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UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-20052-JAR

FENG TAO, a/k/a "Franklin  
Tao,"

Kansas City, Kansas

Date: January 18, 2023

Defendant.  
.....

TRANSCRIPT OF EXCERPT OF SENTENCING  
BEFORE THE HONORABLE JULIE A. ROBINSON  
SENIOR UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

For the Plaintiff:

Mr. Adam Barry  
U.S. DEPARTMENT OF JUSTICE  
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Washington, D.C. 20530

Mr. Christopher Oakley  
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For the Defendant:

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ARENT FOX, LLP  
1717 K Street NW  
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Proceedings recorded by machine shorthand,  
transcript produced by computer-aided transcription.

1 (Excerpt of hearing.)

2 THE COURT: Okay. All right. I'm going to make the  
3 following findings, and as part of the findings and as part of  
4 my announcing a tentative sentence, I'm going to address the  
5 3553(a) factors.

6 So the total offense level in this case is six and the  
7 criminal history category is one. The statute sets a maximum  
8 sentence of five years of prison, a maximum three years of  
9 supervised release, a range of one to five years of probation,  
10 a maximum \$250,000 fine.

11 There is no restitution in this case under the  
12 statute, and the sentence must include under statute or  
13 guidelines a \$100 mandatory assessment for the Crime Victims  
14 Fund.

15 The guidelines, which of course are discretionary, not  
16 mandatory, advise as follows: For custody a range of  
17 zero months to six months, for supervised release a range of  
18 one to three years, for probation a range of one to five years,  
19 for a fine a range of 1,000 to 9,500, no restitution, a \$100  
20 special assessment mandated under the Crime Victims Fund.

21 Again, the government is seeking a 30-month sentence.  
22 The defendant is seeking a sentence of time served, which in  
23 this case means a one-week imprisonment sentence because  
24 Dr. Tao did serve one week in jail.

25 The government I believe seeks a one-year term of

1 supervised release. The defendant seeks no term of supervised  
2 release. The government also seeks a \$100,000 fine.

3 The court's tentative sentence is as follows: A  
4 custodial sentence of time served, a two-year term of  
5 supervised release, no probation because there has been a  
6 custodial sentence, no fine, no restitution, a \$100 special  
7 assessment for the Crime Victims Fund.

8 The court is required pursuant to 18 U.S.C. Section  
9 3553(a) to impose a sentence that is sufficient but not greater  
10 than necessary to comply with the purposes of sentencing  
11 identified in that statute. In determining the particular  
12 sentence to be imposed the court has considered the sentencing  
13 guidelines, which promote uniformity in sentencing and assist  
14 the court in determining an appropriate sentence by weighing  
15 the basic nature of the offense as well as aggravating and  
16 mitigating factors.

17 The court has considered the statements of the  
18 parties, the arguments of the parties, the presentence  
19 investigation report, the written and oral victim impact  
20 statements, and the sentencing memoranda provided to the court  
21 as well as the numerous -- I think it's several dozen or a  
22 couple dozen letters written in support of Dr. Tao.

23 After reviewing the presentence report, the court  
24 finds that the guideline range of zero to six months is  
25 correctly calculated based on a total offense level six and

1 criminal history category of one.

2 This offense involves the defendant making a false  
3 statement on an institutional responsibilities form submitted  
4 to the University of Kansas. He has no prior criminal history  
5 and has been compliant on bond since his arrest in August 2019.

6 After considering all of the 3553(a) factors and the  
7 advisory guidelines, the nature and circumstances of the  
8 offense, and Dr. Tao's history and characteristics, the court  
9 intends to sentence him to a term of time served followed by  
10 two years of supervised release for these reasons:

11 First, the nature and circumstances of the offense.  
12 This is not a case about espionage. This is not a case about  
13 industrial espionage. This is not a case where there was any  
14 evidence that Dr. Tao stole anything from KU, NSF, DOE, or the  
15 American taxpayers. This is not a case where there's any  
16 evidence that the time that he spent in China was spent to  
17 share intellectual property, proprietary information, inside  
18 information that was funded by the taxpayers or anyone else  
19 with the People's Republic of China.

20 Frankly, I thought going into this case I was going to  
21 hear evidence that whatever Dr. Tao's research was about, it  
22 was something that it would hurt our taxpayer-funded research  
23 agency, science agencies, it would hurt the taxpayers that he  
24 went to China and spent time there working with them because he  
25 was sharing information that taxpayers had funded for him to

1 share with KU and with the federal government or whatever, but  
2 that's not what the evidence was.

