

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
vs.)	Case No. 20 CR 111-7
)	Hon. Virginia M. Kendall
MATTHEW NAMOFF,)	
Defendant.)	

MATTHEW NAMOFF’S SENTENCING MEMORANDUM

NOW COMES, the Defendant, MATTHEW NAMOFF, by his attorney, DARRYL A. GOLDBERG, and sets forth his position as to sentencing factors and respectfully requests, according to *United States v. Booker*, 125 S.Ct. 738 (2005), *Gall v. United States*, 128 S.Ct. 586 (2007), *Kimbrough v. United States*, 552 U.S. 85 (2007) and 18 U.S.C. § 3553(a), that the Honorable Court impose a sentence of probation (with at most home detention if the Honorable Court believes some restriction on movement is necessary) because such a sentence is sufficient but not greater than necessary to comply with the purposes of sentencing under 18 U.S.C. 3553(a). In support of this request and in addressing the relevant sentencing factors, Mr. Namoff states as follows:

I. SENTENCING REQUEST AND SUMMARY

At just 25 years young, Mr. Namoff is a loving and devoted brother, son, and romantic partner, a motivated and remarkable employee, ideal neighbor, and but for his uncharacteristic conduct that brings him before the Honorable Court, a model citizen and community member. In 2017, a very young and anxious Matt Namoff, also suffering from then undiagnosed Post Traumatic Stress Disorder (“PTSD”), made the poor choice to participate in the offense to which he has pled guilty, which was ironically predictable as one of the hallmarks of PTSD is impaired decision making. Mr. Namoff had been the victim of a violent robbery in his first few weeks at

college, with a gun being placed to his temple before being robbed of his belongings. Suffering from PTSD, since diagnosed and currently being treated, and becoming increasingly anxious at the time, Mr. Namoff's particularly poor choice to involve himself in the offense conduct is aberrational from an otherwise generally law-abiding life. Already a shy teenager who had been bullied and some trouble making friends before the robbery, Mr. Namoff began to find a social connection with others over sports, and eventually tried to ingratiate himself with his peers by betting and then taking small wagers on sporting events as a way to make and surround himself with friends and acquaintances, which also made him feel safer on campus. It is with this mindset and those stressors, at a time in life that is already beset with stress, that Mr. Namoff foolishly attempted to further impress his peers, make friends and generally improve his social status by involving himself with Vincent Delgiudice and his gambling operation. What began as \$1 to \$3 wagers on a sporting event over a beer morphed into something else; Mr. Namoff's betters were betting so small on average that the minimum wager was eventually increased to \$5, clearly on the smallest scale of all charged in this case. Mr. Namoff knew Delgiudice, a family friend, ran a bookkeeping operation and his support would give him legitimacy and financial backing for the small wagers he was accepting. Put even another way, Mr. Namoff's acute mental health struggles clouded his judgment as he made a series of regrettable, poor decision that was completely out of character for him that will profoundly affect him for the rest of his life.

Mr. Namoff's arrest in this case has truly been eye-opening, as he has had much time for reflection. With time to reflect and facing legal trouble for the first time in his life, he has recognized there are consequences for his actions. Mr. Namoff is a different man than he was just two years ago, having begun the process of receiving the mental health treatment he has desperately needed, particularly during the period of the offense. He has also matured and he is excited about his future,

particularly with his girlfriend and with his employment where he has been promoted twice and has been recognized as the national sales employee of the month. In another sense, Mr. Namoff is also the same person, a positive asset to his community with a long history (even at his young age) of doing positive things for the benefit of others, as many people continue to rely on him for support. While not depreciating the serious nature of the conduct that occurred, his lack of criminal history and post-offense conduct shows that his conduct was aberrational and that he does not have the propensity to engage in criminal behavior.

Not only has Mr. Namoff matured, but he is gainfully employed and a valued employee, exhibits continued positive involvement in the community, and is clearly a person that many people rely upon. Learning from his past mistake, Mr. Namoff has become a model employee, neighbor, and family member that everyone in his community seems willing and eager to sing his praises and share a story about the positive contributions Mr. Namoff has made in their lives. He has sought mental health treatment and has learned how to deal with stress more effectively, which help eliminate any risk of recidivism and help ensure he is never placed in this position again. He has also learned to channel his stress and anxiety in a positive way through therapy and recreation, such as softball and volleyball.

A non-custodial sentence is sufficient, but not greater than necessary, and will adequately reflect the seriousness of the offense while taking into account Mr. Namoff's unique personal history and characteristics including his youth, mental health treatment needs and untreated mental health issues at the time of the offense, lack of any criminal history, profound remorse, his supportive role within the community and his family, role in the offense, stigma associated with his conviction, the kinds of sentences available, as well as the other purposes of sentencing outlined by 18 U.S.C. §3553(a).

II. A CONSIDERATION OF THE §3553(A) FACTORS SUPPORTS A SENTENCE OF PROBATION AND BELOW THE ADVISORY GUIDELINES:

a. The §3553(a) Factors:

As this Court is well aware, when imposing sentence, it must consider the criteria set forth in 18 U.S.C. §3553(a). The primary directive in § 3553(a) is that the court must impose a sentence that is “sufficient, *but not greater than necessary*, to comply with” the purposes of sentencing. See 18 U.S.C. § 3553 (a) (*emphasis added*). Those purposes include the need:

- to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment;
- to create adequate deterrence;
- to protect the public from future crimes of the defendant; and
- to provide the defendant with necessary treatment and training.

