

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	11 CR 0778
v.)	
)	Hon. Joan H. Lefkow
SRINIVASA ERRAMILI,)	
Defendant.)	

SRINIVASA ERRAMILI'S SENTENCING MEMORANDUM

Defendant, SRINIVASA ERRAMILI, through his attorneys, files this sentencing memorandum setting forth the factors to be considered in determining the sentence that is sufficient but not greater than necessary. In doing so he respectfully requests that this Court consider the factors set forth in 18 U.S.C. § 3553 and the excessive severity of U.S. Sentencing Guideline (U.S.S.G.) § 3A1.1. For the reasons elucidated below, Mr. Erramilli seeks a sentence of probation with special conditions. Such a sentence would comply with the statutory directives of 3553(a) and justice. In support he states as follows:

I. INTRODUCTION

Srinivasa Erramilli was indicted on two counts¹ and invoked his constitutional right to a jury trial. During trial, Count One was dismissed following testimony by the complaining witness that she was awake during the contact that

¹ For violation of 18 U.S.C. § 2244(a)(2) (engaging in sexual contact with an incapacitated person) and 18 U.S.C. 2244(b) (abusive sexual contact without permission), respectively. Both charges were pursuant to the 49 U.S.C. § 46506(1), the special aircraft jurisdiction of the United States.

gave rise to the charge. Mr. Erramilli was ultimately found guilty of Count Two. Though he is challenging his conviction, he wishes to advise the Court of all the circumstances that should be considered in determining the appropriate sentence.

Srinivasa Erramilli—Srini to his friends and family—is a beloved employer, community member, and father. As the many letters to the Court on Srini's behalf illuminate, he is a remarkable man with unusual generosity of friendship, mentorship, and charity. He is a devout Hindu with strong ethical and moral values. Srini is always available to help someone in need, be they a close friend, an employee, or a perfect stranger. Without exception, these letters speak movingly of how, throughout his life, Srini has selflessly dedicated himself to others and made positive and lasting contributions to society.

With his boundless energy and self-motivation Srini and his wife built a thriving technology business that currently employs thirteen people in the Chicago area. As letters from his employees and business associates attest, Srini is a pivotal and irreplaceable figure there. Without his continued presence and guidance, the business will surely fail, causing deleterious consequences to his employees, customers, and family alike.

Srini is a loving husband and doting father. He has a wonderfully close relationship with his daughters (ages 10 and 16), and has taught them to live meaningful and principled lives. He is an irreplaceable figure during these formative years. This family has endured the hardship of this case together, from the vociferous publicity surrounding it to the very real threat of deportation.

Fundamentally, Mr. Erramilli is a good person, whose acts of kindness and charity reveal him to be so much more than the evidence shows. Mr. Erramilli is confident that this Court will carefully consider his positive character and contributions in fashioning a just sentence.

Considerations of just punishment, retribution, protection of the community, deterrence, and rehabilitation also militate in favor of a sentence of probation with special conditions. This Court should give due consideration to the specific deterrence effect of the punishment Mr. Erramilli and his family have already endured as a result of this matter: a felony conviction, humiliating and detrimental publicity, four months spent in immigration custody, the looming threat of deportation, and the potential loss of his company. A traditional prison sentence is not necessary to further punish and/or deter Mr. Erramilli.

Finally, Mr. Erramilli stands convicted of the lowest level of felonies. Despite his prior record, the underlying alleged conduct—a touching past the midline of the complaining witness' thigh—simply does not warrant a determinate term of imprisonment. In considering the potential sentences, the Court can impose a probation term with conditions ranging from intermittent imprisonment—thereby allowing Srini to keep the business afloat—to rehabilitative requirements such as ongoing monitoring and therapy. A sufficient sentence can be fashioned from probation with special conditions; prison is not necessary to meet the particular sentencing needs of this case.