3 The evidence was that Dr. Tao's research -- first of  
4 all, it's not the type of research that is monetized or  
5 commercialized. It's too -- I would call it esoteric. I'm not  
6 a scientist, probably the wrong word. But it's academic. I  
7 think one person testified that if it's ever going to be usable  
8 commercially, we're probably I think they said maybe 50 years  
9 out or maybe 20 years, a long time out. It's the type of  
10 research that's fundamental research I think someone called it,  
11 and it's the type of research that it's freely shared in the  
12 scientific community in all of these hundreds of articles, over  
13 200 articles that Dr. Tao has published during his academic  
14 career, 16 that he's published since the charges have been  
15 filed.

16 It's shared globally. It's shared within the  
17 scientific community, which is an interesting community that  
18 we've all benefited from and a community that largely doesn't  
19 recognize borders, and that's been a good thing over the course  
20 of human history.

21 That's not to say that there cannot be concerns about  
22 sharing certain types of scientific research with frankly our  
23 enemies. People's Republic of China is not an ally of the  
24 United States in any sense. But that's not what was happening  
25 here. That's not what the evidence demonstrated. That was not

1 the type of research that Dr. Tao was performing, and it was  
2 the type of research that was freely shared in scientific  
3 journals and shared globally.

4 And so that's not what was happening here. This is  
5 not an espionage case. Maybe that's what the Department of  
6 Justice thought what was going on, but that's not what was  
7 going on. If it was, they presented absolutely no evidence  
8 that that's what was going on. Believe me, if that was going  
9 on, there would be a very different sentence being imposed  
10 today.

11 Now, scientific integrity is critically important.  
12 Dr. Keiser gave us all a really good example in her victim  
13 impact statement about the importance of scientific integrity.  
14 You've got, you know, a researcher that's researching and  
15 producing data that is peer reviewed and accepted as being  
16 research of integrity being shared in the scientific community  
17 having to do with the heart, but failing to disclose that  
18 they're being funded by tobacco companies, something that  
19 everyone could understand should be disclosed and that would  
20 cause all of us, even lay people, some concern about the  
21 integrity of the data. Is the data real? Is it bias? Is it  
22 changed? Is it -- are certain things not disclosed? In other  
23 words, real questions about the integrity of the research  
24 itself.

25 And so that's why NSF, DOE, and these other funding

1 agencies and the universities that they work in partnership  
2 with, that's why it's so important to them that forms be filled  
3 out, that conflicts be disclosed, that people operate without  
4 bias and integrity.

5 But, again, Dr. Tao argues -- and this is true --  
6 there was no evidence that there was any conflict of interest  
7 in that sense in this case. What there was concern about was a  
8 conflict of time. Dr. Tao is over in China, but yet he's  
9 supposed to be supervising research at KU even during that  
10 buyout semester. And it turns out he was; he was supervising  
11 the research at KU because apparently he's somebody that can  
12 work 70 or 80 hours a week consistently.

13 Should he have disclosed these things? Absolutely.  
14 There was question -- I heard a lot of evidence that called  
15 into question how much did anybody understand as to what they  
16 were supposed to disclose when certain things happened after  
17 the fact, after the application process. But there was  
18 certainly at least a concern about a commitment of time. And  
19 maybe there was a concern about conflict of interest otherwise  
20 as well. It should have been disclosed.

21 That's why I denied the motion for judgment of  
22 acquittal on the false statement count. That particular  
23 institutional responsibilities form wasn't fully accurate, and  
24 that's why Dr. Tao sits here today as a convicted felon and  
25 having suffered the consequences over the last three and a half

1 years and the consequences of that going forward.

2 But he did not commit wire fraud. He did not obtain  
3 money or property for this. He engaged in deception. If you  
4 read my order, there's no question about that. He was  
5 deceptive with KU about what he was doing and where he was.

6 It was interesting because his department chair said I  
7 wouldn't have cared if he was in China; I didn't care if he was  
8 in Germany; I didn't care where he was as long as the work got  
9 done. And, frankly, I think if Dr. Tao had disclosed what he  
10 was doing exactly, maybe we wouldn't be here. I don't know.  
11 Maybe the government would have pursued him anyway. I don't  
12 know.