Section § 3553 (a) directs sentencing courts to consider a number of additional factors as well, including:

- the nature and circumstances of the offense, § 3553 (a)(1);
- the history and characteristics of the defendant, § 3553 (a)(1);
- the kinds of sentences available, § 3553 (a)(3);
- the sentencing guideline range, § 3553 (a)(4);
- pertinent Sentencing Commission policy statements, § 3553 (a)(5);
- the need to avoid unwarranted sentencing disparities, § 3553 (a)(6);
- the need to provide restitution to any victims of the offense, § 3553 (a)(7).

The impact of requiring the Court to consider the §3553(a) factors, including the history and characteristics of the defendant, is that federal sentencing is no longer only an offense based system of sentencing; it is now an offense-based and individual defendant based system. *United States v. Pepper*, 131 S.Ct. 1229, 1239-40 (2011). In the instant case there are numerous factors, as discussed below, all of which indicate the appropriateness of a sentence of probation and below the advisory guideline range.

III. THE HISTORY CHARACTERISTICS, BACKGROUND, AND CHARACTER OF MR. NAMOFF JUSTIFY A SENTENCE BELOW THE ADVISORY SENTENCING GUIDELINE RANGE AND OF PROBATION (§3553(a)(1))

A. Mr. Namoff's Mental Health and Treatment Needs (§ 3553(a)(2)(D)) Support a Sentence of Probation.

A sentence short of imprisonment is sufficient, but not greater than necessary, to meet the goals of punishment, because it will best provide Mr. Namoff treatment for his mental treatment needs. *See* PSR at ¶60-64. Section 3553(a)(2)(D) directs the Court to fashion a sentence that provides the defendant with necessary "medical care" or other "treatment" in the most effective manner. Accordingly, a sentence short of imprisonment is the most effective way for Mr. Namoff to continue his mental health treatment, which is best addressed outside of prison walls, where he will have the ability to continue to his mental health treatment. As his therapist, Amy Busse writes in her letter, "Any disruptions in his care could cause damaging setbacks to his ongoing progress." *See* Letter from Amy Busse, LCPC attached as part of *Group Exhibit A*. As such, a downward variance from the advisory sentencing guidelines and a sentence short of imprisonment that allows him to continue his current treatment is appropriate.

As documented in the Presentence Report ("PSR"), Mr. Namoff suffers from post-traumatic stress disorder as a result of a violent robbery that occurred when he was 18 years old and just starting college. *See* PSR at ¶60-64. The effect of this robbery, which was covered in the local paper and led to convictions of the two assailants, had a profound impact on Mr. Namoff and his mental state and continues to plague him to this day. *See Group Exhibit B*. As his friend and fellow victim of the robbery articulates, "I still get flashbacks seeing a gun six inches from my head and still to this day I feel weird when I walk around whether that's during day or night." *See* Letter from Zachary Toulon attached as part of *Group Exhibit A*. Mr. Namoff's fear and the impact of the robbery was aggravated by the fact that *he* was the one who had the gun physically placed

against his temple. Not only are his “treatment needs” critical to determining an appropriate sentence, but his then existing mental health issues at the time of the offense (then undiagnosed PTSD and anxiety) led to him making irrational choices, directly connected to his participation in the offense, and should be considered substantial mitigation when considering the “circumstances of the offense under § 3553 (a)(1).”¹

PTSD can manifest itself in many ways, but the hallmark of depression and PTSD is poor decision making. Mr. Namoff, was bullied as a child, a shy teenager,² and what he and others have described as “socially awkward.” Mr. Namoff had difficulty making friends in high school and was having trouble making meaningful connections with his fraternity brothers and fellow students at Illinois State University, even before the robbery and the later commission of the offense that brings him before the Honorable Court. In a misguided attempt to form closer relationships with his peers, who often talked about sports, Mr. Namoff began casually betting with some other students that were his age, typically about \$1 to \$3 per bet/game. Eventually, years later in a desperate and frankly dumb quest to increase his social status, still plagued with the effects of his untreated and then undiagnosed PTSD, and under the influence of alcohol, Mr. Namoff boasted that he knew of a gambling website that could be used and that he had a family friend, Mr. Delgiudice, who could provide access and they could all place their small wagers. This was his attempt to increase his popularity, but more significantly, to help ease his overarching and

¹Although downward departures are now obsolete, even pre-*Booker*, recognized that downward departures were appropriate if defendants at the time of the offense suffered from diminished capacity; departures “[m]ay be warranted if (1) the defendant committed the offense while suffering from a significant reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense.” U.S.S.G. §5K2.13. Certainly, post-*Booker*, a downward variance would be appropriate given his mental health condition that directly contributed to the commission of this offense.

² For example, Mr. Namoff’s former employer of seven years ago (prior to college and the commission of the offense) not only noted that he was a good employee, but still remembers that he was shy to this day. PSR ¶72.

paralyzing fear of being alone (which stemmed from his victimization resultant of the armed robbery).