II. SENTENCING LAW

In sentencing a defendant, the Court is bound by the federal sentencing statute, 18 U.S.C. § 3553(a). That statute provides that the sentence imposed must be one that is “sufficient, but not greater than necessary” to satisfy the purposes of sentencing. As the Supreme Court recognized in *Kimbrough v. United States*, 128 S.Ct. 558, 570, 575, 169 L.Ed. 2d 481 (2007), this “parsimony provision” is the “overarching instruction” of the statute.

Although the sentencing court should first correctly calculate the advisory sentencing guideline, the Guidelines are only “the starting point and the initial benchmark.” *United States v. Gall*, 552 U.S. 38, 50 (2007). The U.S. Sentencing Guidelines are as titled: guides to the Court in imposing a reasonable sentence. *United States v. Booker*, 543 U.S. 220 (2005). The Court ultimately must select an appropriate sentence after consideration of all of the factors set forth in 18 U.S.C. § 3553(a). See, e.g., *Gall*, 552 U.S. at 50; *United States v. Holt*, 486 F.3d 997, 1004 (7th Cir. 2007); *United States v. Miranda*, 505 F.3d 785, 791 (7th Cir. 2007). In making its determination, the court may not presume that a guideline sentence is the correct one, *Rita v. United States*, 551 U.S. 338, 351 (2007), or place “any thumb on the scale favoring a guideline sentence.” *United States v. Sachsenmaier*, 491 F.3d 680, 685 (7th Cir. 2007).

Briefly stated, § 3553(a) directs a sentencing court to consider seven factors:

(1) offense and offender characteristics; (2) the need for a sentence to reflect the basic aims of sentencing, namely, (a) ‘just punishment’ (retribution), (b) deterrence, (c) incapacitation, (d) rehabilitation; (3) the sentences legally available; (4) the Sentencing Guidelines; (5)

Sentencing Commission policy statements; (6) the need to avoid unwarranted disparities; and (7) the need for restitution.

Rita, 551 U.S. at 347-48 (citing 18 U.S.C. § 3553(a)).

In *Rita v. United States*, the Court confirmed the advisory nature of the Guidelines and clarified that a District Court has an independent obligation to meaningfully consider all of the factors set forth in Section 3553(a) and, thereafter, to impose a sentence that is “sufficient, but not greater than necessary,” to achieve the goals of sentencing. *Rita*, 127 S. Ct. at 2468-69; 18 U.S.C. § 3553(a).

A defendant may argue for a non-Guidelines sentence 1) on the basis of traditional departure grounds, 2) “because the Guidelines sentence itself fails properly to reflect §3553(a) considerations,” or 3) “because a case warrants a different sentence regardless.” *Rita*, 127 S. Ct. at 2465. “In determining the merits of these arguments, the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply.” *Id.*

The limitations of the Guidelines are seen in the mandate that the court must sentence based on an “individualized assessment based on the facts presented.” *Gall*, 128 S. Ct. at 596. Thus, while either the Guidelines or consideration of Congressional sentencing policy provide general guidance, “[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall*, 128 S. Ct. at 598 (citing *Koon v. United States*, 518 U.S. 81, 113 (1996)).

III. GUIDELINES

Other than the “vulnerable victim” issue addressed below, Mr. Erramilli agrees that the Guideline calculations set out in the Presentence Investigation Report (PSR) are properly calculated. The base offense level is 12.

A. Non-Guideline Related Objections to the PSR

The PSR states that Mr. Erramilli is in the United States without lawful immigration status. (PSR, p. 3 and ¶ 47) That conclusion is incorrect. Attorney James Hallagan, Srini’s immigration attorney, prepared the attached certification (Exhibit A) explaining in detail his immigration status and clarifying that he is currently legally residing within the United States.

The PSR also erroneously states that Srini Erramilli has only 2 dependants. (PSR, p. 3) In addition to his two children, Srini also provides financial support for his aging parents. Thus, he has 4 dependants.

The PSR notes that Srini’s children “have not had any difficulties since the charges were filed.” (PSR, ¶ 48) Nothing could be further from the truth. While the girls are incredibly strong and resilient, this case and related publicity have been exceedingly hard on them.

