

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

UNITED STATES OF AMERICA

v.

SRINIVASA S. ERRAMILLI

11 CR 778

Judge Joan H. Lefkow

GOVERNMENT'S SENTENCING MEMORANDUM

The UNITED STATES OF AMERICA, by GARY S. SHAPIRO, United States Attorney for the Northern District of Illinois, respectfully submits this Sentencing Memorandum. For the reasons set forth below, the government requests that this Court sentence defendant to a term of imprisonment at or near the top of the properly calculated guidelines range of 15 to 21 months, a sentence well-supported by the factors to be considered under 18 U.S.C. § 3553(a).

I. Factual Background

While returning from a trip to Las Vegas to celebrate their 34th wedding anniversary, the victim in this case and her husband boarded a Southwest Airlines flight to Chicago. The victim took a window seat so that she could lean against the fuselage and sleep, while her husband sat next to the aisle, to allow him easier access to the restroom if needed. The flight was full and defendant took the seat between them.

During direct examination of the victim, she recounted three incidents in which defendant made contact with her left leg. As to the first contact, she stated the

following:

I remember dozing off again. And I felt something on my leg, and I jolted. And I woke, and I didn't see anything. I thought maybe the paper had brushed me or – I just didn't know what it was.

Tr. 54.¹

As to the second contact, the victim testified to the following:

AUSA: Where did you feel contact that time?

VICTIM: On my left thigh. I felt pressure on my left thigh.

[. . .]

AUSA: And where did you feel the contact on your leg?

VICTIM: On my – middle of my upper thigh, it – but I had felt like somebody was kneading it.

Tr. 55-56.

The victim later described the third contact. In relevant part, she testified to the following:

VICTIM: I saw his hand, he was reading a paper, and his hand went underneath and went up my thigh and started to grab it.

[. . .]

AUSA: Where did that hand go?

VICTIM: It went up – his thumb went into like the middle of my thigh, and his hand was rubbing up the outside of my thigh going up.

AUSA: Was this above or underneath your shorts?

¹ Citation formats are as follows: (1) the trial transcript is "Tr." followed by the page number; (2) Defendant "Srinivasa Erramilli's Sentencing Memorandum" is "Def." followed by the page number; (3) Defendant's Exhibits to his Sentencing Memorandum are "D.Ex." followed by the exhibit letter; and (4) the Government's Exhibits are "G.Ex." followed by the exhibit letter.

VICTIM: Oh, it was underneath my shorts.

AUSA: So contact was with your skin?

VICTIM: Yes.

[. . .]

AUSA: Where on your leg did you feel pressure?

VICTIM: On my inner thigh, on my outer thigh. He was just like kneading it, fondling it.

Tr. 58-59.

The jury subsequently found defendant guilty of abusive sexual contact, in violation of 18 U.S.C. § 2244(b) and 49 U.S.C. § 46506(1). Defendant faces a maximum term of imprisonment of four years based on his prior conviction under the same title, a fine up to \$250,000, and not more than three years' of supervised release.

II. Guideline Calculation and Recommended Sentence

A. Properly Calculated Guideline Range.²

The government agrees with the guidelines calculation provided by the Probation Officer. The Probation Officer calculated defendant's offense level as follows:

Base offense level for abusive sexual contact (§2A3.4(a)(3)):	12
Vulnerable victim adjustment (§3A1.1(b)(1)):	+2
Total Offense Level:	14

² Pursuant to *Peugh v. United States*, 133 S.Ct. 2072 (2013), the guidelines applicable to this case are those in effect at the time of defendant's offense conduct rather than at the time of sentencing, as was reflected in the Government's Version of the Offense. As the offense conduct occurred in June 2011, the November 2010 Guidelines Manual is to be applied. There are no relevant modifications to the guidelines applicable in this case from the November 2012 Guidelines Manual previously relied upon by the government.

The government also agrees with the Probation Officer's conclusion that defendant's criminal history category is I. With an offense level of 14 and a criminal history category of I, the applicable guidelines range is 15 – 21 months' imprisonment.

B. The Vulnerable Victim Adjustment Is Applicable to Defendant's Offense and Relevant Conduct.

Defendant initially argues that the vulnerable victim adjustment is inapplicable in the present case because the victim was awake at the time of the third contact – the fondling of her inner-thigh for which defendant was convicted of abusive sexual contact – and because his prior two contacts with her leg were “not unlawful.” Def. 8. First, the evidence presented at trial showed that prior to fondling the victim' inner-thigh, defendant twice committed simple assault against her when defendant knowingly made physical contact of an offensive nature with her leg. Contrary to defendant's claim, these contacts were illegal and should be considered by the Court in determining defendant's advisory guidelines range, as the vulnerable victim adjustment applies not only to the conduct for which defendant was convicted, but also to relevant conduct. § 3A1.1, n. 2.