Mr. Namoff has since received counseling from a specialist (a licensed clinical professional counselor) and is now better equipped to handle life stressors and the triggers of his mental health issues. Mr. Namoff has significantly benefitted from therapy, learning how to effectively manage periods of PTSD symptoms, as well as incorporating other lifestyle changes to assist his progress and better deal with stress and anxiety, such as regularly engaging in recreational activities with his friends and family, like playing volleyball or softball. However, any disruption in his care could cause damaging setbacks to his ongoing progress. In other words, a prison sentence could place him at risk of regressing. Put even another way, Mr. Namoff's treatment needs are best addressed outside of prison walls and in the environment and community that he will be a part of; treatment and counselling, rather than prison, protect the public and promotes rehabilitation.

In short, imprisoning Mr. Namoff will greatly endanger his mental health and is "greater than necessary," when considering Mr. Namoff's mental health conditions and unique mental health treatment needs.

B. Mr. Namoff's Current Age As Well As Age at the Time of the Offense Further Support A Sentence of Probation.

Mr. Namoff's age and immaturity at the time of offense is very relevant in determining an appropriate sentence and are not otherwise captured by the advisory sentencing guidelines. The seminal case of *Gall v. United States*, 552 U.S. 38 (2007) is instructive. In *Gall*, the defendant pled guilty to conspiring to distribute a large quantity of ecstasy and to making a profit of \$30,000 from his conduct, but where he withdrew from the conspiracy after 7 months, stopped using drugs, went to college and became a businessman and the guideline range called for 30-37 months imprisonment, the district court's sentence of probation was reasonable in part because of

defendant's youth and immaturity at time of the crime and district court's "consideration of [defendant's immaturity] find support in our cases." (citing *Roper v. Simmons*, 125 S.Ct. 1183 (2005) ("today our society views juveniles, in the words Atkins used respecting the mentally retarded, as "categorically less culpable than the average criminal.... [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.... The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult.... [t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside."); *Johnson v. Texas*, 509 U.S. 350, 367 (1993) (jury may consider a 19-year-old defendant's youth as a mitigating factor because "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and psychological damage.")).

Although Mr. Namoff is not suggesting his age is an excuse for his criminal conduct, there is no doubt that Mr. Namoff's age and immaturity, coupled with his life circumstances and mental health issues, can contextualize his poor decision making and suggest a sentence short of imprisonment is appropriate. Mr. Namoff was a teenager and in his early 20s at the time of the offense. Studies have shown that the prefrontal cortex, the section of the brain responsible for reasoning, planning, judgement, and impulse control is not fully developed until approximately a person's mid-20s, and that trauma during this time can interfere with brain functioning.³ Mr. Namoff's series of poor decisions to involve himself in this offense occurred at a time when he

³ Arain, Mariam et al. "Maturation of the adolescent brain." *Neuropsychiatric disease and treatment* vol. 9 (2013): 449-61. doi:10.2147/NDT.S39776

could not fully appreciate or understand the ramifications of his actions in addition to also being plagued with untreated PTSD.

It is worth noting that this was Mr. Namoff's first breach of the law, and, now at 25 years old, he has no appreciable criminal history, having a criminal history score of zero and no prior arrests and whose sole interaction with law enforcement before being charged in this matter related to a possession of open alcohol ordinance violation that was dismissed. Mr. Namoff is profoundly remorseful for his conduct and is embarrassed about his conviction. His otherwise spotless criminal record, or lack thereof, serve as proof of his law-abiding lifestyle. It is also worth repeating that the conduct that brings him before the Honorable Court occurred during a turbulent period in his life when he was still searching for meaning in his life and suffering from serious undiagnosed mental health issues which has since been diagnosed and are being treated/addressed. A variance is warranted because his age and conduct highlights the fact that Mr. Namoff clearly lacks a propensity to commit crimes and he is not beyond rehabilitation.

Furthermore, Mr. Namoff has been forthcoming with his family, friends, and community members about his conduct and they believe this was aberrational conduct he will not repeat. As his friend succinctly states that when Mr. Namoff told his friend of his crime, "The only thing I remember him vividly saying was how he embarrassed he was of himself. He felt strong remorse for disgracing his family's name and himself in a way they couldn't fathom." *See, e.g.,* Letter from Connor Gibson attached as part of *Group Exhibit A*.

Put another way, sentencing Mr. Namoff anywhere near the advisory guideline range is greater than necessary as his involvement has been a profoundly eye-opening experience and provided a great deterrent to him, as this is the first time he has run afoul of the law. *United States v. Baker*, 445 F.3d 987 (7th Cir. 2006) (in distribution of child porn case court affirms below

guidelines sentence of 78 months (guidelines called for 108) noting that “significant is the district court’s finding that a prison term would mean more to Mr. Baker than to a defendant who previously had been imprisoned). Consideration of this factor is consistent with §3553’s directive that the sentence reflect the need for “just punishment,” *Id.* § 3553(a)(2)(A), and “adequate deterrence,” *Id.* § 3553(a)(2)(B)”). Under the totality of the circumstances, and considering all of the § 3553(a) factors, even the threat of a conviction or incarceration has been a sufficient deterrent for a person like Mr. Namoff who has never spent any time in custody and warrants a variance to a sentence below the advisory guideline range and short of imprisonment.⁴ A sentence of probation would be sufficient, but not greater than necessary.