In paragraph 55 of the PSR it states that Srini is presently in sex offender treatment. (PSR, ¶ 55) While he is currently in therapy and under the care of a psychiatrist, the treatment is not sex offender specific. Srini is also regularly receiving religious counseling.

In addition, the PSR recommends certain sex offender restrictions to correspond with any term of supervised release imposed by the Court. The Defendant objects to any restriction on computer usage, computer monitoring, and/or contact with children. (PSR, ¶¶ 79-90) The offense conduct in this case involved neither children nor computers. Imposition of such restrictions would have no rational connection to preventing future offenses, and would have a harmful impact on his business.

Lastly, the PSR provides an outline of offense conduct based on the charging documents and an interview with the case agent that does not accurately reflect the testimony at trial. (PSR, ¶¶ 5-12) Specifically, in paragraph 8, the PSR states: “Mrs. Domino observed the defendant take his left hand, reach across his body, slip his hand up the opening of the leg of her shorts, rub his hand up her leg, and squeeze her inner thigh.” (PSR, ¶ 8) The Defendant objects to this summary as inaccurate and incorporates herein the portions of the trial transcript and argument cited in his Motion for New Trial regarding where and how the actual touching which occurred. (Dkt. # 87, pp. 2-9)

B. Vulnerable Victim

The Defense takes issue with the PSR’s conclusion, shared by the Government, that the complaining witness was a “vulnerable victim” as defined by the Guidelines. Guideline § 3A1.1 provides for a two-level increase when a victim of the offense or relevant conduct is “is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal

conduct,” and the defendant knew or should have known that fact. U.S.S.G. § 3A1.1(b), note 2. The PSR and the Government take the position that the complaining witness was vulnerable because she was asleep during some contact and because seated in cramped quarters.

To begin, the Seventh Circuit has cautioned that merely because a victim is asleep does not mean that the victim is “vulnerable” under the Guidelines. In *United States v. Newsom*, 402 F.3d 780, 785 (7th Cir. 2005), an appeal involving a much more serious offense of child pornography, the Court expressed concern that the district court’s finding that the victim was vulnerable because they were asleep endorsed an overly-broad application of the enhancement. *Id.*

Yet here, the complaining witness was *not* asleep when prohibited contact occurred. While she described two moments of contact while she was sleeping—on her knee and outer part of her leg—such contact is not unlawful. Criminal culpability exists only for “sexual contact,” limited under 18 U.S.C. § 2246(3) to the “inner thigh,” and not to the knee or leg area. Thus, according to evidence adduced at trial, none of the contact made while she was asleep was in a prohibited area.² Nor does the fact that the witness was asleep during pre-offense contact make her especially vulnerable to exploitation while she was awake. Therefore, the requirements of § 3A1.1. cannot be met as to any contact that occurred while sleeping.

² Indeed, Count One—engaging in sexual contact with an incapacitated person, 18 U.S.C. § 2244(a)(2)— was dismissed at trial following testimony that the complaining witness was actually awake during the only statutorily impermissible contact.

As no unlawful contact was made while the victim was asleep, application of the § 3A1.1 enhancement turns on whether airplane flight makes one “physically vulnerable” or otherwise susceptible to the criminal conduct. The argument that one is “vulnerable” simply because they are on an airplane would extend the provision’s application to the breaking point. By its nature, airplane travel does not make people especially vulnerable. This Court should reject the PSR’s application of the “vulnerable victim” enhancement as applied to this case.