Defendant also cites *United States v. Newsom*, 402 F.3d 780 (7th Cir. 2005) in arguing that § 3A1.1 should not be applied in this case despite the fact that the victim was asleep at the time of the initial contacts. Def. 8. However, contrary to defendant's claims, *Newsom* supports the applicability of the vulnerable victim adjustment under these facts. In *Newsom*, the Seventh Circuit expressed concern that the sentencing court's rationale for applying the adjustment could be stretched to include all cases in which victims were sleeping and, potentially, those situations in which all victims

surreptitiously recorded (including those who were awake but were simply unaware they were being filmed) would be deemed vulnerable. *Id.* at 785. However, the Court upheld the enhancement in *Newsom*, noting that the defendant was able to manipulate the victim's clothing while she was sleeping in order to photograph her and that "[s]uch an attempt would have been impossible had [the victim] been awake. The purpose of the vulnerable victim enhancement, which is to punish more severely those who target the helpless, is satisfied on these facts." *Id.* Similarly, defendant was able to twice grope the victim because she dozed next to him. This fact made the victim particularly susceptible to defendant's conduct – unlike a victim that could be filmed in public whether or not she was awake.

In addition, the victim was assaulted by defendant because she was seated next to him on an airplane. As noted during the trial, the flight was full and there were no unoccupied seats. In addition, the contact with the victim's inner-thigh occurred while the flight was in descent – a time when passengers are prohibited from moving about the cabin. The restrictive nature of commercial flight seating and the proximity of the victim to defendant also rendered her particularly susceptible to his criminal conduct. The vulnerable victim enhancement is additionally applicable for this reason. *See United States v. Friedlander*, 110 F.3d 71, *2 (9th Cir. 1997) (unpublished) (affirming application of vulnerable victim enhancement after sentencing court determined, among other factors, that the offense took place on an airplane, that seats were assigned, and that the victim could not leave the plane.)

C. The Court Should Sentence Defendant to a Term of Imprisonment at or near the Top of the 15-21 Month Guideline Range.

Throughout his sentencing memorandum, defendant minimizes his criminal conduct in the present case, fails to address his repeated acts of sexual abuse committed against women, and attempts to limit his sentence by repeatedly asking the Court to consider the impact of a term of imprisonment on those around him – without noting that he apparently did not bother to consider the effect of his actions on his friends, family, and employees when he groped the victim while seated next to her on the Southwest Airlines flight to Chicago. As noted by the Probation Officer, there are no identified factors that would warrant a departure from the applicable sentencing guideline range. PSR 19.

1. Nature and Circumstances of the Offense

Defendant was convicted of making contact with the victim' inner-thigh with the intent to abuse, harass, degrade, or arouse or gratify the sexual desire of any person. In his sentencing memorandum, defendant mis-characterizes his offense conduct and the jury's verdict, claiming that the "jury found in this case that Mr. Erramilli's hand passed the midline of the victim' thigh." Def. 9. Contrary to defendant's view of his crime, his offense was serious, constituted a sex offense, had a significant impact on the victim, and warrants a sentence at or near the top of the properly calculated guidelines range.

Defendant first asks the Court to reject the guidelines range on policy grounds but does not specify why the Court should do so, other than arguing that the range has been increased based on Congressional directives to raise sentences on sexual offenses

in general. Def. 9-12. Defendant makes the additional argument that abusive sexual contact – defendant’s offense of conviction – was categorized as a misdemeanor until 2006. Def. 9. That Congress subsequently determined that the seriousness of the offense warranted classification as a felony and that those convicted of such an offense should face more stringent sentences cuts against defendant’s view that his guideline range is merely the result of improper considerations by the U.S. Sentencing Commission.³

Defendant’s offense had a significant impact on the victim. Defendant violated the victim and his conduct caused her to experience stress-related stomach pains and nightmares. PSR Supplemental Report. Although defendant views his conduct as simply passing his hand along the midline of the victim’s thigh, he committed a serious offense – one that Congress has determined should be classified as a sex offense and a felony. That the increased punishment for violations of 18 U.S.C. § 2244 were included in the Violence Against Women and Department of Justice Reauthorization Act of 2005 is telling – Congress made clear that no woman should be forced to endure the contact to which defendant subjected the victim. Contrary to defendant’s claim that his guideline range is the result of an effort to increase penalties in offenses committed against children, Congress specifically increased the punishment for abusive sexual contact in a provision aimed at protecting women who were subject to conduct such as defendant’s.

