court can consider under 3553.

25 THE COURT: I agree those are factors that the

1 court can consider, however, as I've indicated, they're not
2 the factors I'm relying upon in reaching this conclusion.

3 MR. JOHNSON: Understood.

4 THE COURT: Okay. Anything further?

5 MS. CHEN: I don't believe so, Your Honor.

6 I think there was a request for bail pending appeal
7 and the government would oppose that.

8 THE COURT: Okay.

9 MR. JOHNSON: There is a request for bail pending
10 appeal. As the Court is aware that what the defendant must
11 do is bring forth a plausible argument that may be successful
12 on appeal. That he's demonstrated he's not a risk of flight
13 or danger to the community in the very beginning. I think
14 he's demonstrated that and I think bail pending appeal should
15 be granted.

16 THE COURT: All right. I am disinclined to grant
17 bail pending appeal. I will consider a surrender date. I'm
18 not remanding him into custody.

19 MR. JOHNSON: What I would like is that would the
20 Court be inclined with January 31st as a self-surrender date?

21 THE COURT: I know the government probably opposes
22 it, but I would be prepared to do that.

23 MS. CHEN: Your Honor, the government does not
24 oppose it. That's fine.

25 MR. JOHNSON: When the Court said, I want to be

1 clear for the record, is the Court would be inclined not to
2 grant bail pending appeal?

3 THE COURT: I'll tell you why.

4 MR. JOHNSON: Okay.

5 THE COURT: First of all, I think there is a low
6 probability that a new trial will be granted. I think
7 there's a low probability that the conviction will be
8 reversed on appeal. And I believe that your client has
9 demonstrated at least up until now that he's not a risk of
10 flight although I do think that is a possibility given his
11 ability to travel, but I think that can be mitigated by the
12 existing circumstances or surrender of passport and things
13 along those lines. I just don't think you have met the bar
14 in my mind for me to grant bail on appeal.

15 MR. JOHNSON: In terms of the risk of flight and
16 danger to the community, he's continuously, he has electronic
17 monitoring.

18 THE COURT: I'm aware of that.

19 MR. JOHNSON: He has turned in his passport.

20 The standard in Handy 761 Fed.2d. 1279 is that is
21 there a debatable issue that would be raised on appeal that
22 would likely result in reversal being successful.

23 I think that, in fact, there are several debatable
24 issues that are listed on page 22 of the brief, that there
25 were several issues raised at trial, that, um -- including

1 the statements that the Court has ruled on, the jury
2 instructions -- the, uh, uh, the jury instructions related to
3 the money laundering as well as the offense in the 1960 as
4 well as the -- the defense that the entire -- the defendant
5 should have been entitled to cross-examine Sanjev Wadhwa
6 during the trial. And I think these are debatable issues
7 that if granted will be, uh -- would actually lead to another
8 trial.

9 It's not determining whether they're great issues,
10 but if they are a debatable issue, and they -- if one of them
11 is granted by the 9th Circuit that that would actually lead
12 to a new trial.

13 So I think the standard is met for bail pending
14 appeal.

15 THE COURT: Well, your arguments are noted for the
16 record and for the reasons I just indicated, I respectfully
17 disagree.

18 MR. JOHNSON: Thank you, Your Honor.

19 THE COURT: Okay. Do you want to say anything in
20 response to that, Ms. Chen?

21 MS. CHEN: Only with respect to the bail pending
22 appeal, Your Honor.

23 THE COURT: Yes.

24 MS. CHEN: Only that I believe that none of the
25 eight issues listed on page 22 of Mr. Johnson's sentencing

1 memorandum would actually satisfy the standard. And in
2 particular with regard to Paragraph 4 with regards to his
3 entitlement to present evidence or discuss faith and family,
4 I believe he did get to do that at trial, perhaps not to
5 extent he wanted to.

6 I will otherwise submit as the reasons listed by
7 the Court. And I do believe that only other thing I would
8 mention is now having been convicted and sentenced to a
9 lengthy sentence, I do believe that increases incentive for
10 flight. On that I would submit, Your Honor.

11 THE COURT: All right.

12 MR. JOHNSON: Just on the bail pending appeal so
13 the record is clear, the Court didn't conclude that he was a
14 flight risk, those could be mitigated. I don't think the
15 Court addressed danger.