IV. § 3553 FACTORS

A. Policy Disagreement with § 2A3.4(a)(3)

The jury found in this case that Mr. Erramilli’s hand passed the midline of the complaining witness’ thigh. It is noteworthy that the underlying conduct, if charged in Illinois state court would be a simple battery. And, in the federal system until 2006, violations of 18 U.S.C. § 2244(b) also constituted a misdemeanor.³

This Court should reject the U.S.S.G. § 2A3.4(a)(3) base offense level of 12, with its corresponding Guideline range of 10-16 months, as unreasonably high in general and as applied to this case. The Guidelines range for this offense has been increased dramatically in recent years, largely in response to Congressional directives to increase punishment for other, more serious sex offenses – particularly

³ Congress amended 18 U.S.C. § 2244(a)(3) with Pub. L. 109-62, Violence Against Women and Department of Justice Reauthorization Act of 2005, Sec. 1177, Increased Penalties And Expanded Jurisdiction for Sexual Abuse Offenses in Correctional Facilities, thereby increasing the maximum sentence to two years.

those aimed at children. This particular Guideline overstates the seriousness of the offense of conviction, and the base offense level should be adjusted accordingly.

Guideline § 2A4.3(a)(3) applies to 18 U.S.C. § 2244 offenses, which vary in terms of seriousness. The history of § 2A4.3(a)(3) shows that the Commission increased the base offense level for 18 U.S.C. § 2244 offenses simply to keep pace with ever increasing offense levels for more serious federal sex offenses. For instance, in 1987, the Commission set the base offense level for § 2A4.3(a)(3) offenses at 6, with a corresponding sentencing range of 0-6 months.⁴ Then, in 1989, the Commission nearly doubled the base offense level to 10, with a corresponding sentencing range of 10-12 months.⁵ In its reason for the amendment, the Commission explained that it was to make sentencing levels (a) consistent with other sex offense Guidelines, (b) to reflect the increased statutory maximums for some offenses covered by this Guideline, and (c) emphasized, but not exclusively so, the need to increase sentences for offenders who victimize children and minors.⁶

In 2004, the Commission again raised the base offense level of U.S.S.G. § 2A3.4(a)(3) to 12.⁷ Amendment 664 was a comprehensive amendment of sex-related guidelines, the Commission explained, intended to “implement[] the directives to the Commission regarding child pornography and sexual abuse offenses in the

⁴ U.S.S.G. Appendix C, Vol. I, Amend. 95, at 45 (2012).

⁵ U.S.S.G. § 2A4.3(a)(3), at 2.11 (1989).

⁶ U.S.S.G. Appendix C, Vol. I, Amend. 95, at 46 (2012).

⁷ U.S.S.G., Appendix C, Vol. 3, Amend. 664, at 22-23. The base offense level for section 2A3.4(a)(1) was likewise increased from 16 to 20; section 2A3.4(a)(2) was raised from a level 12 to a level 16.

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, (the ‘PROTECT Act’), Pub. L. 108-21.” *Id.* at 58. As for the increased base offense levels for section 2.A3 offenses in Amendment 664, the Commission explained that it “concluded that these increases were appropriate to account for the serious conduct committed by the defendant and to maintain proportionality with other Chapter Two, Part A guidelines.” *Id.* at 63.

This Court may impose sentences that vary from the Guidelines range based on a policy disagreement with the Guidelines. *See, e.g., Spears v. United States*, 555 U.S. 261, 263-67 (2009) (per curiam); *United States v. Kimbrough*, 552 U.S. 85, 109-10 (2007); *United States v. Corner*, 598 F.3d 411, 415 (7th Cir. 2010) (*en banc*). A district court’s rationale for disagreeing with a Guideline is strongest where the Commission’s own justifications for a particular offense level were not rooted in the Commission’s reliance “on empirical data and national experience, guided by a professional staff with appropriate expertise.” *Kimbrough*, 552 U.S. at 109. The absence of such evidence means that the particular guideline “do[es] not exemplify the Commission’s exercise of its characteristic institutional role.” *Id.*

With section 2A4.3, the increases for the base offense level did not derive from the Commission’s distillation of empirical data and national experience. In hiking up the § 2A3.4(a)(3) base offense level, the Commission has pointed to no science or evidenced-based reasoning which would logically account for its doubling. Instead, it is clear that § 2A3.4(a)(3)’s increased penalties are a result of a recent

spate of increased penal consequences for substantially more serious sex offenses stemming from the pressure on legislatures to act tough on “sex crimes.”