³ In addition, defendant claims that his conduct would only constitute simple battery in state court. Def. 9. Although initially charged with battery in the Circuit Court of Cook County, Illinois, defendant’s conduct additionally qualifies as aggravated battery, a Class 3 felony. *See* 720 ILCS 5/12-4(b)(9) (battery of a passenger on a transportation facility), 720 ILCS 5/12-4(b)(10) (battery of an individual of 60 years of age or older).

2. *History and Characteristics of the Defendant*

Defendant presents himself to the Court as a person “with strong ethical and moral values”, “always available to help someone in need, be they a . . . perfect stranger,” and someone who has “selflessly dedicated himself to others.” Def. 2. Defendant also references “the honorable life he has led” and claims that he “is a man of integrity.” Def. 14. Defendant’s repeated sexual offenses stand in stark contrast to how he portrays himself to the Court and serve as a reminder that defendant simply will not acknowledge that he is a serial sex offender and now, a convicted felon. Defendant also fails to consider the impact of his repeated criminal conduct on his victims. In addition, as he has done in the past, defendant attempts to avoid sanction for his criminal behavior by highlighting the negative impact imprisonment or deportation would have on those around him. However, these incentives to refrain from criminal behavior existed at the time defendant chose to assault the victim, but were insufficient to dissuade defendant from repeatedly groping her.

Defendant married his wife in 1994, prior to moving to the United States and prior to any of the three sexual offenses for which he has been convicted. PSR 9. In his sentencing memorandum, defendant notes that he is a “caring, loving and dedicated father and husband.” Def. 15. That defendant would subject his wife to embarrassment and the other emotions that must surely have been raised when she learned – on three different occasions – that her husband fondled other women is incongruous with defendant’s claim. As he noted in his sentencing memorandum, his “prior two convictions were difficult for his wife and family.” Def. 17. Defendant – despite being a self-identified “caring, loving, and dedicated husband” and apparently cognizant that

his prior behavior had a negative impact on his wife – again committed an act of sexual contact against a woman. In addition, defendant states that he is “a devout man, a fixture in his religious community and regularly attends Hindu services,” Def. 14. Yet his conduct on each occasion – making sexual contact with women who were not his wife – is contrary to Hindu’s teachings.

Defendant repeatedly asks the Court to consider the potential impact of a sentence of imprisonment on his wife, her employment, and his children. Def. 13, 15. Indeed, defendant goes so far as to “beg() for consideration of the impact that a traditional sentence of incarceration would have on his employees, customers, business, and family.” Def.13. In addition, defendant notes the “humiliating and detrimental publicity” surrounding his arrest and conviction. Def. 17. Defendant refers to this negative public portrayal as “punishment” and asks the Court to consider it in determining his sentence. Def. 17-20. Defendant also argues that the prospect of his removal from the United States should be considered by the Court as significant mitigation, as he would face potential separation from his family or they would be uprooted from their homeland. Def. 21-22. Finally, defendant notes that he would be ineligible for certain Bureau of Prison programs as a result of his status as a deportable alien. Def. 21.

First, this is not the first time that defendant has appealed for leniency by invoking his wife and children. When arrested in 2002, defendant completed a voluntary statement in which he wrote, in part: “I, again, offer my apologies and request to withdraw charges against me. I am a good family man with wife and daughter. I and my family will be faithful to you.” G.Ex. 1. Similarly, when defendant

was informed that the police would be contacted in the instant case, he asked that law enforcement not be contacted and stated that his wife and children were coming to the airport to pick him up. G.Ex. 2. When faced with sanction for his criminal conduct, defendant immediately refers to his family to play upon the sympathy of others and does so again in his sentencing memorandum.

Second, as noted in the affidavit of his immigration attorney, defendant previously faced removal proceedings as a result of his 2002 conviction for abusive sexual contact. D.Ex. A, ¶8. Therefore, at the time defendant committed the instant offense, he was already aware that his conduct could have a significant impact on his status in the United States. All non-citizens face immigration consequences when convicted of criminal conduct – particularly when the conduct is a felony and a sexual offense. That defendant would face separation from his wife and children if deported (or whether they would be forced to leave the United States to remain with him), is not an uncommon argument posed to sentencing courts, and does not warrant a below-guideline sentence here. *See United States v. Ramirez-Fuentes*, 703 F.3d 1038, 1048 (7th Cir. 2013) (affirming sentence of defendant who argued that he should receive a lighter sentence because he would almost certainly be deported and that deportation would cause him to be separated from his wife and children, who were United States citizens) (citing *United States v. Mendoza*, 576 F.3d 711, 721-22 (7th Cir. 2009) (“Mendoza’s deportation argument strikes us as nothing other than a stock argument that is routinely, and increasingly, made to the district courts. Every deportable alien would be ineligible to participate in certain BOP programs or in a halfway house and could argue for mitigation based on deportability. And it does not seem that Mendoza

would be alone in claiming that deportation would separate him from his family. As such, Mendoza's deportation argument was not a substantial one requiring explicit discussion by the district court") (internal citation omitted)).

