

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Case No.: 2:20-CR-20073-001

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL R. BRUE,

Defendant.

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**DEFENDANT’S COMMENTARY ON SPECIAL SENTENCING FACTORS AND
INCORPORATED MEMORANDUM OF LAW**

Defendant, **DANIEL R. BRUE (“Mr. Brue”)**, by and through undersigned counsel, files his Commentary on Special Sentencing Factors and moves this Court pursuant to 18 U.S.C. § 3553(a) to impose a reasonable sentence all facts and circumstances considered.

I. INTRODUCTION

Taking into careful consideration the mitigating factors set forth herein, Mr. Brue respectfully requests this Court impose a reasonable sentence below the advisory guideline range. Such a sentence would be sufficient—but not greater than necessary—to satisfy the factors set forth in 18 U.S.C. § 3553(a). See Kimbrough v. United States, 552 U.S. 85, 101 (2007). Except for the improper conduct at issue here, Mr. Brue has led an exemplary and law-abiding life. Mr. Brue’s early acceptance of responsibility, significant cooperation with law enforcement and the Government, low risk of recidivism, unique family circumstances, public and private embarrassment of a felony conviction, and the negative impact same will have on Mr. Brue for the

remainder of his life, all provide ample justification for the Court to impose a below-guideline sentence.

II. PROCEDURAL HISTORY

1. On November 3, 2020, Mr. Brue was charged by Information with four (4) counts of wire fraud in violation of 18 U.S.C. § 1343. (D.E. 1).

2. On March 11, 2021, Mr. Brue pled guilty to the Information. (D.E. 18).

3. On March 11, 2021, this Court set Mr. Brue's sentencing hearing for July 19, 2021, at 10:30 AM.

III. ADVISORY GUIDELINES CALCULATIONS

A. UNCONTESTED GUIDELINE PROVISIONS

U.S.S.G §2B1.1 is the applicable guideline for violations of 18 U.S.C. § 1343. All four (4) counts are grouped under U.S.S.G. §3D1.2(d) because the offense level is determined by the total amount of harm or loss. The base offense level is seven (7). See U.S.S.G. §2B1.1(a)(1). Per the Plea Agreement, the Government and Mr. Brue jointly recommend this Court find the value of the funds involved to be between \$250,000 and \$550,000, resulting in a twelve (12)-point increase to the base offense level. See Plea Agreement at ¶ 17(b) (D.E. 18); see also U.S.S.G. §2B1.1(b)(1)(G). The Government and Mr. Brue agree two (2) levels are added under U.S.S.G. §2B1.1(b)(2)(A) because Mr. Brue's conduct resulted in financial hardship to one or more victims. An additional two (2)-level increase under U.S.S.G. §3B1.3 is applicable because Mr. Brue abused a position of public trust.

Pursuant to the Plea Agreement, the base offense level should be reduced by two (2) points for acceptance of responsibility under U.S.S.G. §3E1.1(a). See Plea Agreement at ¶ 17(e) (D.E. 18). The Government has also agreed to file a motion requesting an additional one (1) level

decrease pursuant to U.S.S.G. §3E1.1(b) due to Mr. Brue’s substantial and timely cooperation with the investigation of his misconduct. Id. at ¶ 17(f) (D.E. 18).

B. TOTAL OFFENSE LEVEL

A total offense level of twenty (20) and criminal history category of I results in an advisory sentencing guideline range of thirty-three (33) to forty-one (41) months imprisonment. However, as noted below, several mitigating factors support a far lower, more reasonable sentence.

IV. REQUEST FOR A REASONABLE SENTENCE

As this Court well knows, “[t]he Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.” Nelson v. United States, 555 U.S. 350, 352 (2009) (emphasis on original); see also Gall v. United States, 552 U.S. 38, 39 (2007) (a district judge “**may not presume that the Guidelines range is reasonable but must make an individualized assessment based on the facts presented.**”). “The corollary of that proposition is that district judges have an obligation to consider whether a sentence other than a Guidelines sentence would be sufficient, but not greater than necessary, to serve the purposes of sentencing” under 18 U.S.C. § 3553(a). See United States v. Corsey, 723 F.3d 366, 382 (2d. Cir. 2013) (Underhill, J., concurring).