Moreover, the Commission did not craft the § 2A3.4(a)(3)’s base offense level with due regard to proportionally less serious offenses included in § 2244. By lumping together offenses of varying degrees of seriousness and then pegging that base offense level to increases in other, more serious sex offense guideline provisions, it hiked the base offense level for less serious offenses without analysis whether it was justified by evidence-based penological concerns. Consequently, this Court should reject the base offense level of 12 as too high and unjustified.

The Court should also reject the base offense level in this particular case because the reasons proffered for its increase—namely concerns regarding child pornography and the sexual abuse of children—are simply not at issue here. This matter involved neither pornography nor children; thus, the increased base offense level is inapplicable to Mr. Erramilli.

B. History and Characteristics

1. Successful Business Owner and Employer

Srini is a passionately hardworking man. And, throughout his education and professional life, he has always tried to use his success and resources to help elevate others. The letter from his parents speaks of him sharing funds from his scholarships with friends who could not afford their own tuition. Countless letters from employees and business associates speak to his personal and professional generosity: giving bonuses even when a profit was not made; gifting a laptop to an

employee for his son for Christmas; creating a supportive work environment that caters to employees and their families; and tirelessly providing advice and support. Srini is dedicated to mentoring and rising up the next generation of entrepreneurs. He has a well-earned reputation of bending over backwards to provide a supportive and nurturing environment.

With his unrelenting dedication, Srini and his wife Ananda built a successful product engineering company which contracts with some of the largest corporations in the country. Most importantly, their company employs over a dozen people who work out of their Downers Grove office. As a result of the instant matter and the intense publicity surrounding it, the business has suffered greatly. It has lost half of its employees and many accounts. Yet, through it all Srini has kept the company afloat and many loyal employees have stayed the course.

The four months that Srini was in custody on immigration charges were devastating to the company, and portend of disaster should he spend any further length of time away. Without him at the helm of day-to-day operations, the business simply cannot stay afloat. If the company were to close its doors, Srini's wife Ananda would also become unemployed, causing extraordinary financial hardship on the family. Srini recognizes that the Court must give a punishment it feels is appropriate, but he begs for consideration of the impact that a traditional sentence of incarceration would have on his employees, customers, business, and family.

2. *Community Leader*

What is also clear from the letters submitted in support of Mr. Erramilli is that he is a respected member of the Chicagoland Indian-American community because of his dedication to supporting—through volunteer work and financial contributions—a number of important causes. Srini is a devout man; he is a fixture in his religious community and regularly attends Hindu services.

Srini is deeply compassionate and earnestly believes in his obligation to help those less fortunate than himself. He encourages others to make charity work a dedicated part of their lives. He has wrangled friends into running marathons for worthy causes and into donating time and money to those in need. As his eldest daughter's letter shows, Srini's commitment to creating a better world and to sharing his resources is infectious. Such generosity and selflessness are rare.

As also is evidenced by many of the letters, Srini is a man of integrity and humility. People know him as a man of his word, unafraid to roll up his sleeves and work hard. He is respected and admired. Whether it is giving his old car to a former employee, ensuring a friend of the family makes it back to college on time, helping a friend grow his business, or merely offering advice, Srini has a strong sense of responsibility for others.

Even in the face of humiliating press and public trial on charges of a sexual nature, community members and friends continue to stand by Srini and his family. That fact alone speaks volumes to the good will he has created through the honorable life he has led.

3. *Dedicated Father, Husband, and Son*

Lastly, Srini is a caring, loving, and dedicated father and husband. He has a very close relationship with his daughters, who have been deeply impacted by this case and publicity surrounding it. They have lost friends and have been mocked and castigated; while tough and resilient girls, the slings and arrows of adolescent gossip have left an indelible mark on them. Srini loves them more than anything, and their pain has been felt acutely by him. He is an active and influential part of his daughters' day-to-day lives. Developmentally speaking, it is extremely important at this stage of their lives for the girls to have their father present. The During the four months that Srini was held in immigration detention, the family suffered greatly. True to his giving nature, Srini also provides financial assistance for his elderly parents, who depend on him for support. Without him able to earn an income, there will be a great financial toll on the entire family.