C. A Sentence of Probation is Warranted Given Mr. Namoff’s Support From Loved Ones.

Mr. Namoff has a loving and supportive family, as made clear from letters submitted to the Honorable Court. *See, generally, Group Exhibit A.* Mr. Namoff’s family supports him and he in kind supports his family and community. Mr. Namoff’s arrest and prosecution has had a strong effect on him as well as his family. Not only has his arrest been eye-opening for himself and provided an opportunity for reflection, but it has resulted in positive change such as seeking out the mental health treatment he needed. The strong support of his loved ones will help aid Mr. Namoff’s rehabilitation (to the extent it is even necessary) and demonstrate that a sentence of probation would be “sufficient but not greater than necessary” to comply with the purpose of sentencing. *United States v. Wachowiak*, 496 F.3d 744, 746 (7th Cir. 2007) (supportive family and friends will assist in rehabilitation). As evidenced by his conduct on bond, the support of his

⁴ It should be noted that even without a downward variance, Mr. Namoff’s advisory guideline range falls within Zone B.

family has allowed Mr. Namoff to use his time on pretrial release to better himself, seek mental health treatment and excel at his job.

D. Mr. Namoff's Exemplary Character, Good Works, and Support for His Family, Support a Sentence of Probation.

Matt Namoff has led an exemplary life, characterized by ordinary good works, beginning long before the events that formed the basis of the indictment against him; he has consistently given his time, energy, and assisted his community, friends, and family in whatever way he can. These good works, and the character they exemplify, are in and of themselves a factor that this Court should consider in determining a sentence. These good works are also fundamentally inconsistent with a criminal mind and demonstrate that Mr. Namoff's admitted misdeeds are not typical of his overall character and principals that characterize his life to date. The kind of character Mr. Namoff possesses and has been constantly displayed in both large and small ways throughout his life, is genuine and could not have possibly been faked or invented for the purposes of a Sentencing Memorandum.

The letters submitted on Mr. Namoff's behalf testify to his altruism, benevolence, humanity, hard work and selflessness. If there is one theme that runs through the letters submitted to the Court, it is that lawbreaking is out of character with the type of person Mr. Namoff has been throughout his life, and certainly who he is today. Friends and family members alike marvel at Mr. Namoff's most outstanding virtue: his total devotion to family and his willingness to assist anyone in need, whether they had asked for help or not. *See* Letters attached as *Group Exhibit A*.

- Zachary Toulson, a friend since middle school talks not only about how Mr. Namoff helped him in school and with sound advice but encouraged him to repair his relationship with his family. Stating, "I definitely got upset when he would give that advice but it truly was what I needed to hear... He even pushed me to strengthen/ repair the bond that my father and I had been lacking for years."

- Many of the letters speak about the assistance Mr. Namoff provides for those around him. As his elderly and recently widowed family friend, Cindy Rousey, notes “He visits me often and has helped me in the yard, with snow removal and replacing light bulbs and my smoke alarm in the house. Matt has shown his love and concern for me during this past year after my husband passed away.”
- While many other college aged kids are concerned with partying, Mr. Namoff would often use what little free time he had to assist the community. As his friend and roommate Trevor Arbogast recalls, “Matt would often volunteer his assistance to help me prepare for practice [for a little league soccer team]. He also joined me at a few practices as his schedule allowed. His support and assistance were appreciated and the players enjoyed his enthusiasm and selfless giving of his time.”
- Mr. Namoff is the friend who will help a friend in any way he can. As his high school friend Connor Gibson states, “When I separated from the military, [I] had no job, and began living with my parents...throughout my job search, it was his reference, that described my character and work ethic, that landed me a job”
- His random acts of kindness are not confined just to family members. As a family friend, Casey Cramer, recalls, “One time in particular, he knew my oldest was working a double shift at her job in the mall, Matthew was out shopping and decided to extend his generosity and bring her a favorite iced coffee to perk her up during the long shift.” Although this is a small gesture, it just an example of the assistance he provides anyone he comes into contact with.

The above accounts of Mr. Namoff’s character and good works, spanning his youth and young adulthood, do not come close to constituting a complete list of his kind and charitable endeavors. They also do not fully encapsulate the amount of time, efforts and money he has donated to his community, neighbors, family, friends, and others in need. Mr. Namoff unfailing gave his time and resources to individuals in need of support, both privately and publicly. His history of working hard and assisting others began as a teenager and continues to this day.

In addition, Mr. Namoff also provides emotional support for his immediate family, his girlfriend, and the community at large. Friends and family members alike write in their letters about the indispensable role Mr. Namoff provides for them. *See* Letters attached as *Group Exhibit A*.

- His aunt, Mary Ellen Namoff, talks about the assistance Mr. Namoff currently provides her after becoming ill about eight months ago. While many other offer assistance, “Matthew has lived it -calling me, checking in, stopping by, and most importantly ending every interaction we have with a hug (once COVID-19 restrictions changed)... I know if I need anything, Matthew will be at my door and assist me with whatever it is I may need.”
- His girlfriend, Chelsea Creatore, recounts a jarring situation shortly after graduating from college when she had a seizure. Not only did Mr. Namoff assist her and make sure she got to a hospital but became an indispensable resource for work. “After my accident, I was no longer able to drive for six months. Since I just received a teaching job at that time, I was worried about not being able to take it since of my current circumstance. Matt took me to school and picked me up from school everyday so I was able to pursue my first teaching position.”
- Mr. Namoff’s sister has dealt with depression and she describes him as an invaluable resource to help her throughout her life. While in college, he would often visit her to make sure she was doing ok. When it became more serious, she relied on Mr. Namoff to help her seek professional help. As she recalls, “I was nervous to tell anyone about how dark my depression had gotten, until one day, I finally gathered up the courage to tell my brother I had been having suicidal thoughts. Matt was there for me during my hospitalization and continued to be there for me after. I began going to counseling and Matt would drive me every week to my appointments.”