13 But he was deceptive. He didn't let them know exactly  
14 where he was and what he was doing. He asked his graduate  
15 students to kind of help him conceal this. There was  
16 definitely deception, but it didn't constitute wire fraud. It  
17 did constitute a false statement on this one particular count.  
18 So I've taken all of that into consideration.

19 Frankly, based on all of the evidence I heard, I think  
20 a reasonable jury could have found that what Dr. Tao was trying  
21 to do was he was trying to figure out where he goes from KU.  
22 He's a mid-career researcher. He's gotten this huge reward  
23 from KU. They love this man, and they should; he's brought in  
24 a claim and probably students to KU and certainly a lot of  
25 federal research dollars to KU, which in a research institution

1 is important.

2 But he's trying to figure out what his next steps are.  
3 And so he, you know, gets involved with this China talent  
4 program. There's, you know, evidence going both ways as to  
5 whether -- you know, he definitely got the scholar award.  
6 There was the certificate in evidence. There's some evidence  
7 about he had a contract. There's evidence that suggested maybe  
8 he didn't finalize the contract. I don't know.

9 But the bottom line is he was deceptive. He didn't  
10 want to tell KU exactly what he was up to. He talked to some  
11 colleagues about, you know, how can I accomplish this? How can  
12 I go over there and test the waters, so to speak, with them?

13 And I think that's what he was doing; he was over in  
14 China testing the waters, you know, starting to build a lab  
15 during the buyout semester or during the semester that he was  
16 able to be off campus, although he didn't fulfill all of his  
17 responsibilities. He didn't go to some faculty meetings, and,  
18 you know, he was slow in responding to some students who wanted  
19 some advising, but, again, I don't think that's a basis for a  
20 felony conviction.

21 But I think he was testing the waters and he was being  
22 deceptive about it, and that's not a basis for a custodial  
23 sentence in my view. Deception, yes. Wire fraud, no. False  
24 statement, yes. No loss. All of these I think go to the  
25 nature and circumstances of the offense.

1 His history and characteristics. Dr. Tao has had no  
2 conviction, no prior criminal history whatsoever. He's been on  
3 bond in this case since his arrest. He served a week in jail,  
4 and then he's been on bond for three and a half years, since  
5 August of 2019. He's been on home detention, which is somewhat  
6 custodial, home detention, wearing an ankle bracelet. He's not  
7 had any violations of his conditions of pretrial release. Not  
8 the same as being in prison by any means, but it has -- it has,  
9 you know -- it has affected his ability to live in the world,  
10 no doubt.

11 I've taken into consideration the fact that Dr. Tao's  
12 continued to do research. I don't view that as a negative.  
13 I'm like him; I view it as a positive. I don't view it as a  
14 lack of remorse to tell someone who has spent their entire life  
15 doing this kind of research that if you now do this research  
16 while you're under pending charges or after you've been  
17 convicted, that proves you're not remorseful.

18 He's not getting federal funding. He's not filling  
19 out NSF and DOE and KU forms, but he's still getting published.  
20 As one of the authors -- the one author from one of the letters  
21 from I think the University of Central Florida pointed out, you  
22 know, everybody knows that he's under these charges; everybody  
23 in the community knows that he's been convicted now I guess,  
24 but nobody else has questioned the integrity of his research.  
25 His own peers -- he's still getting published in peer-reviewed

1 journals. He's still probably working 70 or 80 hours a week at  
2 home to do that.

3 All of that I think is a positive. I don't think it  
4 shows a lack of remorse. I think it shows a commitment to the  
5 work, and that was his failing I think. He was afraid that if  
6 he, I guess, was completely transparent, you know, maybe he  
7 wouldn't be able to test the waters, maybe he wouldn't be able  
8 to build a world class lab as being a Changjiang scholar as  
9 part of the Chinese talent program.

10 He should not have lied about it. He should not have  
11 been deceptive. I think he knows that because that's why he's  
12 here now.

13 And when I say testing the waters, the evidence was he  
14 went there, and there's e-mails and sort of communications  
15 about this, they didn't come through. People's Republic of  
16 China did not come through. They weren't going to give him  
17 enough money to build the lab that he needed that would come  
18 even close to what he had at KU. He had one student that acted  
19 like he might be willing to come over there, but another one,  
20 no. His family did not want to move there. His children were  
21 born in the United States. They're Americans. They didn't  
22 want to go there.