4. *Capacity for Self-Improvement*

Throughout his life, Srini has shown a relentless drive to progress as well as the intellectual curiosity necessary to fulfill his goals. His conviction in this case has deeply impacted him and his family. At some point after the verdict, your Honor suggested that Mr. Erramilli seek counseling. Since then, he has sought ongoing religious counseling as well as traditional therapy.

In sum total, Srini has lived a giving, caring, and devout existence. Many depend on him financially and emotionally. These positive characteristics should be weighed heavily in favor of a non-incarceration sentence.

C. Nature and Circumstances and Seriousness of the Offense

The Court, in fashioning a sentence pursuant to the § 3553(a) factors, must give due consideration to the seriousness of the offense. 18 U.S.C. § 3553(a)(2)(A). The offense of conviction, 18 U.S.C. § 2244(a)(2), carries a two-year maximum sentence and has no mandatory minimum term of incarceration. It is a Class E felony, the lowest class of federal felony offense. The PSR concludes that 18 U.S.C. § 2247(a) applies, which doubles the maximum sentence where a defendant has been previously convicted of a sex offense. If it applies, then the maximum in this case is four years.

Given the fact that until recently this offense was considered a misdemeanor, the conduct charged is less serious than most federal sex offenses. Of the conduct prohibited by 18 U.S.C. § 2244, a touching of the Defendant's fingers just across the midline of the victim's thigh is among the least serious forms of prohibited contact.⁸

D. Just Punishment, Deterrence, and Protection of the Public

This Court is aware of Mr. Erramilli's two prior convictions for facially similar conduct: one a federal misdemeanor, the other being a Cook County misdemeanor for simple battery. Mr. Erramilli received two years supervision for the battery. In the federal matter, he received three years' probation and 120 days in a half way house. (PSR, ¶¶ 32-33) Crediting the jury's verdict, as the Court must, the Court will be concerned about deterrence and protection of the public.

⁸ See 18 U.S.C. § 2246(3) (defining prohibited areas of sexual contact as: "genitalia, anus, groin, breast, inner thigh, or buttocks").

This Court should consider that Srini has already received significant punishment as a result of this case, including: his first felony conviction, ongoing and humiliating publicity, loss to his business, four months of incarceration, a ten-year extension of his requirement to register as a sex offender, and the serious threat of deportation.

1. Felony Conviction

The punishment that Mr. Erramilli has already endured in this case is much worse than any previous punishment; that fact is a powerful deterrent for Mr. Erramilli to engage in any future offense conduct. Mr. Erramilli now stands convicted of a felony sex offense. Any felony conviction reduces a person's ability to maintain employment, run a business, maintain required licensures, obtain credit, and serve on charitable boards. As a person required to register as a sex offender by virtue of the 2002 misdemeanor, this conviction will result in a further extension of that time period. Srini recognizes that any terms and conditions of probation will be more restrictive than before and that his ability to travel will be eliminated.

2. Humiliating and Detrimental Publicity

Mr. Erramilli's prior two convictions were difficult for his wife and family, but they were not a matter of sustained, embarrassing, and far-reaching Internet news coverage. In contrast, this incident has been by far the most damaging to his reputation, business, and family. In the press the allegations and verdict have received a sustained level of airplay, none of which is flattering. (See Exhibit B, attached)

Local media has extensively covered Srini's case. Moreover, Mr. Erramilli's Indian ethnicity and stature in the community have meant that Indian media outlets such as the Hindustan Times ran the story, and gossip sites such as searchIndia.com continue to publicize his conviction. Srini's role as a businessman has made his case news in such outlets as Forbes. (*See Exhibit B*) The sexual nature of the charges and pretrial, trial, and ongoing publicity has caused endless humiliation and shame for Srini and his family.