The above are just a select few of the ways in which Mr. Namoff assists his family. Mr. Namoff’s good character, and lifetime of good deeds (even at his young age), are factors the Court not only can, but must, consider in imposing a sentence, according to § 3553(a)(1) and § 3661. Good works and good character are valid bases for a *Booker-Gall-Kimbrough* downward variance and need not be exceptional. *See United States v. Warner*, 792 F.3d 847, 857 (7th Cir. 2015) (“A defendant record of charity may justify a lenient sentence...[T]o survive appellate review, a defendant’s good works must be sufficient to justify the variant sentence, but they need not necessarily be exceptional.”); *see also United States v. Washington*, 715 F.3d 975, 979 (6th Cir. 2013); *United States v. Tomko*, 562 F.3d 558, 560 (3rd Cir. 2009); *United States v. Thurston*, 544 F.3d 22, 25-26 (1st Cir. 2008)(defendant convicted of defrauding the Medicare Program of over \$5,000,000, with an advisory guideline range of 63-78 months, was sentenced to 3 months

incarceration, after the district court considered the defendants “charitable work, community service, generosity with time, and spiritual support and assistance to others.”)

Even pre-*Booker*, courts have departed from the guidelines based on a defendant’s charitable and community activities and good works. *See, e.g., United States v. Canoy*, 38 F.3d 893 (7th Cir. 1994) (charitable and civic activities may, if exceptional, provide a basis for departure). In addition, his family responsibilities can also be considered as part of his history and characteristics under § 3553(a)(1). *See, e.g., United States v. Howe*, 543 F.3d 128, 138 (3d Cir. 2008) (affirming downward variance to probation based on finding that defendant was a “devoted husband, father, and son”); *United States v. Sayad*, 589 F.3d 1110 (10th Cir. 2009) (varying downward based partly on the “necessity for [defendant] to be with her family considering her father’s health and their ability to survive, if not prosper, in the [their] business”); *see also United States v. Galante*, 111 F.3d 1029 (2d Cir. 1997).

The simple truth is that Mr. Namoff is a good person who has done many good things over the course of his young life. It is obvious, based on his history to date, that Mr. Namoff will continue to provide outstanding service to his family and to the community at large if the Court grants him a sentence of short of imprisonment. When considering the entire spectrum of his life, his good deeds support a sentence of probation.

E. The Length of Time Since the Commission of the Offense and Mr. Namoff’s Post-Offense Conduct Support a Sentence of Probation.

Gall made it clear that courts can take into account post-offense rehabilitation and conduct at sentencing. 128 S.Ct. 586 (2007). Moreover, the United States Supreme Court’s decision in *Pepper v. United States*, reiterates that proposition. 131 S.Ct. 1229, 1243 (2011). (Pepper’s exemplary post[offense] conduct may be taken as the most accurate indicator of ‘his present purposes and tendencies’ and significant to suggest the period of restraint and the kind of discipline

that ought to be imposed on him.”). To begin, Mr. Namoff’s criminal conduct was an aberration from a law-abiding life, having no prior criminal history. Furthermore, Mr. Namoff has complied with all conditions of his pretrial release. *See, e.g., United States v. Munoz-Nava*, 524 F.3d 1137 (10th Cir. 2008) (drug case with guidelines of 47-56 months and district court sentenced defendant to one year and one day in prison and a year of home detention held reasonable in part because defendant’s “behavior while on a year-and-a half pretrial release, which district court found to be exemplary” which shows the defendant unlikely to reoffend). Today, Mr. Namoff is in an entirely different place in life than he was nearly four years ago when he became involved in this offense. He has sought out mental health treatment, has matured, and in a meaningful long-term relationship. Mr. Namoff has also been a model and indispensable employee, recently being named employee of the month, often the top salesperson in his group, and even recently receiving promotions. *See Group Exhibit C*. He has continued to help others on a daily basis in the midst of a global pandemic, even with the weight of an indictment and pending sentencing on his shoulders. While on pretrial release, he has established a track record of following orders and makes it clear that if he was sentenced to probation, he could respect and follow the Court’s order. Accordingly, Mr. Namoff is a candidate for a sentence below the advisory guidelines range and short of imprisonment.

F. The Stigma Associated with Mr. Namoff’s Non-Violent Offense and First Conviction Support a Sentence Short of Probation.

Mr. Namoff is not depreciating the seriousness of this offense but simply notes its non-violent nature for a first-time offender who has never been to prison. The stigma of being labeled a federal felon has been sufficient punishment for Mr. Namoff. It has been deeply humiliating to Mr. Namoff, and humiliating to his extended family, who were shamed as word spread of this

prosecution as this case is covered extensively in the local press, even though they continue to support him.