16 THE COURT: Let me be clear. I think that there
17 are not really debatable issues as to whether a new trial
18 would be granted or the conviction reversed on appeal. To
19 the extent that I have to address risk of flight and danger
20 to the community as part of the motion, and I think it's
21 pretty much mooted by a finding that there's little
22 likelihood of reversal on appeal and little likelihood that a
23 new trial would be granted.

24 But to the extent I do, it seems to me after I
25 impose a 70-month sentence, there is a greater risk of flight

1 and I think that the issue of danger to the community is a
2 neutral issue. In other words, I don't think that Mr. Singh
3 presents a risk of danger to the community that cannot be
4 mitigated, but I do think that there's little likelihood of a
5 reversal or a new trial.

6 MR. JOHNSON: I understand the Court's ruling and I
7 just want to be clear on the Court's ruling related to, uh,
8 is he a risk of flight?

9 THE COURT: What I'm saying is he is to the extent
10 that I am imposing a 70-month sentence. He has greater
11 incentive to flee in those circumstances. I believe that for
12 the short term that we're talking about until the date of his
13 self-surrender, the fact that he is not in possession of his
14 passport and the fact he's on electronic monitoring for that
15 short period of time does something to mitigate that risk,
16 but I do not think it entirely mitigates the risk.

17 As I've experienced in numerous other cases where I
18 have delayed a self-surrender date and have believed that
19 there was not a great risk of flight and people have flown
20 the coup more times than I'd like to count. So I can't tell
21 you there's no risk of flight. Does that answer the
22 question?

23 MR. JOHNSON: I think it does Your Honor.

24 THE COURT: Ms. Chen, anything further?

25 MS. CHEN: No, Your Honor.

1 THE COURT: Okay. Then it is ordered that the
2 defendant shall pay to the United States a special assessment
3 of \$300 which is due immediately. Any unpaid balance shall
4 be due during the period of imprisonment at the rate of not
5 less than \$25 per quarter and pursuant to the Bureau of
6 Prisons Inmate Financial Responsibility Program.

7 Pursuant to Guideline Section 5E1.2(a), all fines
8 are waived as the Court finds that the defendant has
9 established that he is unable to pay and not likely to become
10 able to pay any fine.

11 MR. JOHNSON: I'm sorry, Your Honor. Can the Court
12 slow down?

13 THE COURT: Absolutely, I'm sorry. Let me start at
14 the beginning.

15 It is ordered that the defendant shall pay to the
16 United States a special assessment of \$300 which is due
17 immediately. Any unpaid balance shall be due during the
18 period of imprisonment at the rate of not less than \$25 per
19 quarter and pursuant to the Bureau of Prisons Inmate
20 Financial Responsibility Program.

21 Pursuant to Guideline Section 5E1.2(a), all fines
22 are waived as the Court finds that the defendant has
23 established that he is unable to pay and is not likely to
24 become able to pay any fine.

25 Pursuant to the Sentencing Reform Act of 1984, it

1 is the judgment of the Court that the Defendant Harinder
2 Singh is hereby committed on Counts 1, 2 and 3 of the
3 indictment to the custody of the Bureau of Prisons for a term
4 of 70 months. This term consists of 70 months on each of
5 Counts 1, 2 and 3 of the indictment to be served
6 concurrently.

7 Upon release from imprisonment, the defendant shall
8 be placed on supervised release for a term of three years.
9 This term consists of three years on each of Counts 1, 2 and
10 3 of the indictment, all such terms to run concurrently under
11 the following terms and conditions:

12 1. The defendant shall comply with the rules and
13 regulations of the United States Probation Office and General
14 Order 05-02 with the exception of Conditions 5, 6 and 14 of
15 that order.

16 2. The defendant shall not commit any violation of
17 local, state or federal law or ordinance.

18 3. During the period of community supervision, the
19 defendant shall pay the special assessment in accordance with
20 this judgment's orders pertaining to such payment.

21 4. The defendant shall cooperate in the collection
22 of a DNA sample from the defendant.

23 5. As directed by the probation officer, the
24 defendant shall notify specific persons and organizations of
25 specific risks and shall permit the probation officer to

1 confirm the defendant's compliance with such requirement and
2 to make such notifications.

3 6. The defendant shall comply with the immigration
4 rules and regulations of the United States and if deported
5 from this country either voluntarily or involuntarily not
6 reenter the United States illegally.