The Internet Age makes that embarrassment relatively permanent, since a simple Google search of his name brings all of the stories to the fore. Srini's business suffers greatly as a result; the public nature of this matter has caused devastation to his business. As a result, business substantially declined; the company lost approximately half of their employees and many important accounts.

Unlike with his prior cases, Srini now has two school-age daughters who can (and did) discover the existence of the charges and the negative publicity. As a dedicated family man, the humiliation that this publicity has wrought upon his family has been devastating. Ananda and his daughters have suffered publicly and greatly. Srini is painfully aware of what this case has put them through and must live everyday with that impact on them. This punishment is a powerful deterrent; Srini knows that any future offense conduct would put him and his family through the same harrowing ordeal of public shame and embarrassment.

3. *Four Months Spent in Custody*

Srini Erramilli spent four months in immigration detention at the Kenosha County jail as a result of the charges in this case. (See Exhibit A) Mr. Erramilli's four-month pretrial detention served as both punishment and a clear deterrent. Mr. Erramilli has never previously served an extended period of incarceration.

His custody was, from the defense perspective, both arbitrary and capricious. Prior to the surrender, an understanding was reached with the Government and immigration officials to the effect that Mr. Erramilli would not be taken into immigration custody during the pendency of the criminal case. Despite those efforts, and without prior warning to the parties, U.S. Immigration and Customs Enforcement (ICE) intervened and took Srini into custody while the U.S. Marshal Service was processing him.

After doing so, ICE pursued a novel and untested legal theory in an attempt to keep Srini in custody, despite the fact that he was not removable from the United States prior to any conviction. ICE's efforts to keep Srini in custody resulted in four months of confinement separated from his family and business in the Kenosha County Jail. Finally, an immigration judge found that ICE's legal position was untenable and thereby dismissed the removal proceedings against him.

It was a difficult ordeal for Srini, emotionally, spiritually, and physically. Mr. Erramilli is a vegetarian—a duty of his Hindu religion—and the jail was unable to provide a proper amount of calories from vegetarian food sources. Mr. Erramilli—already a thin man—lost a considerable amount of weight during his

incarceration. As a result, he had difficulty concentrating during conversation, was often listless, and could not sleep at night. The separation from his wife and children was unbearable, and, in his weakened physical condition, he began to despair for his future and the future of his family. In determining his sentence, we respectfully request that the Court consider his four months of imprisonment and the impact it had on him, his family, and his business. The charges in this case were the precipitating factor for ICE's decision to take Srini into custody, and for that reason this Court should credit Mr. Erramilli for that time served.

4. Loss of Business

The fact that Srini's thriving business has been damaged due to this case is substantial deterrence. Mr. Erramilli has held on to suppliers and clients mainly because they believe in his professional abilities and his past practices in delivering superior services to them. Not everyone stayed. His business lost valued employees and clients as a result of the publicity surrounding this case. Competitors leveraged the publicity to their advantage, poaching employees and spreading word of the case. As a further result of the negative publicity, Srini's visible role at the company has been eliminated; he can no longer be the public face. Any further criminal issues would surely mean the demise of his company and professional reputation. The loyalty and dedication of his core employees means the world to Srini, and he could never put their jobs and faith in him in jeopardy again.

5. *Deportation*

Due to this conviction and his prior misdemeanor 18 USC § 2244(a)(2) offense, Srini's immigration status is in real jeopardy. (See Exhibit A) He will certainly face removal proceedings, and most likely be unable to avoid deportation. As someone who has strived to live the American Dream and whose wife and children are all United States citizens, being forced to leave America would be the greatest of penalties. The family is devastated over the prospect, as they have worked tirelessly to build a life for themselves in this country. The family will not divide itself, and if Srini must leave so must they all. His daughters are American through and through, and the prospect of leaving the United States—their only home—for the homeland of their relatives is frightening. There is no question that the family does not want to leave the United States.