The stigma of being labeled a federal felon is profound. *United States v. Smith*, 683 F.2d 1236, 1240 (9th Cir. 1982) (“The stigma of a felony conviction is permanent and pervasive.”); *see also* Wayne A. Logan “Informal Collateral Consequences” 88 *Washington Law Review* 1103 (2013) (“Today, convict status serves as a perpetual badge of infamy, even serving to impugn reputation beyond the grave.”); *Id* at p. 1107 (“stigma can have a self-fulfilling criminogenic effect, predisposing individuals to become deviants they were branded to be.”); Michelle Alexander, *The New Jim Crow* (Paperback ed. The New Press 2012) at p. 94 (“Once a person is labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal.”); *Id* at 163 (“When someone is convicted of a crime today, their ‘debt to society’ is never paid.”) Ernest Drucker, *A Plague of Prisons* (The New York Press 2011), at p. 130 (“Having served their formal sentences, ex-prisoners will endure new forms of punishment capable of generating more anger, more shame and the scars of permanent social stigma...most states...bar many ex-felons from living in public housing, from working in a wide variety of jobs and professions, and from receiving a range of forms of public assistance including school subsidies, income support and food stamps...There [are] enduring disabilities...); *United States v. Wulff*, 758 F.2d 1121, 1125 (6th Cir, 1985) (“a felony conviction irreparably damages one’s reputation.”)

When commuting the sentence of Lewis “Scooter” Libby, former President George W. Bush, and recognizing the stigma of being labeled a federal felon, commented:

“the [within guideline] prison sentence given to Mr. Libby is *excessive*. Therefore, I am commuting the portion of Mr. Libby’s sentence that required him to spend 30 months in prison. My decision to commute his prison sentence leaves in place a harsh punishment for Mr. Libby. The reputation he gained through his years of public services and professional work in the legal

community is forever damaged. His wife and young children have also suffered immensely. He will remain on probation. The significant fines imposed by the judge will remain in effect. The consequences of his felony conviction on his former life as a lawyer, public servant and private citizen will be long lasting.”

See Statement by the President on Executive Clemency for Lewis Libby, July 2, 2007, <http://web.archive.org/web/200708150114223/http://whitehouse.gov/news/releases/2007/07/20070702-3.html>. (last visited February 12, 2021).

Courts routinely vary downward from the advisory guidelines when dealing with first time offenders because a defendant’s lack of criminal history is not adequately considered by the guidelines, as well as noting the dictates of 28 U.S.C. §994(j) (Congress stressed “the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first time offender who has not been convicted of a crime of violence or an otherwise serious offense”); see, e.g., *United States v. Polito*, 215 Fed.Appx.354, 2007 WL 313463 (5th Cir. Jan. 31, 2007) (unpub.) (Where defendant convicted of possession of child pornography and guidelines 27-33 months, district court’s sentence of probation with one year house arrest reasonable in part because first offense); *United States v. White*, 506 F.3d 635 (8th Cir. 2007) (in case of distribution of child porn where guidelines 108-135 months, variance to 72 months proper in part because first offense, rejecting government’s argument that court may not consider defendant’s lack of prior record because already taken into account by guidelines; after *Booker*, court can consider lack of criminal record apart from guidelines).

In fact, the United States Sentencing Commission has noted that prison often makes prisoners more prone to criminality. See U.S. Sent’g Comm’n, Staff Discussion Paper, *Sentencing Options Under the Guidelines* (1996) (recognizing the “criminogenic effects of imprisonment which include contact with more serious offenders, disruption of legal employment and weakening

of family ties”); Justin Murray, *Reimagining Criminal Prosecution*, 49 *American Criminal Law Review* (2012) at 1565 (“Rather the rehabilitating prisoners, modern incarceration tends to make prisoners more violent, antisocial, and prone to criminality.”) “Most people who study prison life believe there are significant brutalizing effects to imprisonment that impair prisoners’ inclination to conform to the law.” *Id.* (quoting Dina R. Rose & Todd R. Clear, *Incarceration, Social capital and Crime: Implications for Social Disorganization Theory*, 36 *Criminology* 442, 465 (1998); Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 *Berkeley Journal of Criminal Law* 259 (2012) (abstract of paper discussing “the self-defeating nature of current carceral practices – the way the combination of prison conditions and postcarceral burdens ensures that many people who have done time will return to society more prone to criminal activity than previously”).

Not only has Mr. Namoff been profoundly humiliated, but he has been keenly aware of and devastated that he has let others, including his family, down. His private shame has been overwhelming. Not a day will go by that Mr. Namoff will not feel the guilt as a palpable consequence of his actions. The embarrassment and shame felt by Mr. Namoff is striking, particularly when he reflects on serving as a role model for his g-dchildren, and dreams of starting his own family and how he will serve as a role model for his future children and the community. Being a convicted federal felon will always be a stain on his resume and modern technology will record it and expose for eternity. Given Mr. Namoff’s unique name, a simple google search will quickly yield results tied to his arrest in this matter, as the case has been covered in the *Chicago Tribune* and *Chicago Sun Times* extensively. In addition to the personal shame of having a felony conviction, there is the professional stigma that will follow Mr. Namoff. This conviction will no doubt follow Mr. Namoff for the rest of his life even if, despite the conviction, he is fortunate enough to have others that still believe in, trust, and support him, as he embarks on future personal

and professional endeavors. As a sales representative, Mr. Namoff must rely on his reputation and integrity, and for the rest of his days will have to revisit and account for the conduct that brings him before the Court. In other words, the branding of “criminal,” will always overshadow Mr. Namoff’s past and future good works in the eyes of his family and professional community.