7 The defendant is not required to report to the
8 probation office while residing outside of the United States.
9 However, within 72 hours of release from any custody or any
10 reentry to the United States during the period of court
11 ordered supervision, the defendant shall report for
12 instructions to the United States Probation Office located at
13 the United States Courthouse, 312 North Spring Street, Room
14 600, Los Angeles, California 90012.

15 The drug testing condition mandated by statute is
16 suspended based on the Court's determination that defendant
17 poses a low risk of future substance abuse.

18 It is further ordered that the defendant shall
19 surrender himself to the institution designated by the Bureau
20 of Prisons at or before 12:00 noon on January 31, 2019. In
21 the absence of such designation, the defendant shall report
22 on or before the same date and time to the United States
23 Marshal located at Roybal Federal Building, 255 East Temple
24 Street, Los Angeles, California, 90012.

25 Okay. Do we have a request?

1 MR. JOHNSON: For location?

2 THE COURT: Yes.

3 MR. JOHNSON: Yes, Your Honor, we do.

4 THE COURT: And that is?

5 MR. JOHNSON: That he be in Southern California
6 close to his family and his children.

7 THE COURT: And the Court will make that
8 recommendation that the defendant be placed at a facility in
9 the Southern California area which is hopefully near his
10 family.

11 Um, Mr. Singh, to the extent you have a right to
12 appeal and you do, you must do so within 14 days of today.
13 If you cannot afford to pay for counsel, counsel will be
14 provided for you at no cost. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay.

17 MR. JOHNSON: Your Honor, I have two statements
18 regarding the sentencing.

19 THE COURT: Sure.

20 MR. JOHNSON: I believe the Court has imposed a
21 sentence of 70 months for each count that they run
22 concurrent. I believe Counts 2 and 3 have a 60-month cap.

23 THE COURT: Thank you for clarifying that.

24 MR. JOHNSON: I would also like to -- to object
25 generally just for the record, generally to the supervised

1 release conditions and certainly just for appeal purposes and
2 in particular but including DNA, the requirement that he, uh,
3 be required to submit to DNA testing.

4 THE COURT: Okay. Let me first of all say that the
5 sentence is to 70 months on Count 1, 60 months on Count 2,
6 60 months on Count 3, and all such counts shall be served
7 concurrently.

8 With regard to the objections, uh, to the
9 conditions of supervised release, I believe that while I'm
10 going to note them for the record, the objections are not
11 well taken, and I intend to overrule the objections based on
12 the orders -- general order of this court regarding
13 conditions of supervision.

14 Um, and to the extent that I need to, uh, deal with
15 the 3553A factors, I think I have already done so in the
16 course of these proceedings, and I have indicated that the
17 key factors in my mind are not only the defendant's history
18 and characteristics excluding what I think -- well, let me
19 put it this way, history and characteristics, namely that
20 he's young, he was brought to this crime by Mr. Sucha Singh,
21 uh, and may have been influenced by elders, the fact of the
22 matter is I think he committed the crime fully knowing, uh,
23 its objects.

24 And last but not least, I have indicated that the
25 reasons that I have varied his sentence to 70 months is

1 principally to avoid what I believe are unwarranted
2 sentencing disparities in the case. Um, obviously, everyone
3 preserves their objections.

4 Now, the one thing that I do need to clarify,
5 everybody, is I intend to find that the criminal history is
6 34, and that the, uh -- uh, I'm sorry. I misspoke. The
7 offense level is 34, and the criminal history category is 1.
8 Um, for purposes of the statement of reasons recognizing that
9 that there has been a concession by the government at least
10 for purposes of this hearing without waving anything that the
11 offense level is 32.

12 Does anyone find a problem in my doing that?

13 MR. JOHNSON: Well, obviously, preserving the
14 objections that the defendant has raised, I -- I don't know
15 that we would weigh in.

16 THE COURT: Okay.

17 MS. CHEN: And, Your Honor, I don't find any issues
18 with that as well.

19 THE COURT: Okay. And then should we provide that
20 bond will be exonerated upon surrender?

21 MR. JOHNSON: Yes.

22 MS. CHEN: Yes, Your Honor.

23 THE COURT: Okay. Thank you, everyone.

24 MS. CHEN: Thank you, Your Honor.

25 MR. JOHNSON: Thank you, Your Honor.

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THE CLERK: This court is adjourned.