Srini remains eligible, as Mr. Hallagan's affidavit asserts, for a waiver of the grounds of removability, despite his conviction in this case. Yet, such waiver is an act of discretion, and, particularly because of the nature of his conviction in this case, he may not obtain it. A sentence of probation with special conditions would help to allow Srini and his family remain in the United States, whereas a sentence of imprisonment of over one year would likely cause harmful immigration consequences. Further, if Srini is incarcerated, ICE will undoubtedly lodge a detainer against him, thereby elevating his custody level and will render him ineligible for work release and certain BOP programs. If Srini is able to remain here in his home, he is under no illusions that *any* future offense conduct will

certainly result in his deportation. Such a circumstance is the clearest deterrent to future offense conduct.

Collectively, the punishments already endured and the severe consequences to his conviction have made it clear to Srinu Erramilli that any future criminal issues will only bring more pain and disaster for him and his family and their financial future. The consequences of this offense have clearly taught him that any future offense will result in even harsher penalties. Thus, a jail sentence is not necessary to deter him from future offenses. This Court should find, after considering all of the relevant factors, that a probation sentence with special conditions is sufficient but not greater than necessary in this case.

E. Available Sentences

Section 3553(a)(3) directs the Court to consider the kinds of available sentences. Given the forgoing, especially the fact that Srinu's ongoing presence is vital to keep his company afloat and his employees with work, he asks for a term of probation with special conditions as the Court sees fit. For instance, as a condition of a sentence of probation, the Court can order time in a community correctional center, weekend terms of imprisonment, and other forms of intermittent confinement.⁹ 18 U.S.C. § 3563(b). Should the Court believe that a sentence involving some form of imprisonment is appropriate, Mr. Erramilli respectfully

⁹ While the advisory Guidelines do not envision intermittent incarceration for someone who falls within "Zone 3" of the sentencing table, Srinu Erramilli is in fact legally eligible for probation. U.S.S.G. § 5C1.1(c)(3); 18 U.S.C. § 3561. Moreover, for the reasons detailed in sections III.B and IV.A *infra*, Srinu Erramilli's base offense level should be lower than the PSR calculates, thereby making him at least a "Zone 2" defendant.

submits that intermittent imprisonment or time in a half-way house would serve that goal sufficiently. 18 U.S.C. § 3561.

Most importantly, should the Court feel that this case warrants participation in a qualified psychiatric program, ongoing monitoring and counseling can be ordered as a condition of probation. The Court can easily establish other special conditions to probation, such as travel restrictions that can sufficiently address any concerns. Should the Court determine that a traditional sentence of incarceration is required, it is respectfully requested that such a term be below or within the Guidelines; a sentence of longer than a year could have adverse immigration consequences.

V. CONCLUSION

Mr. Erramilli understands and accepts this Court's duty to sentence him in accordance with the law. At the same time, the Court should consider that Mr. Erramilli has already been punished for this offense. The form and severity of those punishments—outlined above—have fallen heavily upon Mr. Erramilli and his family. They will continue to do so, to some degree, for the rest of his life. When compared to the offense conduct, we respectfully submit that such punishment in addition to a term of probation is proportional. Further, Srini's lifelong good deeds and selflessness are characteristics that warrant consideration in fashioning an appropriate sentence. Thus, we respectfully request that the Court sentence Mr. Erramilli to a term of probation with special conditions.

Dated: August 22, 2013

Respectfully submitted,

s/ Edward M. Genson
One of the Attorneys for the Defendant

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CERTIFICATE OF SERVICE

I, Edward M. Genson, certify that the above **Sentencing Memorandum** has been e-filed via the courts ECF filing system on this 22nd day of August, 2013, and served via that system on the Assistant United States Attorney Bolling W. Haxall and that a hand delivered copy of the above and foregoing has been delivered to the Honorable Judge Joan H. Lefkow.

s/ Edward M. Genson
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