In short, sentencing Mr. Namoff to imprisonment would be greater than necessary as his involvement has been profoundly humiliating and provided a great deterrent to him, as a first-time offender. *United States v. Paul*, 2007 WL 2384234 (9th Cir, Aug. 17, 2007) (unpub.) (within guidelines sentence of 16 months (high end) for taking government money unreasonably high in part because Paul was “a first-time offender with absolutely no criminal record whatsoever”); *United States v. Baker*, 445 F.3d 987 (7th Cir. 2006) (in distribution of child porn case court affirms below guidelines sentence of 78 months (guidelines called for 108) noting that “significant is the district court’s finding that a prison term would mean more to Mr. Baker than to a defendant who previously had been imprisoned). Consideration of this factor is consistent with §3553’s directive that the sentence reflect the need for “just punishment,” *Id.* § 3553(a)(2)(A), and “adequate deterrence,” *Id.* § 3553(a)(2)(B)”). Under the totality of the circumstances, and considering all of the § 3553(a) factors, being forever labeled a federal felon is significant punishment, and warrants a variance to a sentence well below the advisory guideline range and short of imprisonment.

G. A Downward Variance from the Advisory Guideline Range is Warranted to Avoid Unwarranted Disparities from Much More Culpable Co-Defendants Who Have Received Sentences of Probation.

Mr. Namoff is among the least culpable of those charged in this case and certainly less culpable than some of his co-defendants who have been sentenced to periods of probation. Mr. Namoff is also the youngest person who participated in the offense, did not have any agents or

“subagents” under him, did not also act as a “runner” and the amount of bets/money being wagered (and his profits) paled in comparison (by any measure) to those of his co-defendants.

Consider co-defendant Todd Blanken; despite being an older adult working for the court system, also working as a runner with agents underneath him, regularly collecting installments toward a \$600,000 debt from a television personality and handling much larger bettors, a valued agent of Delgiudice who received large Christmas bonuses,⁵ whom the government placed among the “top,” the Honorable Court recently sentenced to a period of two years probation with six months of community confinement, which is lower than the sentence called for under Mr. Namoff’s anticipated advisory sentencing guideline range and what is being advocated for by the government. Similarly, Eugene Delgiudice, who had a prior gambling conviction was sentenced to a term of 12 months probation, despite being scored under the same advisory guideline range as Mr. Namoff, with Eugene handling much larger amounts of money as a runner and instrumental in his son’s gambling activity. Putting aside all other §3553(a) factors or mitigating circumstances for the moment, there is a stark difference between much older defendants like Blanken and Eugene Delgiudice who were sentenced to probation, and a naïve young adult like Matthew Namoff, who only took very small bets from the vast majority of his bettors. Unlike Namoff, who the government points out a discussion where he once had a total of \$500 for Vincent Delgiudice as an overt act, Blanken was responsible for collecting from a bettor who owed \$600,000 and regularly collected \$1,500 from this individual. Simply put, Mr. Namoff’s conduct pales in comparison to his co-defendants and if he were to be sentenced anywhere near his anticipated advisory sentencing guideline, or greater than his previously

⁵ To compare, Todd Blanken received Christmas bonuses over a tow year period totaling \$12,000 whereas Mr. Namoff received \$1,500 (12.5% of. Blanken).

sentenced co-defendants Blanken or Eugene Delguidice, it would result in an unwarranted disparity and would be greater than necessary. 18 U.S.C. §3553 (a)(6).

Moreover, in its Sentencing Memorandum (Doc.224) filed earlier today, in support of its sentencing request, the government suggests that Mr. Namoff “[brought] both a ‘deep pockets’ gambler and a police officer to Delguidice during the short period of time covered by the wire intercepts,” but fails to mention that despite discussion, neither materialized and that Mr. Namoff specifically told the police officer not to participate given the potential professional consequences, or that the vast majority of Mr. Namoff’s involvement occurred during the period of the overhear. In addition, the so-called “deep pockets” was the equivalent to an ordinary bettor of Mr. Namoff’s co-defendants, much larger than Mr. Namoff’s small bettors and also amounted to nothing more than a discussion. Further, the government also references an overt act, namely a text exchange settle up sheet showing that Mr. Namoff’s gamblers owed Delguidice in excess of \$20,000, but it also fails to mention or recognize that this was a tally at the end of the football season and accounted for a *years’* worth of betting, was also to be split, and did not account for the “uncollectable,” which might decrease that number by up to 30 percent. Plus, \$20,000 over the course of a year pales in comparison by any calculus, to the extent and dollar amount of wagers attributable to Blanken who had a single bettor owe over \$600,000 that he was collecting on, another who lost \$22,000 in one week, and at least three agents under him that owed him at least \$26,000. Or certainly that of co-defendant Stella who had a single gambler lose multiples of that number in a season. In other words, not only is it unfair to characterize Mr. Namoff’s conduct as a significant bookmaking operation in comparison to his co-defendants, but it also would lead to an unwarranted sentencing disparity.