Unless otherwise prohibited by law, this Court “may consider, without limitation, any information concerning the background, character and conduct of [a] defendant.” U.S.S.G. § 1B1.4; see also 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”).

18 U.S.C. § 3553(a) obliges the Court, “in determining the particular sentence to be imposed[,]” to consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense;
 - (B) provide adequate deterrence to criminal conduct;
 - (C) protect the public from future crimes of the defendant; and
 - (D) provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

* * * *
- (5) any pertinent policy statement—

* * * *
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a)(1)–(7).

Mr. Brue respectfully asks this Court to look beyond the sentencing range prescribed by the advisory sentencing guidelines and instead focus on the principles pronounced by the United

States Supreme Court and the factors set forth in 18 U.S.C. § 3553(a), and thereafter impose a reasonable sentence.

A. MITIGATING FACTORS

1. THE HISTORY AND CHARACTERISTICS OF DANIEL BRUE

Congress has directed that a defendant's personal characteristics should be considered equally with "the nature and circumstances of the offense." 18 U.S.C. § 3553(a)(1). Yet these factors are given no weight in the guidelines calculation; indeed, the Guidelines recognize only the defendant's criminal record (providing for higher offense levels for a greater criminal history, rather than reductions for no prior record). See Rita v. United States, 551 U.S. 338, 364-65 (2007) ("The Commission has not developed any standards or recommendations that affect sentencing ranges for many individual characteristics. Matters such as age, education, mental or emotional condition, medical condition (including drug or alcohol addiction), employment history, lack of guidance as a youth, family ties, or military, civil, charitable, or public service are. . . matters that § 3553(a) authorizes the sentencing judge to consider."); see also United States v. Prosperi, 686 F.3d 32, 39 & 45 (1st Cir. 2012) (affirming a downward variance from an advisory guideline range of 87–108 months to home detention because the guidelines did not take into account the personal characteristics of the defendant); United States v. Martin, 520 F.3d 87, 93 (1st Cir. 2008) (affirming a 91-month variance down from the guideline range based in part on the defendant's "personal qualities indicating his potential for rehabilitation"). Therefore, we urge the Court to balance the federal sentencing guideline calculations with consideration of the history and characteristics of Mr. Brue that weigh in favor of a significantly below-guidelines sentence.

Daniel Brue was born in Pittsfield, Illinois on April 29, 1973, and is one of four (4) siblings. Mr. Brue comes from humble beginnings. His father worked as a meat cutter and truck driver, and

his mother was both a teacher and store manager at a fast-food restaurant. Despite his family's working-class lifestyle, Mr. Brue enjoyed a stable childhood in a loving home where his parents taught him the importance of family, hard work, and helping others.

Mr. Brue always worked summer jobs as a young man growing up; he had ambitions of creating a better life for himself. This work ethic has remained a constant in his life and manifested itself in Mr. Brue's passion for education. After Mr. Brue finished his undergraduate and graduate studies, he devoted his career to providing positive environments for children to learn through his work as a school administrator (working his way up from being an assistant principal to the superintendent of several school districts). This was no easy feat, nor did it happen overnight.

Mr. Brue's true calling, however, has always been, and always will be, fatherhood. Indeed, when asked what his proudest achievement in this life has been thus far, he is quick to say his three sons, Adam, Mason, and Jonah. Tragically, it was his dedication to his family that led him to commit the acts forming the basis of his conviction. This is not an excuse for Mr. Brue's conduct, just a partial explanation.

It is hard to comprehend why someone raised with good values, surrounded by a strong support system, with a stable career and family, would ever do something like this. Simply stated, Mr. Brue's actions were motivated by financial pressure he felt coupled with a desire to give his wife and children everything they wanted/he believed they deserved. Unfortunately, "no" was not a word in Mr. Brue's vocabulary with respect to his children (and his now ex-wife, Tara Mattson).