Defendant's 2002 conviction for abusive sexual contact also resulted in media coverage, albeit not to the degree that arose after the instant arrest and conviction, committed in the era of increased internet attention. One such article published after defendant's 2002 offense is attached as Government Exhibit 3. Therefore, defendant was on notice that additional similar conduct could result in public scrutiny. Additionally, as a registered sex offender, defendant's profile has been publically available on-line for several years, so those who searched for defendant on the internet would have been able to determine that he had a prior conviction for a sexual offense. Attached as Government Exhibit 4 is a copy of defendant's Illinois Sex Offender Information, available through <http://www.isp.state.il.us/sor>.⁴

In addition, defendant was aware of the potential impact of his behavior on the victim. Attached as Government Exhibit 5 is the victim impact statement presented to the sentencing court in 2002. As a result of the sexual abuse committed by defendant, the victim noted that she experienced "severe anxiety," that she was "unable to sleep" and that she felt a "lack of trust . . . towards men now." G.Ex. 5. In addition, the victim wrote: "I don't ever want him even to think in his mind that he can touch another person without there (sic) consent first." G.Ex. 5. That defendant – a man who claims such benevolence to total strangers – would violate another woman

⁴ Indeed, the photograph included in two of the articles attached to defendant's sentencing memorandum appear to be taken from the Illinois sex offender website.

with the awareness this harm could cause speaks to his true character.

As defendant sat next to the victim on the flight to Chicago, each of the consequences of which defendant now complains existed: imprisonment, deportation, loss of employment, and embarrassment. None of these potential sanctions arose subsequent to this case: immigration authorities had already attempted to remove defendant from the country based on his earlier conviction; he already had served two periods of court monitoring, including a period of 120-days in a community correctional center; and his name had already been published in a newspaper in connection with a groping incident. In the face of these potential consequences, defendant made the conscious decision to assault the victim. Either defendant did not bother to consider the impact of his conduct on his family, employees, and friends, or he did contemplate – and rejected – these factors. In either case, it is disingenuous for defendant to now ask the Court to consider all these factors in mitigation when defendant either did not, or would not, do so himself.

3. General and Specific Deterrence

Defendant argues that the future threat of deportation and the other negative consequences of his conviction will deter him from future offenses. Def. 22. Given that he committed the criminal conduct notwithstanding his awareness of the potential sanctions he faced, as discussed above, it is difficult to determine how a sentence other than imprisonment would serve to deter him from similar conduct. It is alarming that defendant has sought counseling but is foregoing sex offender specific treatment. Def. 6. This demonstrates that defendant still does not grasp the sexual nature of his offenses and increases the likelihood that he will again commit another similar offense.

Defendant speaks about his “capacity for self-improvement,” Def. 15, but has not improved on the aspect of his life that requires it the most: his repeated sexual crimes against women. Prior terms of probation, including with a term of community corrections, did not serve to deter this offense, and there is nothing in defendant’s history to indicate that a similar sentence will do so.

In addition, the Court must impose a sentence that affords adequate general deterrence. This case has generated some media interest, as noted in defendant’s sentencing memorandum, and the sentence imposed is more likely to impact the behavior of the general population than if it had not. By imposing a sentence of imprisonment at or near the top of the guideline range, the Court can clearly state that conduct such as the defendant’s is serious and will not be tolerated. Conversely, if the public learns that an individual was sentenced to probation or a short period of imprisonment after sexually abusing a woman for the third time, a message will be sent that such conduct is not taken seriously by the criminal justice system.

4. *Need to Avoid Sentencing Disparities Among Defendants*

The Sentencing Guidelines, although advisory, serve an important purpose: to ensure that similarly situated defendants do not receive disparate sentences. The sentence a particular defendant receives should not depend on the sentencing district or judge, or the prosecutor or defense attorney handling the matter. Courts are statutorily directed to consider the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553(a)(6). Imprisonment at or near the top of the properly calculated guideline range will ensure that defendant is sentenced to a term similar to those

defendants with similar offense conduct and criminal backgrounds.

III. Conclusion

For the foregoing reasons, the government respectfully requests that the Court sentence defendant to a term of imprisonment at or near the top of the properly calculated advisory guideline range of 15 to 21 months.

Dated: August 29, 2013

Respectfully submitted,

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