

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Case No. 23-cr-10005-DJC
XIAOLEI WU,	)	
	)	
Defendant.	)	
_____	)	

**GOVERNMENT’S SENTENCING MEMORANDUM**

The defendant Xiaolei Wu has been convicted of cyberstalking in violation of 18 U.S.C. § 2261A and of making threatening communication in interstate commerce in violation of 18 U.S.C. § 875(c). As described in the Presentence Investigation Report (“PSR”), and as established at trial, between October 22-24, 2022, Wu undertook a campaign of threats and harassment against a former Berklee College of Music student (“Miss Zoey”). Miss Zoey had posted an innocuous, pro-democracy flier on the Berklee campus. In response, the defendant threatened her with violence, threatened to report her to the PRC government, and then followed through on that threat by providing Miss Zoey’s information to his mother, who was a PRC government official.

The defendant’s crimes are serious. He weaponized the authoritarian nature of the PRC government in order to harass and threaten Miss Zoey, with the express intention of suppressing her freedom of speech. He reported her actions to the PRC government. As a result of this case, Miss Zoey’s father was subjected to repeated visits in China by representatives of the PRC government – a result which the defendant anticipated. Given the nature of the defendant’s actions against Miss Zoey, his apparent lack of remorse, and a need for strong general deterrence, the government recommends that he be sentenced to 33 months’ imprisonment and three years of supervised release. This sentence reflects the seriousness of the offense and is sufficient, but not greater than necessary,

to promote respect for the law, provide just punishment to the defendant, and adequately deter others from committing similar crimes.

### ***The Sentencing Guidelines Calculation***

According to the PSR, the base offense level for Wu's convictions is 18. PSR, ¶ 26. The defendant receives a two-point enhancement under USSG § 2A6.2(b)(1)(E) because "the offense involved... a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim."<sup>1</sup> *Id.* ¶ 27. The total offense level, therefore, is 20.

The Defendant has no criminal history. PSR, ¶¶ 36-41. As a result, he is in criminal history category I.<sup>2</sup> PSR, ¶ 38. The resulting Guideline Sentencing Range is 33-41 months. *Id.*

### ***The Government's Recommendation***

The Supreme Court has directed federal trial courts to initially calculate the appropriate sentencing range under the advisory Sentencing Guidelines. *Gall v. United States*, 552 U.S. 38, 41 (2007). The Sentencing Guidelines, the Supreme Court has acknowledged, are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions." *Id.* at 46. Therefore, "[a]s a matter of administration and to secure nationwide consistency, the Sentencing Guidelines should be the starting point and the initial benchmark" for determining a defendant's sentence. *Id.* at 49. Given the Sentencing Commission's important institutional role and expertise, the Guideline Sentencing Range often will "reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." *United States v.*

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<sup>1</sup> The application notes state that a "pattern of activity involving stalking, threatening, harassing, or assaulting the same victim" means any combination of two or more separate instances of stalking, threatening, harassing, or assaulting the same victim, whether or not such conduct resulted in a conviction." Wu meets this threshold because he had two or more instances, as the jury found in order to convict under 18 U.S.C. § 2261A.

<sup>2</sup> The Defendant is not eligible for a further downward adjustment under § 4C1.1 because the Defendant used violence of credible threats of violence in connection with the offense. *See* USSG § 4C1.1(a)(3).

*Kimbrough*, 552 U.S. 85, 89 (2007) (internal quotations omitted); *see also United States v. Martin*, 520 F.3d 87, 91 (1st Cir. 2008) (holding that “a major deviation from ... [the guidelines] must be supported by a more significant justification than a minor one”). The starting point, therefore, is the Guideline Sentencing Range of 33-41 months.

The facts, as outlined in the PSR and as established at trial, are straightforward. On October 22, 2022, Miss Zoey had posted a flier on the Berklee College of Music campus, which stated a simple message:

WE WANT FREEDOM  
WE WANT FOOD ON OUR TABLES  
WE WANT TO BREATHE  
WE WANT ART  
WE WANT DEMOCRACY  
WE WANT TO LOVE  
STAND WITH CHINESE PEOPLE