The root of this financial pressure was Mr. Brue's relationship with his ex-wife. Mr. Brue's marriage to Tara Mattson was characterized by persistent anxiety and insecurity over the possibility of Ms. Mattson leaving him if Mr. Brue did not provide everything (materially) she wanted. In fact, Mr. Brue went bankrupt in 2008 due to certain financial expenditures. Facing

financial ruin, Mr. Brue secured a second job at a warehouse in addition to his primary job as a principal. He could not keep up with the demands of both jobs and suffered seizures from overwork. Bankruptcy followed shortly thereafter. To be clear, none of this excuses Mr. Brue's behavior. He accepts that he alone is responsible for his present situation, and he is sincerely remorseful and ashamed for what he has done.

A recent and significant development Mr. Brue requests this Court consider is that his ex-wife began displaying alarming signs of serious mental illness. She often disappears for days without communicating her whereabouts to her sons (one of whom—Jonah—is seventeen (17) and lives with her). On June 21, 2021, Mr. Brue was notified by an Illinois State Police officer that his ex-wife had been following a teenage girl in her car because a song entitled "Follow Me" was playing on the radio. Ms. Mattson admitted to the police she believed this was a sign that she should follow the car driving in front of her. She also admitted to having paranoid thoughts, namely, that people were following her for at least two (2) weeks. Understandably, Mr. Brue is concerned about the lack of support his youngest son will have if he is sentenced to a lengthy term of incarceration and his ex-wife's mental condition further deteriorates.

We urge this Court consider the "whole" of Mr. Brue, not just the conduct at issue sub judice. Daniel Brue is a father, son, brother, uncle, friend, neighbor, and most importantly, a decent human being. And like all of us at some point in our lives, he made a serious mistake – but his cost him his marriage, the unity of his family, his career and reputation, and most importantly, his legal status and liberty. In its remarks on the effect of incarceration on first-time, nonviolent offenders, the First Circuit in Prosperi recognized the punishment inherent to those who are thrust into the criminal justice system:

I think it is very difficult at times, for those of us who are judges or prosecutors or lawyers, to put ourselves in the shoes of a person with

no prior experience with the criminal justice system who finds himself or herself accused of a crime. I do not think, sometimes, we fully recognize the anguish and the penalty and the burden that persons face when called to account, as these men are, for the wrong that they committed.

686 F.3d at 48.

Mr. Brue urges the Court to take his personal characteristics and life history into account when imposing sentence.

2. MR. BRUE’S ACCEPTANCE OF RESPONSIBILITY AND COOPERATION

One of the goals of sentencing is rehabilitation. See Williams v. New York, 337 U.S. 241, 248 (1949). A defendant's admission of responsibility or expression of contrition “is often a significant first step towards his rehabilitation and, for that reason, deserving of a possible reward in the form of a lessened sentence.” Smith v. Wainwright, 664 F.2d 1194, 1196 (11th Cir.1981).

Furthermore, “[a] sentencing court has the power to consider a defendant’s cooperation under §3553(a), irrespective of whether the Government files a §5K1.1 motion”). United States v. Robinson, 741 F.3d 588 (5th Cir. 2014); see also United States v. Knox, 573 F.3d 441 (7th Cir. 2009); United States v. Landrón-Class, 696 F.3d 62 (1st Cir. 2012); United States v. Massey, 663 F.3d 852 (6th Cir. 2011); United States v. Leiskunas, 656 F.3d 732 (7th Cir. 2011); United States v. Doe, 398 F.3d 1254 (10th Cir. 2005).

Mr. Brue, through counsel, immediately began cooperating with law enforcement’s investigation of his conduct. The Macon County Sheriff’s Office began investigating Mr. Brue in July of 2019. On August 8, 2019, Mr. Brue voluntarily surrendered his cellular telephone to the Macon County Sheriff’s Office to allow investigators to search the contents of same. As soon as Mr. Brue learned federal authorities would be taking over the investigation, he reached out to the

United States Attorney's Office for the Central District of Illinois and offered to meet with prosecutors and investigators to be debriefed about his offense conduct.