Mr. Namoff is also much less culpable than his recently sentenced co-defendant Nicholas Stella who was sentenced to 15 months in prison. Nicholas Stella had approximately 1000 bettors, subagents, recruited bettors, and took in millions of dollars on an annual basis; all while he was a sworn Chicago Police Officer. Furthermore, Mr. Stella violated his pretrial release and had his bond revoked after battering his girlfriend and evaded the government's search warrant for his cell phone, which clearly demonstrates his continued disrespect of the rule of law after his arrest in this case. Unlike Mr. Stella (who is on tape discussing two of his many bettors who lost approximately \$73,000), Mr. Namoff has been profoundly shaken by his arrest, has not had any violations while on bond, and took in small bets from a small number of individuals. Additionally, Mr. Namoff's conduct pales in comparison to the conduct of co-defendant Casey Urlacher, who was pardoned by former President Trump. As the Honorable Court is well aware, Mr. Urlacher was a suburban mayor when he recruited and profited large amounts from gamblers. For example, an overt act charged in the indictment alleged Urlacher has a new gambler to be setup on the website with a \$500 maximum bet, a maximum wager for the week of \$3,000 and a \$1,000 settle up figure. Nonetheless, President Trump, in a press statement, cited Mr. Urlacher "[consistent giving] back to his community" as justification for his pardon. Mr. Namoff, who has also consistently assisted his community, should not be imprisoned to avoid disparate treatment under the law, whether this Honorable Court believes Mr. Urlacher's pardon was appropriate or not. Sentencing Mr. Namoff to anything close to Mr. Stella would result in an unwarranted disparity given their respective culpability, roles, and promote disrespect for the law. 18 U.S.C. §3553 (a)(6).

H. A Sentence of Probation is Appropriate Given the COVID-19 Global Pandemic and the Emergence of the Delta Variant.

As this Court is painfully aware, the country (and world) is in the grips of the COVID-19 pandemic, which has been declared a national emergency. The unfortunate reality is that the infection rate among the prison population is over 750 times the rate of the Chinese population, which is believed to be the origin of the deadly virus. As of the filing of this memorandum, the United States has had more than 35.4 million diagnosed cases and at least 614,834 individuals have died from the disease in the United States alone.⁶ It has been well documented that prisons, at both the federal and state levels, have been considered hotbeds for the transmission of the virus given the inability to practice safe distancing and the BOP handling of the virus has led to at least 11 class-action lawsuits to try to compel releases and improve conditions inside the prisons.⁷ Any person who is sentenced to serve time in a federal prison is being placed at risk of contracting the disease. Furthermore, though there have been some vaccines approved for emergency use and widely distributed, there have been recent and significant issues revolving around the emergence of a new variant or strain (commonly referred to as the delta variant) that has again placed the future of the virus in the United States at issue.⁸ The Delta variant is more contagious than other virus strains, can make people actually sicker, and vaccinated people might more readily transmit

⁶ “Coronavirus Map: Tracking the Global Outbreak,” New York Times (March 25, 2020), available at <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (updated daily and last visited on August 5, 2021)

⁷ Keri Blakinger “I Begged Them To Let Me Die: How Federal Prisons Became Coronavirus Death Traps”, The Marshall Project, June 18, 2020 <https://www.themarshallproject.org/2020/06/18/i-begged-them-to-let-me-die-how-federal-prisons-became-coronavirus-death-traps> (Last accessed February 10, 2021)

⁸ Mihir Zaveri, “Vaccine Rolls Out Slowly as Virus Surges”, The New York Times (January 4, 2021) available at <https://www.nytimes.com/2021/01/04/nyregion/vaccines-rollout-coronavirus-nyc.html>

the Delta variant of COVID-19 to others according to some emerging research including those that have been vaccinated.⁹

Prison restrictions and the focus on caring for those infected with COVID-19 and its debilitating effects, will also make it more difficult for Mr. Namoff to receive appropriate medical care that was hard to obtain in a timely manner even before the global pandemic. In addition any mental health treatment will likely be neglected given the BOP's focus on emerging from the COVID-19 crisis draining its resources. In light of this and the uncertainty and unprecedented challenges facing the BOP, it would be prudent and safer for Mr. Namoff to be sentenced to a non-custodial sentence of probation.

I. CONCLUSION

In *Gall*, the Court remarked:

[T]he unique facts of Gall's situation provide support for the District Judge's conclusion that, in Gall's case, "a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing.

The Court in *Gall*, (552 U.S. at 48-9) clearly established that sentencing someone to probation still imposes considerable restrictions and is punishment. Moreover, "[r]ehabilitation outside of incarceration is increasingly the only practicable way of dealing with individuals who are still ethically malleable." *United States v. Blake*, 89 F. Supp. 2d 328, 345-46 (E.D.N.Y. 2000). Mr. Namoff always was and always will be "ethically malleable," and when taking into account the "real conduct and circumstances," a sentence of probation is a sufficient punishment. Based upon the foregoing, information contained in the PSR, and other information to be submitted at hearing,

⁹ Tina Hesman Saey, Erin Garcia de Jesus, and Jonathan Lambert, "New Delta Variant Studies Show the Pandemic is Far from Over" Science News (July 30, 2021) available at <https://www.sciencenews.org/article/delta-variant-studies-cdc-coronavirus-covid-pandemic>

Mr. Namoff respectfully urges this Honorable Court to impose a sentence of probation, because such a sentence is sufficient but not greater than necessary to comply with the purposes of sentencing under 18 U.S.C. 3553(a) including his unique personal history and characteristics (including his age), the nature and circumstances of the offense, his mental health treatment needs (particularly during the COVID-19 global pandemic), lack of criminal history, his positive involvement in the community and history of good works, profound remorse, his supportive role within the community and his family, stigma associated with his conviction and the kinds of sentences available.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Darryl A. Goldberg, an attorney, certify that in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, and the General Order on Electronic Case Filing (ECF), the document “MATTHEW NAMOFF’S SENTENCING MEMORANDUM” was served on August 9, 2021, pursuant to the District Court’s system as to ECF filers.

/s/ Darryl A. Goldberg
Darryl A. Goldberg