PSR, ¶ 7. As established at trial, this message is at odds with the stated policies of the PRC government, an authoritarian regime that does not tolerate dissent or freedom of speech. Upon learning that Miss Zoey had posted this flier, the defendant began to post threatening and harassing messages directed at Miss Zoey on a Berklee College WeChat group. He told her that if she posted more, he would “chop your bastard hand(s) off.” *Id.*, ¶ 10. He told her to return to Tiananmen Square and set herself on fire. *Id.* He told her that she would soon be killed by “public security” – a reference to the PRC government’s security services, which enforce laws against political dissent. *Id.*, ¶ 11. He posted what he believed to be Miss Zoey’s address, encouraged others to go “greet” Miss Zoey, and asked if anyone could check her school records to see where she currently lived. *Id.*, ¶ 12. The following day, he sent Miss Zoey an email which he then posted to Instagram, in which he continued to harass and intimidate Miss Zoey. *Id.*, ¶¶ 13, 14. He said that she should not return to the PRC because her actions would result in her being “seize[d]” by PRC authorities, said she would be beaten to death if she ever went to Chinatown in Quincy, Massachusetts, and made repeated

references to revolutionaries who had died while trying to overthrow the government. *Id.*, ¶ 13. He told Miss Zoey that she would “not be able to get rid” of him, that he already had screenshots of her social media, and that he had “called the report hotline in the country” – i.e., had reported her to the PRC government. *Id.* He closed, ominously, with the line: “I hope your family is having a good time being greeted. Be ‘safe.’” *Id.*

#### *The Nature of the Defendant’s Actions*

A 33-month sentence is appropriate in this case for several reasons. First is the nature of the words themselves. They were violent. They employed references to death and the chopping off of hands. These were not mere colloquialisms used in the heat of the moment. They were directly calculated to cause fear.

Second, the defendant threatened and harassed Miss Zoey not simply because he disagreed with her views about democracy, freedom, and the PRC. The defendant threatened and harassed Miss Zoey because he wanted to silence her. He has admitted as much. His conduct, therefore, was directed at ensuring that Miss Zoey – and others like her – would be afraid to speak out. In other words, he was carrying out his own personal censorship campaign.

Third, as part of the defendant’s campaign to silence Miss Zoey, he threatened to report her actions to the PRC government. In a series of posts on October 23, 2022, the defendant stated “I already called the tipoff line in the country, the public security agency will go greet your family.” *Id.*, ¶ 11. As established at trial, the references to the “tipoff line” and the “public security agency” were references to the Ministry of Public Security (“MPS”) or the Ministry of State Security (“MSS”), who investigate political dissidents and those who voice support for democracy. *Id.* The term “greet” was a reference to beginning an investigation into the political loyalty of Miss Zoey’s family, who continued to reside in the PRC. *Id.* In other words, not content only to make threats of his own, the defendant raised the specter of the PRC government against her. This, again, he did to

accomplish his main goal – to make her so afraid that she would never again speak out against the PRC government.

Nor did the defendant stop after simply threatening to report Miss Zoey’s actions to the PRC government. He followed through with his threat. On October 24, 2022, two hours after the Berklee College police visited him and issued a no contact order, the defendant reported Miss Zoey’s actions to his mother, who was a PRC government official. *Id.*, ¶¶ 15-16. After speaking with his mother for fourteen minutes, the defendant sent her a screenshot of Miss Zoey’s WeChat ID – which, as established at trial, was sufficient for the PRC government to determine someone’s identity. *Id.*, ¶ 16. His mother then responded: “Need evidence of harming the country.” *Id.* And the defendant proceeded to provide just that – screenshots of Miss Zoey’s social media posts, including the flier described above, as well as other posts that were critical of the PRC government. *Id.* Thus, not only did the defendant threaten to report Miss Zoey to the PRC government, but the defendant *followed through* on his threats. And, as he told his girlfriend, he knew *exactly* what he was doing: “I finished the phone call [with my mother]. Now my family wants me to collect evidence. Let her through Chinese customs first. Then my family will find someone to report to the National Security Bureau. She will then be listed as a person of primary concern.” *Id.*

Lastly, as the defendant intended, Miss Zoey and her family suffered significant repercussions. According to Miss Zoey, in March 2023, a representative of the National People’s Congress – the highest organ of state power within the PRC – spoke to her father, and informed him that Miss Zoey had caused the arrest of the defendant. As a result of the visit, Miss Zoey’s father encouraged her to drop the case. Later that month, two more individuals from Beijing approached Miss Zoey’s father asking for Miss Zoey to “minimize the outcome” of the trial. Then, approximately two months later in May 2023, another member of the PRC government approached Miss Zoey’s father – this time on behalf of the defendant’s father – and encouraged him to ask Miss

Zoey to drop the case. Miss Zoey's father also reported to her that he believed her participation in the trial would place him in physical danger.