Due to the nature of the fraud, Mr. Brue's cooperation saved the Government hundreds of hours of time and avoided the substantial costs associated with investigation, and trial. Mr. Brue has openly and honestly disclosed all information relating to his offense and provided his best good-faith effort to assist the Government with its investigation.

Mr. Brue's cooperation and complete acceptance of responsibility for his actions weigh in favor of this Court granting a downward departure or variance below the advisory guideline range. See Roberts v. United States, 445 U.S. 552, 558 (1980) (stating a defendant's cooperation demonstrates that the defendant "will transgress no more...respond to rehabilitative efforts...[and] not deem himself at war with his society."); see also United States v. Ruff, 535 F.3d 999 (9th Cir. 2008) (affirming sentence of one (1) day in jail and three (3) years of supervised release for defendant who pled guilty to embezzling \$650,000 from non-profit organization over course of three years, partially because of his cooperation with the agents as to how crime accomplished); United States v. Gardellini, 545 F.3d 1089 (D.C. Cir. 2008) (imposing sentence of probation for defendant convicted of filing false income tax return, where guidelines called for 10-16 months' imprisonment, because defendant "cooperated with authorities and accepted responsibility...to an extraordinary degree.").

3. MR. BRUE'S EARLY RESTITUTION

Mr. Brue is determined to pay the full amount of restitution owed. Prior to being formally charged, Mr. Brue made enormous strides to repay the Bement and Meridian County school districts. In September of 2020, Mr. Brue paid \$40,000 (\$20,000 each) to the Meridian and Bement County School Districts. Mr. Brue liquidated his 401(k) plan, which constituted his life savings,

to do so. It should be noted that Mr. Brue was prepared to make those payments as early as July of 2020.

Mr. Brue has been employed full-time as an Assistant Human Resources Manager by JBS USA¹ for the last two years. Since beginning his employment at JBS, Mr. Brue has been promoted twice and has the potential to be promoted further. Although he earns substantially less income at his new job and currently does not have his own residence, Mr. Brue is prioritizing the repayment of his restitution. He has been able to accumulate \$1,450 to pay immediately after sentencing, and Mr. Brue hopes this Court considers the fact that he is doing his best to remedy the damage he caused.

Mr. Brue respectfully urges this Court to consider, when fashioning his sentence, his substantial efforts to fully pay his restitution. See United States v. Kim, 364 F.3d 1235 (11th Cir. 2004) (holding payment of \$280,000 in restitution by defendants, a husband and wife, after they pled guilty to conspiracy to defraud the United States and fraudulently obtaining government assistance, respectively, demonstrated their sincere remorse and acceptance of responsibility and was extraordinary enough to justify downward departure from 24 months to probation and home detention where defendants dipped significantly into their life savings and voluntarily undertook enormous amount of debt to pay restitution.); see also United States v. Oligmueller, 198 F.3d 669, 672 (8th Cir. 1999) (upholding downward departure for extraordinary restitution where defendant made voluntary payments a year prior to indictment, often worked sixteen-hour days on his farm to raise the money, took on a second job, turned over his life insurance policy and his wife's certificate of deposit, and gave up his home.).

¹ JBS USA is the American subsidiary of JBS Foods, a global producer of beef, pork, poultry, and other meat products. The company operates a processing plant in Beardstown, Illinois.

4. MR. BRUE'S CHARITABLE WORKS AND COMMUNITY INVOLVEMENT

Courts have recognized that a defendant's charitable works and community involvement can justify a downward departure or variance. See United States v. Thurston, 544 F.3d 22 (1st Cir. 2008) (affirming District Court's sentence of 3 months rather than 60-month guideline term for Medicare fraud conspiracy of more than \$5 million, citing, among other things, defendant's charitable work, community service, and generosity with his time); United States v. Cooper, 394 F.3d 172 (3d Cir. 2005) (affirming 4-level downward departure to probation in securities fraud and tax evasion case based on defendant's good works where guidelines called for 14-21 months; defendant did not simply donate money to charity but made "hands on personal sacrifices which have a dramatic and positive impact on the lives of others."); United States v. Serafini, 233 F.3d 758 (3d Cir. 2000); United States v. Woods, 159 F.3d 1132 (8th Cir. 1998) (defendant's exceptional charitable efforts, in taking in two troubled young women, financing their private education, and assisting an elderly friend's move from a nursing home, justified a downward departure).