23 So he tested the waters and probably figured out  
24 pretty quickly this wasn't going to work, but apparently he  
25 thought it made sense to be deceptive with KU and not let them

1 know he was doing that. And frankly a lot of people go out in  
2 the world and apply for other jobs and don't tell their  
3 employers what they're up to for obvious reasons. It doesn't  
4 constitute a federal crime if they lie to their employers that  
5 they were over interviewing in China or Norway or wherever when  
6 they were supposed to be at work, unless they obtained money or  
7 property from their employer that they weren't entitled to.  
8 But that's not what happened here.

9 So I've taken into consideration the nature and  
10 circumstances of the offense, Dr. Tao's history and  
11 characteristics. I do not want to suggest that I think it is  
12 not serious that researchers of any sort not comply with these  
13 requirements of NSF, DOE, and their sponsoring academic  
14 institutions. It's important, that's why those rules are in  
15 place.

16 I've taken into consideration general and specific  
17 deterrence. I have a hard time believing that a custodial  
18 sentence is necessary to specifically deter Dr. Tao now when  
19 he's lost his job or is in the process of losing, he suffered  
20 everything that we've heard about here in this courtroom today.

21 And as far as general deterrence, I think that's  
22 interesting. I don't remember the name of the letter, but  
23 there was a letter from a researcher that knows Dr. Tao who is  
24 from the University of Nebraska at Lincoln. And that person  
25 said, you know, my institution -- I assume he was talking about

1 University of Nebraska -- he said I've been worried about these  
2 conflict of interest forms for several years, and I have asked  
3 for more clarity from the organization and I never get it and  
4 I'm terrified.

5 And I think general deterrence is in play here. I  
6 think not only that person but probably other researchers have  
7 seen what happened to Dr. Tao and perhaps some other people  
8 that were prosecuted as part of this Department of Justice  
9 initiative and are terrified that it could happen to them.

10 Apparently now the Chinese talent programs are not  
11 going to be an issue anyway, one, because NSF and DOE or  
12 whoever aren't going to fund people if they do disclose that,  
13 and, two, in any event the Department of Justice apparently is  
14 no longer pursuing these prosecutions that are solely on that  
15 basis anyway. I don't know.

16 But the point is, I think the scientific community is  
17 generally deterred to see somebody of Dr. Tao's acclaim and  
18 accomplishment go down the tubes like he has because of this,  
19 so I don't think a custodial sentence is necessary to further  
20 deter people.

21 The need to avoid unwanted disparities in sentencing.  
22 The government has cited a number of cases. That's an  
23 important consideration under the 3553(a) factors, although the  
24 government doesn't consider that the most important. They've  
25 said it's who Dr. Tao is and the nature and circumstances of

1 the offense that are the primary considerations. But the need  
2 to avoid unwanted disparities in sentencing is appropriate.  
3 Every case is different. Some of these folks were convicted of  
4 more serious activity.

5 But I come back to the guidelines. I'm offering --  
6 imposing a sentence within the guidelines, and the guidelines  
7 are designed for this very purpose, and I do not think a  
8 variance upward to a custodial sentence is necessary to avoid  
9 unwanted disparities in this case.

10 So also I've considered whether there's a need for  
11 correctional treatment and find that Dr. Tao requires no  
12 educational or vocational training. He may require some  
13 medical care which is consistent with the condition that I'm  
14 imposing as part of his supervised release.

15 I will say that the defendant is asking for no term of  
16 supervised release. Given that I'm not imposing any additional  
17 custodial sentence, I think supervised release is warranted but  
18 without a condition for home detention. I do not think Dr. Tao  
19 should have an ankle bracelet anymore. I don't think he needs  
20 to be home detained anymore. Otherwise the conditions of  
21 supervision that are in the probation office will -- in the  
22 presentence report will be imposed with one exception.

23 There's a recommendation in there for a community  
24 service condition. That pertains when somebody is given a  
25 probation sentence. I'm actually giving him a supervised

1 release sentence, so in paragraph 109 that condition will not  
2 be imposed as part of the supervised release. Frankly, I think  
3 what he is doing is community service, continuing to provide  
4 scientific research. If somebody doesn't want to accept it  
5 because of his conviction, that's fine. But he continues to  
6 work for the better of the scientific community whether it's  
7 accepted or not.

8 So the court believes based on all of this that the  
9 sentence as tentatively announced is sufficient but not greater  
10 than necessary to reflect the seriousness of the offense, to  
11 promote respect for the law, to provide just punishment, to  
12 afford adequate deterrence, and to protect the public from  
13 further crimes.