These actions would not have come as a surprise to the defendant and was undoubtedly a foreseeable outcome – indeed, he wrote to Miss Zoey in October 2022 that he had reported her, and that he hoped her family was having a good time being “greeted” by the PRC security services. *Id.*, ¶ 13. In other words, the harassment of Miss Zoey's family was, from his view, desirable. And as a result of this case and the defendant's conduct, Miss Zoey does not feel like she can safely return to China. Any sentence must consider these facts.

#### *Specific & General Deterrence*

A sentence of 33 months' incarceration in this case is also appropriate for both reasons of specific and general deterrence. Specific deterrence is warranted here because the defendant has not expressed any remorse for his actions, nor appeared to have understood the wrongness of what he did. Given that, it is important that the defendant understand that using threats and harassment to suppress the free speech rights of individuals is not tolerated in free societies. That understanding, so far, appears to be lost on the defendant.

Perhaps more important, though, is a message of general deterrence. The PRC government routinely attempts to silence persons of Chinese descent living outside of China. As the U.S. State Department has described<sup>3</sup>:

**Constraints on global freedom of expression.** On issues it deems sensitive, the PRC has employed online and real-world intimidation to silence dissent and encourage self-censorship... Within democratic countries, Beijing has taken advantage of open societies to take legal action to suppress critical voices. On WeChat, an application used by many Chinese-speaking communities outside the PRC, Beijing has

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<sup>3</sup> See U.S. State Department, *How the People's Republic of China Seeks to Reshape the Global Information Environment*, Sept. 28, 2023, available at <https://www.state.gov/gec-special-report-how-the-peoples-republic-of-china-seeks-to-reshape-the-global-information-environment/>.

exercised technical censorship and harassed individual content producers. Notably, data harvested by PRC corporations operating overseas have enabled Beijing to fine-tune global censorship by targeting specific individuals and organizations.

**An emerging community of digital authoritarians.** The PRC promotes digital authoritarianism, which involves the use of digital infrastructure to repress freedom of expression, censor independent news, promote disinformation, and deny other human rights. Through disseminating technologies for surveillance and censorship, often through capabilities bundled under the umbrella of “smart” or “safe cities,” the PRC has exported aspects of its domestic information environment globally...

Freedom House, a non-profit group dedicated to political advocacy surrounding democracy, political freedom, and human rights, has also catalogued the PRC’s extensive global repression efforts<sup>4</sup>:

China conducts the most sophisticated, global, and comprehensive campaign of transnational repression in the world... [T]he sheer breadth and global scale of the campaign is unparalleled. Freedom House’s conservative catalogue of direct, physical attacks since 2014 covers 214 cases originating from China, far more than any other country.

These egregious and high-profile cases are only the tip of the iceberg of a much broader system of surveillance, harassment, and intimidation that leaves many overseas Chinese and exile minorities feeling that the CCP is watching them and constraining their ability to exercise basic rights even when living in a foreign democracy. All told, these tactics affect millions of Chinese and minority populations from China in at least 36 host countries across every inhabited continent.

Although the Defendant himself does not appear to have been specifically directed by the PRC government, he nevertheless enlisted himself as part of the PRC’s network of censorship and repression. This repression network often reaches into the United States and targets people of Chinese descent whose family members remain in the PRC.<sup>5</sup> It is important that this sentence send a strong

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<sup>4</sup> Freedom House, *China: Transnational Repression Origin Country Case Study*, available at <https://freedomhouse.org/report/transnational-repression/china>

<sup>5</sup> *See id.*, (“MPS is often involved in threats against family members within China, or cases where regional authorities call exiles to threaten them from within China”; China’s “anticorruption”

message of general deterrence – the United States does not tolerate efforts to suppress a person’s First Amendment rights simply because their views are at odds with the PRC government.

**CONCLUSION**

For the reasons set forth above, the government respectfully asks the Court to impose a sentence of 33 months of imprisonment and three years of supervised release.

Respectfully submitted,

JOSHUA S. LEVY  
Acting United States Attorney

By: /s/ Timothy H. Kistner  
Timothy H. Kistner  
Alathea E. Porter  
Assistant U.S. Attorneys

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campaigns include “at a minimum surveillance, physical threats, and family intimidation in order to force exiles to return ‘voluntarily’ to China”); FBI, Transnational Repression Webpage, <https://www.fbi.gov/investigate/counterintelligence/transnational-repression>.



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to counsel for the defendant, who are registered participants as identified on the Notice of Electronic Filing (NEF).

By: /s/ Timothy H. Kistner  
Timothy H. Kistner  
Assistant U.S. Attorney