Despite often working two jobs to support his family, Mr. Brue found the time to coach youth sports, including basketball, baseball, and soccer. Whenever students needed something, whether it was school supplies, mats for kindergarteners to sleep on, or books, Mr. Brue would purchase same at his own expense. If his employees needed money or extra support, Mr. Brue gave it to them with no questions asked and no expectations of repayment. Earlier this year, Mr. Brue began volunteering at the Cass County Food Pantry in Virginia, Illinois, as a way to better himself and contribute to the community.

These are just a few of the ways that Mr. Brue has devoted himself to helping his community, and he hopes the Court will see that he is not a man motivated by greed or personal gain, but rather someone who genuinely cares for others and strives to help those in need:

If ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, the history and characteristics of the defendant.

United States v. Adelson, 441 F. Supp. 2d 506, 514 (S.D.N.Y. 2006), aff'd 301 Fed. Appx 93 (2d Cir. 2008).

5. THE NEED TO AVOID UNWARRANTED SENTENCE DISPARITIES

Under 18 U.S.C. §3553(a)(6), courts must consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” Data collected from fraud cases across the country and within the Central District of Illinois, as well as a representative sample of sentences, demonstrate a downward variance in this case would not lead to unwarranted sentence disparities for similarly situated defendants.

a. NATIONAL AVERAGE LENGTH OF WIRE FRAUD SENTENCES

From October 1, 2019, through September 30, 2020, the United States Sentencing Commission compiled sentencing data for 63,556 cases from every federal jurisdiction. See “Preliminary 2020 Datafile, USSCFY20,” United States Sentencing Commission (January 2021).² In 15,483 (24.4%) of those cases, defendants received a downward variance from the advisory

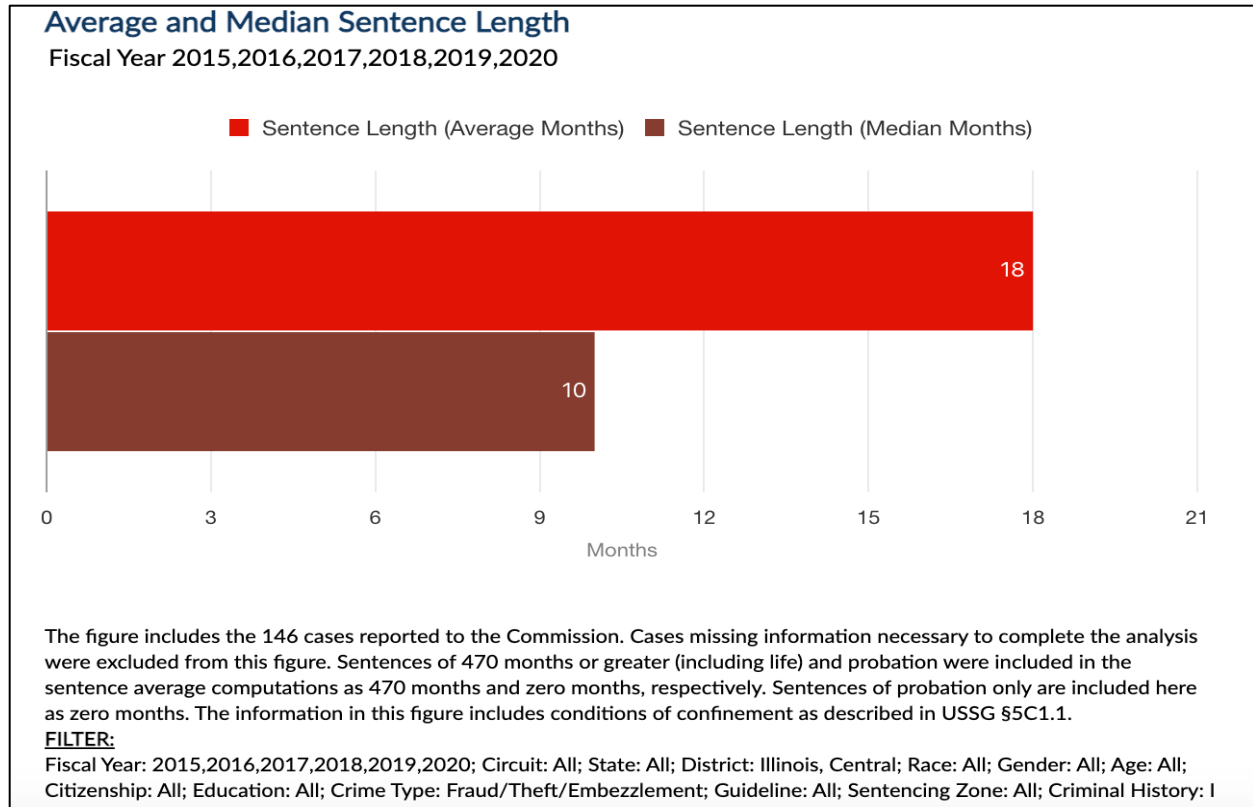
² Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC_Quarter_Report_4th_FY20.pdf