14 The court intends to order a special assessment of  
15 \$100 to the Crime Victims Fund but no fine due to Dr. Tao's  
16 inability to pay.

17 Again, I'm intending to impose a two-year term of  
18 supervised release. I will say it's the policy of this court,  
19 the entire District of Kansas, that if someone serves  
20 50 percent of the term of supervised release without any  
21 problems, we will early terminate them.

22 So a year from now if Dr. Tao continues being without  
23 blemish on his conditions as he's been for the last three and a  
24 half years, this court will be inclined upon motion to  
25 terminate the supervised release at the one-year mark.

1 The court intends to impose the mandatory and special  
2 conditions of supervision set forth in part D of the  
3 presentence report with the exception again of paragraph 109.

4 The drug testing condition is suspended based on the  
5 court's determination that the defendant poses a low risk of  
6 substance abuse in the future.

7 As directed by 18 U.S.C. Section 3561(c)1, when  
8 someone is granted probation, the court can impose a fine,  
9 restitution, or community service. But I'm not granting  
10 probation, and so that's why I'm taking out the condition for  
11 community service.

12 Because Dr. Tao is not a United States citizen, a  
13 condition ordering compliance with ICE is warranted.

14 Dr. Tao reported being depressed since his arrest. A  
15 special condition requiring mental health treatment will allow  
16 him to receive counselling to address mental health issues and  
17 provide him with needed medical care.

18 Voluntary surrender of course is not an issue given  
19 the noncustodial sentence.

20 I'll hear objections or anything else from the parties  
21 now. First for the government.

22 MR. BARRY: Nothing from the government, Your Honor.

23 THE COURT: From the defendant.

24 MR. ZEIDENBERG: Nothing from the defense, Your Honor.

25 Thank you.

1 THE COURT: All right. The court determines that the  
2 presentence investigation report as corrected or modified by  
3 the court and the previously stated findings are accurate and  
4 orders those findings incorporated in the following sentence:

5 Pursuant to the Sentencing Reform Act of 1984 it is  
6 the judgment of the court that the Defendant Feng Tao is hereby  
7 sentenced to two years of supervised release -- time served and  
8 two years of supervised release.

9 While on supervised release, Dr. Tao shall comply with  
10 the mandatory and standard conditions adopted by this court and  
11 the special conditions of supervision set forth in part D of  
12 the presentence report as amended, meaning no paragraph 109.

13 It is ordered Dr. Tao shall pay the United States a  
14 special assessment of \$100 to the Crime Victims Fund pursuant  
15 to 18 U.S.C. Section 3013. Payment of assessment is due  
16 immediately. Imposition of a fine is waived.

17 Both the government and defendant are advised as to  
18 their respective rights to appeal this sentence and conviction.  
19 An appeal taken from this sentence is subject to 18 U.S.C.  
20 Section 3742.

21 Dr. Tao is advised it is your right to appeal the  
22 conviction and sentence, but you can lose your right to appeal  
23 if you do not timely file a notice of appeal in the district  
24 court. Rule 4(b) of the Federal Rules of Appellate Procedure  
25 gives you 14 days after the entry of judgment to file a notice

1 of appeal. If you request, the clerk of the court shall  
2 immediately prepare and file a notice appeal on your behalf,  
3 and if you are unable to pay the cost of an appeal, you have  
4 the right to apply for leave to appeal in forma pauperis.

5 All right. I think that completes our hearing today.  
6 Thank you, counsel.

7 MR. ZEIDENBERG: Your Honor, I'm sorry. On the  
8 special assessment, is it -- I know it's due immediately. Is  
9 it possible -- I don't know if they have a check with them.  
10 Can we have two days to pay that?

11 THE COURT: Sure. That's fine.

12 MR. ZEIDENBERG: Thank you.

13 THE COURT: I wish you the best, Dr. Tao. We'll be in  
14 recess.

15 (The proceedings were adjourned.)  
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C E R T I F I C A T E

I, Danielle R. Murray, a Certified Court Reporter and the regularly appointed, qualified, and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that the foregoing is a true and correct transcript from the stenographically reported proceedings in the above-entitled matter.

SIGNED 18th of January, 2023

/s/Danielle R. Murray  
DANIELLE R. MURRAY, RMR, CRR  
United States Court Reporter