guidelines range. Id. at 27. Of those 15,483 defendants that received downward variances, 1,636 (10.6%) of them were convicted of fraud related offenses. Id. The average sentence for those 1,636 defendants was eighteen (18) months, with an average downward variance equivalent to a 58.5% decrease from the bottom of the advisory guideline range. Id.

Here, the advisory guideline range of thirty-three (33) to forty-one (41) months' imprisonment is **nearly double the national average** (eighteen (18) months) for those who received downward variances. Thus, a downward variance here would conform with the need to prevent unwarranted disparities in sentencing and the need for the sentence to reflect the seriousness of the offense.

b. TYPICAL WIRE FRAUD SENTENCES IN THE CENTRAL DISTRICT OF ILLINOIS

An analysis of the average sentence length imposed on defendants convicted of fraud related offenses in the Central District of Illinois further evidences a downward variance from the advisory guideline range would not only be reasonable, but also in line with general sentencing practices in this District. The Sentencing Commission's "Interactive Data Analyzer" revealed that, between 2015 and 2020, there were one-hundred and forty-six (146) reported cases involving fraud in this District where defendants had a criminal history category of I (results reproduced below). The average sentence length for those defendants was eighteen (18) months, with the median sentence being ten (10) months. It is important to note that these figures include sentencing information for all fraud-related cases, not only those in which a downward variance was granted.



The thirty-three (33) to forty-one (41) month advisory guideline range in this case is **almost twice more than the average sentence imposed on defendants in this District**. Consequently, the Court should place greater emphasis on the mitigating factors set forth in support of a below-guidelines sentence. See Adelson, 441 F.Supp.2d at 515 (stating that, “where the Sentencing Guidelines provide reasonable guidance, they are of considerable help to any judge in fashioning a sentence that is fair, just, and reasonable. But where, as here, the calculations under the guidelines have run so amok that they are patently absurd on their face, a Court is forced to place greater reliance on the more general considerations set forth in section 3553(a), as carefully applied to the particular circumstances of the case and the human being who will bear the consequences.”).

c. REPRESENTATIVE CASES WARRANTING A BELOW-GUIDELINES SENTENCE

“[D]istrict judges have an obligation to consider whether to depart from the Guidelines sentencing range or to impose a non-Guidelines sentence in every case.” See United States v.

Corsey, 723 F.3d 366, 382 (2d. Cir. 2013) (Underhill, J., concurring). Below is a collection of sentences imposed on defendants convicted of similar or worse fraud offenses in this District:

- 1) United States v. Wanzo; Case No.: 20-cr-30029-SEM (Defendant sentenced to eighteen (18) months imprisonment and three (3) years supervised release for fraud involving loss of \$350,000 to the Illinois Secretary of State and Department of Revenue).
- 2) United States v. Hardwick; Case No. 15-cr-20009-CSB (Defendant sentenced to seven (7) days imprisonment and four (4) years of supervised release after obtaining a \$3,900,000 loan from a bank and using the proceeds for personal expenses).
- 3) United States v. Brown; Case No. 20-cr-30031-RM (Defendant sentenced to thirty-seven (37) months imprisonment and three (3) years of supervised release for operating a sham medical equipment reseller business that defrauded businesses and individuals from various states, with an intended loss amount over \$750,000).
- 4) United States v. Martinez; Case No. 17-cr-30004-SEM (Defendant sentenced to twenty-nine (29) months imprisonment and three (3) years of supervised release after defrauding Lincoln Land Community College of \$695,401.70 through false invoice scheme).

These cases illustrate that a below-guidelines sentence would be sufficient—but not greater than necessary—to satisfy the factors outlined in 18 U.S.C. 3553(a).

6. MR. BRUE'S LOW LIKELIHOOD TO RECIDIVATE

In 2004, the Federal Sentencing Commission published a report which presented a statistical analysis of the characteristics associated with the likelihood of a person recidivating. The study showed that (1) those sentenced under economic crime guidelines were less likely to recidivate than those sentenced under other guidelines; (2) older individuals were less likely to reoffend; (3) first-time offenders were less likely to recidivate than repeat offenders; (4) those who were employed were less likely to recidivate than those who were unemployed; (5) non-drug users

were less likely to recidivate than drug users; (6) college graduates were significantly less likely to reoffend than those with lower levels of educational attainment; and (7) people who received non-incarcerative sentences were less likely to reoffend than those who received sentences involving incarceration. See “Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines,” United States Sentencing Commission (May 2004) at 28-32.³ Each of these factors strongly supports a finding that Mr. Brue poses no risk of reoffending.

The Eleventh Circuit discussed the likelihood of recidivating in United States v. Clay, 483 F.3d 739 (11th Cir. 2007). In Clay, the District Court sentenced the defendant to 60 months, even though his guidelines were 188-235 months, because of the District Court’s view that the defendant was not likely to re-offend. Id. at 742-43. In affirming the defendant’s sentence, the Eleventh Circuit stressed that a sentencing Court is “require[d] . . . to consider characteristics of the defendant and the offense that make it more or less likely that the defendant will reoffend.” Id. at 745. Because the defendant in that case had “fundamentally changed since his offense” and “pose[d] a lesser risk to the community,” the Eleventh Circuit determined that the sentencing court was correct in issuing a variance. Id. at 746. See also Gall v. United States, 552 U.S. 38, 57–59 (2007); United States v. Cherry, 487 F.3d 366, 369–70 (6th Cir. 2007) (granting significant downward variance from the guideline range where the defendant presented a low risk to reoffend); Prosperi, 686 F.3d at 48 (affirming non-incarcerative sentence where there was no risk of recidivism).

As further proof of the nonexistent risk of Mr. Brue reoffending, he has religiously observed the conditions of his release pending disposition of this matter and reported to his

³ Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf

probation officer without fail. See United States v. Munoz-Nava 524 F.3d 1137 (10th Cir. 2008) (holding district court's sentence of one year and one day in prison plus one year of home detention reasonable in drug case where guidelines were 47-56 months, partly because of defendant's "behavior while on a year-and-a-half pretrial release, which the district court found to be exemplary" showed the defendant was unlikely to reoffend).

Mr. Brue respectfully requests the Court, when fashioning his sentence, to consider his extremely low likelihood of reoffending.

V. CONCLUSION

"It 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 . . . the crime and the punishment to ensue." Koon v. United States, 518 U.S. 81, 113 (1996). Mr. Brue will have to live with the knowledge that his actions caused the dissolution of his marriage, erased the years of effort he spent building his career, financially harmed his victims, and irreparably harmed his children and those closest to him – a sentence he will serve for the rest of his life. Mr. Brue respectfully asks that this Court downward vary from the advisory guideline range and impose a fair and just sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/Brian H. Bieber
BRIAN H. BIEBER